
44.15

START

FIRST

SIDE

55-56

31

SCHEDULE.

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

Accused: B.92898 Pte DALZELL G.T. - 1 CASCRU

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

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

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

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

Sentence Awarded by the Court:

To forfeit one ordinary day for fifty-five (55) days.

(Sgd) ..... Judge-Advocate, if any. Date awarded. 2 Apr 45 (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

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

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

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

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

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

Confirmed

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

(Sgd) J.H.P. Connelly Brig

Date 4 Apr 45 Commanding B Corps CRA
Confirming Officer

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

Accused.	Date.	Signature of Offr.
B92898 Pte Dalzell GT	5 Apr 45	Kenneth Thorn Lt-Col

D... 85 d/10 Apr 45. Taken on file

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Corps Royal Unit

* 5-642/189 ~~RECORDED~~ AT CMHQ IN AB 160 5C-86

RECEIVED 24 APR 1945 AAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA81) 40/P.S.R./1650 (2054)

Convened by Order of Brig A.B. Connelly Comd "B" Gp, CRU dated 1 Apr 45

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.92898		Garnet Thomas	DALZELL	1 CASCRU

PROCEEDINGS REVIEWED K [illegible] 16 apr 45 MLS REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 2 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 90 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

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

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

Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 98(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Major	E.M. Miller, ED, KC	HQ CRU
Member	Captain	C.R. Barratt	1 CGRU
Member	Lieutenant	D.E.L. Fraser	1 CGRU
~~Judge-Advocate~~			
Prosecutor	Major	H.E. Hart	1 Cas Co
Defending Offr	Major	C.L. Walker	1 Cas Co

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See CF p 3.)

A8. The accused ..... before arraignment make(s) (no) (an) plea (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposite, the evidence, if any, and finding are recorded (per Notes. For forms of record see references in fns to RP cited. Insert in full name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 79(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

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

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

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

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

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges, and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 42, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 355 or MFB 284. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 70(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 44(1)(b), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-92898 Pte Garnet Thomas, Dalzell, RCASC, on strength of I Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas is charged with:

Sec 15(1) Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

IN THE FIELD, absented himself without leave from 0800 hours 6 March, 1945, until 2130 hours 27 March 1945, when he surrended himself at the Unit Guard Room, I Cdn ASC Rft Unit.

TOTAL TIME ABSENT: 21 days 13 hours and 30 minutes.

H L Pease

(H.L. Pease) Colonel, RCASC.
Commanding,
1 Cdn ASC Rft Unit.

IN THE FIELD
30 MARCH 1945

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

A B Connelly

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units

IN THE FIELD
1 APR 45

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.92898	Pte		Garnet Thomas	DALZELL	1 CASCRU

CONVENING ORDER.

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

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

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

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

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

PRESIDENT.

Major	E.M. Miller, ED, KC	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	to be detailed by CO	1 CGRU
Lieutenant	to be detailed by CO	1 CGRU
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

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

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in England (Country.) — (A.B. Connelly) (Signed personally. RP 105 fn 2.) — Brig (Rank.)

Date 1 Apr 45 — Commanding "B" Gp, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1897 (6143)

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 85(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

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

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accsd to go on parade. He refused and did not go on parade.

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

Re-exam: None.

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

RP 83(B) complied with.

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

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

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

(i) Opening address by Defending Offr. (*RP 66(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 2*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

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

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

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

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 565(a).*)

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

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

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

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 105, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

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

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

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

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 139, RP 118(C), MML p 759.*)

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

Medical Officers' Certif.
K.R. (Can) para 557

I certify that I have this morning examined No: B.92298.....

Pte:.....D.A.12c11, G.T. and in my opinion he is fit to
(rank) (name)

~~unfit~~ NF

undergo trial by Court Martial.

Station: Blenheim Beks.

Date: 2 April 1945.

M. Finkelstein Capt
(Medical Officer)

Although this soldier has pleaded guilty to the charge of A.W.L., I would ask the Court to give consideration to the following facts -

1/ Pte. Dalzell is Catagory S.4 - M.2, and is due to be sent back to Canada for discharge

2/ At the time of going A.W.L., his child of 10 months was seriously ill - and required constant attention - Mrs Dalzell was unable to carry on alone - as she also was ill - ~~and only Pte Dalzell's presence there~~ & only by Pte Dalzell being there was he certain that the child was properly looked after & cared for.

3 During the period of A.W.L. - arrangements were also completed for his family to be moved to Canada

4 This man has completed 4 yrs in the Cdn. Army - & a light sentence in this case would do much to help Pte Dalzell to re-habilitate himself when he returns to civilian life

Pte Dalzell's home is in Ashton - Keynes, Wiltshire, & ~~[illegible]~~ has been married approx. 3 yrs.

C.H. Waller Major
1 Cdn A.S.C. R.V.

SUMMARY OF EVIDENCE

IN THE CASE OF B-92898 Private Garnet Thomas Dalzell, RCASC on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas.

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

1st WITNESS (For the Prosecution) Major, H.E. Short, RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am Major, H.E. Short RCASC, on strength of 1 Cdn ASC Rft Unit and I produce the following document relating to the accused, whom I now recognize, pursuant to Overseas Routine Order No.5352 which has been read over and shown to the accused and which is attached hereto as an exhibit.

(a) Certified True Copy 1 Cdn ASC Rft Unit Part II Orders, dated 9 March 1945 certifying that B-92898 Pte Dalzell, G.T. AWL from 0800 hours 6 Mar 45.(Marked Exhibit "A")

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

(H.E. Short) Major
1 Cdn ASC Rft Unit.

2nd WITNESS (For the Prosecution) K-25840 Cpl Hunter, W.E., R.C.A.S.C. on strength of 1 Cdn ASC Rft Unit having been duly sworn states:-

I am K-25840 Cpl Hunter, W.E. on strength of 1 Cdn ASC Rft Unit and am employed in No.1 Guard Room at 1 Cdn ASC Rft Unit. On 27 Mar 45 at 2130 hours while I was in charge of Unit Guard Room the accused Pte Dalzell reported to me stating that he had been AWL. I immediately took note of time and placed him under close arrest.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

(K-25840 Cpl Hunter, W.E.)
1 Cdn ASC Rft Unit.

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

THE ACCUSED DECLINED TO MAKE A STATEMENT AT THIS TIME.

I hereby certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in writing on the 27 Mar 45 in the Field in the presence of and hearing of the accused and that R.P.4 (c) (d) (e) (f) ~~and (g)~~ have been complied with.

(H.E. Short) Major, RCASC,
Officer detailed to take
Summary of Evidence.

IN THE FIELD
30 MARCH 1945

EXTRACT FROM:

Exhibit "A"

LAST DO
NO 57
8 Mar 45

I CDN A.S.C. REINFORCEMENT UNIT.
CANADIAN ARMY OVERSEAS.
DAILY ORDERS PART II
BY
COLONEL H.L. PEASE, OBE, COMMANDING.

THIS DO
No. 58
9 Mar 45

Para 13(d).

B-92898 Pte Dalzell, G.T.

AWL from 0800 hours 6 Mar 45 (24hrs)
Still absent 0800 hours 7 Mar 45

(H.L. Pease) Colonel,
Commanding,
1 Cdn ASC Rft Unit,
Cdn Army Overseas.

Certified True Copy

J.A. Cusumke
(Officer i/c Regt Documents)
1 Cdn ASC Rft Unit.
Capt

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-92898	Pte	Garnet Thomas, DALZELL	1 Cdn ASC Rft Unit

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

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

For AWL Sec.15 (1) Army Act 10 times.

For Sec.40. Army Act 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 5 May 1942

Date of last entry in Field Conduct Sheet ~~[illegible]~~ 4 Oct 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~[illegible]~~

~~[illegible]~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 5 days in military custody, *i.e.*, nil days in open arrest, 5 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 27 yrs 2months and 24 days

6. The date of his ~~[illegible]~~ attestation is 17 Feb 41

7. ~~[illegible]~~

8. The accused is in possession of‡ C.V.S.M. and Clasp 15 Jan 44

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

9. ~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

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

Ext P
Ex 97

(29072) Wt.[illegible] 2,000 [illegible] A.A.&Q.M.G. Gp.698

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

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

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

Signed this 2nd April day of March 1945

Officer i/c Regimental Books

M.F.M. 6 (A.F.B. 127)

No. B92898 Name Dalzell, G.T. Sqn., battery, or Company Corps R.C.A.S.C. Date of enlistment 17/2/41 G.C. Badges Service or Proficiency Pay N/A 40/P & S/136 (2637)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 1 Feb 43 last entry 22-6-41 Nil cases of drunkeness Last Instance on N/A (D.W. Cunnington) Major									
Field	2/5/42	Spr		A.A. Sec 15(1) AWL from 1200 hrs 2/5/42 until 1630 hrs 4/5/42 (Absetn 2 days 4 hrs 30 mins)	L/Cpl Clarke,G.T.	Forf 5 days pay FR&I 149(2)	5/5/42	Maj G.H. Spencer	Forf3 days pay for absence
Field	6/8/42	Spr		A.A. Sec 15(1) AWL from 0900 hrs 6/8/42 until 1930 hrs 7/8/42 (Absent 1 day 10 hrs 30 mins)	L/Cpl Larrett, I.	Forf 3 days pay FR&I 149 (2)	8/8/42 LEC Schmidlin Capt		Forf 2 days pay for absence.
Field	31Jul 43	Spr		AA 15(1) AWL from 2300 hrs 31 Jul 43 until 1330 hrs 1 Aug 43 (Absent 14 hrs 30 mins)	L-C.Julian	14 dys CB 21 dys pay	5 Aug 43	RB Cameron	1 dys pay for absence

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7/11/42	Spr		A.A. Sec 15(1) AWL from 0900 hrs 7/11/42 until 1800 hrs 9/11/42 (Absent 2 days 9 hrs)	L/Cpl Larrett, L.	14 days C.B. Forf 14 days pay FR&I 149(2)	13/11/42	Major D.W. Cunnington	Forf 3 days pay for absence
Field	6 Feb 43			AA Sec 15(1) AWL 1200 hrs 6 Feb 43 until 2345 hrs 15 Feb 43 (Absent 9 days 11 hrs 35 min)	L-Cpl. King M.	14 dys C.B. 28 dys pay FR&I 149(2)	16Feb43	DW Cunnington.Major	10 dys pay for absence
Field	22Mar 43	Spr		AA 15(1) AWL 2359 hrs 22 Mar 43 until 1900 hrs 24 Mar 43 (1 day 18 hrs 59 mins)	L-C.King,M.	Reprimand	25Mar43	DW Cunnington Major	2 dys pay for absence
Field	12 Jun 43	Spr		AA Sec 15(1) AWL 1830 hrs 12 Jun 43 until 1110hrs 14 Jun 43 (1 day 16hrs 40 mins) (In close arrest 2 hrs 20 mins)	Cpl Colgan,W. Cpl Girling W.	18 dys detention	14 Jun43	RB Cameron A/Major	Forf 2 days pay for absence

No. B-92898 Name Dalzell, G.T. Sqn., Battery, or Company Corps R.C.A.S.C. Date of enlistment 17/2/41 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 40/7 & 9/130 (2637)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 Apr 44	Pte		WOAS AWL from 2359hrs 2 Apr 44 til 1800 hrs 24 Apr 44 TTA 21 days 18 hrs 1 min AA Sec 15(1) Under close arrest from 1800 hrs 24 Apr 44 till 1030 hrs 3 May 44	Documentary	10 days Detn 10 days pay FR&I 149(1)(b)	3 May 44	Major AT Dixon	22 dys pay FR&I 149(1)(a) 9 days pay FR&I 149(1)(c)(ii) Total Forf 41 days pay
Field	5 Jul 44	Pte		WOAS Conduct to the prej.etc. when checked by his superior Offr for a breach of discipline did act in an insolent manner.	S/Sgt Maxwell	27 days F.P. 27 days pay FR&I 149 (2)	8 Jul 44	Maj GR Greer	Forf 1 days pay FR&I 149 (1)(c)(i)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17 Jul 44	Pte		AA Sec 15(1) AWL whilst under going FP from 0700hrs 16 Jul 44 until 1345hrs 26 Jul 44 TTA 10dys 6hrs & 45 mins	Sgt Galey	28 days Det 28 days pay FRI 149(1)(b)	7 Aug 44	Col. H.P. Bonnick	Forf 11 days pay FRI 149(1)(a) Forf 11 days pay FRI 149(1)(c)(ii) TF 50 days pay
Field	18 Sep 44	Pte		A.A. Sec.15(1)AWL from 2359hrs 17 Sep 44 until 0630 hrs 4 Oct 44. TTA 16dys 6hrs & 21 mins	Documentary	21 days Det 21 days pay Fri-149(1)(a)	4 Oct 44	Lt.Col.WH Copeland	Forf: 17 days pay FRI 149(1)(a) TF 38 dys pay

CERTIFIED TRUE COPY AS COMPILED FROM DOCUMENTS IN MY POSSESSION.

Officer i/c Regt Documents
1 Cdn ASC Rft Unit.
31 March 1945

IN THE CASE OF

B-92898 Private Garnet Thomas DALZELL

LIST OF WITNESSES FOR THE PROSECUTION

Major, H.E. Short I Cdn ASC Rft Unit

K-25840 Cpl Hunter, W.E. I Cdn ASC Rft Unit

LIST OF WITNESSES FOR THE DEFENCE

Nil

LIST OF EXHIBITS

(a) Certified True Copy of extract from I Cdn ASC Rft Unit Part II Orders, certifying that B-92898 Pte Dalzell, G.T. AWL from 0800 hours 6 March 1945.

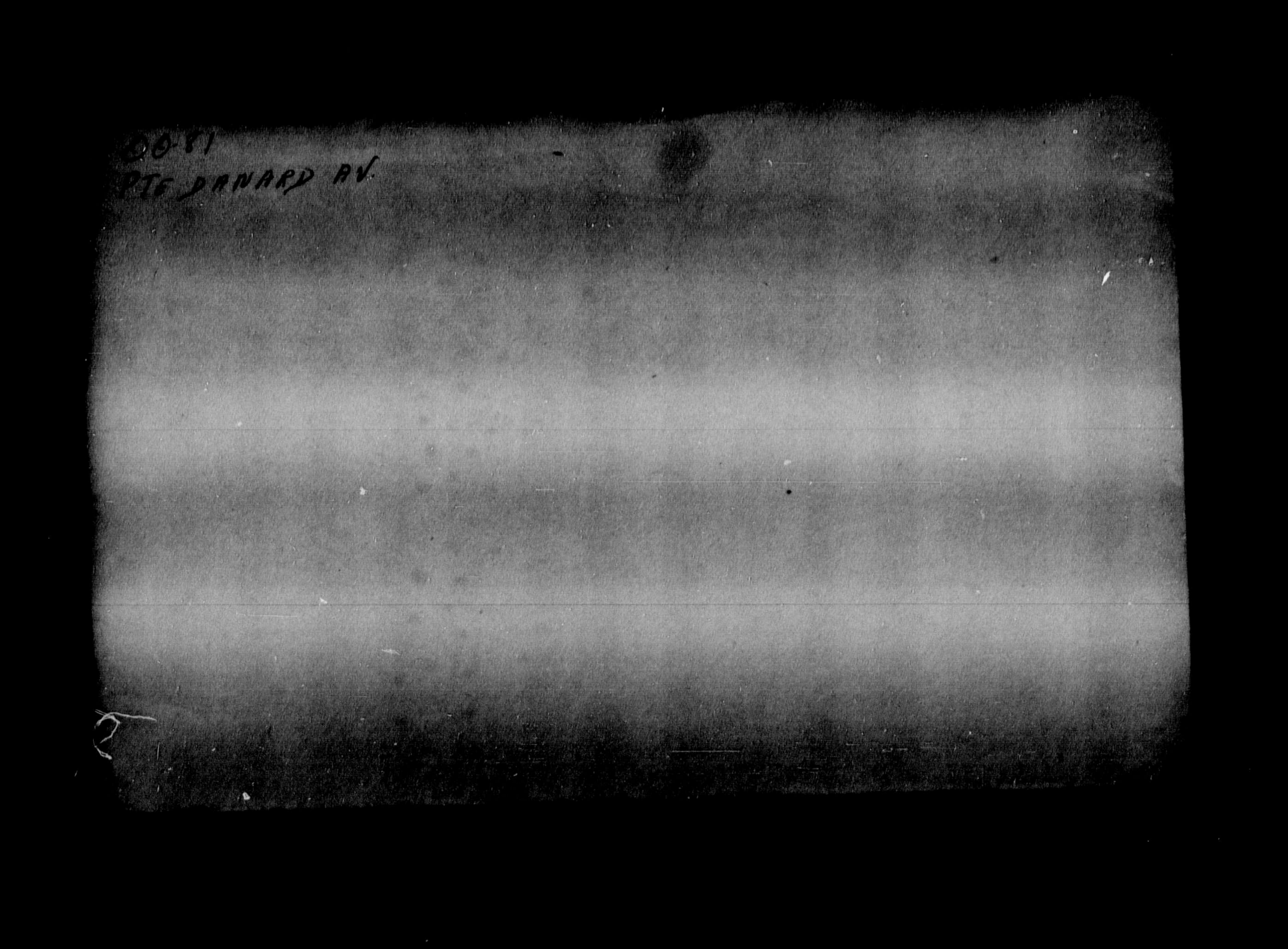
TO WHOM IT MAY CONCERN

This is to certify that I, the accused B-92898 Pte Dalzell, G.T. RCASC, I Cdn ASC Rft Unit, have received one (1) copy of Charge Sheet and Summary of Evidence in connection with my forthcoming Trial by Field General Court Martial.

G.T. Dalzell
(B-92898 Pte Dalzell, G.T.)
I Cdn ASC Rft Unit.

I, the accused, B-92898 Pte Dalzell, G.T. RCASC, on strength of I Cdn ASC Rft Unit, desire the services of a competent officer to defend me at my forthcoming Trial by Field General Court Martial.

G.T. Dalzell
(B-92898 Pte Dalzell, G.T.)
I Cdn ASC Rft Unit.



QO-81
PTE DANARD AV.

00-81

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this fourth day of September, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of HQ RCA 2 Cdn Corps, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

~~*[illegible]~~

~~*(1 [illegible])~~

~~*(2 A Field Officer as President)~~

~~[illegible]~~

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

*Omit if not applicable.

Proceedings Reviewed by Revising Officer

3 Oct 43

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

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

President.

Rank.	Name.	Regiment.
Major	H.C. FAIR	1 Cdn Svy Regt

Members.

Rank.	Name.	Regiment.
Capt	~~T. BOND~~ C.W. LESTEY	HQ RCA 4 Cdn Armd Div
Capt	H.F. MOGEY	15 Cdn Fd Regt

*Signed (A.E.D. Tremain) Brigadier

Commanding C.C.R.A. 2 Cdn Corps

Convening Officer.

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M.16629 Pte. DANARD A.V. 2 Cdn CBO Staff	Committing a Civil Offence, that is to say, Common Assault. A.A. Sec 41 (See Charge Sheet attached)	Not guilty	Not Guilty	Not Sid S.F.D. Tremain

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be ~~recorded on separate sheet~~ if necessary*) :— No.

(Signed) S.F.D. Tremain (A.E.D. Tremain) Brigadier
Commanding CCRA 2 Cdn Corps 1 Cdn Survey Rgt. R.C.A.
Convening Officer (e)

(Signed) H. C. Fair Survey R.C.A.
President

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

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

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

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

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

CHARGE SHEET

The accused, M.16629 Pte. Avery Victor DANARD, 2 Canadian C.B.O. Staff, R.C.A., a soldier of the Canadian Army Overseas, is charged with:-

First Charge Sec. 41 A.A. WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT

In that he

in the field, at about 0040 hrs, on 31 Aug 43 assaulted W.R. 170 Constable Crosse by forcibly taking his constables stick from him, threatening him with it, and then holding his arms and forcing him back while Gnr. Gray struck him.

(J.H.D. Ross) Lt-Col., R.C.A.,
Commanding,
2 Cdn C.B.O. Staff, R.C.A.

In the Field
4 Sep 43

To be tried by Field General Court Martial.

(A.E.D. Tremain) Brigadier
C.C.R.A. 2 Cdn Corps

In the Field
4 Sep 43

MEDICAL OFFICER'S CERTIFICATE

6 Sept 43

I certify that I have this morning examined M-16629 Pte. Danard A.V. and find that he is fit to undergo trial by Court Martial.

Signature

PAGE I

Record of Proceedings of a Field General Court Martial

Held in the Field in ~~[illegible]~~ E Wades Pt. (Country) on 6 Sept. 43 (Date) to try

Accused M 16629 (Number) H.Q. Pte. (Rank) Avery Victor (Christian Names) Danard (Surname) 2 Cdn Corps CBO Staff (Unit)

	Rank	Name	Unit
President	Major	H. C. Fair	1 Cdn Svy Rgt RCA
Member	Capt.	C. L. B. Estey	H Qr RCA 4 Cdn Amd Div
Member	Capt.	H. T. Mogley	15 Cdn Fd Rgt RCA
Judge Advocate (if any)	N.A.		
Officers Under Instruction (if any)	N.A.		
Prosecuting Officer	Capt.	J. E. Seybold	2 Cdn CBO Staff
	Lawyer? Ans No		
Defending Officer	Capt.	S. Sheps	5 Cdn Med. Rgt
	Lawyer? Ans Yes		

(The following procedure must be actually carried out)

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

   (If a waiting member substituted, record is on separate sheet, initialled by the President and attached hereto). (For form of record see M.M.L. p.742 top).

2. The President, in closed court (R.P.22,fn 1) reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49;R.P.105) and constituted (A.A.49;Rs.P.106, 107), that the accused is (are) amenable to Military Law, and that each charge discloses an offence (Rs.P.23,108).

3. The accused is (are) brought before the Court and at 1020 hours the trial commences.

4. The Prosecuting Officer produces a Medical Certificate under K.R.(Can) 557 (See CMHQ Circular Letter 175) that the accused has (have) this day been examined and is (are) fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

(Over)

5. President to accused:

Q - Do you object to _____ as interpreter?
A - _____

The interpreter is duly sworn. (Form of oath on Page "D").

Q - Do you object to _____ as shorthand writer?
A - _____

The shorthand writer is duly sworn. (Form of oath on Page "D").

6. The Convening Order is read in the hearing of the accused. The names of the President and Members of the Court are read to the accused and they severally answer to their names (R.P.25).

7. President to accused:

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

(If objection is made it is recorded on separate sheet, initialled by the President and attached hereto. (R.P.25). (For form of record see M.M.L. p. 742 Variation).

8. The President, Members, Judge-Advocate and Officers under Instruction are duly sworn (Rs.P.26, 27). (Forms of oath on page "D").

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

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

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(2), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130, R.P.57), such pleas and evidence (if any) are recorded on separate sheet(s), initialled by the President and attached hereto). (For form of record see M.M.L. p. 744, 745, Variations).

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

First Charge Not guilty — Fifth Charge _____
Second Charge _____ — Sixth Charge _____
Third Charge _____ — Seventh Charge _____
Fourth Charge _____ — Eight Charge _____

(For procedure on alternative charges, see R.P 37(A) and fn.2). (For form of record see M.M.L. p. 744 Instructions).

Further proceedings are recorded on pages hereto attached.

(For use when accused pleads "Not Guilty" to all charges)

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

1. The accused is asked the question set out below the Schedule on p.2 of A.F.A.3 and his answer there recorded. (R.P.39(A)).

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

(See RECORD OF EVIDENCE on Page "D")

3. The Prosecution is closed.

(If submission is made by Defence, that no prima facie case has been established, such submission, Prosecutor's reply and decision of the Court are recorded on separate sheet, initialled by the President and attached hereto). (Rs.P.40, fn 1; 70, fn 1).

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

5. President to accused:

Q - Do you apply to give evidence yourself as a witness?
A - Yes
Q - Do you intend to call any other witness in your defence?
A - No
Q - Is he a witness as to character only?
A - No

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

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

8. The Court is closed to consider the finding(s). (Rs.P.43,44,117).

9. The finding(s) of the Court is (are) recorded on p.2 of A.F.A.3.

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

10(A) (If finding(s) "Not Guilty" on all charges)

The finding(s) is (are) announced and the accused is released.

O R

(B) (If finding(s) "Not Guilty" on one or more charge(s) and finding(s) "Guilty" on one or more charge(s).

The finding(s) of "Not Guilty" are announced and the President states "The finding(s) of the Court on the ____, ____, and ____ charge(s) being subject to confirmation, will be promulgated later".

O R

(C) (If finding(s) "Guilty" on all charges).

The President announces "The finding(s) of the Court being subject to confirmation, will be promulgated later".

(Over)

12. Statement of Character and Service (A.F.B.296 or M.F.B.325) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163 (1) (h) purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, marked " " and " ", signed by the President and attached to the proceedings. (R.P.46; Overseas R.O. 3131).

13. President to accused:

Q - Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)).

A - _____

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

14. The President announces:

" The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

15. The Court is closed to consider the sentence.

16. The sentence is recorde, dated and signed by the President (R.P.50) on p.2 of A.F.A.3.

(Punishments, A.A.44; M.M.L. p.130-134; M.R.(Can)563-566; Overseas R.Os. 309,2323).
(One sentence is awarded in respect of all offences, R.P.48).
(For form of sentence see M.M.L. p. 756-759).

17. _____ (Signature of President)

First Witness for the Prosecution

WR 170 Constable E O CROSSE, Monmouth Police Sta, MONMOUTH, being sworn states:-

At 0040 hrs Tue morning 31 Aug I was in my house at Whitebrook, Monmouthshere when I heard the sound of smashing timber on the rd outside and men shouting. I put on my uniform and went down onto the rd where I saw a square of fencing 4'x4' smashed on the other side of the rd. About 20 or 30 yds up the rd there was a group of 4 soldiers. I shone my spotlight on them, they were still smashing something up the rd. One of them called out, "What do you want". I replied "I want you to come back here and see this damage". Two of the men then ran towards me, a third one laid down a few feet away. The fourth man remained further up the rd holding a white light. The two men who came towards me appeared to be hostile, so I shone my torch on my uniform so that they could see who it was accosting them. I then shone the light on them again and the man on the left shouted, "It is only a fucking policeman, we can knock his head off". The man on my left then wrestled with me for possession of my torch which he obtained. I then drew my staff and warned the men again that I was a police offr. The two men then took hold of the staff and my arm was twisted until I had to release it. The man on my left then raised the staff over my head with his right hand and said, "we can knock your head off and we will". He did not deliver a blow however, he closed with me and pinned my arms to my side. He then began to walk me backwards and the man on my right landed two blows on my neck. The man on my right then said, "take your bloody glasses off so that we can hit you properly". Neither of the two men had hats on. I noticed that the man on my left had hair which was brushed back, the man on my right had hair which was standing straight up. I eluded the men and went to phone for help from Monmouth . I also got another torch from my own house. When I got back to the rd the men had vanished. I immediately made enquiries at Whitebrook in company with two other police offrs as a result of which we went to a gravel quarry near Redlock. The gd there took us to Capt J E Seybold and we told him what had happened. After making a search of the camp he infm us all men were present. The time was then 0230 hrs 31 Aug. Later in the day I returned to the quarry. I identified Pte Danard as the man who had been on my left and Gnr Gray as the man who had been on my right.

The Prosecution examined the above witness

Question 1 — How did you identify the accused?
Answer — By an identification parade and again I saw the two accused late in the day not at an identification parade and I satisfied myself the accused were the two men in question.

Question 2 — How far is it from "Pub" in Whitebrook to where the fight occurred?
Answer — About one mile, sir.

Question 3 — Were there any other tps in the vicinity?
Answer — No to my knowledge.

A.67

Capt S Shops, the def counsel cross-examined the witness.

Question 4 — Where is Whitebrook?
Answer — On the side of the valley between Monmouth and Chepstow.

Question 5 — How large is Whitebrook?
Answer — A scattered village ¾ mile in length.

Question 6 — Where is your normal beat?
Answer — In Monmouth.

Question 7 — Do you perform duties in Monmouth?
Answer — Yes sir.

Question 8 — Were you on duty in Whitebrook on night of 30-31 Aug?
Answer — No sir, I was in bed.

Question 9 — Were you around Whitebrook evening of 30 Aug?
Answer — No sir.

Question 10 — Were you near the Crown Inn, Whitebrook during evening 30-31 Aug?
Answer — No sir.

Question 11 — What time did you return to your house from duty 30 Aug 43?
Answer — 30 Aug was my day off, I remained at home all day.

Question 12 — Were you in doors all evening of 30 Aug?
Answer — Yes sir.

Question 13 — What time did you go to bed 30 Aug 43?
Answer — 2345 hrs, sir.

Question 14 — Where is your house in relation to the Crown Inn and the quarry near Tudlech?
Answer — My house is one mile up the rd from the Crown Inn on the rd to Tudlech. A track to the quarry commences 100 yds from my house, the distance being about one mile.

Question 15 — Would it be necessary to pass your home to get from the quarry to the Crown Inn?
Answer — Yes, sir.

Question 16 — On evening 30 Aug between 1830 hrs and 2100 hrs did you notice soldiers passing your house?
Answer — Yes sir going down towards the Crown Inn.

Question 17 — Have you any idea of the identity of the soldiers who passed at 2100 hrs?
Answer — No, sir.

Question 18 — Can you identity the two accused whom you saw in the quarry as ones who passed your home?
Answer — No, sir.

Question 19 — Do you recall any noise of soldiers passing by your home after "pub" closing time?
Answer — No, sir.

Question 20 — Are there any other constables stationed in Whitebrook.
Answer — No, sir.

H.C.J.

Question 21 How do you know the time of your being disturbed on night 30-31 Aug?
Answer I looked at the clock and it was 0040 hrs.

Question 22 Is there any possibility of the clock being wrong?
Answer No, sir.

Question 23 What time did you reach the rd?
Answer At approx 0045 hrs.

Question 24 What would you estimate the lapse of time between your noticing the soldiers and coming in contact with them?
Answer A matter of seconds or minutes.

Question 25 How did you recognize the two accused?
Answer By their hair mainly, also their build.

Question 26 Did you notice anything about their dress?
Answer I noticed they were wearing battledress undone at the neck.

Question 27 You did not notice their dress lower down?
Answer No, sir.

Question 28 Did you notice anyone with a DRs crash helmet?
Answer No, sir.

Question 29 When you visited the quarry on morning 31 Aug with whom did you come?
Answer With Supt J Lewis, Monmouth. We were followed in a car by 3 civilians. I did not see what these civilians were doing.

Question 30 You returned to the quarry on the evening of 31 Aug?
Answer Yes sir. I had a look around to try and identify the third man with whom I wanted to compare Gnr Gray. On comparison I was satisfied that my identification of Gnr Gray was correct.

Question 31 Before you made enquiries on night 30/31 Aug did you know there were troops in the quarry?
Answer No Sir.

Question 32 Has you been informed officially of presence of tps in the quarry or vicinity?
Answer No Sir.

R.P. 83(b) complied with.

Second witness for the prosecution H24129 A/Sgt Brown; E J 2 Cdn CBO staff RCA sworn, states:

Sir I left Camp (the gravel quarry) at approximately 2000 hrs in compnay with Gnr Fyfe and proceeded to the pub at Whitebrook where I spent the evening. I left the pub at closing time and with L/Bdr Stewart, Gnr Gray, Pte Dunard and Gnr Fyfe we started up the road together and as we walked we straggled apart and after sometime I found myself walking with Gnr Fyfe - the others having got seperated from us. After a distance of approximately ½ mile I missed Gnr Fyfe and proceeded back to camp where I was alone. During the walk back I heard footsteps behind me from time to time. I arrived back in camp at approximately 2300 hrs.

The Prosecution examine the above witness:

Question 1 — Did you leave the pub at closing time?

Answer — Yes sir.

Question 2 — Did you take any beer with you from the pub?
Answer — Yes sir.

Question 3 — Where did you drink the beer you took from the pub?
Answer — Just after we left the pub.

Question 4 — Were you alone when you drank this beer?
Answer — No sir, we were all together (see statement of witnesses)

Question 5 — Where did you last see the two accused?
Answer — I cannot remember the time but it was a few hundred yards from the pub.

Question 6 — Did you arrive home before the other members of the party with whom you left the pub?
Answer — I do not know.

Question 7 — How did you estimate the time it took you to get from the pub in Whitebrook to your camp?
Answer — It took us ½ hour to walk down and about the same time to walk home.

Question 8 — Do you not think it took you longer to walk home than to walk down to the pub due to the fact that you stopped to drink on the way home and also that the road to the camp is uphill all the way?
Answer — I do not think the difference was more than 15 minutes at the outside.

Question 9 — When you arrived home did you see anyone in the Camp?
Answer — No sir.

Examined by Defence Counsel:

Question 1 — During the evening did you notice the dress of Gnr Gray?
Answer — He had his DR uniform and his crash helmet.

Question 2 — After you left the pub did you notice if Gnr Gray was wearing his crash helmet?
Answer — Yes, he was wearing it.

Question 3 — How many bottles of beer did you take from the pub?
Answer — Two I think.

Question 4 — What happened to the two bottles you had?
Answer — One of the bottles was passed around and I threw it away. I do not remember what happened to the other.

Question 5 — You drank this beer just after you left the pub?
Answer — Yes Sir.

Question by President:

Question 1 — What time did you reach the pub?
Answer — About 2030 hrs, sir.

Question 2 — Were Gnr Gray and Pte Bunard in the pub when you arrived?
Answer — I think Gnr Gray was in the pub when we arrived ~~from~~ we met Pte Bunard just outside.

RP 83 (b) complied with.

Third witness for prosecution: B9330 L/Bdr Stewart; GB 2 Cdn CBO Staff RCA, sworn, states:-

I left camp about 2000 hrs and proceeded to Crown Inn, Whitebrook with Gnr Gray. I arrived at the Inn about 2030 hrs 30 Aug and spent the time drinking until closing time which was about 2230 hrs. I left in company with Sgt Brown, Gnr Fyfe, Pte Panard and Gnr Gray. Just after leaving the pub we all had a drink outside and started up the road together. As we walked we started to straggle out. I was with Gnr Gray for awhile and then Gnr Fyfe. About ½ mile from the pub I got seperated from Gnr Gray and Fyfe and proceeded to the camp alone. About ½ mile further on I met Gnr Fyfe. I spoke to Gnr Fyfe and then he carried on towards the camp and I followed closely behind. I arrived in camp and went straight to bed. During my stay at the pub I drank between 6 and 8 beers and drank for about 5 minutes outside of the pub. I saw Pte Panard outside of the pub and left Gnr Gray about ½ mile up the road. Gnr Fyfe came along right after Sgt Brown had passed me. Gnr Fyfe did not accompany me to the Camp. When I arrived at camp, Gnr Gray who shares a bed with me was not in. I arrived at Camp at about 2315 hrs. Gnr Gray arrived back and went to bed about 2325 .

The Defence Counsel examins the witness:

There were no other soldiers in the pub At closing time other than our own group of five. Gnr Gray was wearing how DR equipment when he was in the pub. Gnr Gray had on his crash helmet when he left the pub and when I saw him again. We had a quart bottle of beer to drink between the five of us outside of the pub. I saw Gnr Fyfe about ½ mile from camp.

~~Did Gnr Gray get up after he went to bed?~~

Gnr Gray was wearing his crash helmet when I left him ½ mile from the pub.

RP 83 (b) complied with.

Fourth Witness for Prosecution. K76840 Gnr Fyfe; D. 2 Cdn CBO Staff RCA, sworn, states:

I left the pub about 2230 hrs. I had a drink outside with the group. On the way home we broke up and I found myself walking with Sgt Brown. I left Sgt Brown about ½ mile further on. I walked on my myself to the first Cross Rds and I met L/Bdr Stewart. After a few words with Stewart I started for the camp. On reaching camp I went to the latrine. I was in the latrine for about 5 minutes and walked over to the tent. On the way to the tent I met L/Bdr Penny and then I went straight to bed at about 2320 hrs. During my stay in the pub I had at least 8 pints of beer. I did not notice whether any of the group which I left the pub with were in camp when I arrived. I did not hear anyone come in after I went to bed for I had my head under the blankets.

The Defence Counsel examine the witness:

I never noticed any other soldiers in the pub on the night of 30 Aug outside of our group. We spent about five minutes outside the pub drinking a quart bottle of beer. I did not have any bottled beer with me when I left. I do not know who supplied the quart of beer. I talked to L/Bdr Stewart about ½ mile from Camp. I heard footsteps all the way up the road until we turned off the road where the trail commenced for the camp.

RP 83 (b) complied with.

Fifth Witness for Prosecution: B43919 L/Bdr Penny RS 2 Cdn CBO Staff, RCA.

I was duty clerk on night of 30 Aug until 0030 hrs. Between 2300 and 2330 I went to the latrine where I saw Gnr Fyfe D.

Defence counsel declines to cross examine above witness.

RP 83 (b) complied with.

First Witness for Defence

The accused M590 Gnr Gray MA having been duly warned gives the following evidence under oath:

I left camp around 2000 hrs 30 Aug with L/Bdr Stewart and proceeded to the Crown Inn, Whitebrook where we spent the evening until 2230 hrs drinking. I drank about 12 pints of beer. At 2230 hrs when the pub keeper hollered time we all left and went outside together. Just outside the pub we had a bottle of beer between us and started for camp together. We got spread out. I tried to keep up to L/Bdr Stewart. After we got split up I found myself walking with someone whom I did not recognize. A little further on we met a person who might have been spàliceman who hollered at us telling us not to make so much noise. This man in uniform appeared when we were about ½ mile from the pub. We did not stop but kept on going and I arrived in camp alone. On arriving in camp I spoke to L/Bdr Stew art who had just got into bed, we talked for a short while and went to sleep. The only time I stopped on the way from the pub to the camp was just outside of the pub where we had a drink. I had no physical contact with anyone from the time I left the pub until I reached the camp. I do not remember anyone flashing a light, the persons in uniform had on a square hat and might have been either a bus driver or a policeman.

Witness was examined by the Prosecution.

I estimate that I arrived in camp after 2300 hrs but before midnight.

Witness was examined by President.

I was wearing my DR uniform and my crash helmet. I wore my crash helmet all the time on the night of 30 Aug for fear of losing it. I have my crash helmet now.

RP 83 (b) complied with.

Second witness for Defence:

M16629 Pte Benard; A V having been duly warned gives the following evidence;

On the night of 30 Aug shortly after 2000 hrs I left the camp accompanied by Sgt Carr. We were going down to the pub at Whitebrook. Just as we got to the pub we met Sgt Brown and Gnr Fyfe. I drank beer in the pub until closing time. Just before we came out of the pub there was a flagon of beer on the counter which the pub keeper told me to take. I stepped outside the pub when I tumbled over something and the flagon broke. When I caught up to the others on the road they were passing a bottle around and I had a drink there with them. We then started up the road together. While I was walking up the hill alone I head others in front of me. When I got home I talked to Pte Baker. Then I went straight to bed, but I do not know the time I got into bed. I estimate that I had 6 to 8 pints in the pub and a drink outside the pub.

The above witness cross-examined by the Prosecution.

I think I can remember everything that happened on the night of 30 Aug.

Cross examined by the President.

I do not know the exact time I reached the Camp but I walked back slowly not sitting down anywhere.

RP (8) 83 complied with.

Third witness for Defence:

K37230 Pte Baker; S J 2 Cdn CBO Staff RCA sworn, states:

I am a cook in the mens kitchen. I know both the accused Pte Benard and Gnr Gray. On the night of the 30 Aug I was around the kitchen talking with Gnr Smith who was the guard. We talked till about 2250 hrs when I started to make my bed. I know it was 2250 hrs for I asked Gnr Smith for the time and he looked at his watch. I spoke to Gnr Smith again at 2300 hrs when he went off guard. I then smoked a cigarette in bed. Pte Benard then came in stepped on the foot of my bed and I spoke to him. I would estimate that Pte Benard came in between 2320 and 2325 hrs.

The witness was cross examined by the prosecution.

I was not asleep when Pte Benard came in. I may have fallen asleep before he came in but this is highly improbable. I was not very tired on the night in question as I had a sleep during the day.

RP 83(b) complied with.

Fourth Witness for Defence

Capt J E Seybold, 2 Cdn CBO Staff, RCA, sworn, states,-

I inspected the kit of the men in my unit on 31 Aug and did not find either a constable's staff or flashlight This inspection included the kits of the two accused. I do not know of the accused, Gnr Gray being short a crash helmet since 30 Aug. There were 17 men present on the identification parade 31 Aug.

RP 83 (b) complied with.

Closing address of
Defence Counsel (sec 7)

This case rests on the question of identification of the two accused. The court is faced with the problem of reconciling two contradictory reports, as to the presence of the two accused in two different places at materially the same time. On the one hand the evidence of Constable Cross that at 0045 hrs 31 Aug ~~xx~~ out of a group of 4 soldiers the accused were the two by whom he was assaulted. On the other hand we have the quite independent evidence of Pte Baker that the accused Pte Panard had stepped on his bed and had subsequently gone to bed in a camp about 1 mile away from the scene of the assault. L/Bdr Stewart said that the accused Gnr Gray came into bed a few minutes after he did at least 1½ hrs before the time of the assault. I ask the court to examine the credibility of these two sets of statements as they apply to the accused. In the latter case there is no question of identification, the accused are known to the persons who gave the evidence. L/Bdr Stewart's time is fixed by the fact that he met Gnr Fyfe about ½ mile from camp. Gnr Fyfe going on into camp ahead of him, the latter arrives at a time fixed by L/Bdr Penny as being between 2300 and 2330 hrs. I submit to the court that it is unreasonable to assume that L/Bdr Stewart took another 3/4 of an hour to make that ½ mile and that the time of his arrival may be taken to be before 2330 hrs.

We are asked to believe that agroup of five men will leave a pub at closing time and are still on their way home some two hours later. Yet we are told by Sgt Brown, Gnr Fyfe and the two accused that they all moved off together from the pub at the most 15 minuts after closing time. I ask the court where the four men of whom the accused are alleged to have been two came from. When we are told that out of a group of 5 from this unit two were definitely in camp by midnight and one was ½ mile away at midnight. I ask the court to examine the strength of the identification by the first witness of the accused. The constable came onto the road, flashed his torch on a party 20 or 30 yds away. Two of the party come running towards him as they come he shines his torch on himself to identify his uniform, then these two men start grappling for the torch. All of this activity the constable tells us took a minute or a matter of seconds. This taking place on a practically moonless night. The constable does not recall any peculiarity in dress and does not recall seeing any dress other than ordinary battle dress on any of these two men. I suggest to the court that a torch flashed over a distance of 20 to 30 yds on people running towards one shows more than just the faces. High boots and breeches, a crash helmet, whether worn or carried, are sufficient variance of the normal pattern as to make a decided impression. I suggest to the court that Constable Cross has made a mistake in identification. His identification is based on colour of hair, height and general build. I would submit as a psycological fact that the human mind sees and recognizes that which it wants to see and recognize.

The constable comes to a group of 17 men and sees two who answer his description. The first time he sees them he is positive of one and not of the other. The second time he sees them that evening he is satisfied as to both. I submit that having seen them in court a third time he firmly believes they are the two men. I would submit to the Court that Constable Cross at about 2300 hrs saw the accused walking down to the pub. The next day when he came to identify them they struck a responsive chord in his mind and his identification was incorrect.

I ask the court to pay attention to MML p 58 para 67 ch 5.

I suggest that at least one hour before the scene described by the constable took place the accused were back in camp.

Closing address of the Prosecution.

As Capt Sheps poined out there are two conflicting stories, one the evidence of the policeman, who as it was said before, was positive of the identity of one man on the parade, but was not certain of the other until he heard the second one's voice later on. Against that we have the evidence of L/Bdr Stewart and L/Bdr Penny, Sgt Brown, Gnr Fyfe, as to when they arrived home. None of them should have been out of camp at all. With the exception of Fyfe who was seen by Penny within certain time limits I submit that there has not been one definite time established regarding the time of return of these men. In Penny's evidence he stated that he went back to the tent after duty at about 0045 hrs. He remembers Fyfe there. He does not remember any of the others. It is reasonable to expect that had Gray been in Penny would have noticed him as they only slept a foot and a half apart. I would ask the court to consider the way these soldiers spent the evening, the amount of beer they had consumed, the fact that none of them should have been out of camp, at the time when it is weighing the evidence.

Summary of evidence in the case of M 590 Gnr Herbert Alfred Gray and M 16629 Pte Avery Victor Danard of 2 Cdn C.B.O. Staff R.C.A., Canadian Army Overseas, charged with a civil offence, that is to say assault of W.R. 170 Constable Crosse of the Monmouthshire County Constabulary.

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

First Witness

W.R. 170 Constable Edward Owen Crosse, sworn, states:

At 0040 a.m. on 31 August I was at my home in Whitebrook when I heard the sound of smashing wood on the road outside and some men shouting. I put on my uniform and went down on to the road where I saw a 4'x4' section of fencing which had been recently smashed. A little way up the road there was a group of men smashing at something. I shone my torch towards them and one of them called out, "What do you want? I replied, " I want you to come down here and see this damage." One of them called out, "All right we are coming" and two of the men came towards me. They appeared to be hostile so I shone my torch on my uniform so that they should know who it was accosting them. I then shone the torch on them again and they continued to come towards me. I warned them to stop intending to question them. The man on my left who appeared to have the fairer hair of the two said, "He is only a fucking policeman, we can knock his head off." He then tried to take the torch from me and I shone it on them again. The man on my right had darker hair that stood upright on his forehead. The man on my left succeeded in obtaining possession of the torch. I then drew my steff and warned the men once more that I was a police officer. The man on my left then shone the torch on my face and both men tried to get my steff from me. They twisted my arm around until I had to release my staff which was taken by the man on my right. The man on my left then took the staff and held it up in his right hand above my head and said, "We can knock your head off and we will". He did not deliver a blow but closed with me and pinned my arms to my side. He then pushed me backwards and the man on my right started punching me on my throat but landed only two blows. The man on my right then said, "Take off your bloody glasses so we can hit you properly." I then released myself from their grasp and went to a house to telephone for assistance from Monmouth. When I returned to the road the men had gone. At 1.20 a.m. in company with Sgt Taylor and W.R. Turvill, I visited the Crown Inn at Whitebrook. I made enquiries there as a result of which we three officers visited a gravel quarry near Trelleck. We there saw Capt Seybold and told him what had occurred and that we beleived the men to be in his unit. We were informed by Capt Seybold after he had made a search, that all men were present, the time then being 0230 hrs. At 0700 hrs, 31 August, I searched the road where the fight had occurred and found a flagon half full of beer in a ditch and a bottle containing a clear liquid. At 9.30 a.m. 31 August in company with Supt. Lewis of Monmouth I visited the quarry again. An identification parade was held and I was invited to try to identify my two assailants. I identified the two men who are before you now, Gray being the man who was on my right and Danard on my left. During the fight a third soldier was lying on the road a few feet away and a fourth man, who I

do not know if he was a soldier, was about thirty yards away up the road holding a white light. He remained there during the fight.

Q. What other troops are there in the neighborhood?

A. To my knowledge, none within seven miles of Monmouth in which district I am in, I do not think there are any between here and Chepstow.

Pte Danard, the accused, cross examined:

Q. When you came out on the road how far away would you say the troops were that were doing the breaking?

A. About 15 yards.

Q. I understand you to say that you stood by the break in the fence and these two soldiers approached you.

A. I did say that.

Q. When you came out on the road firstdid you shine your torch around to see the damage?

A. Yes. I did.

Q. Then did you see the man that you said was lying on the road?

A. The third man did not approach me in the same manner as the other two.

Gnr Gray, the other accused, cross examined the witness:

Q. You say that the two men who approached you had no hats on?

A. I did not say that but I say it now. That is how I was able to describe their hair.

Signature of Witness

Second Witness

H.24129 A/Sgt. Brown, E.J., 2 Cdn C.B.O. Staff, R.C.A. sworn states:-

"Sir, I left camp shortly after 2000 hrs on 30 Aug 1943. I walked down to the pub in Whitebrook with Gnr. Fyfe, where I spent the evening and left at closing time with Gnr. Gray, Pte. Danard, L/Bdr. Stewart and Gnr. Fyfe. We started off up the road together. After we had gone a short distance we straggled out and I found myself walking with Gnr. Fyfe. After some time which I think to be about half a mile we got separated. I do not know if Gnr. Fyfe was in front or behind. The rest of the journey home I heard no unusual sounds but I heard footsteps behind me from time to time. I arrived back in camp at what I estimated to be approximately 2300 hrs.

Q. When you left the pub did you take any beer with you?

A. Yes sir.

Q. How much?

A. I think I had two bottles.

Q. Where did you drink this beer?

A. I had a few drinks just after I started to walk and I threw the empty bottle in a ditch. I don't remember what happened to the other bottle.

Q. Were you drinking alone or were others with you?

A. There were others with me just after I left the pub.

Q. They shared in your bottle?

A. I believe so.

Q. When was the last time you saw the accused on the way home?

A. I believe it was shortly after we left the pub. I don't remember seeing them again.

The accused both decline to cross examine the witness.

E.J. Brown
Signature of Witness

Third Witness

B.9930 L/Bdr. Stewart, G.B., 2 Cdn C.B.O. Staff, R.C.A. sworn states:

"I left camp at approximately 2200 hrs and proceeded directly to a pub about a mile and a half away. I think it was the Crown Inn at Whitebrook. I arrived there at approximately 2030 hrs. I went with Gnr. Gray and spent the evening drinking beer till closing time. I then left the pub and returned directly to the camp. I went to bed.

Q. When you left the pub were you alone or who was with you?

A. I was with Sgt. Brown, Pte. Danard, Gnr. Fyfe, and Gnr. Gray.

Q. Did you bring any beer with you?

A. No.sir.

Q. Who did you walk home with?

A. We started together but as we walked along we began to straggle out and I was with Gnr. Fyfe for some time. I was also with Gnr. Gray and Pte Danard and Sgt. Brown. About a mile from the pub I left Gnr. Fyfe and proceeded to camp by myself.

Q. Did you drink any be r on the way home?

A. Yes sir.

Q. Where was that?

A. Just after I left the pub.

Q. Was that all?

A. Yes sir.

Q. How far had you gone when you last saw Sgt. Brown?

A. About a mile.

Q. And Gnr. Gray?

A. About half a mile.

Q. And Pte. Danard?

A. I don't remember seeing him after I had a drink with the others outside the pub.

Q. How far was it from the pub to the place where you turned into the lane leading to the camp?

A. About ¾ mile.

Q. What time did you get home?

A. A bout 2315 hrs.

Q. Do you know if the others arrived back ahead or after you?

A. I believe it was shortly after.

Q. Did you hear them come in?

A. I was talking to Gnr. Gray.

Q. Did he mention anything about a fight or a row on the way home?

A. No sir.

Cross examined by Gnr. Gray, one of the accused.

Q. How long after you got in were you talking to me?

A. Shortly after, a matter of minutes, but I couldn't say as I was not paying any attention to xxx time.

Pte Danard the other accused, declines to cross examine the witness.

L B Stewart
Signature of Witness

Fourth Witness

K.76640 Gnr. Fyfe, D., 2 Cdn C.B.O. Staff, R.C.A. sworn states:

"I went down to the pub with Sgt. Brown and met Gnr. Gray , Pte Danard, L/Sgt. Carr, and L/Bdr. Stewart. I drank there until 2230 hrs and left about 2235 hrs with the others. We started off and split up as we walked. I found myself with Sgt. Brown. Just before we pulled off the main road to go up the trail I missed Sgt. Brown. I proceeded up the trail and met L/Bdr. Stewart. I spoke to him and kept on going. I went straight to camp and went to the latrine. I went over to the tent and saw L/Bdr. Penny on the way and went straight to bed.

Q. How far had you gone from the pub when you last saw the accused?

A. I didn't after we started up the hill from the pub.

Q. Did you have anything to drink on the way home?

A. Yes sir just after we left the pub.

Q. Did you bring a bottle with you from the pub?

A. No sir.

The accused decline to cross examine the witness.

D. Fyfe
Signature of Witness

Fifth Witness

B.43919 L/Bdr. Penny sworn states:

"I was on duty between 1800 hrs and 2400 hrs. Between 2300 hrs and 2330 hrs on my way to the latrine I met Gnr. Fyfe. He was going from the latrine to the tent. I went on to the latrine and then went back to the office. I was not away more than ten minutes.

Cross examined by Gnr. Gray one of the accused

Q. Did you go to the tent coming from the latrine or go straight to the office?

A. I went straight to the office.

Pte Denard the other accused, declines to cross examine the witness.

R. L. Penny
Signature of Witness

The accused declined to call any witnesses.

The accused were warned as follows:

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

The accused, Gnr. Gray " I have nothing to say at this time."

The accused, Pte. Danard "I have nothing to say at this time"

I certify that paras C,D,E and F of Rules of Procedure 4 Have been complied with.

Taken by me in the field in the presence and hearing of the accused this 31st day of August and 1st day of September 1943.

J. E. Seybolds Capt SCA.

Signature of Officer taking Summary

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by field general court-martial.

I desire the services of Lieut. Sheps, 5 Med Regt RCA, if he is available.

H.P.T.

R V Donald
(Signature of Accused)

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

B.

Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of Sept. 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

*(~~3. The Interpreter~~) H.C.F.

*(~~4. The officers under instruction~~) H.C.F.

were duly sworn.

*Omit if not applicable.

Signed this 6th day of Sept 1943.

H.C. Fair
Maj. H.C.A.

President of the Court Martial.

C.

Certificate in case of death sentences.

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

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

Signed this ~~day of 19~~ H.C.F.

President of the Court Martial.

D.

Confirmation.

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

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

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

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

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

[illegible] Wt. [illegible] [illegible] [illegible] A.S.S.W.L.[illegible] Gp.[illegible]
[illegible] Wt. [illegible] [illegible] [illegible] 7/42 " "

O.I. PTE DANCOISNE, A.W.

O. H. M. S.

6/Dancoinsne, M.W./O
K-876 Pte. Dancoinsne, M.W.

201

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this thirteenth day of May, 1942.

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

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

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

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

* Omit if not applicable.

* [illegible]

* [illegible]

* [illegible]

[illegible]

JUDGE ADVOCATE:

LIEUT.G.M.MORRISON,
H.Q., CDN. REINF. UNITS.

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
MAJOR	KNOX THOMPSON	1. M.T.V.R.D.

Members.

Rank.	Name.	Regiment.
A Captain	from	1. C.B.T.D.
A Lieutenant	from	1 C.B.T.D.
A Lieutenant	from	1 C.B.T.D.

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

*Signed [signature] Brigadier

Commanding Cdn. Reinforcement Units,
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K- 876 Pte. Dancoisne, M.W. Cdn. Scottish Regt. 3 C.D.I.R.U.	FIRST CHARGE A.A. Sec 15 (1)	guilty	guilty	
	SECOND CHARGE. A.A. Sec. 24 (2)	guilty	guilty To undergo detention for a period of ninety (90) days and to be placed under stoppages of pay until he has made good the sum of $8-6-2½ costs of apprehension and loss of equipment. 15 May 42 KP	Confirmed J. Stewart Brig.
	See charge sheet attached			

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

(Signed) [signature] Brigadier (Signed) [signature] May

Commanding Cdn. Reinf. Units. Convening Officer (e) Gnrulonisson Lieut President.

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 15th day of May 42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

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

* Omit if not applicable.

Signed this 15th day of May 1942

[signature] May
President of the Court Martial
Gnrulonisson Lieut
J.A.

C. Certificate in case of death sentences.

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

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

Signed this day of 19

KP
President of the Court Martial

D. Confirmation.

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

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

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

Signed this 19th day of May 1942

J. Stewart Brigadier
Confirming Officer
of Canada C.B.U.

Promulgated and extracts taken in the case of K.876 Pte. Dancoisne, M.W. (L.C.Scot.R)

(a) (Dated) 23 May 42 (Signed) [signature] ✓
(T.R. Basitt) Lieut.-Colonel,
A/C.O. 3 Cdn.Div.Inf.Reinf.Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

CHARGE SHEET

The accused K-876 Private Dancoisne, M.W. Canadian, Scottish, Regiment, Reinforcement on the strength of 3 Canadian Divisional Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas), is charged with

FIRST CHARGE
SEC. 15 (1) A.A. When on Active Service, Absenting himself without leave,

in that he

At Haig Lines, Church Crookham, Hants, on the 26th of March 1942, absented himself without leave from tattoo roll call until he was arrested at Liverpool at 0915 hours on the 28th day of April 1942.
Thereby incurring expences for his apprehension and return to his Unit to the amount of £1,16,4.

SECOND CHARGE
SEC. 24 (2) A.A. When on Active Service, Losing by neglect his equipment and regimental necessaries:

in that he

At Haig Lines, Church Crookham, Hants on May the 7th 1942 was deficient of:

		£.s.d.
Anklets. webprs.	1	0/4/4
Gloves, woolen, prs	1	0/1/11
Jackets, sweater	1	0/6/9
Knives, clasp	1	0/2/10
Caps, comforter	1	0/1/8
Greatcoats	1	2/8/6
Shoes, canvas	1	0/2/3
Bottles, water	1	0/2/2
Carries, Bottles, water	1	0/1/11
Frog, bayonet	1	0/0/11
Bayonet & scabbard	1	1/4/3
TOTAL		£4. 17s. 6d.

(J.R. Stewart Lough) Col
Officer Commanding
3 Cdn.Div.Inf.Reinf. Unit.

Dated at Haig Lines,
Church Crookham,
Hants, England, this
7th day of May 1942.

To be tried by Field General Court Martial.

Brigadier,
Commanding, Cdn. Reinforcement Units.
Convening Officer.

Farnborough, Hants,
this 13th May 42.

15 May 42

I hereby certify that I have examinated Pte K-876 Danccisne W.M., and I found him fit for his trial for a Court-Martial

MEDICAL OFFICER
3rd CDIRU

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT BORDON, Hants. ON THE 15 DAY OF MAY 42

TRIAL OF:- No. K-876, PTE DANCOINSNE M.W. Unit 3 CDIRU.
The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.
The Court satisfy themselves as provided by R.P. 22 & 23.
The accused is brought before the Court.
Prosecutor:- (Name) Lt. P. Gravelle (Unit) 3 CDIRU.
Defending Officer:- (Name) Capt. A.E. Hall, (Unit) 3 CDIRU.
At 1200 hrs the trial commences.
The order convening the court is read, signed by the President and attached to the proceedings.
The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.
Q1 Do you object to be tried by any of the officers whose names you have heard read over? A1 -
The President, members and Judge-Advocate (if any) are duly sworn.
The following constitute the Court:

President . Major Knox Thomson.....(Unit) 1 MTVRD
Members ... Capt A.T. Smith.....(Unit) 1 CBTD.
...Lieut. W.J.A. Reynolds...(Unit) 1 CBTD.

The officers under instruction are duly sworn.
Q2 Do you object to ..Sgt. T. Pyburn.....acting as shorthand writer? A2.- No, sir.
The shorthand writer is duly sworn.
The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.
The summary of evidence is read, signed by the President, and attached to the proceedings.
Court is closed to consider its finding. Court is re-opened.
Name...Lt. P. Gravelle....(Unit)..3 CDIRU..... sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.
Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 -No, sir.
Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

DEFENDING OFFICER stated accused, though bearing a French name, does not speak French. Was a schoolboy, enlisted Vancouver two yrs ago with 5 Motorcycle Regt when 16 yrs old. Was discharged, under age. In Jan 41 went from Vancouver to Victoria to see his old Col, who recommended him to go to armouries in Victoria; did so, again enlisting in Cdn Scot and proceeding with reinfs to Debert, N.S. Age again discovered, about to be sent home, when joined Merchant Navy and came to this country. Then enlisted with RAF in Jun 41; age again discovered, and discharged from RAF with good character given by Group-Capt. Returned to his unit, awarded 14 days C.B. and 28 days forf of pay. Then sent to his Fd Unit, Cdn Scot, and was told he was to be sent back to Canada again. Getting 7 days leave, accused proceeded to London, checked his kit at club and went to Liverpool; was about to

P.T.O.

SUMMARY OF EVIDENCE

in the case of

K-876 Private Dancoisne, Marcel, Walter, Canadian Scottish Regiment, Reinforcement, on the strength of 3rd Canadian Divisional Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas).

The evidence is taken under oath by direction of the Officer Commanding.

FIRST WITNESS
Prosecution

K-62152 Sgt. Olsen, W.H., Canadian Scottish Regiment, having been duly sworn, states:

At Haig Lines on the 26th of March 1942, during my tour of duty as No.3 Company Orderly Sergeant I called the roll at tattoo and K-876 Private Dancoisne, M.W., here present, did not answer to his name. I entered his name on the tattoo report for that day and continued to report him absent at reveille and tattoo for the remainder of my tour of duty until I handed my duties to Sergeant Milton, C, of No.3 Company at reveille, the 30th of March 1942.

The accused declines to cross-examine the witness.

K.62152 Sgt. Olsen, W.H.
Canadian Scottish Regiment.

SECOND WITNESS
Prosecution

K-57015 Sgt. Milton, C. Canadian Scottish Regiment, having been duly sworn, states:

At Haig Lines on March the 30th 1942 until April the 30th 1942 I was Company Orderly Sergeant of No.3 Company and during that time the accused, K-876 Private Dancoisne, M.W., here present, failed to answer at any roll call.

The accused declines to cross-examine the witness.

K.57015 Sgt. Milton, C.
Canadian Scottish Regiment.

THIRD WITNESS
Prosecution

K-62011 Cpl. Smith, C.J. Canadian Scottish Regiment, having been duly sworn, states:

At Haig Lines, I was Company Orderly Sergeant on May the 2nd 1942 I was informed by the Regimental Military Police that the accused, K-876 Private Dancoisne, M.W., here present and whom I recognize had been returned and I was informed to see that he had blankets.

The accused declines to cross-examine the witness.

K.62011 Cpl. Smith, C.J.
Canadian Scottish Regiment.

FOURTH WITNESS
Prosecution

E-9415 Pte. Rail, W. Regiment de la Chaudiere, having been duly sworn, states:

I am storeman in the Pack Stores of 3 C.D.I.R.U. one man came in there one morning and handed in, one kit bag and five blankets. I put them in the rack and gave him a receipt bearing the number 110. I checked the kit bag but I don't know if it belongs to the accused K-876 Pte. Dancoisne,M.W. here present,.When I received the kit bag the man gave me his name and number and told me that he was from n0.3 Company.

The accused declines to cross-examine the witness.

Wilfrid Rail
E-9415 Pte. Rail, W.
Regiment de la Chaudiere.

FIFTH WITNESS
Prosecution

C-53006 Sgt. Bailey, R. Stormont Dundas and Glengarry Highlanders of Canada,having duly sworn,states:

At Haig Lines I have been acting on behalf of the Quartermaster I did the kit inspection of the accused Pte. Dancoisne,M.W.,here present,and I found him deficient of the following:

		£.s.d.
Anklets,web,prs.	1	4/4
Gloves,woolen,prs.	1	1/11
Jackets,Sweater.	1	6/9
Knives,clasp.	1	2/10
Caps,comforter.	1	1/8
Greatcoats.	1	2/8/6
Shoes,canvas,prs.	1	2/3
Bottles,water.	1	2/2
Carriers,bottle,water.	1	1/11
Frog,bayonet,	1	11
Bayonet & Scabbard.	1	1/4/3
TOTAL		£4. 17s. 6d.

The accused cross-examines the witness.

Q. Do they still issue Cardigans over there Sgt?

A. In England,Cardigans are replaced with Jersey pullovers.

R Bailey
C-53006 Sgt. Bailey,R.
S.D.& G Highlanders of C.

SIXTH WITNESS
Prosecution

K-57660 Cpl. Wright, C. Canadian Scottish Regiment, having been duly sworn,states:

At Haig Lines I remember the day he went on leave I was down to turn in the kit bag and blankets of the accused at the Quartermaster Stores.

The accused declines to cross-examine the witness.

C. Wright
K-57660 Cpl. Wright, C.
Canadian Scottish Regiment.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT BORDON, Hants. ON THE 15 DAY OF MAY 42

TRIAL OF:- No. K-676, PTE DANCOINSNE M.W. Unit 3 CDIRU.

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

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

The accused is brought before the Court.

Prosecutor:- (Name) Lt. P. Gravelle (Unit) 3 CDIRU.

Defending Officer:- (Name) Capt. A.E. Hall, (Unit) 3 CDIRU.

At 1200 hrs the trial commences.

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

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

Q1 Do you object to be tried by any of the President or by any of the officers whose names you have heard read over? A1 -

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President . Major Knox Thomson.....(Unit) 1 MTVRD

Members ... Capt A.T. Smith.....(Unit) 1 CRTD.

...Lieut. W.J.A. Reynolds...(Unit) 1 CRTD.

The officers under instruction are duly sworn.

Q2 Do you object to ...Sgt. T. Pyburn.....acting as shorthand writer? A2.- No, sir.

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name...Lt. P. Gravelle.....(Unit).3 CDIRU..... sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 -No, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

DEFENDING OFFICER stated accused, though bearing a French name, does not speak French. Was a schoolboy, enlisted Vancouver two yrs ago with 5 Motorcycle Regt when 16 yrs old. Was discharged, under age. In Jan 41 went from Vancouver to Victoria to see his old Col, who recommended him to go to armouries in Victoria; did so, again enlisting in Cdn Scot and proceeding with reinfs to Debert, N.S. Age again discovered, about to be sent home, when joined Merchant Navy and came to this country. Then enlisted with RAF in Jun 41; age again discovered, and discharged from RAF with good character given by Group-Capt. Returned to his unit, awarded 14 days C.B. and 28 days forf of pay. Then sent to his Fd Unit, Cdn Scot, and was told he was to be sent back to Canada again. Getting 7 days leave, accused proceeded to London, checked his kit at club and went to Liverpool; was about to

P.T.O.

again enter Merchant Navy when apprehended. Submits accused willing and eager to serve his country; has makings of good soldier. Requests leniency.

Re loss of equipment, def officer stated accused now in possession of 1 pr anklets, web. Prosecutor admitted this.

CERTIFIED a true and correct
report of the proceedings:-

F. Pearce Sgt.

Shorthand Writer.

SUMMARY OF EVIDENCE

in the case of

K-876 Private Dancoisne, Marcel, Walter, Canadian Scottish Regiment, Reinforcement, on the strength of 3rd Canadian Divisional Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas).

The evidence is taken under oath by direction of the Officer Commanding.

FIRST WITNESS
Prosecution

K-62152 Sgt. Olsen, W.H., Canadian Scottish Regiment, having been duly sworn, states:

At Haig Lines on the 26th of March 1942, during my tour of duty as No.3 Company Orderly Sergeant I called the roll at tattoo and K-876 Private Dancoisne, M.W., here present, did not answer to his name. I entered his name on the tattoo report for that day and continued to report him absent at reveille and tattoo for the remainder of my tour of duty until I handed my duties to Sergeant Milton, C, of No.3 Company at reveille, the 30th of March 1942.

The accused declines to cross-examine the witness.

K.62152 Sgt. Olsen, W.H.
Canadian Scottish Regiment.

SECOND WITNESS
Prosecution

K-57015 Sgt. Milton, C. Canadian Scottish Regiment, having been duly sworn, states:

At Haig Lines on March the 30th 1942 until April the 30th 1942 I was Company Orderly Sergeant of No.3 Company and during that time the accused, K-876 Private Dancoisne, M.W., here present, failed to answer at any roll call.

The accused declines to cross-examine the witness.

K.57015 Sgt. Milton, C.
Canadian Scottish Regiment.

THIRD WITNESS
Prosecution

K-62011 Cpl. Smith, C.J. Canadian Scottish Regiment, having been duly sworn, states:

At Haig Lines, I was Company Orderly Sergeant on May the 2nd 1942 I was informed by the Regimental Military Police that the accused, K-876 Private Dancoisne, M.W., here present and whom I recognize had been returned and I was informed to see that he had blankets.

The accused declines to cross-examine the witness.

K.62011 Cpl. Smith, C.J.
Canadian Scottish Regiment.

FOURTH WITNESS
Prosecution

E-9415 Pte. Rail, W. Regiment de la Chaudiere, having been duly sworn, states:

I am storeman in the Pack Stores of 3 C.D.I.R.U. one man came in there one morning and handed in, one kit bag and five blankets. I put them in the rack and gave him a receipt bearing the number 110. I checked the kit bag but I don't know if it belongs to the accused K-876 Pte. Dancoisne,M.W. here present,.When I received the kit bag the man gave me his name and number and told me that he was from nO.3 Company.

The accused declines to cross-examine the witness.

Wilfrid Rail
E-9415 Pte. Rail, W.
Regiment de la Chaudiere.

FIFTH WITNESS
Prosecution

C-53006 Sgt. Bailey, R. Stormont Dundas and Glengarry Highlanders of Canada,having duly sworn,states:

At Haig Lines I have been acting on behalf of the Quartermaster I did the kit inspection of the accused Pte. Dancoisne,M.W.,here present,and I found him deficient of the following:

		£.s.d.
Anklets,web,prs.	1	4/4
Gloves,woolen,prs.	1	1/11
Jackets,Sweater.	1	6/9
Knives,clasp.	1	2/10
Caps,comforter.	1	1/8
Greatcoats.	1	2/8/6
Shoes,canvas,prs.	1	2/3
Bottles,water.	1	2/2
Carriers,bottle,water.	1	1/11
Frog,bayonet,	1	11
Bayonet & Scabbard.	1	1/4/3
TOTAL		£4. 17s. 6d.

The accused cross-examines the witness.

Q. Do they still issue Cardigans over there Sgt?

A. In England,Cardigans are replaced with Jersey pullovers.

R Bailey
C-53006 Sgt. Bailey,R.
S.D.& G Highlanders of C.

SIXTH WITNESS
Prosecution

K-57660 Cpl. Wright, C. Canadian Scottish Regiment, having been duly sworn,states:

At Haig Lines I remember the day he went on leave I was down to turn in the kit bag and blankets of the accused at the Quartermaster Stores.

The accused declines to cross-examine the witness.

C. Wright
K-57660 Cpl. Wright, C.
Canadian Scottish Regiment.

SEVENTH WITNESS
Prosecution
(Documentary)

The statement of Constable 228"K" C.M. Travis, J.I.D. Special Branch & Intelligence, is read to the accused.

STATEMENT

I beg to report that at 09.30 hours on Tuesday, 28-4-42, in company with Detective Constable Richards, I saw the above-named soldier in the Y.M.C.A. Services Hotel Church Street, Liverpool. He was dressed in civilian Clothing and was in possession of a service respirator. I asked him to account for his possession of the respirator and he said " I bought it from a soldier".

I further questioned him and he later admitted being absent without leave from the 3rd Canadian Division-Reinforcement Unit, stationed at Crookham, Hants, since 26-3-42. The civilian clothing Dancoisne was wearing had been lent to him by David Simpson, a merchant navy man, also residing at the Y.M.C.A., to whom Dancoisne had represented that he was on Leave. I instructed Dancoisne to change into his uniform and returned the civilian clothing to Simpson.

Dancoisne was arrested and taken to the Main Bridewell, where when charged with being an absentee he did not reply.

He appeared before the Court and was remanded in custody until the following day, 29-4-42, on which date he was further remanded to await military escort.

I would suggest that a copy of this report be forwarded to the Officer Commanding the 3rd Canadian Division Reinforcement Unit, Crookham, Hants.

(SIGNED) C.M.Travis, Con.228"K"

The accused does not question the evidence of the witness nor does he require his presence for cross-examination.

FIRST WITNESS
Defence

The accused K-876 Private Dancoisne, M.W. having been duly warned in accordance with Rule of Procedure 4 (e) makes the following statement:

When I returned to the 1st Batalion on Canadian Scottish Regiment on the 22nd of December 1941 from the R.A.F. I was told that I would be able to remain in England with the said Unit and when I was a short time with the Field Unit I was told that I would have to go back to the Holding Unit and await a draft to return to Canada. When I got to the Holding Unit I applied again for my fourteen days leave which was due, they would not give it to me and they tried to stop my seven days leave, when I went on my seven days leave I decided that instead of going back to Canada I would go back to the Merchant Navy where I think my services would be of more value to the country.

K-876 Pte Dancoisne, M.W.
Canadian Scottish Regiment.

Taken down in the hearing and presence of the accused. Certified that Rules of Procedure 4(c)(d)(e)(f)(g) have been complied with.

Certified that owing to the exigencies of the service, and the expenses and loss of time involved, the attendance of the witness giving documentary evidence could not readily be procured. A written statement of his evidence has been read to the accused who does not question it and does not require his attendance for cross-examination.

(Paul Gravel) Lieutenant
Officer detailed

Dated at Haig Lines
Church Crookham, Hants, Eng.,
7th day of May 1942.

LIST OF WITNESSES FOR PROSECUTION

In the case of K-876 Pte. Dancoisne, M.W. Canadian Scottish Regiment, A.F.

First Witness	K-62152 Sgt, Olsen, W.H. Canadian Scottish Regiment, 3 C.D.I.R.U.
Second Witness	K-57015 Sgt. Milton, C. Canadian Scottish Regiment, 3 C.D.I.R.U.
Third Witness	K-62011 Cpl. Smith, C.J. Canadian Scottish Regiment, 3 C.D.I.R.U.
Fourth Witness	E-9415 Pte. Rail, W. Regiment de la Chaudiere, 3 C.D.I.R.U.
Fifth Witness	C-53006 Sgt. Bailey, R. Stormont, Dundas, and Glengarry, Highlanders of Canada, 3 C.D.I.R.U.
Sixth Witness	K-57660 Cpl. Wright, C. Canadian Scottish Regiment, 3 C.D.I.R.U.
Seventh Witness	Constable 228"K" C.M. Travis, J.I.D. Special Branch & Intelligence, Liverpool, England.

LIST OF WITNESSES FOR THE DEFENCE

First Witness	K-876 Pte. Dancoisne, M.W. Canadian Scottish Regiment, 3 C.D.I.R.U.

LIST OF EXHIBITS

In the case of K-876 Pte. Dancoisne, M.W. Canadian Scottish Regiment, 3 C.D.I.R.U.

1. Written statement by Constable 228"K" C.M. Travis, C.I.D.Special Branch & Intelligence.Liverpool,England.
2. Certificate of arrestation.
3. Cost of transportation.
4. Copies of Declaration of Court of Inquiry.

TELEPHONE No. CENTRAL 6666.
TELEGRAMS "DEVOIR, LIVERPOOL."

Please address your letter
THE CHIEF CONSTABLE,

and in your reply quote No.

CENTRAL POLICE OFFICE,
LIVERPOOL, 2.

1st. May, 19 42.

Your reference No. 1124

4 MAY 1942

Dear Sir,

K.876. Private Marcel Walter Dancoisne.

I beg to forward for your information, the enclosed copy report relative to the above.

Yours faithfully,

Asst. Chief Constable.

The Officer Commanding,
3rd. Canadian Division Reinforcement Unit,
Crookham,
HANTS.

RECEIVED
4 MAY 1942

WA.

"K".

C.I.D.Special Branch & Intelligence. 30 4 42.

Con.228"K" Travis.

The Inspector.

K 876 Private Marcel Walter DANCOISNE - absentee.

I beg to report that at 09.30 hours on Tuesday, 28.4.42, in company with Detective Constable Richards, I saw the above-named soldier in the Y.M.C.A. Services Hotel Church Street, Liverpool. He was dressed in civilian clothing and was in possession of a service respirator. I asked him to account for his possession of the respirator and he said "I bought it from a soldier".

I further questioned him and he later admitted being absent without leave from the 3rd.Canadian Division Reinforcement Unit, stationed at Crookham, Hants, since 26.3.42. The civilian clothing Dancoisne was wearing had been lent to him by David Simpson, a merchant navy man, also residing at the Y.M.C.A., to whom Dancoisne had represented that he was on leave. I instructed Dancoisne to change into his uniform and returned the civilian clothing to Simpson.

Dancoisne was arrested and taken to the Main Bridewell, where when charged with being an absentee he did not reply.

He appeared before the Court and was remanded in custody until the following day, 29.4.42, on which date he was further remanded to await military escort.

I would suggest that a copy of this report be forwarded to the Officer Commanding the 3rd.Canadian Division Reinforcement Unit, Crookham, Hants.

Con.228"K".

Submtd. to Ch.Inspr.C.I.D."S.B." Inspr.

Submtd. to C.C.,C.I.D. 30.4.42. Ch.Inspr.

Sk.

[illegible] RETURN OF K/876 Private Marcel Walter DANCOISNE, who [illegible] at LIVERPOOL (hour) 9.15 on the 28th day of APR 1942 and was committed to confinement at LIVERPOOL on the 29th day of APR 1942 as a Deserter (or Absentee without leave) from the 1st Bn. of the Canadian Scottish Regiment of:

Age 18 years. Height 5 feet 8 inches
Complexion Fresh Hair Dark Brown Eyes Hazel
Marks Nil In uniform or plain clothes Uniform

Probable date and place of attestation	6th January, 1941. Canada.
Probable date of desertion or beginning of absence and from what place.	26th March, 1942. Crookham.
Name occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	228 K. Travis, Liverpool City Police.
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	* I saw the prisoner at the Y.M.C.A., Church Street. He ad,itted being an absentee from the above corps. When rrested, cautioned and charged he made no reply.

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he† is an absentee from the before-mentioned Corps.

Louis Redfearn Signature
CITY POLICE COURT Residence
LIVERPOOL Post Town
29th APR 1942 Date of Signature
of Committing Magistrate.

M. Dancoisne Signature of Prisoner
Cmt Travis Con 228 K Signature of Informant
Liverpool City Police

~~Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming~~

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the ..... day of ..... for the purpose of obtaining such evidence.

Signature
Residence
Post Town
of Magistrate.
Date of Signature

§ Care should be taken to insert Army No. and Rank.
‡ Insert "was apprehended" or "surrendered," as the case may be.
* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

Army Form C.1618.

PART II.

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

Apprehension of No. ..... of .....
Regiment at ..... on ..... by .....
who was committed as a Deserter (or Absentee without leave) on the .....

RECOMMENDATION FOR REWARD.

I RECOMMEND* .....

Address .....

for a reward of .....

Signature of Committing Magistrate.

Date.

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

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

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

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

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

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

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. K.876 Rank Pte Name Hancrisne, M.W. Unit Cdn Sect

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ ~~Unit from~~ London from Liverpool

Date	Particulars	Amount		
2 May 42	Escorts return fare from LONDON To Liverpool (i patron)		15	2
	Prisoners single fare to LONDON From Liverpool		15	2
	Prisoners fare from To			
	Escorts & Prisoners expenses for [redacted], Meals, Bus fares		6	0
	Total £	1	16	4

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

M C Byers Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/482

RECORD of the Declaration of a Court of Inquiry assembled at Crookham on the 22nd day of April 1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.K-876 Pte. Dancoisne, M.W. 1st. C.S.R.

DECLARATION

The Court Declare, that K-876 Pte. Dancoisne, M.W., 1st C.S.R. 3 C.D.I.R.U. illegally absented himself without leave at Haig Lines, Crookham, England on the 26th day of March 1942, that he still is absent, and that on the 22nd day of April 1942 he was deficient and that he is still deficient of the following articles:

		£.s.d.
Anklets, web, prs.	1	4/4
Badges, Shoulder, wstd. prs.	1	5½
Battle Dress, trousers, prs.	1	1/0/6
Blacking Tin.	1	N.A.
Brasses, button.	1	2
Brushes, boot blacking.	1	8½
" " Polishing.	1	2/1
" Button.	1	1/2
" Cloth.	1	2/3
" Hair.	1	2/6
" Shaving.	1	1/2
" Tooth.	1	5
Bonnets Tam O'Shanter.	1	2/11
Greatcoats '39 Dis.	1	2/8/6
Combs.	1	2
Discs, Indentidy	1	3
Drawers, cotton, short, prs.	2	4/4
Dressings, first field.	1	1/1
Forks, table.	1	4½
Gloves, wollen, drab, prs.	1	1/11
Holdalls.	1	9
Housewives.	1	7
Jackets, sweater.	1	8/6
Knives, clasp & lanyard.	1	2/11
Knives, table.	1	10
Overalls, trousers, denim, prs.	1	11/9
Razors, safety.	1	5½
Shirts, flannel, khaki.	2	1/0/0
Shirts, under cotton.	2	4/8
Shirts, woolen.	2	15/6
Shoes, canvas, prs.	1	2/3
Socks, prs.	3	5/9
Spoons, table.	1	4½
Towels, hand.	2	3/0
Bags, ration.	1	3½
Belts, waist, large.	1	3/9
Bottles, water.	1	2/2
Braces, right & left.	2	3/6
Carriers, water bottle.	1	1/11
Covers, mess tin.	1	3
Frogs, bayonet.	1	11
Haversacks.	1	8/6
Helmets, steel.	1	9/0
Packs.	1	8/6
Pouches, basic.	2	12/6
Slings, rifle.	1	1/3
Straps, shoulder, L & R	2	3/10
" web supporting.	2	1/4
Tins, mess.	1	1/8
Eyeshields, a/g	6	2/3
Respirator, a/g container type EMK-6	1	4/3
" facepiece Mk.IV	1	7/6
" Haversack Mk VI	1	6/9
Outfits, anti-dimming.	1	2½
Ointments, a/g #2 tins.	2	1/6
Bayonet & scabbard.	1	1/4/3
Bottles, oil.	1	9½
Pullthroughs.	1	4½
Rifle a/3402	1	7/8/0

Capes a/g cam.	1	12/9
Wallets, a/g	1	9
Blankets, G-1098	1	15/5
Sheets, ground.	1	10/0

CERTIFIED TRUE COPY

(W.F. Wansbrough) Major
Administration Officer, RHQ,
3 Cdn. Div. Inf. Reinf. Unit.

APPLICATION FOR DEFENDING OFFICER

1. I,No.K-876 Pte. Dancoisne, M.W. of Canadian Scottish Regiment desire to have an Officer assigned to represent me at my trail by Field General Court Martial.

2. I hereby certify I have received free of charge copies of Charge sheet,Summary of Evidence,copy of Exhibit and list of Witnesses.

M. Dancoisne

(K876 Pte. Dancoisne, M.W. (C.Scot.R)

No K-876 Name Dancoisne, M.W. Sqn., Battery, or Company "A" Corps 1st C.Scot. Regt. A.F. Date of enlistment 6/1/41 G.C. Badges Service or Proficiency Pay Nil M.F.M. 6 (A.F.B. 122) SUOM—6-39 (1722) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. R.D.Travis Major. Character Fair.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified True Copy. E.E. Radley.Lt.					
Crookham Hants.	2/5/41	Pte		1)AWLfrom 2359hrs 2/5/41 to 0715 22/12/41 A.A.15 (1)	Dodson,CSM	28 Days' Summary forfeiture	6/1/42	Lt-Col.T.H. Hewitt.	E.Auto.For 4 days' P
				2)Loosing by neglectA.A.24(2)	Sgt.Milton,C.	of pay and 14 days'		(Auth,CMHQ	Stoppages
				3)AWL while in open arrest from 31/12/41 to 1720hrs 3/1/42A.A.15)1)	1100hrs	C.B.		10/Jones E/ (AAG(pers)) d/2 Jan 42	1of 6/17/ (FR&I172/ 8)and £6/17/9 (FR&I173/2
				4)Unlawful possession of public property. A.A.40	Documentary				
in-the field	10-2-42	"		Conduct to the prejudice of good order and military discipline A.A. 40	Sgt.James,S. Pte.Olsen,R.	10 Days'C.B.	12-2-42	R.S.W. Parker. Major.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY

for [signature]

(J.H. CHICOINE) CAPT. & ADJT.

8 C.I.B. Trng. Wing.

M.F.R. 355
TM—8-40 (6400-13)
H.Q. 1172-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K-876	Private.	Dancoisne, M.W.	Cdn.Scottish Regt. 3CDIRU

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

	Within last 12 months		Since enlistment or appointment	
For A.W.L.	Two	times	A.W.L. Two	times
For Loosing by Neglect	One	times	Loosing by Neglect One	times
For Unlawful Poss of Public Prop	1	times	Unlawful Poss of Public Prop 1	times
For Conduct to perj of good Order and Military Law	1	times	Conduct to prej of good Order and Military Law 1	times

~~Number of instances of gallantry or distinguished~~

~~or~~

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

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

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

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 79 Section 47 of the Army Act, and dispensations with trial under A.A. 75, are set out in the Schedule annexed to this statement.~~

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

or,

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

4. The accused has been in confinement awaiting trial on the present charges, for 1 days in Air Force civil custody, and 14 days in military custody, making a total of 15 days in custody, of which None days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 18 Years 4 Months

6. The date of his commission specified in his record of service is attestation paper attestation 6 January 1941

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

8. ~~The accused is entitled to reckon service for the purpose of determining his position on~~

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

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

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Pg Lt.

Permanent Force
unit

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

..... dated .....

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

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

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

SCHEDULE

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

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

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

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

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. Paul Grant Lt. N/Ay for J. H. Chevrier Capt. 8 C.I.B. Troy W.

Signed this 15th day of May 1942

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

5 J. 129

Pt. Dancoisne M. W.

SCHEDULE.

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

Accused: K676 Pte "arcel Walter DANCOISNE CH of O 10 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	NOT GUILTY	GUILTY	Except that accused was apprehended at 1730 hrs approx.
2nd AA Sec 40	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

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

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

Time in confinement awaiting present trial—a total of 11 days, of which 5 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EZ.)

Sentence Awarded by the Court:

To be imprisoned for one year with hard labor and to be discharged with ignominy from his Majesty's Service.

(Sgd) _____ Judge-Advocate, if any. 26 Mar 45 Date awarded. (Sgd) "G MacKenzie" Major President. (RP 45, 50.)

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

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

Date _____ (Sgd) _____ Commanding

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

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

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

rr45 GO i/c 1 Ech 21 A Gp Confirmed.
ected sentence be put in
execution. EXECUTION

"E P Taylor Major DJA 1 Ech

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

Date 27 Mar 45 (Sgd) "O S M Gostling" (O S M GOSTLING) BRIG Commanding 2 CDN BASE RPT GP

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
6 Pte Marcel Walter DANCOISNE CHof O 10 CBR Bn	1500 hrs 29Mar 45	"Jas W Varty" Lt ass Adjt 10 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA66 (to form of AFA41, 40/P & R 1868) 4/388

Convened by Order of Brigadier GSM Gostling ED Comd 2 CBRG dated 23 Mar 45

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K676	Pte		Marcel Walter	DANCOISNE CH of O	10 CBR Bn

CERTIFIED TRUE COPY
[illegible] Capt #421AG
20 May 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 26 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 27/38

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns/KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

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

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

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

A5. President to accused: ~~Do you object to~~ "If you prefer it - Amr
~~The Prosecutor is sworn.(1) Do you object to~~ "If shorthand writer is sworn - Amr - "GMc"
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans nc (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 108, MML p 742.)

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

President	MAJOR	G G MACKENZIE MiE	RCH X-9 List 5 CSM NETH
Member	LIEUT	BURTON RTCH	10 CBR Bn
Member	LIEUT	J G MOVAT	11 CBR Bn
Judge-Advocate			
Prosecutor	LIEUT	G K BISSETT	10 CBR Bn
Defending Offr	LIEUT	L R WILSON	10 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused K676 Pte Marcel Walter DANCOISNE before arraignment make(s) (no) (a) plea. (1)
20May45 jwb
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to fact of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

PROCEEDINGS REVISED D.J. Kitching Lt-Col 18 May 45 Can Sec 1 Ech 21 Army Gp

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 90(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 130, 182, RP 46-50, 98, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"G Mc"

CHARGE SHEET

The accused K876 Pte Marcel Walter DANCOISNE (CH of C) on strength of 42 Coy, 10 CBR Bn, a soldier of the Canadian Army Overseas

is charged with

FIRST CHARGE
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at 1400 hrs, 2 Mar 45 absented himself without leave until apprehended at 1800 hrs 2 Mar 45 by the military authorities at GHENT.

Total time absent: 4 hours)"3 hrs 30 mins"

SECOND CHARGE
AA Sec 40

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

in that he

In the Field, in Belgium, at approximately 1730 hrs 2 Mar 45 used obscene language saying "You Provost are no fucking good" or words to theat effect, striking L-36495 L/Cpl JOHNSON S, Can Pro Corps on the side of the head with his fist and spitting in L/Cpl JOHNSON's face.

In the Field
17 Mar 45

" J Runcie" Lt Col
(J Runcie) Lt Col
OC 10 CBR Bn

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
23 Mar 45

"G S N Gostling"
(GSN Gostling) Brigadier,
Commander
2 Canadian Base Reinf Gp

"GMc"

CFA95 (In lieu of AFA8) 40/PAS/1697 (2868)

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K876	Pte		Marcel Walter	DANCOISNE	CH ofO 10 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 23 Mar 45 endorsed by me, (or by an offr of my staff for me), " T[illegible] tried by Field General Court-Martial ".

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

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

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

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

"G S N G"

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	G G MACKENZIE MBE	FGH X-9 List 3 Cdn NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	to be detailed by OC 10 CBR Bn	10 CBR Bn
Lt	to be detailed by OC 11 CBR Bn	11 CBR Bn

WAITING MEMBER.

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

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in BELGIUM (Country.)

"G S N Gostling" (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G S N Gostling)

Date 23 Mar 45

Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

"GMc"

MEDICAL OFFICER'S CERTIFICATE

(KR(Can) Para 557)

I certify that I have this day examined K876 Pte Dancoisne M W

10 CBR Bn and in my opinion he is fit ~~unfit~~ to undergo
" RHC"

trial by Court Martial.

Station Field

Date 26 Mar 45

"R H Chalmers "Capt

Medical Officer

10 CBR Bn

Unit

"GMc"

Lt(N/S) M Wright #2 C C Hosp
identifies the accused.

Q Would you identify and id ? the accus. you were on duty at #2 CCH
Q What circumstances did you see acc.
A Saw acc. at appro. 1330 hrs 2nd had asked for pass, pass cancelled RSM's office. I did not see accused again approx 1800 hrs 3rd when he was brought back under guard.
Q Did you see the accused leave hosp.
A No leaving ward.
QC Had accused been given pass 2400 hrs?
A No, he had been given pass 14-17 hrs but that cancelled.
QC Had he been notified of its cancellation
A I could not say for sure.

RP 83 (b) complied with. "J E Movat" Lt

L36495 L/Cpl Johnson S identifies the accused.

Q Pres On the 2 Mar 45 did you see accused at any time.
A No sir, not until we'd received info. to proceed to liquor store.
Q Pros On result of info. accl what did you do?
We proceeded to the Liq. Store - a civilian pointed out the 2 Cdn soldiers dressed in hosp blues. They were standing a short way down the St. They saw us and started to run away, we gave chase and ordered them to halt. They did not As the acc. was turning around a corner his feet went from under him, he got up again and started to run down the St. There was a civ. vehicle, parked crossways on the road which the accused tried to hide behind. L/Cpl Robbins went one side, and I went the other side. The accused was standing beside the vehicle. One of the Cdn soldiers had a pistol and had it pointed at L/Cpl Robbins, he ordered him to put the pistol down which he did. L/Cpl Robbins handed the pistol to me, I examined it and put it in my pocket. I ordered the accused to stay where he was until the jeep came. He did not. He stated that "you Provost are no fucking good." Then the accused struck me on the side of the head with his fist. Then a civilian police came up and gave assistance, and we took him to Coy HQ on the way to Coy HQ the acc. spit in my face.

Q Pros What time did you apprehend the accused
A At approx 1730 sir

Q Def Did you tell the accused that you were the Provost when you ordered him to halt?
A No sir
Q Def You say the accused fell down would you say he had been drinking?
A2 No sir his feet just slipped from under him.
Q3D At any time would you say that the acc. had been drinking?
A3 No sir I would not say he had beend rinking.
Q4 What happened just before the time you say the accused struck you?
The acc. made statement "you Provost" and at that time I was stdg beside him.
Q5 Did you tell acc he was under arrest?
A Yes sir
Q6 Just when did you tell him
A As soon as I got to him.
Q When I ordered the acc to stay where he was he started to walk down the St and after I told him again to stay where he was he made the statement "you prov etc and then struck me.
Def A minute ago the Cpl said he didn't have to hold him now you say you did have to hold him. Which is it?
I did not lay a hand on him until after he refused to stay where he was ordered, the second time, and struck me.
Qd What did you do to defend yourself?
A I tangled with him until the civilian police came.

RP 83(b) complied with. "J E Movat" Lt

D rests

A27109 L/Cpl Robins K E
The witness idents the accused.

QP On the 2 Mar 45 Did you have occasion to go to liquor store to see about a complaint
A1 Yes sir
From the infor rec'd here what did you do?
L/Cpl Johnson and I proceeded to the Liquor Store to investigate the complaint of Cdn soldiers causing a disturbance. We arrived there about 1730 hrs. I was informed there that the soldiers had left at that moment a civilian standing on the St pointed towards the corner. As we was walking towards the corner two soldiers in hosp blues saw us coming and started to run. We gave chase meanwhile ordering them to halt, but they kept on running for about 2 sts then we saw the soldiers hide behind a civilian lorry. L/Cpl Johnson went around the rear of the lorry I went around the front. We then apprehended the two soldiers. The accused then started using obscene language.
QC What do you call obscene lang?
A The Prov are no etc sir.
--and then struck L/Cpl Johnson on the side of the head using his fist. A civ. policeman then gave assistance and force had to be used to subdue him. He was then escorted to Detach. HQ.
Q Pros What time did you actually apprehend him
A I'd say about 1740 -1745

Q1 Def When did you tell the accused he was under arrest
A1 When I apprehended him sir, when I went around the front of the truck
Q2 Could you tell us just what happened around the time you say the acc. struck Cpl Johnson
A2 At that time he was ordered to come along with us. He told his partner he didn't have to as the Provost were etc and struck L/Cpl Johnson.
Q3D Did Cpl Johnson have a hold of him at the time?
A 3 No sir he was going to take him by the arm when he struck him
Q3 He was just reaching for him
A3 Yes sir that is what I would say
Q4 Then they got into a fight?
A4 Yes sir
Q5 Would you say the accused was very drunk
Q5 He had been drinking sir, but I would not say he was drunk

RP 83(b) complied with "J E Movat" Lt

The accused sworn states:
At approx 1700 hrs 2 Mar 45 I left the liquor store and proceeded to the corner of the st. to wait for a tram. Then we saw the Provost and remembering that the lady in the wine shop said she would call the provost, we walked around the corner. The rest is very vague. I remember starting to run and I remember seeing L/Cpl Robins with a pistol pointed at me. Then I don't remember anymore until I was at Det HQ

Q1Def Do you remember what kind of a day it was- Rainy windy
A1 It was windy
Q2D Do you remember anything about spitting in the Provost face
A1 No sir
Q1 Pros What time did you leave the hospital?
A At approx 1415 1430 hrs
Q2 Did you have a pass signed for that day?
A2 No sir
Q3 You say you were app at approx 1730 hrs by the Provost
A3 I wouldn't say that.
Q4 You said it was approx 1730 hrs you saw L/Cpl Robins
A4 No sir I said at approx 1700 hrs I left the liquor store.

RP 83(b) complied with "J E Movat" Lt

Defense
The accused is charged with an act that is alleged to have occurred at 1730 hrs and yet he was apprehended at 1800 hrs and yet he is supposed to have committed an act before the time of app

Statement of character submitted by Def marked Ex "C" "GMs"

23/3/45

To whom it may concern:

The accused Pte DANCOISNE CAMERON HIGHLANDERS OF OTTAWA came to my platoon in England in November 1943 and stayed with me until the change of organization of our unit in February 1944.

During his stay he was employed as a DR and he carried out all his duties in a faithful and soldierly manner

"G E BALAR" Lieut

Statement of Mitigation by the accused.

When I was with the CSR in Debert Can. I was discharged on the 1 May 41, which was about the 8th discharge for being underage. I went to Halifax, signed on a ship in the Merchant Navy, came to England and enlisted in the RAF. I served in the RAF until the end of that year (41) when they found out how old I was they then gave me 6 mos temp discharge to return to the service when I was 18. Instead I went to London and re-enlisted in the Can Army. I was then kept in the Reinforcement Units, because of my age. I was never available for the field because of my age. I always seemed to be getting into trouble while in the holding unit. I then came over here in November 44 haping to go straight to the front, but I was kept here in the holding unit until the beginning of Jan 45 when I was admitted into hosp for diptheria and skin trouble. I spent two months in hosp and when I was slated for Rconval. I tried to come straignt to CSRG instead of going to Conv, so that I would be available for the front. I would like very much to get there before it is all over.

I wish to point out that the accused has had no previous charges since arriving in this theatre.

"Pte M H Dancoisne"

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

x Strike out if not applicable

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

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

For AA Sec 15(1) one ..... 13 ..... times

For AA Sec 24 (2) nil ..... 3 ..... times

For AA Sec 40 nil ..... 5 ..... times

For AA Sec 11 nil ..... 1 ..... times

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the schedule overleaf.~~ "CMGA" "CMGA"

3.x ~~The accused at the present time is under sentence for~~ ..... "CMGA"

~~beginning on the~~ ..... ~~day of~~ ..... "CMGA"

4. The accused has been awaiting trial on the present charges for .Nil days in civil custody; and for ..11.. days in military custody, making a total of ..11.. days of which ..5.. days were spent in hosp.

5. The present age of the accused is 21yrs,2mths,12dys

6. The date of his attestation is 1 Jan 42

7. The service which the accused is allowed to reckon is .....3 yrs, 2 mths, 12 days

8. The accused is in possession of #

CVSM & CLASP

9. (~~If the accused is a warrant officer or NCO~~). The "CMGA" accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

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

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
The Field		AA Sec 24(2) AA Sec 15(1)	90 days detn Stop:£6-19-3	22 days
The Field		AA Sec 15(1) AA Sec 24(2)	90 days detn	30 days
The Field		AA Sec 15(1)	6 mths Detn 183 days pay under 149(1)(b) FR&I 37 days pay under 149(1)(a) " 11 days " " 149(1)(c) " £2-10-7 " " 172(8) $8.44 " " 158(2)	
The Field		AA Sec 15(1)	Imprisoned with hard labor 2 yrs less 14 days	572 days

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

Signed this 20th day of March 1945

"C M G Arthurs" Capt

No K876 Name Walter DANCOISNE Sqn, Battery, or Company | Corps (CIC) | Date of enlistment 6 Jan 41 | GC Badges n/a | Service or Proficiency Pay n/a

MFM 6 (AFB 122) 40/P&S/136 (3458)

Date of last entry in Company Conduct Sheet n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No | Signature OC Company, etc signed (J Horokeris) Character Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31Dec41	Pte		1.AA15(1)AWL from 1100hrs 31Dec41 till 1720hrs 3Jan42(3days 6hrs 20 m) 2.AA24(2)Losing by neglect his clothing, equipment and regt necessaries to the value of £6-17-9 3.AA40Conduct Cost of Appr £6-19-3	Documentary	14 days CB 28 days pay Stop £6-19-3	6Jan42	DO8/10Jan 42	Forf 4 days pay for AWL
Field	10Feb42			AA 40 Conduct					
Field	26Mar42			1.AA15(1)AWL from 2200hrs 26Mar42 till 2359hrs 17Apr42(22days 1hr 59 min) 2.AA 24(2) Losing by neglect his clothing equipment & regt necessaries to the value of £5-6-2½	Sgt James Documentary	10 days CB 90 days Detn Stop:£5-6-2½ Released from 21Jul42 Remission 22 days	12Feb42	RGL Parker FGCM	forf 23 days pay for AWL & 11 days for time in arrest
Field	7 Aug 42			AA15(1)AWL fr 2300hrs 7Aug42 till 0900 hrs 8 Aug 42 (10 hrs)	Cpl Blacklock	14 dys FP	8Aug42	DO-192/15Aug42	F.1dypay for AWL
Field	15Sep42			AAConduce(Reluctance to obey an NCO	Sgt.Fitzgerald	5 days CB	16Sep42		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 21Sep42		Pte		AA 11 Disobeying unit standing orders	CSM Fisher	5 days CB	21 Sep42	Maj.Plows	
Field 5Feb43				AA15(1)AWL 8 hrs 15 mins	CSM Jackson Sgt Meeres	10 days pay 10 days F P	6 Feb 43	LtColHewitt	For.1daypay for AWL
Field 20Feb 43				AA15(1)AWL fr 2200hrs 20Feb43 till 0740hrs 23Feb43(2days9hrs40mins)	Documentary	7 days FP 7 days pay	24Feb43	D024/3Mar43	For.3dayspy for AWL
Field 27Feb43				AA40Cond.(Failing to rise at rev.	Cpl Milun	7 days CB	27Feb43	Maj.Paquet	
Field 19Apr43				(1)AA15(1)AWL fr 0600hrs19Apr43till 0115hrs 24Apr43(4dys19hrs15mins	Sgt Show Sgt Emms	12 days FP 12 days pay	26Apr43	Maj.Crofton	For 6 daypay forAWL
				(2)AA15(1)AWL fr 0700hrs 25Apr43to 2030hrs 25Apr43(13hrs 30 mins)					
Field 30Apr43				AA40Cond.(Failed to report on defaulters parade)	Sgt Jackson	4 days CB	1 May 43	Capt Cross	
Field 11May43				AA15(1)AWL fr 1315hrs 11May43 to 1750hrs 11May43 (4hrs 35 mins)	Sgt Robinson Cpl Baker	14 days CB	11May 43	LtColHewitt	
Field 15May43				AA15(1)AWL fr 1245hrs 15May43 to 0500hrs 22Jun43.Cost appr £1-17-11 (37 days 16 hrs 15 mins)	Documentary	90days detn Rel:27Aug43 Rem 30 days	29Jun43	FGCM	For.38dypay AWL, 7 dys arrest
Field 5Dec43				AA15(1)AWL fr 2359hrs 5Dec43 to 0815hrs 6 Dec 43 (8 hrs 16 mins)	Cpl Finn	Admonished	7Dec 43	Maj.Palmer	for 1 day for AWL

No K876 Name Dancoisne Walter | Regt. Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/12E (3488)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
						6 mths Detn	15Apr44	FGCM	
Field	27Feb44	Pte		1.AWL 36 days 16 hrs 1 min		183 days pay under	149(1)(b)	FR&I	
				2.AASec24(2) Cost Appr £2-10-7		37 days pay under	149(1)(a)	"	
				Loss greatcoat $8.44		11 " " "	149(1)(c)	"	
						£2-10-7 " "	172(8)		
						$8.44 " "	158(2)		(755 days pay
Detention	?			AWL 55 days 23 hrs 38 mins		Imprisoned with hard labor 2 yrs less 14 dys (granted 572 days rem of sentence and FGCM)	D0123A/44 7July44	FGCM	(156 concurrent (with awd 15Apr (44
						(7 July 44 10 Nov 44	9A/44		
Field	17Nov44			WOAS AASec15(1)AWL 2days 1 hr	1/C Wilson Cpl Kirk	7 days FP 7 days pay FR&I	20Nov44	Lt-ColRSE	Fpr.3dyspay 149(1)(b) WatermanFR&I 149(1)(a

Certified True Copy
"C M G Arthurs" Capt
Offr i/c Regimental books

(PTO)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
The Field		AA Sec 24(2) AA Sec 15(1)	90 days detn Stop:£6-19-3	22 days
The Field		AA Sec 15(1) AA Sec 24(2)	90 days detn	30 days
The Field		AA Sec 15(1)	6 mths Detn 183 days pay under 149(1)(b) FR&I 37 days pay under 149(1)(a) " 11 days " " 149(1)(c) " £2-10-7 " " 172(8) $8.44 " " 158(2)	
The Field		AA Sec 15(1)	Imprisoned with hard labor 2 yrs less 14 days	572 days

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

Signed this 20th day of March 1945

"C M G Arthurs" Capt

Ex "A" "CMGA"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

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

Number	Rank	Name	Regiment (or as the case may be)
K876	Pte	Marcel Walter DANCOISNE	10 CDR Bn

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

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

For	AA Sec 15(1) one	13	times
For	AA Sec 24 (2) nil	3	times
For	AA Sec 40 nil	5	times
For	AA Sec 11 nil	1	times

2. ~~Previous convictions of the accused by a court martial or civil court are set out in the schedule overleaf.~~ "CMGA"

3. ~~The account of the present time to be under~~ "CMGA"
~~sentence for~~ .....

~~beginning on the~~ ..... ~~day of~~ ..... "CMGA"

4. The accused has been awaiting trial on the present charges for .Nil days in civil custody and for ..11. days in military custody, making a total of ..11.. days of which ..5.... days were spent in hosp.

5. The present age of the accused is 21yrs,2mths,12dys

6. The date of his attestation is 1 Jan 42

7. The service which the accused is allowed to reckon is .....3 yrs, 2 mths, 12 days.....

8. The accused is in possession of # CVSM & CTASP

9. (~~If the accused is a warrant officer or non-~~ "CMGA"
accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

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

* Strike out if not applicable

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

Army Form B.296 (War)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 21	Sep42	Pte		AA 11 Disobeying unit standing orders	CSM Fisher	5 days CB	21 Sep42	Maj.Plows	
Field 5	Feb43			AA15(1)AWL 8 hrs 15 mins	CSM Jackson	10 days pay	6 Feb 43	LtColHewitt	For.1daypay for AWL
					Sgt Meeres	10 days F P			
Field 20	Feb 43			AA15(1)AWL fr 2200hrs 20Feb43 till 0740hrs 23Feb43(2days9hrs40mins)	Documentary	7 days FP 7 days pay	24Feb43	DO24/3Mar43	For.3dyspy for AWL
Field 27	Feb43			AA40Cond.(Failing to rise at rev.	Cpl Milun	7 days CB/	27Feb43	Maj.Paquet	
Field 19	Apr43			(1)AA15(1)AWL fr 0600hrs19Apr43till 0115hrs 24Apr43(4dys19hrs15mins	Sgt Show Sgt Emms	12 days FP 12 days pay	26Apr43	Maj.Crofton	For 6 daypay forAWL
				(2)AA15(1)AWL fr 0700hrs 25Apr43to 2030hrs 25Apr43(13hrs 30 mins)					
Field 30	Apr43			AA40Cond.(Failed to report on def aulters parade)	Sgt Jackson	4 days CB	1 May 43	Capt Cross	
Field 11	May43			AA15(1)AWL fr 1315hrs 11May43 to 1750hrs 11May43 (4hrs 35 mins)	Sgt Robinson Cpl Baker	14 days CB	11May 43	LtColHewitt	
Field 15	May43			AA15(1)AWL fr 1245hrs 15May43 to 0500hrs 22Jun43.Cost appr £1-17-11 (37 days 16 hrs 15 mins)	Documentary	90days detn Rel:27Aug43 Rem 30 days	29Jun43	FGCM	For.38daypay AWL, 7 dys arrest
Field 5	Dec43			AA15(1)AWL fr 2359hrs 5Dec43 to 0815hrs 6 Dec 43 (8 hrs 16 mins)	Cpl Finn	Admonished	7Dec 43	Maj.Palmer	for 1 day for AWL

MFM 6 (AFB 122) 40/F&S/138 (3488)

No K876 Name Walter DANCOISNE | Regt, Battery, or Company | Corps (CIC) | Date of enlistment 6 Jan 41 | GC Badges n/a | Service or Proficiency Pay n/a

Date of last entry in Company Conduct Sheet n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No | Signature OC Company, etc signed (J Horokeris) Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31Dec41	Pte		1.AA15(1)AWL from 1100hrs 31Dec41 till 1720hrs 3Jan42(3days 6hrs 20 m) 2.AA24(2)Losing by neglect his clothing, equipment and regt necessaries to the value of £6-17-9 3.AA40Conduct Cost of Appr £6-19-3	Documentary	14 days CB 28 days pay Stop £6-19-3	6Jan42	DO8/10Jan42	Forf 4 days pay for AWL
Field	10Feb42			AA 40 Conduct	Sgt James	10 days CB	12Feb42	BTL Parker	
Field	26Mar42			1.AA15(1)AWL from 2200hrs 26Mar42 till 2359hrs 17Apr42(22days 1hr 59 min) 2.AA 24(2) Losing by neglect his clothing equipment & regt necessaries to the value of £5-6-2½	Documentary	90 days Detn Stop:£5-6-2½ Released from 21Jul42 Remission 22 days		FD CM	forf 23 days pay for AWL & 11 days for time in arrest
Field	7 Aug 42			AA15(1)AWL fr 2300hrs 7Aug42 till 0900 hrs 8 Aug 42 (10 hrs)	Cpl Blacklock	14 dys FP	8Aug42	DO-192/15Aug42	F.1dypay for AWL
Field	15Sep42			AAConduce(Reluctance to obey an NCO	Sgt.Fitzgerald	5 days CB	16Sep42		

(FTO)

No K876 Name Dancoisne Walter | Regt, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3488)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order Suspending sent trial	By whom awarded	Remarks
Field	27Feb44	Pte		1.AWL 36 days 16 hrs 1 min 2.AASec24(2) Cost Appr £2-10-7 Loss greatcoat $8.44		6 mths Detn 183 days pay under 149(1)(b) FR&I 37 days pay under 149(1)(a) " 11 " " " 149(1)(c) " £2-10-7 " " 172(8) $8.44 " " 158(2)	15Apr44	FGCM	
Detention	?			AWL 55 days 23 hrs 38 mins		Imprisoned with hard labor 2 yrs less 14 dys (granted 572 days rem of sentence and (7 July 44	D0123A/44 7July44 10 Nov 44	FGCM FGCM) 9A/44	(755 days pay (156 concurrent (with awd 15Apr (44
Field	17Nov44			WOAS AASec15(1)AWL 2days 1 hr	L/C Wilson Cpl Kirk	7 days FP 7 days pay FR&I 149(1)(b)	20Nov44	Lt-ColRSE	For.3dyspay Waterman FR&I 149(1)(a

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"C M G Arthurs" Capt
Offr i/c Regimental books

(FTO)

SSS-32

PTE DANCOISNE W

II-11 (cam #3)

PTE DANCOISNE V.

See I-20 for 1st cam

K.876 Pte. Walter DANCOISNE
1 Cdn Scot R - 1 C.I.R.U.

Correspondence to be PINNED here

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 28th day of JUNE, 19 43.

Whereas it appears to me, the undersigned, an officer in A/Command of "G" GROUP CANADIAN REINFORCEMENT UNITS C.A.(O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* [illegible]

*Omit if not applicable.

*(1. [illegible]

*(2. [illegible])

[illegible]

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

President.

Rank.	Name.	Regiment.
LIEUT-COL.	D.L.REDMAN VD	H.Q. C.R.U.

Members

Rank.	Name.	Regiment.
A Captain	from	C.R.U.
A Lieutenant	from	C.R.U.

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

*Signed [signature] Colonel

*Commanding "G" Gp C&c Rft Units, Convening Officer. C.A.(O).

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K-876 Pte. Walter DANCOISNE 1 Cdn Scot R. 1 C.I.R.U.	First Charge A.A.Sec. 15(1)	Guilty	Guilty Sentence To undergo 4 months imprisonment (90) Suspended to be kept under supervision of pay until he has served good 71-17-11 the expiration of his sentence	Confirmed Col.

SEE CHARGE SHEET ATTACHED

"I have satisfied myself that none of the Officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge before this Court Martial".

29 June 1943

President

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

(Signed) Colonel (Signed)

Commanding "G" Gp Cdn Rft Units
(Confirming Officer (e)) C.A.(C). President.

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

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

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

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

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

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

*Omit if not applicable.

were duly sworn.

Signed this 29th day of June 1943

President of the Court Martial.

C. Certificate on case of death sentences.

*See footnote (b) on page 7 of M.M.L. 1918.

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

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 30th day of June 1943

Confirming Officer.

D.O. 119
3 July 43

Promulgated and extracts taken in the case of K876 Pte. Dancoisne, W.(C. Scot R.)
Promulgated D.O. 119 dated 3 Jul 43.

(a) (Dated) 30 Jun 43 (Signed) Lt-Col., (H.C.A. Hervey)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

CHARGE SHEET

The accused, No. K-876 Pte. Walter, DANCOISNE, of the First Battalion Canadian Scottish Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, as reinforcement, a soldier of the Canadian Army (Overseas.)

FIRST CHARGE
Section 15(1)
ARMY ACT

When on Active Service, Absenting himself without leave,

in that he,

at No. 1 Canadian Infantry Reinforcement Unit, Barossa Barracks, Aldershot, Hants., absented himself without leave from 1245 hours the 15th day of May 1943, until apprehended by the Military Police in Manchester at 0500 hours the 22nd day of June 1943, thereby incurring expense to the public in the amount of £1-17-11 the cost of apprehension.

Total absence 37 days 16 hours 15 minutes

H C A Hervey Lt.-Colonel.
(H.C.A. Hervey) A/Commander,
No. 1 Cdn Inf Reinf Unit.

Barossa Barracks,
Aldershot, Hants.

26th day of June 1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(C.W. Dewey) Colonel,
A/Commander,
"G" Group Cdn Rft Units, C.A.(O).
Convening Officer.

28 Jun 43

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) P[illegible]n. 557 -

29 Jun 43.

I certify that I have this morning examined No.

K-876 Pte Dancoisne M.W. - 1 C. Scot. R.

No. 1 Cdn. ~~Div~~. Inf. Reinf. Unit, and in my opinion,

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

B.J. Murphy, Capt

(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Ondeverde Bks. Farnboro.
ON THE 29 DAY OF June 1943

The accused K 876 Pte Dancewicz W Unit 1 C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt-Col D.L. Redman Unit HQ CRU
Members Capt J.H. Townsend Unit R.C.C.L.
Lt B.H. Garfunkel Unit HQ CRU

The officers under instruction are duly sworn:-

2 Officers Unit
Unit

Prosecutor Lt. Emmett, A.G. Unit 1 C.I.R.U.
Defending Officer Lt. Moss, J.M. Unit 1 C.I.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
VM The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
VM (b) ~~Calls witnesses as to character.~~
(c) ~~Calls witnesses in mitigation of punishment.~~
MM (d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Statement by accused is attached
Plea in mitigation
The accused is very young. at times he has done well and was free from VM
Crime. A heavy sentence is not indicated

29 June 43.

Plea for Mitigation of Sentence.

Accused No. K-876 Pte Walter Dancoisne of the First Bn., Canadian Scottish Regt. pleads guilty to the charge. The following are mitigating circumstances.

Pte Dancoisne left school in 1940 to enlist at age of 16. He was discharged from the 5th Can. Motor cycle Regt. after two months as under age. He then enlisted with the Canadian Scottish Regt and was with them until 1941 at Debert in Canada. Here he was warned that he would not come overseas because of his age. On a "stickman's" pass, he went absent without leave and worked his way by ship to England.

16th June 41 Pte Dancoisne joined the R.A.F. as a motor cycle instructor and was discharged because of age 22 Dec. 41. No crime record during this time.

Canadian Provost advised that he would enlist in Canadian forces in England and Pte. Dancoisne requested to be sent to his old regiment, Canadian Scottish, in an effort to redeem himself with that unit.

When he ~~[illegible]~~ was apprehended was in uniform en route to return to his unit, though he had been previously in plain clothes.

In view of this record and the fact that he has been denied opportunity of training on motor cycles which is his great interest in the army, we respectfully submit that a minimum ~~[illegible]~~ sentence be handed down and that a recommendation be made to transfer him to another unit where his motor cycle experience will be profitable.

J. Moss Lt.
Defending Officer

MM

To Confirming Officer
Trial of K 876 Pte Lawrence W
Plea note in plea that accused
is desirous of transferring. This
might be met by posting him to another
Regt within I C I R U where he has
served his sentence

[illegible signature]

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 43.

I CERTIFY that No. K-876 . . Rank Pte . . . Name Dancoisne, M.

Unit . No.1.C.I.R.U. . . . . was arrested at . Manchester . . (Place)

at .0500.hrs..(hour) on 22 June 43 .(date) and that at the time of his arrest he was wearing (Military Uniform) or (~~Civilian Clothes~~). Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

. . . . . Capt.
(W. Cdr) D. A. P. M.,
London Area

London
24 June 43

E1 B
bR

RECORD of the Declaration of a Court of Inquiry assembled at 1 C.I.R.U. on the 11 Jun 43. day of 19

for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No K-876 Pte Dancoisne M. (1 CIRU)

DECLARATION

The Court declare, that K876 Pte Dancoisne M. 1 CIRU did illegally absent himself from 1245 hrs, 15 May 43 and is still absent, and that on 15th May 43 he was defecient and still is defecient the following articles of kit.

ARTICLES	No	VOCABULARY PRICE £	s.	d.	APPRAISED PRICE £	s.	d.
Badges Cap 1 CSR	1			4½			3
Battle Dress	1	1	7	8	1	1	8
Blouse Serge	1	1	7	11	1	1	9
Trouser Serge Prs	1						3
Tam O'Shanter	1		4	2			1½
Boots Ankle Prs	2	2	3	0	1	17	0
Braces	1		1	3½			11
Brasses Button	1			2			2
Brushes boot	1			9			6½
Brushes cloth	1		1	1			8½
Brushes shaving	1		1	4		1	0
Brushes tooth	1			4½			3
Brushes hair	1		1	1			8½
Cap comforter	1		1	1½			9
Comb hair	1			2		2	2
Drawers Wool Prs.	1		5	3		4	0½
Dressing F.F.	1		1	1			8½
Fork	1			5			3½
Gloves wool prs	1		2	7½		2	0
Holdall	1			9			6½
Housewife	1		2	3		1	6
Jersey pullover	1		6	9		5	1
Knife clasp	1		5	2½		4	1
Knife table	1			9½			6½
Razor	1		1	10½		1	4½
Shirts flannel	2		18	4		14	0
Shirts woollen	1		5	1		4	0
Shoes canvas	1		8	10		6	7
Socks prs	1		1	8		1	3
Spoon table	1			4½			3
Towels hand	2		1	11		1	4
Drawers Cell	1		2	2 0½		1	7
Shorts Gym	2		3	10		2	8
Vests Gym	2		3	0		2	4
Bags ration	1			2			1½
Packs	1		9	6½		7	2
Straps sholders LAR	2		4	0		2	2
Straps web	2		1	6		1	1
tins mess	1		2	6½		2	0
Eyes shield A.C.	6		1	8		1	4
Cape A.C.	1		4	10		4	4
		£11	4s	9d	£8	13s	8½d

Signature of Commanding Officer

Names of President and Members:

President Major J.A. Early (PPCLI)
Members: Lieut. A.A.McPherson (WesternR.)
Lieut. O.H. Mace (Calg Highrs)

Certified true copy

Signature of Officer having custody of original record.

(R.C.A.Harvey) 1 C.I.R.U. A/Cmdr Lt/Col

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. K.876 Rank Pte Name Lancoisne, M. Unit 1 CIRU Cdn. Scot.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Manchester

Date	Particulars (1/3 portion	Amount		
24 June 45	Escorts return fare from LONDON To Manchester		18	10
	Prisoners single fare to LONDON From Manchester		14	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares (1/3 portion		5	0
	Total £	1	17	11

E + C / BR

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

[signature] Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

SUMMARY OF EVIDENCE

In the case of K-876 Pte. Dancoisne, W., of the First Battalion Canadian Scottish Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, as a Reinforcement of the Canadian Army (Overseas)

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

FIRST WITNESS for the PROSECUTION — Capt. W. Rorke, Calgary Highlanders, on the strength of No. 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Capt. W. Rorke, Calgary Highlanders, on the strength of No. 1 C.I.R.U.

I produce certified true copy of a Declaration of a Court of Inquiry purporting to be signed by Lt.-Colonel H.C.A. Hervey, No. 1 Canadian Infantry Reinforcement Unit, which relates to the accused whom I now recognize. I also produce certificate in accordance with P.C. 2797 of 10 Apr 42 purporting to be signed by W. Fern, D.A.P.M., London Area, which relates to the accused, whom I now recognize. I also produce C.M.H.Q. 1000:55 relating to the accused, whom I now recognize. These documents are marked Exhibit "A", "B" and "C" respectively and duly initialed by me for purposes of identification.

The accused declines to cross-examine the witness.

W Rorke Capt.
(W. Rorke)

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

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

Lieut.
(P. H. Claxton)
Officer detailed to take Summary.

Albuhera Barracks,
Aldershot, Hants.

26th day of June 1943.

M.F.M. 6
(A.F. B.122)
40/P & /S136 (2965)

No K-876 Name DANCOISNE W. Sqn., Battery, or Company Corps Cdn Inf Corps Date of enlistment 6-1-41 G.C. Badges Service or Proficiency Pay

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

ORIGINAL SHEET DESTROYED ON COMPLETION OF SIX MONTHS SERVICE.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10/2 42	Pte		AA Sec 40 Conduct to the Prej. of good order & Mil. Discipline	Sgt. James Pte Olsen	10 dys C.B.	12.2.42	R.G.L. Parker, F.G.C.M	
Field	26.3. 42	Pte		AA sec 15(1) AWL from 2200 hrs 26.3.42 to 2359 hrs 17.4.42 (2) AA Sec 24(2) Losing by neglect	Sgt. Milton Sgt Olsen Cpl Wright	90 days Det. Remission of sentence-22 days	15.5.42		Total Forf of 107 days Pay
Field	7.8.42	Pte		A Sec 15(1) AWL from 2300 hrs 7.8.42 to 0900 hrs 8.8.42 Absent 10 hrs	Sgt. Sked	14 days F.P.	8.8.42		1 days pay FR&I 149 1a
Field	15.9. 42	Pte		AA Sec 40 Reluctanc to obey an NCO while on parade. Conduct to the Prejudice, etc.	Sgt. Fitzgerald	5 days C.B.	16.9.42		
Field	21.9. 42	Pte.		AA Sec 11 Failing to comply to an order	CSM Fisher	5 days C.B.	21.9.42	Major A.H. Plows	
Field	5.2. 43	Pte		AA Sec 15(1) AWL 8 hrs 15 Mins.	Csm Jackson Sgt. Meeres	10 days f.P. 10 days Pay	6 Feb 43	Lt-col T. Hewitt	1 days pay FR&I 149 1(a)

(P.T.O.)

M.F.M. 6
(A.F.B.122)
50/P & /8138 (2965)

No. K-876 Name DANCOISNE W. Sqn., Battery, or Company — Corps Cdn Inf Corps — Date of enlistment 6-1-41 — G.C. Badges — Service or Proficiency Pay — Character

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

ORIGINAL SHEET DESTROYED ON COMPLETION OF SIX MONTHS SERVICE.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date award or order dispensing with trial	By whom awarded	Remarks
Field	10/2 42	Pte		AA Sec 40 Conduct to the Prej. of good order & Mil. Discipline	Sgt. James Pte Olsen	10 dys C.B.	12.2.42	R.G.L. Parker,	
Field	26.3. 42	Pte		AA sec 15(1) AWL from 2200 hrs 26.3.42 to 2359 hrs 17.4.42 (2) AA Sec 24(2) Losing by neglect	Sgt. Milton Sgt Olsen Cpl Wright	90 days Det. Remission of sentence-22 days 14 days F.P.	15.5.42	F.G.C.M	Total Forf of 107 days Pay 1 days pay FR&I 149 1a
Field	7.8.42	Pte		A Sec 15(1) AWL from 2300 hrs 7.8.42 to 0900 hrs 8.8.42 Absent 10 hrs	Sgt. Sked		8.8.42		
Field	15.9. 42	Pte		AA Sec 40 Reluctanc to obey an NCO while on parade. Conduct to the Prejudice, etc.	Sgt. Fitzgerald	5 days C.B.	16.9.42		
Field	21.9. 42	Pte.		AA Sec 11 Failing to comply to an order	CSM Fisher	5 days C.B.	21.9.42	Major A.H. Plows	
Field	5.2. 43	Pte		AA Sec 15(1) AWL 8 hrs 15 Mins.	Csm Jackson Sgt. Meeres	10 days f.P. 10 days Pay	6 Feb 43	Lt-col T. Hewitt	1 days pay FR&I 149 1(a) (P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
1 CIRU	27/2 43	Pte		AA Sec 40 Failing to rise at Reveille	Cpl Milum	7 days C.B.	27.2.43	Major A.E Paquet	
1 CIRU	25.4. 43	Pte		AA Sec 15(1) AWL from 0700 hrs 25.4.43 to 2030 hrs 25 Apr 43 13 hrs 30 mins	Sgt Shaw Sgt Murray	3 Days C.B.	26.4.43	Major J.D Crofton	1 days pay FR&I 149 1 a
Field	19.4. 43	Pte		AA Sec 15(1) AWL from 0600 hrs 19 Apr 43 till 0115 hrs 24 Apr43 Absent 4 days 19 hrs 15 mins	Sgt. Emms Documentary	12 days F.P. 12 days Pay	26.4.43	Major D.G. Crofton	5 days pay FR&I 149 1(a)
1 CIRU	30.4. 43	Pte		AA Sec 40 Conduct to the Prej. failed to report on Defaulters	L/Sgt Jackson	7 days C.B.	1 May 43	Capt R. Cross	
1 CI RU	11.5 43	Pte		AA Sec 15(1) AWL from 1315 hrs 11 May 43 to 1750 hrs 11 May 43 Absent 4 hrs 35 mins	Sgt. Robinson Cpl Barber	14 Days C.B.	11 May 43	Lt-Col Hewitt.	

CERTIFIED TRUE COPY CONSISTING OF One SHEETS

Officer having custody of original documents.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 290

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K 876	Pte.	DANCOISNE, W.	1. C.I.R.U.

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

	Within last 12 months		Since enlistment or appointment	
For A.A. 15 (1)	5	times	5	times
For A.A. 40	3	times	4	times
For A.A. 11	1	times	1	times
For ~~A.A. 24 (2)~~	~~Nil~~	~~times~~	~~1~~	~~times~~

Number of instances of gallantry or distinguished conduct

or,

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

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

2. The accused has not been previously convicted

~~or~~

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

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

or,

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

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 7 days in ~~Air Force~~ military custody, making a total of 7 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 19 years 5 Mos

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

7. The service which the accused is allowed to reckon towards discharge is 2 Years ~~X Mos~~

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

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

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

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

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

.....dated.....

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

.....Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

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

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Y. 876 Rank Pte Unit

Name DANCOISNE, R. of 1. C.D.T.U. Regiment

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

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field 15 May 42	A.A. 15(1) A.A. 24 (2)	90 Days Detention	22 Days

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

Signed this 29 day of June 43 [illegible]
Ass't Records Officer

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

[illegible]

TTT-111

Pte. Dando, F.E.

RECORDED AT CMHQ IN AB 160 - 777-111

CPA86 - 1a [Instr of AFAG] 20/P & S/1668 (4/43) 4/38B

FIELD GENERAL COURT-MARTIAL

Order of Brig GSW Gosling, ED Comd "A" GP CRU dated 27 JUL 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 15, 71, 409. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

(a) Prmnt R. (b) Apptmt, A/R or A/Appmt. Full Christian Names. Surname. Unit.

mber. Fredrick Ernest DANDO 1 CIRU CIC

6114 Pte

PROCEEDINGS REVIEWED

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

Held in the Fd in (country) ENGLAND on (date(s)) 28 July 1944

J.C.C. Judge-Advocate-General
12 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, Cf A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (1) attached thereto.(1)

The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(2)

A3. The Court is opened. The accused is (not) brought before the Court. At 1660 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (not) fit to undergo trial by court-martial.(1) Ans Yes

~~The Prosecutor informs the Court that accused is to be tried by court martial instead of being dealt with AFO~~

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

(1. KR Con 557.

A5. President to accused: Do you object to ~~the Interpreter~~ an interpreter? Ans

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

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	MAJOR	H W SMITH	1 CIRU
Member	Capt	D C Lee	1 CIRU
Member	Lt	K E Dalton	1 CIRU
Judge-Advocate	Lieut	R B Allen	1 CIRU
Prosecutor	~~Capt~~ Capt	R G Rowan	1 CIRU
Defending Offr			

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans No (1)

(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 23)

A8. The accused M16114 Pte DANDO, FE before arraignment make(s) (no) (1) plea(s)

(1. If a special plea is made for separate trial on two or more charges (RP 63(2), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13C, RP 37), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see reference to fns to RP cited. Insert in A8 name and name of the accused making the plea.)

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

(1. RP 32, RP 33. If otherwise, delete and separately see RP 71(C), and use separate copies of Cf A86 to record proceedings. 2. See note 1 of insert p 2. When more than one Charge Sheet see RP 62; when several accused to the same make appropriate record per Notes.)

A10. The Court (in closed and) considers the Instrs on Procedure after Arraignment at top of p 3. proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORDED AT CMHQ IN AB 160 TTT-111

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA2) 40/P & S/1698 (4930)
4/38B

Convened by Order of Brig GSN Gostling, ED Comd "A" GP CRU dated 27 JUL 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 409. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M16114	Pte		Fredrick Ernest	DANDO	1 CIRU CIC

PROCEEDINGS REVIEWED
J.C.H. J. Hurlingwood Capt.
12 Aug 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 28 July 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1600 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(2) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(3)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

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

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

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

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

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

Ans NO (2)

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

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

President	MAJOR	H W SMITH	1 CIRU
Member	Capt	D. C. Lee	1 CIRU
Member	Lt	F. E. Dalson	1 CIRU
Judge-Advocate			
Prosecutor	Lieut.	R. B. Allen	1 CIRU
Defending Offr	~~Lieut.~~ Capt.	R. W. Bonner	1 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans NO (3)

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

A8. The accused M16114 Pte DANDO, FE before arraignment make(s) (no) (a) plea ..... (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 31(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

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

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

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

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

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

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeded by complying with paras D1 to D6 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. M-16114 Private Fredrick Ernest DANDO, Royal Canadian Army Service Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SEC 18(4)
ARMY ACT

When on Active Service, Stealing Public Property,

in that he,

In the Field, on the 11th day of July 1944 stole, one half pound of margarine, six slices of bacon, three eggs, a cooked pudding, such rations being public property.

SECOND CHARGE
(ALTERNATIVE)
SEC 40
ARMY ACT

When on Active Service, Conduct to the Prejudice of good order and Military Discipline,

in that he,

In the Field, on the 11th day of July 1944 was in improper possession of one half pound of margarine, six slices of bacon, three eggs, a cooked pudding, such rations being public property.

(E. Sharp) Colonel
Commander,
1 Canadian Inf. Reinf. Unit.

In the Field,

16th day of July 1944.

To be tried by Field General Court Martial.

(G S N Gostling) Brig
Comd
"A" Gp Cdn Rft Units
C A (O)

Field
27 Jul 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2065)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
M16114	Pte		Fredrick Ernest	DANDO	1 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 27 Jul 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

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

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

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

4. ~~The President to be [a] Rank Offr to form a Court, the senior Offr as President, for the convening of an armed forces.~~

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

5. ~~Order appointing Judge Advocate hereunder a Offr not attached here under.~~

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	H W SMITH	6 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 1 CIRU	
Lt	to be detailed by OC 1 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	to be detailed by OC 1 CIRU	

~~JUDGE ADVOCATE~~

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

On Active Service in the Fd

in England — (Country.)

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

(J S M Gostling)

Date 27 Jul 44

Commanding "A" Gp Cdn Rft Units C A (O)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 763, RP 82, 111.*)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2693.*)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 85(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

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

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

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 85(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Convening Order(s). (*KR Can 557.*)
(iv) Medical Certificate(s).
(v) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(vi) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 586. As to certified copies of regimental books see AA 163 (1) (g) (k).*)
(vii) Summary of Evidence, if not already an exhibit.

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

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

Medical Officers Certificate
K.R. Can. Para 557

I certify that I have this morning examined No. M-18114 Pte
DANDO F.E. and in my opinion he is ~~unfit~~ fit to undergo
trial by Court Martial.

Station: In the Field

Date: 28 Jul 44

(Medical Officer)

Medical Officers Certificate
K.R. Can. Para 557

I certify that I have this morning examined No. M 16114.....
Pte. Dando F.E.....and in my opinion he is fit to undergo
trial by Court Martial

Station: Welbeck 161 RU

Date: July 29th 7-44.

A.C. Stevenson Capt....
(Medical Officer)

HSJ

PROCEEDINGS OF FIELD GENERAL COURT MARTIAL IN THE CASE OF

M-16114 Pte. Dando, F.E.
RCASC - 1 CIBU

The Defending Officer raises no objection to the Court proceeding in the absence of the usual notice of one Week.

1st WITNESS FOR THE PROSECUTION

M-11675 L/Cpl. Hunt, H.W., No 4 Detachment, No 7 Coy, Cdn Pro Corps states:

" When on m/c patrol between Welbeck Abbey and Church Warsop on the 11 Jul 1944 I had occassion to check the Cdn Soldier whom I now recognize as Pte. Dando at 1630 hrs 11 Jul 44. I checked him for a pass which he produced. I then noticed that he was carrying a haversack. I asked Pte. Dando to show me the contents. In the Haversack were 2 eggs, ½ lb of margarine, a few slices of bacon and a small cooked pudding. The eggs had a date stamp on them. I placed Pte. Dando under arrest and escorted him to my section office at Welbeck Camp. The haversack and contents were turned over to the Cdn Pro Sgt."

Cross Examination by the Defending Officer

Q. Were you acting on information when stopping Pte. Dando?
A. I was not acting on information at the time.

Q. Was the packet exactly ½ lb or not?
A. It looked like a ½ lb packet.

Q. The pudding was a small one?
A. Yes about 8" by 4".

Q. How did Pte. Dando act when asked about the contents?
A. He was very agreeable.

Questions by the Prosecution

Q. Did you notice the weight of butter stamped on the packet?
A. I did not notice.

Q. (By the Court) What reason had you to ask to see the contents of the pack?
A. My orders were to chekc soldiers carrying parcels etc, as to the contents.

Q. Has that order been in force long?
A. Yes to the best of my belief.

R.P 83(2) Complied with

2nd WITNESS FOR THE PROSECUTION

B-80209 Pte. Gamelin, L., on the strength of No 7 Coy, Cdn Pro Corps states:

"On the 11 Jul 1944 I was on patrol duty with L/Cpl. Hunt at 1630 hrs. I checked Pte. Dando whom I now recognize. He was carrying a haversack and Cpl Hunt asked what it contained. He produced 3 eggs a few slices of bacon and a leaf pudding, also about ½ lb of margarine or butter. L/Cpl. Hunt took him back to the Provost Office at Welbeck Camp. I carried the haversack which I left in the Provost Office."

Cross Examination by the Defending Officer

Q. When you stopped Pte. Dando was this a routine check?
A. Yes.

Q. Did you suspect Pte. Dando before you stopped him?
A. NO.

Q. How did Pte. Dando act when asked about his haversack?
A. He was willing to show the contents.

RP 83(2) Complied with.

3rd WITNESS FOR THE PROSECUTION

I am K-53264 Sgt. Schlosser, M.B., No 7 Pro Coy, Cdn Pro Corps at 1 CIRU Welbeck Abbey.

I recognize the accused Pte. Dando 1 CIRU. At approximately 1730 hrs on the 11 Jul 1944 upon returning to my office at 1 CIRU I found the accused in custody of L/Cpl Hunt. I was informed that the accused Pte. Dando had been placed under arrest by L/Cpl. Hunt and Pte. Gamelin having been found in possession of Army rations. On the table was resting a haversack which I now recognize.
(At this point the Prosecuting Officer produces the Haversack as Exhibit "A".)

Cross Examination by Defending Officer

Q. How do you know the haversack?
A. By the red marking which I myself placed on it. Upon opening the haversack I found the following, ½ lb of Margarine--
Q. Would you know the maragarine again?
A. Yes.

(Margarine is produced as exhibit "B")

Q. Do you recognize this margarine?
A. Yes by the marking which I placed on it.

-- also several slices of bacon which I recognize from markings on the wrapper and the initials J.H. and date.
(Bacon produced as Exhibit "C")
--also 3 eggs which I recognize by the initials and date.
(Eggs produced as Exhibit "D")
--also a suet pudding also marked on the outside by myself.
(Pudding produced as exhibit "E")

Q. What happened to these rations afterwards?
A. They were kpet under continual observation until approximately 19 30 hrs 11 July 1944 when I placed them in a safe in my office. They were turned over to the Adjutant, 1 CIRU at approximately 1100 hrs on 12 July 1944.

Q. Was someone in the office all the time on this day?
A. Yes.

Q. (By the Court). Was any statement made by the accused?
A. Yes after he was duly warned that he was NOT obliged to make any statement but should he so chose, it would be taken down in writing and would be used as evidence. The accused made this statement to L/Cpl. Baker in my presence. The accused made a statement in my presence to the effect that he had been working in the Officers Mess on this particular day, 11 July 1944 and had left the Mess early taking with him a quantity of ration which he intended to give to his wife at Warsop.
R.P. 81 (a) complied with. [illegible]

4th WITNESS FOR THE PROSECUTION

I am L-53480 L/Cpl. Baker, F.A. No 7 Cdn Pro Coy, Cdn Pro Corps.

Q. What are your duties?
A. Clerical work and some investigation for the Detachment.

Q. What do you know of the present case?
A. I recognize the accused as Pte. Dando, 1 CIRU. On the 11 Jul 44 at approx 1730 hrs I came to the Detachment Office in company with Sgt Schlosser. I found the accused there in custody. On Sgt Schlosser's instructions I asked the accused if he wished to make a statement.

Q. What words did you use?
A. I used the usual procedure, that is, I warned the accused that if he cared to make a statement anything that he said might be used in evidence but that he was under no obligation to make a statement and that anything he said was entirely voluntary.

Q. Was that the only warning he received?
A. It was the only warning I gave him but Sgt Schlosser warned him, which was more or less an explanation of my warning. After the warning the accused made a statement which I took down and the accused signed.
(The witness recognizes the written statement and statement is marked Exhibit "F")

[illegible]

4th WITNESS FOR THE PROSECUTION (CONTINUED)

Q. When did you leave the Office?
A. I left at approximately 1830 hrs leaving Sgt Schlesser in the Office.

Q. Was there anything unusual in the office?
A. The evidence in the case, namely a haversack containing the rations, 3 eggs some slices of bacon, ½ lb of margarine and a pudding.

Q. Were you alone in the Office.
A. Yes while Sgt Schlosser went for supper.

Q. Who took charge of them at supper?
A. Sgt. Schlosser.

R.P. 83(1) Complied with. Ref.

5th WITNESS FOR THE PROSECUTION

I am H-17105 A/Cpl. Downie, J., 1 CIRU.

Q. What are your duties?
A. Messing Cpl. i/c Officers Mess Norton Camp.

Q. What staff do you have in the Mess?
A. Ten men - 2 cooks, 1 Veg Man, 1 Dish man, 3 waiters, 1 bar and lounge man, 1 fireman and myself.

Q. Have you always had two cooks?
A. Yes.

Q. Have you two now?
A. Yes.

Q. How long have you had these two?
A. Ever since I have been in the Mess, Pte Potts has been there and Pte. Maloney replaced Pte. Dando.

Q. You had Pte Dando employed as a cook?
A. Yes.

(Witness recognizes the accused, Pte. Dando).
(Prosecuting Officer produces three eggs and the witness identifies them as those shown him at the Summary of Evidence by the markings thereon).

Q. Is there any way you can tell where they came from?
A. No.

Prosecuting officer produces a pudding recognized by the Witness as that produced at the summary of Evidence.

Q. Have you ever seen one like it before?
A. Yes many.

Prosecuting Officer asks permission to Cross Examine the Witness. Permission given.

Q. Did you have a pudding such as this for the noon meal on the day in question?
A. Yes, but I cannot recall the date.

Q. You knew it was the day Pte Dando was arrested.
A. Yes.

Q. Is this a full size pudding?
A. I've seen them larger than that.

Q. What are they cooked in?
A. In a large square tins.

Q. Have you seen these tins?
A. Yes.

Q. Where are they obtained from?
A. They are empty Spam tins, Sir.

5th WITNESS FOR THE PROSECUTION (CONTINUED)

Q. So that this pudding could have been cooked in such a tin?
A. Yes.

Q. That is, it is the right size and shape?
A. It looks like it to me.

Prosecution produces a packet of Margarine marked as Exhibit "E" in the evidence)

Q. Is that the sort of Margarine you draw for the Mess?
A. Yes.

Cross-examined by the Defnding Officer

Q. Is there anything about these items that would identify them; with 1 CIRU?
A. No. I think you would find them in almost any unit.

Q. Had it come to your attention as NCO i/c Norton Officers Mess that pilfering of rations was taking place?
A. No it had not.

Q. Was anyone in your staff under suspicion?
A. No, Sir.

Q. You stated that a pudding similiar to the one you identified had been served at the noon meal?
A. Yes, Sir.

Q. Do you recall if the amount of pudding prepared for that meal was entirely consumed at that meal?
A. I cannot say for sure.

Q. If there is an unconsumed portion of a meal what becomes of it?
A. It is given to the staff to be consumed there or if perishable it is thrown in the swill.

Q. Is that pudding perishable?
A. Yes it would not keep for more than a day and a half.

R.P. 83(2) Compared with H.C.C.

6th WITNESS FOR THE PROSECUTION

I am W-1725 CQMS Campbell, P.E., C.I.C., 1 C.I.H.U.

Q. What are your duties?
A. I am employed as CQMS "A" Wing. These duties include those of Messing Sgt.

Q. Do you have anything to do with rations?
A. Yes I indenting and breaking down of rations for the various messes within the Unit.

Q. Do you have anything to do with the rations for the Officers' Mess?
A. Only the standard commodities, not the cash element, Sir.

Prosecuting Offr produces Exhibits, "B", "C", "D" and "E".

Q. Would any of these exhibits come within what you call the cash element?
A. The eggs are the only item that might be a cash purchase.

Q. So that the other two items; namely, bacon and margarine, are what you call issue commodities?
A. Yes.

Q. Is there any way of recognizing the bacon and margarine, Exhibits "C" and "E", as Army rations?
A. No, Sir.

Prosecuting Offr produces Exhibit "E", the pudding

Q. What can you say about that?
A. It is not an issue but it could be made in the cookhouse.

Q. Is it possible to buy eggs anywhere that are not rationed?
A. Yes, Sir.

H.C.C.

6th WITNESS FOR THE PROSECUTION (CONTINUED)

Q. What about the margarine?
A. Points are required to purchase margarine.

Q. What about bacon?
A. The same applies, points are required.

Q. What about ingredients for making such a pudding as this Exhibit?
A. Rationed commodities would be reuired.

R.P. 83(B) Complied with. [illegible]

CROSS EXAMINED BY THE DEFENDING OFFICER

Q. Is there anything about the pudding that would identify it with 1 CIRU?
A. No. There is a similiarity in shape to the puddings we make in the Unit.

Q. From time to time has it come to your attention that pilfering takes place in the Mess at 1 CIRU?
A. Yes Sir.

Q. When pilfering occurs does it come to your attention quickly?
A. Yes Sir.

Q. Did you suspect that pilfering was going on in the Offrs Mess at Norton Camp?
A. No. Sir.

Q. Was there any reason to suspect anyone on the staff of the Officers' Mess at Norton Camp?
A. No Sir.

R.P. 83(B) Complied with. [illegible]

THE ACCUSED M-16114 PTE DANDO F.E., R.C.A.S.C., 1 C.I.R.U. BEING QUESTIONED BY THE DEFENDING OFFICER, as witness for the defence. (under oath).

Q. Are you married?
A. Yes, Sir.

Q. Where does your wife live?
A. Edinburgh Sir.

Q. Do you see her often during the year?
A. Just on my leave, Sir.

Q. Does your wife visit near the Camp on occassions?
A. She ca e down just before this.

Q. Was this a vacation for her?
A. It was going to be.

Q. How long before she arrived did you know she was coming?
A. Three weeks to a month, Sir.

Q. When your wife is on one of these visits is it easy or difficult to visit with her?
A. Sometimes it is difficult.

Q. Is it a simple matter to have supper with your wife?
A. Sometimes it can be arranged.

Q. From the stand point of the folld supply is it easy to have supper with your wife?
A. No ti is not sir.

Q. Would you offer a brief explanation as to why it is difficult to have supper with your wife?
A. Food is rationed and one card will not feed two people.

Q. Is Exhibit "F" your statement?
A. Yes, Sir.

[illegible]

THE ACCUSED M-16114 PTE DANDO F.E. BEING QUESTIONED BY HIS DEFENDING OFFICER (CONT'D)

Q. It has been shown in evidence that you had no hesitiation in showing the contents of your haversack and freely making a statement of them. Would you explain to the court slowly why you considered yourself justified in being in possession of these items?
A. Sir, it is very seldom that I eat breakfast and I had been saving my rations in order that sometime I might be able to eat a meal with my wife. This was not done intentionally. As long as I have been cooking it is very rare occassions that I eat breakfast.

Q. Will you explain what privileges you receive in lieu of 2½d commodities not available to staff working in the Officers Mess at Norton Camp?
A. The 2½d is turned over to the Mess Secretary and is used by him so that Officers extra messing is available to the staff.

Q. How frequently are eggs served in the Officers Mess at Norton Camp?
A. Twice to three times a wekk.

Q. Had you been accustomed to eating breakfast, how many eggs would you have consumed during the month preceeding your wifes visit?
A. At least half a dozen.

Q. Is the quantity of bacon (exhibit "C") more or less than a months ration?
A. Probably a weeks ration.

Q. How about the margarine?
A. We are allowed 1½ oz per day.

Q. How many ozs are there in the packet?
A. About 8 oz.

Q. That is less than 1 weeks ration?
A. Yes, Sir.

Q. So that the amount in the exhibit is actually less than that you would have eaten had you had breakfast during the month?
A. Yes, Sir.

Q. Will you tell the Court what you know about the pudding?
A. The pudding in question is not a full size pudding. I made two full tins which we used, this was about four spoonfulls of batter left and would have been thrown away, instead of which I put it in a tin and steamed it with the rest. The meal was served - everyone had had enough and so rather than throw it out I thought it could be used at home.

CROSS EXAMINATION BY THE PROSECUTION

No cross-examination.

2nd. R.P. 83(a) Complied with. [illegible]

[illegible] WITNESS FOR THE DEFENCE

I am M-10701 Pte. Potts, W.G., Cook at Officers Mess, Norton Camp

Q. Are you i/c cooking in the Mess?
A. Yes, Sir.

Q. Before July 11, 1944 did you have an assitant?
A. Yes Sir.

Q. Who was he?
A. Pte. Dando, Sir.

Q. Do you recognize Pte. Dando?
A. Yes Sir.

Q. How long has Pte. Dando been in this Mess?
A. He was there when I arrived about 20 June 1944.

Q. During this period Pte. Dando worked with you?
A. Yes Sir.

[illegible]

1st WITNESS FOR THE DEFENCE (CONTINUED)

Q. Would you comment on Pte Dando's assistance to you?
A. It was very good.

Q. Had there been any shortage of rations whilst you were i/c kitchen?
A. Not that I know of.

Q. Did you have any reason to suspect anyone?
A. None Sir.

Q. Did Pte Dando ever mention that he expected a visit from his wife.
A. Yes Sir.

Q. Are there any eating pec uliarlarities of cooks as a group and what are they?
A. Most cooks I know have only one meal a day.

Q. What meal do you eat as a rule?
A. Usually the evening meal.

Q. Were you aware that Pte Dando had similiar habits?
A. No, I cannot say that I was.

Q. If Pte Dando told you that he was in the habit of missing the breakfast meal would you be prepared to believe it?
A. Yes Sir.

Q. Do you recognize the pudding?
A. No sir.

Q. Can you recall if a similiar pudding was served on the 11 Jul 1944.
A. No I cannot remeber the exact date.

Q. Does it happen that Pudding is sometimes left over?
A. At times.

Q. What becomes of such pudding?
A. It is left on the staff table and if not eaten is disposed of in the swill

Q. Explain to the Court whether you receive 2½d commodities in the mess in question?
A. No Sir.

Q. What do you get in lieu of this?
A. The 2½d in cash foes to the Mess Secretary who in turn makes extra messing available for the staff.

Q. Are eggs part of extra messing?
A. Yes Sir.

Q. How often are eggs available?
A. At least one per week.

R.P. 83 (a) Complied with. HST.

2nd WITNESS FOR DEFENCE.

U-1723 CQMS Campbell, P.E. states under oath:

Pte Dando has always given satisfaction in his work and has never at any time been suspected of taking rations during the period I have known him, from approx June 19[illegible] to date.

Q. Have you known other cooks to come under suspicion during this time?
A. Yes Sir.

Q. Is pilfering in the mess difficult to conceal?
A. Yes Sir.

R.P. 82 (a) Complied with. HST.

3rd WITNESS FOR THE DEFENCE

I am Major B.M. McLean, Acting O.C. "A" Wing, 1 C.I.R.U.

Q. Do you recognize Pte. Dando?
A. Yes he has been employed as a cook for about three years during which time he has always been reliable and worked hard. I fell that whatever has happended is due to error on his part and not deliberate intention, I would be quite willing to

2nd WITNESS FOR THE DEFENCE (CONTINUED)

X.

A. I would be quite willing to employ him in the future.

R.P. 83 (b) complied with.

PLEA IN MITIGATION OF PUNISHMENT BY DEFENDING OFFICER / CAPT R.W. BONNER

In plea of mitigation I wish to draw to your attention once again the fact that there has been no attempt to discredit the claim which Pte Dando placed upon the rations which were found in his haversack. Had he exercised what he feltto be his rights and eaten the rations in his own camp, there would be no suggestion, and indeed there has been none offered by the Prosecutor in examination, as to his conduct. However in seeking to have a meal with his wife and taking his rations to his wifes stopping place for the purpose of his own consumption, he placed himself technically in error, a fact which should be weighed only after consideration of his original intent and further in consideration with his record of unquestionedconduct and exemplary industry within his term of service, a matter of 2½ years with this unit. I believe the strongest testimony as to character and degree of reliability with which this unit regarded Pte. Dando is to be found in the statement offered by Major McLean this morning. The Major's statement That Dando was one of the few upon whom he had relied while others failed him and that indeed he would be willing to re-employ Pte. Dando in his former position when this business has been settled, speaks for itself. In addition, I would point out, although Pte. Dando has not, until yesterday been up for trial he has nevertheless undergone a considerable period of confinement (18 days) and I beg therefore that in considering the sentence to be awarded that the 18 days be taken into account.

11 July 44

STATEMENT OF EVIDENCE BY M16114 PTE DANDO F.E

1 CIRU NORTON CAMP AT 1810 hrs 11 July 44

I having been duly warned state; —

I had to arise early this morning for duty at the Officers Mess, and was leaving early this afternoon in trading to have my supper with my wife who has just come up from Edinbourgh. So I took 3 Eggs half a dozen slices of Bacon ½ a pound of margarine and left camp at 1600 hrs. I was apprehended at 1630 by the provost on my way to Church warsop where my wife is staying.

F. E. Dando.

Exhibit "F"

MEA

HUS

CLOSING ADDRESS BY DEFENDING OFFICER

By way of summarizing the defence, Sir, let me point out that the prosecution has failed to establish the theft of the items referred to as exhibits B, C, D, and E by first, failing to show that the items were missing from any particular mess and indeed introducing only a likelihood that these goods were army rations at all.

The fact that the defense does not contest the identity of these goods must be interpreted, in the light of testimony for the defense only as, a question of possession by right. The defense contests that a man cannot steal his own rations.

Reasonable evidence has shown that Pte Davdo felt that he could have moral claim on the three eggs and small amount of bacon by reason of not eating breakfast — his habit whilst employed as cook and that he sought to use his unconsumed ration for a supper with his wife an event which is not normally possible because a ration card will not feed two people. Had he followed this line of reasoning and eaten his ration in camp there would have been no question of misconduct but in seeking to eat this food at his home — where his wife was visiting him — and in taking the food to that place — he placed himself technically in error. Though his right to the food was at no time contested during the offering of evidence

nor in cross examination by the prosecutor. His right to the food is not questioned; his taking it out of camp is. This is not a question of stealing but rather one of proper possession.

Character Testimony as to character is unanimous in affirming that Pte Dando's honesty and industry during his service with this unit for the past 2½ years was above question & beyond reproach. Major Mc Lean stated that Dando was one of few upon whom he had relied & would continue to rely upon when this affair had been heard out.

Therefor I plead that the court consider

1. Dando's uncontested claim to his rations
2. His excellent record of service during the past 2½ years

and 3. The unduly long period of confinement whilst awaiting trial - a matter of weeks -

- when it passes judgment upon the case of Pte. Dando.

I beg that the court be most considerate of the delicate point upon which the defence is poised and that its decision be correspondingly sympathetic.

Capt.

Ex. G.

M.F.B. 385
22M—5-41 (572-2)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M16114	Private	Frederick Ernest DANDO,	1 C.I.R.U.

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

	Within last 12 months		Since enlistment or appointment	
For	Nil	times	Nil	times
For		times		times
For		times		times
For		times		times

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

or.

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

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

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

or.

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

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

or.

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

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and 16 days in ~~Air Force~~ military custody, making a total of 16 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 38 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 28 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 4 yrs 179 days

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

9. The accused is in possession of ~~or entitled to no air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State ~~any air force~~ military decoration or reward. Cdn Voluntary Service Medal and Clasp

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

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

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

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

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

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number M16114 Rank Private Unit

Name Frederick Ernest DAWDO of , 1 C.I.R.U. Regiment

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

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	3 Nov 41 Field	A.A. Sec. 18 (4) A.A. Sec. 18 (4)	150 days Detention	60 days with pay

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

Signed this 29 day of Jul 42

(J.E.Baird) Asst Records Off...

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

Ex. H.

No. M-16114 Name DANDO F.E. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 25 Sep 39 | CC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/T&S/130 (5413)

Date of last entry in Company Conduct Sheet 3 Nov 41 | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				PREVIOUS SHEET DESTROYED ON COMPLETION OF 2 YEARS SERVICE WITHOUT A REGIMENTAL ENTRY			10 Feb 44		

CERTIFIED TRUE COPY CONSISTING OF ONE SHEET
Date: 29 Jul 44
J.B. Baird Lieut.
(J.B. Baird) Asst Records Offr
1 Can Inf. Reinf. Unit.
(Officer having custody of Regimental Books and Documents)

(PTO)

RBC

SUMMARY OF EVIDENCE

In the case of M16114 Pte. Dando, F.E., ~~Royal Edmonton Regiment~~ Royal Canadian Army Service Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

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

FIRST WITNESS for the PROSECUTION

M11673 L/Cpl Hunt, H.W., No. 4 Detachment, 7 Provost Company, Canadian Provost Corps, a soldier of the Canadian Army Overseas, having been duly sworn states as follows: I am M11673 L/Cpl Hunt, H.W., #4 Detachment, 7 Provost Coy, Cdn Provost Corps, stationed at Welbeck Camp, No. 1 Canadian Infantry Reinforcement Unit, and was so on 11 Jul 44. While on M.C. patrol on the road between Church Warsop and Welbeck Camp, at about 1630 hrs on 11 Jul 44, I had occasion to check a Canadian soldier, whom I ascertained to be Pte. Dando, whom I now recognize as the accused. I asked him for his pass, which he produced. I also noticed he was carrying a haversack. At my request he opened the haversack and took out the contents. They looked to be Army rations. I found the haversack contained one pudding which was still warm, a half-pound of margarine three eggs which had a date stamp on them, a few slices of bacon and some other stuff but the other stuff was not army stuff. I placed the soldier under arrest and brought him to Welbeck Camp, and on instructions I took him to No. 1 Cdn Inf Rft Unit Guard Room. I turned over the haversack and contents to Sgt Schlosser.

The accused declines to cross-examine this witness.

H.W. Hunt L/Cpl
(H.W. Hunt) M11673

SECOND WITNESS for the PROSECUTION

E80209 Pte. Gamelin, L. No. 4 Detachment, 7 Provost Company, Canadian Provost Corps, a soldier of the Canadian Army Overseas, having been duly sworn states as follows: I am E80309 Pte. Gamelin, L., on the strength of No. 4 Detachment, 7 Provost Coy, Canadian Provost Corps, stationed at Welbeck Camp, No. 1 Canadian Infantry Reinforcement Unit, and was so on the 11 Jul 44. At about 1630 hrs on 11 Jul 44 I was with L/Cpl Hunt on M.C. patrol. On the Warsop road, L/Cpl Hunt, in my presence, checked a Canadian soldier whom we found to be Pte. Dando, and whom I now recognize as the accused. He was carrying a haversack which he opened and which contained three eggs which had a mark stamped on them, a loaf pudding about 4 inches square and about 6 inches long, and a half pound of margarine or butter, and a few slices of bacon. There were also I believe, a couple of packages of salted peanuts. I recognize the pudding which is now produced and shown to me as the pudding which Pte. Dando had in his haversack and which is now marked Exhibit "A" and initialled by me for purposes of identification. We brought Pte. Dando back to Welbeck Camp under close arrest. I left the haversack and contents in the Provost Detachment Office.

The accused declines to cross-examine this witness.

L. Gamelin Pte.
(L. Gamelin) E80209

THIRD WITNESS for the PROSECUTION

K53264 A/Sgt Schlosser, M.E., No. 4 Detachment, 7 Provost Company, Canadian Provost Corps, a soldier of the Canadian Army Overseas, having been duly sworn states as follows: I am K53264 A/Sgt Schlosser, M.E., NCO in charge of No. 4 Detachment, 7 Provost Company, Canadian Provost Corps, stationed at Welbeck Abbey, and was such on 11 Jul 44. At

SUMMARY OF EVIDENCE RBa

In the case of M16114 Pte. Dando, F.E., ~~Loyal Edmonton Regiment~~ Royal Canadian Army Service Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

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

THIRD WITNESS for the PROSECUTION

(continued)
approximately 1700 hrs on 11 Jul 44 on returning to my office, I found the accused whom I now recognize, in the custody of two members of the patrol, namely L/Cpl Hunt and Pte. Gamelin. L/Cpl Hunt informed me in the presence of the accused that he had apprehended the accused, whom I found was Pte. Dando of No. 1 Cdn Inf Rft Unit, at approximately 1630 hrs and that the accused had been found in possession of army rations. I inspected the rations in question and found that they consisted of three eggs, several slices of bacon, one half pound of margarine and a suet pudding. These were in a haversack. The haversack now produced and shown to me is the haversack in question. I recognize it because of a red X which I put on the outside of it with a marking pencil. This haversack is now marked Exhibit "D" and initialled by me for purposes of identification. The eggs marked Exhibit "B" are the same eggs which were turned over to me as being the eggs which were in the haversack found in possession of the accused. The margarine marked Exhibit "C" is the same margarine I found in the haversack Exhibit "D" at this time. The pudding marked Exhibit "A" is the same pudding I found in the said haversack. The bacon which is now produced and shown to me is the same bacon I found in the said haversack. I recognize it because I marked the wrapping in red pencil. This is now marked Exhibit "E" and initialled by me for purposes of identification. The accused volunteered to explain his being found in possession of these articles. He stated that he had been working in the Officer's Mess on that day and had taken the rations to give to his wife who was in Warsop at the time. I then cautioned the accused in the following words, (as closely as I remember) "Will you make a statement? Anything you may say in the statement will be taken down as evidence and may be used against you." In my presence the accused made a statement which was taken down by L/Cpl Baker and signed by the accused. The statement xxxxxxxx xxxxxxxxxxxxxxxxxxxxxx now produced and shown to me is the statement made and signed by the accused. This is now marked Exhibit "F" and initialled by me for purposes of identification. The accused was then escorted to the Guard Room. The haversack and contents was kept under observatio by me and L/Cpl Baker until approximately 1930 hrs when they were placed in the safe. They were turned over to the Adjutant, No. 1 C.I.R.U. the following day for safe-keeping.

The accused declines to cross-examine this witness.

N.E. Schlosser A/Sgt
(N.E. Schlosser) R53264

FOURTH WITNESS for the PROSECUTION

L53480 L/Cpl Baker, F.A., No. 4 Detachment, 7 Provost Company, Canadian Provost Corps, a soldier of the Canadian Army Overseas, having been duly sworn states as follows: I am L53480 L/Cpl Baker, F.A., on the strength of No. 4 Detachment, 7 Provost Coy, Canadian Provost Corps. I do the clerical work for the Detachment. At approximately 1700 hrs on 11 Jul 44 I came back to the office with Sgt. Schlosser. The patrol were in the office with the accused whom I now recognize. I warned the accused to the following effect: "If you care to make a statement, it will be used as evidence but you are under no obligation to make a statement. It is entirely voluntary." I heard Sgt

SUMMARY OF EVIDENCE RBA

In the case of M16114 Pte. Dando, F.E., ~~Royal Edmonton Regiment~~ Royal Canadian Army Service Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

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

FOURTH WITNESS for the PROSECUTION

(continued)
Schlosser warn him saying that anything the accused wanted to say would be used in evidence. The accused then made a statement which I took down, and which the accused signed. The document marked Exhibit "P" is the said statement.

The accused declines to cross-examine this witness.

F.A.Baker L/Cpl
(F.A. Baker) L53480

FIFTH WITNESS for the PROSECUTION

H17105 A/Cpl Downie, J., Canadian Infantry Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:
I am H17105 A/Cpl Downie, J. on the strength of No. 1 Canadian Infantry Reinforcement Unit. I am Mess Corporal in charge of the bar and dining room of the Officers' Mess at Norton Camp, No. 1 Cdn Inf Rft Unit. The pudding marked Exhibit "A" is similar to the pudding which was served in the officers' Mess Dining Room at Norton Camp at the noon meal on 11 Jul 44. The eggs now produced and shown to me are similar to the eggs we draw for the Officers' Mess and which have a stamp on them. These are now marked Exhibit "B" and initialled by me for purposes of identification. The margarine now produced and shown to me is the same kind of margarine which is issued to us for the Officers' Mess. This is now marked Exhibit "C" and initialled by me for purposes of identification.

The accused declines to cross-examine this witness.

J. Downie A/Cpl
(J. Downie) H17105

SIXTH WITNESS for the PROSECUTION

U1723 C.Q.M.S. Campbell, P.E., ~~Royal Canadian Army Service Corps~~ Canadian Infantry Corps, employed in "A" Wing, No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:
I am U1723 C.Q.M.S. Campbell, P.E. presently employed as C.Q.M.S. "A" Wing, No. 1 C.I.R.U. Part of my duties are those of Messing Sgt. I am in charge of receiving and issuing all the standard rations of the Unit. The pudding marked Exhibit "A" is not an issue commodity but could be made of issue commodities. The only thing I can say is that when the cooks of the Unit make steam puddings, they are made in a container of a similar shape to the pudding marked Exhibit "A". Eggs for the Officers' Mess are a cash purchase and do not come within the scope of my duties. The margarine marked Exhibit "C" is a similar ration to the one which we receive from the R.A.S.C. and re-issue to the cook-houses, but it cannot be positively identified as public property. The bacon marked Exhibit "B" is similar to bacon that we receive from N.A.A.F.I. and re-issue to the Unit cook-houses. It can't be identified as public property. The bacon, and margarine are rationed commodities and would require coupons for purchase in a civilian shop.

The accused declines to cross-examine this witness.

P.E. Campbell C.Q.M.S.
(P.E. Campbell) U-1723

SUMMARY OF EVIDENCE RBA

In the case of M16114 Pte. Dando, F.E., ~~Loyal Edmonton Regiment~~ Royal Canadian Army Service Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

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

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

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

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

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

Welbeck Camp,
Worksop, NOTTS,

14th day of July, 1944.

1 CANADIAN INFANTRY REINFORCEMENT UNIT

31 Jul 44

TO WHOM IT MAY CONCERN

This is to certify that the following officers attended F.G.Cs.M. in the case of M-16321 Pte. W.C. Freeman, M-16114 Pte. F.E. Dando and K-52593 Pte. C.A. Bland, as Waiting Members and Officers under Instruction as shown opposite their names, and did in fact so report to the President of the Court:

Lt. W.H. Olsen	Waiting Member
Lt. W.A. Stinchcombe	Offr under Instruction
Lt. W.M.C. Stone	Offr Under Instruction

H.W. Smith Major
(H. W. Smith) L. Edm. R.
President
1 Cdn. Inf. Reinf. Unit.

/WIN

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

Dated at Aldershot, HANTS,
this 17 day of
July 1944

H. Branch

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

I desire the services of Capt. Bonner

if he is available.

M-16114 Pte DANDO F.E. - R.C.A.S.C.

List of Witnesses for the Prosecution

First Witness	- M-11673 L/Cpl Hunt H.W.	4 Det. 7 C.P.C.
Second Witness	- E-80209 Pte Gamelin L.	4 Det. 7 C.P.C.
Third Witness	- K-53264 A/Sgt Schlosser M.E.	4 Det. 7 C.P.C.
Fourth Witness	- K-53480 L/Cpl Baker F.A.	4 Det. 7 C.P.C.
Fifth Witness	- H-17105 A/Cpl Downie J.	1 C.I.R.U.
Sixth Witness	- U-1723 CQMS Campbell P.E.	1 C.I.R.U.

List of Witnesses for the Defence

Nil

List of Exhibits

Exhibit "A" E - cooked pudding
Exhibit "B" D - three eggs
Exhibit "C" B - one half pound margarine.
Exhibit "D" A - haversack
Exhibit "E" C - 6 slices of bacon
Exhibit "F" - Signed statement by the Accused.

DANDO

The defending officer raises no objection to the Court proceeding in absence of the usual notice of one week.

1st Witness for prosecution.

M116 73 ~~Note~~ Lt Capt Hunt H.W. No 4 Det No 7 Con Cdn Provat Corps stated.

Q

A ~~Witt~~ When on m/c patrol between Welbeck Abby and Church ~~Worksop~~ ~~Worsop~~ Warsop on the 11 July 44 I had occasion to check the Cdn soldier whom I now recognise as Pte Dando at 1630 hrs. 11 July 44 I checked him for a pass which he produced. I then noticed that he was carrying a haversack I asked Pte Dandos to show me the contents. In the haversack were 3 eggs ½ lb mary and a few slices of bacon and a small cooked pudding. The eggs had a date stamp on them. I placed Pte Dando under arrest and escorted him to my section office at Welbeck Camp. The haversack and contents were turned over to Cdn Prov Sgt

---

~~Defen~~ Q. Were you acting on info when stopping Pte Dando

Cross exam. A. I was not acting on information at time.

Q. Was the packet exactly half or not.

A ~~It was just a~~ It looked a half ground packet

Q The pudding was a small

A About 8"x4"

Q. How did Pte Dando act when asked about contents of haversack.

A. He was very agreeable.

Prosecution.

Q. Did you notice weight of butter stamped on packet.

A. I did not notice

Q (by the Court). What reason had you to ask to see contents of pack.

A. ~~[illegible]~~ My order were to check soldiers carrying parcels etc as to contents

Q Has that order been in force long

A Yes to the best of my belief

DANDO

2nd Witness

No E 80209 Pte. Gamelin L on the strength of No 7 Coy C.D.n Provost Corp.

On the 11 July 44 I was on patrol duty with S/Cpl Hunt at 1630 hrs. I checked Pte Dando whom I now recognized he was carrying a haversack and Cpl Hunt asked what it contained. He produced 3 eggs a few slices of bacon and loaf pudding also about 2 lb margar butter. S/Cpl Hunt took him back to provost office at Wellbeck Camp. I carried the haversack which I left in ~~charge of~~ the Provost Office.

Cross Exam

Q. When you stopped Pte Dando was this a routine check.

A. Yes.

Q. Did you suspect Pte Dando before you stopped him.

A. No

Q. How did Pte Dando act when asked about his haversack

A. He was willing to show contents.

DANDO

4

3rd Witness.

I am No K53264 Sgt Schlosser M.B. No 7 Cdn Pro Coy. at 1 C.I.R.V. Welbeck Abbey.

I recognise the accused as Pte Dando of 1 C.I.R.V.

At approx 1730 hrs on July 11/44 upon returning to my office at 1 C.I.R.V. I found the accused in custody of Sgt Pte Hopf. I was informed that the accused Pte Dando had been placed under arrest by Sgt Hunt and Pte Gamelin having been found in possession of army rations. The accused on my arrival volunteered an explanation by saying he had been working the officers mess on this particular day and had taken rations to take to his wife at Warrop.

On the table was resting a haversack which I now recognised. (at this point the prosecuting officer produced the haversack as exhibit A) ~~and witness recognised same~~

Q. How do you know the haversack.

A. By the red marking which I myself placed on it.

Upon opening the haversack I found the following

½ lb Marg.

Q. Would you know the Marg again

A Yes.

(Produces Marg as exhibit B)

5

Q. Do you recognise this mary.

A. Yes by the marking which I placed on it. C

Also several slices of bacon which I recognise by markings on wrapper and the initials J H and date

Also 3 Eggs which I recognise by initials and date. Ex. D

Also a suet pudding also marked on the outside by myself Ex. E

Q. What happened to these rations afterwards

A. They were kept under continual observation until approx 1930 hrs 11 July 44 when I placed them in a safe in the office. They were turned over to the Adj 1.6.1RV at approx 1100 hrs 12 July 44

Q. ~~Is there always someone in the office~~ Was someone in the office all the time on this day

A. Yes.

Q (by Court). Was any other statement made by the accused

A. Yes after he was duly warned that he was NOT obliged to make any statement but should he so chose it would be taken down in writing and would be used as evidence. The accused made this statement to S/Sgt Baker in my presence. The accused made a statement in my presence to the effect that he had been working in the officer mess on this particular day July 11 44

and had left the men early taking with him a quantity of rations which intended to give to his wife at Warrop.

4th Witness.

I am L53480. Sfbpl Baker F.A. No 7 Cdn Prov Corps

Q. What are your duties

A. Clerical work and some investigation for the Det

Q. What do you know of the present case.

Witness recognises the accused

On the 11th July at approx 1730 hrs I came to the Det Office in company with Sgt Schlosser, I found the accused there under custody. On Sgt Schlosser instruction I asked the accused if he cared to make a statement

Q What words did you use

A I used the usual procedure that is I warned the accused that if he cared to make a statement anything that he ~~might be used in evidence~~ may said might be used in evidence but that he was under no obligation to make a statement and that anything he said was entirely voluntary

Q. Was that the only warning he received.

A. It was the only warning I gave him but Sgt Schlosser warned him, which was more or less an explanation of my warning. After the warning the accused made a statement which I took down and the accused signed.

Witness recognised written statement produced in court marked Ex F

DANDO.

Q ~~Were~~ When did you leave the office

A. I left at approx 1830 hrs leaving Sgt Schloning in the office

Q. Was there anything unusual in the office

A. The evidence in the case, namely a haversack containing rations, 3 eggs, some slice of bacon ½ lb marg and a padding.

Q. Were you alone in the office

A. Yes while Sgt Schloner went for supper

Q. Who took charge of them at supper

A. Sgt Schloner.

5th Witness.

H17105

I am Cpt Downie of I.C.I.R.V.

Q. What are your duties

A. Mess Corporal i/c officers Mess Norton Camp.

Q. What staff do you have in the Mess

A. Ten men — 2 cooks 1 Veg man 1 Dish man 3 waiters 1 bar and lounge man 1 Fireman and myself

Q. Have you always had two cook.

A. Yes

Q Have you two now

A Yes

Q. How long have you had these two

A. Ever since I've been in there ~~men~~ Pte ~~Fr~~ Pott had been in the mess and the other Pte Maloney replaced Pte Dando

Q. You had Pte Dando employed as a cook.

A Yes.

Witness recognises accused Pte Dando.

Prosecuting Officer produces 3 Eggs

Witness identifies them by the markings as those shown him at the summary of evidence

~~Da~~

Q Is there any way you call tell where they came from

A No

Prosecuting Officer produces pudding recognised by Witness as the same as that produced at the summary of evidence

Q. Have you ever seen one like it before

A Yes many

~~Q~~ Prosecuting Officer asks permission to cross Ex Witness

Permission given

Q. Did you have such a pudding at the noon meal on the day in question.

A. Yes but I cannot recollect the date.

Q. You know it was the day the P.C. Dando was arrested

A Yes

Q. Is this a full size pudding

A. I've seen them larger than that.

Q. What are they cooked in

A In long square tins

Q. Have you seen these tins

A Yes

Q Where are they obtained from

A They are empty Spam tins sir

Q. So that this pudding could have been cooked in such a tin.

A Yes

Q That is it is the right size and shape

A It looks like it to me

Prosecution produces packet marked as Ex in evidence of Mary

Q Is that the sort of Mary you draw for the Mess

A Yes.

Defending Officer.

Q Is there anything about these items that would identify them

with N°1 C.I.R.U.

A. No I think you would find them in almost any Unit.

Q. Had it come to your attention as N.C.O. i/c Norton Officers Mess that pilfering of rations was taking place.

A. No it had not.

Q. Was anyone in your staff under suspicion

A. No Sir

Q You stated that a pudding similar to the one you identified had been served at the noon meal

A. Yes Sir

Q. Do you recall if the amount of pudding prepared for that meal was entirely consumed at that meal.

A. I cannot say for sure.

Q. If there is an unconsumed portion of a meal what becomes of it

A. It is given to the staff to be consumed there or if perishable it is thrown in the swill

Q Is that pudding perishable

A Yes it would not keep for more than a day and a half.

11th

6th Collins

#1723.

I am C.Q.M.S. Campbell. P.E. C.I.C. I.C.I.R.V.

Q. What are your duties

A I am employed as C.Q.M.S. & Wing there duties include that of viewing Dgt

Q. Do you have anything to do with rations

A Yes - indenting and breaking down of rations for the various messes within the unit

Q Do you have anything to do with the rations for the Officers Mess

A Only the standard commodities not the cash element in

Q.

Prosecuting officer produces Exs B C D & E

Q ~~Do you recognise~~ Would any of these exhibits come within what you call the cash element.

A The eggs are the only items that might be a cash purchase

Q So that the other two items namely bacon, meat and meat are what you call issue commodities

A Yes

Q Is there any way of recognising the bacon, exhibit C & D an armistice

A No sir

Q. Prosecuted produces Exhibit E a pudding.

Q. What can you say about that

A It is not an issue but it could be made in the cookhouse.

Q. Is it possible to buy eggs anywhere that are not rationed
A. Yes Sir
Q. What about margarine
A. Points are required to purchase Marg.
Q. What about bacon
A. The same applies points are required.
Q. What about ingredients for making such a pudding at this (Ex B).
A. Rationed commodities would be required.

Defending Officer

Q. Is there anything about the pudding identify it with 1 C I R V
A. No. there a similarity in shape to the pudding we make in the Unit.
Q. From time to time has it come to your attention that pilfering takes place in the Mess of No 1 C I R V.
A. Yes Sir
Q. When pilfering occurs does it come to your attention quickly
A. Yes Sir
Q. Did you suspect that pilfering was going on at Norton Camp Officers Mess at
A. No Sir
Q. ~~No one~~ Was there any reason to suspect anyone on the staff of the Officers Mess at Norton Camp
A. No Sir
Q.

DANDO.

M16114

I am the accused Pte Dando. F.E. DCASC attached to I.C.I.R.V.

Q. Are you married.
A. Yes Sir
Q. Where does your wife life.
A. Edinburgh
Q. Do you see her often during the year
A. Just on leave my leave
Q. Does your wife visit near the lamp on occasion.
A. She came down just before this
Q. Was this a vacation for her
A. It was going to be
Q. How long before she arrived did you know she was coming.
A. Three week to a month sir
Q. When your wife is on one of these visits is it easy or difficult to visit with her.
A. Sometimes it is difficult
Q. Is it a simple matter to have supper with your wife.
A. Sometimes it can be arranged.
Q. From the stand point of food supply is it easy to have supper with your wife
A. No it is not sir
Q. Would you offer a brief explanation why it is difficult to have supper with your wife
A. Food is rationed and one card will not feed two people
Q. Is Ex F your statement
A. Yes

Q. It has been shown in evidence that you had no hesitating in showing the contents of your haversack and freely making a statement of them. Would you explain to the court slowly to the court why you considered yourself justified in being in possession of these items

A. Sir it is very seldom that I eat breakfast and I ~~took~~ had been saving my rations in order that sometime I might be able to eat a meal with my wife. This was not done intentionally as even before ~~&~~ as long as I've been cooking It is a very rare occasion that I eat breakfast

Q. Will you explain what privilege you receive in lieu of 2½d commutation not available to staff working in officer mess at Norton Camp

A. The 2½ is turned over to the Mess Sec and is used by him so that officers Extra Messing is available for the staff

Q. How frequently are eggs served in the officer Mess at Norton Camp.

A. Twice to three times a week.

Q. Had you been accustomed to eating breakfast how many eggs would you have consumed during the month preceding your wife's visit.

A. At least half a dozen

Q. Is the quantity of bacon (En C) more or less than a months ration

A. Probably a weeks ration

Q. How about the Mary.

A. We are allowed 1½ oz per day

Q. How many ozs are there in the packet.

A. About 8 oz ~~[illegible]~~

Q. That is less than I work eaten

A Yes sir

Q. So that the amount in the exhibit is actually less than that you have eaten had you eaten breakfast during the month

A. Yes sir

Q Will you tell the Court what you know about the pudding

A The pudding in question is not a full size pudding. I made five full tins which we used, there was about 4 spoonfuls of batter that was left and would have been thrown away instead of which I put it in a tin and steamed with the rest. The meal was served - everyone had had enough and no rather than throw it out I thought it could be used at home

Cross Examination
by Prosecution NONE

I am M10701 Pte Potts W.G. cook at Officer Mess Norton Camp.

Q. Are you i/c cooking in the Mess
A Yes Sir
Q. Before July 11th did you have an assistant.
A Yes Sir
Q Who was he
A Pte Dando
Q Do you recognise Pte Dando
A Yes Sir.
Q How long had Pte Dando been in this mess
A He was there when I arrived about 20th June 44
Q. During this period Pte Dando worked with you
A. Yes Sir
Q. Would you comment of Pte Dandos assistance to you
A It was very good.
Q Had there been any shortage of ration whilst you were i/c [illegible]
A Not that I know off
Q Did you have any reason to suspect anyone
A None Sir
Q Did Pte Dando ever mention that he expected a visit from his wife
A Yes Sir
Q ~~Are~~ there any eating peculiarity of cooks as a group and what are the.
A Most cooks I know only have one meal a day.
Q. What meal do you ~~[illegible]~~ eat as a rule
A usually the evening meal
Q. Were you aware that Pte Dando had similar habits
A No I cannot say that I was

Q If P.C Dando told you he was in the habit of missing the breakfast meal would you be prepared to believe it.

A Yes Sir

Q Do you recognise the Pudding (Ex E)

A No Sir

Q Can you recall if a similar pudding was served on the 11th July

A No I cannot remember the exact date

Q Does it happen that pudding or remains left over.

A At times

Q What becomes of such pudding.

A ~~If not~~ It is left on the staff table and if not eaten is disposed of in the swill

Q Explain to the court whether you receive 2½ commutation at the Mess in question

A No Sir.

Q What do you get in lieu of this

A The 2½ in cash goes to the mess Sec who in turn makes extra Messing available for the staff.

Q Are eggs part of extra messing.

A Yes Sir

Q How often are eggs available.

A At least one per week

Witness CQMS Campbell states under oath.

Pte Dando has always given satisfaction in his work and has never at any time been suspected of taking rations during the period I have known him. (approx June 1942 until the present time).

Q. Have you known other cooks to come under suspicion during this time
A Yes sir
Q Is pilfering in the mess difficult to conceal.
A Yes sir

I am Major B.M. Maidman acting o/c of A Wing 1 C IRV

Q Do you recognise Pte Dando
A. Yes he has been employed as a cook for about three years during ~~Q. Would~~ which time he as always been reliable and worked hard. ~~I feel that his act was a slip. This is his first offence but I would unhesitating to employ him again.~~ I feel that whatever has happened is due to error on his part and not deliberate intention. I would be quite willing to employ him in future

Plea of mitigation of punishment

by Capt Bonner

In plea of mitigation I wish to draw to your attention once again the fact that there has been no attempt to discredit the claim which Pte Dando placed upon the rations which were found in his haversack. Had he examined what he felt to be his right and eaten the rations in his own camp there would be no suggestion and indeed non has been offered by the prosecution in examination as to his conduct. However in seeking to have a meal with his wife and taking his rations to his wife's stopping place for the purpose of his own consumption he placed himself technically in error a fact which should be weighed only after consideration of his original intent and further in consideration with his record of unquestioned conduct and exemplary industry within his term of service a matter of 2½ years with this unit. I believe the strongest testimony as to character and degree of reliance with which this unit regarded Pte Dando is to be found in the statement offered by Major McLean this morning. The Major's statement that Dando was one of the few upon whom he had relied while others failed him and that indeed he would be willing to re employ Pte Dando in his former position when this business has been settled speaks for itself in addition I would point out although Pte Dando has not until yesterday been up for trial he has nevertheless ~~very~~ undergone a considerable period of confinement (18 days) and I beg therefore that in considering the sentence to be awarded that these 18 days be taken into account

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

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

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

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

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

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

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

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf RP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).)

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused : M16114 Pte Fredrick Ernest DANDO - 1 CIRU - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 18(4)	Not Guilty	Not Guilty	HWS
Alternative 2nd AA Sec 40	Not Guilty	Guilty	HWS
3rd			
4th			
5th			
6th			

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

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

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

Time in confinement awaiting present trial—a total of No days, of which No days were spent in hospital. (2)

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

Sentence Awarded by the Court :

To undergo detention for a period of 30 days.

(Sgd) ..... Judge-Advocate, if any. 29 July 1944 Date awarded. (Sgd) H W Smith Major President. (RP 45, 50.)

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

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

~~Date~~ ~~(Sgd)~~ ~~Commanding~~

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

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

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

Confirmed

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

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

(Sgd) [signature]

Date 1 Aug 44

(G S N Gostling)Brig

Commanding "A" Gp Cdn Rft Units C A (O)

Confirming Officer.

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

Accused.	Date.	Signature of Offr.
M-16114 Pte Dando, F.E. RCASC, 1 CIRU	3 Aug 44	H Sharp Colonel, (H. Sharp) Commander, 1 Cdn Inf Reinf Unit

Promulgated in 1 CIRU Pt II DO 173 d/5 Aug 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

HWS.

Correspondence to be PINNED here.

N.R. 3292 Seafurths

Army Form A.3.

HEADQUARTERS 5 NOV 1941 2nd CDN INF. BDE

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this THIRTIETH day of OCTOBER, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of ~~HEADQUARTERS~~ A.S.M., 2 CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

* Omit if not applicable.

*~~I am unable to appoint:~~

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

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

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

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

PROCEEDINGS REVIEWED.

04/11/41

Reviewing Officer (Pres) 6 Nov 41

President.

Rank.	Name.	Regiment.
MAJOR	J.D. OGILVIE	P.P.C.L.I.

Members.

Rank.	Name.	Regiment.
CAPT	J.L. MALKIN	SEAFORTH OF C
LIEUT	W.G. HARRIS	SEAFORTH OF C
	WAITING	
LIEUT	J.A.L. HUNTER	P.P.C.L.I.

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

*Signed

Commanding Arthur S. Potts Brigadier, Comdg. 2 Cdn. Inf. Bde.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M.16114, Pte. DANDO, ~~P.F.~~ Edmn R	1st Charge Sec 18(4) A.A. W.O.A.S. stealing money the property of a person subject to military law.	G	Guilty	Confirmed as ~~Smaths~~ ~~detention~~
	2nd Charge Sec 18 (4) A.A. W.O.A.S. stealing money the property of a person subject to military law.	G	Guilty Four months ~~detention~~ ~~[illegible]~~ detention	150 days detention ass?

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

(Signed) Arthur E Potts (Signed) [signature]

Commanding Brigadier, Comdg. 2 Cdn. Inf. Bde. Confirming Officer (e) President.

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3 day of November, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

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

* Omit if not applicable.

Signed this 3 day of November 1941.

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this 3 day of November 1941.

[signature]
President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 6 day of Nov 1941

Arthur E Potts
Confirming Officer. Brigadier, Comdg. 2 Cdn. Inf. Bde.

Promulgated and extracts taken in the case of M16114 Pte Dando F E

(a) (Dated) 10 Nov 1941 (Signed) [signature] Edmonton Regt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

CHARGE SHEET

The accused M.16114 Private Frederick Ernest Dando, Edmonton Regiment, a soldier of the Canadian Army (Overseas) is charged with:-

First Charge Sec.18(4) Army Act

W.C.A.S. - Stealing money the property of a person subject to military law

in that he

at Oxted, Surrey, on the 18th October, 1941, did steal the sum of 12/6 the property of M.15545 L/Cpl Wilson, W.C., a person subject to military law.

Second Charge Sec.18(4) Army Act

W.C.A.S. - Stealing money the property of a person subject to military law

in that he

at Oxted, Surrey, on 18th October, 1941, did steal the sum of 10/ the property of M.7267 Pte. Merrill, W., a person subject to military law.

(E.B. Wilson) Lt.Col.,
Commanding, Edmonton Regiment

Oxted, Surrey
22 October, 1941

To be tried by a Field General Court Martial

.....Brigadier,
Commander, 2 Cdn Inf Bde.

Oxted, Surrey,
October, 1941

*N.B.—As this form is applicable to any Board of Officers or Committee or Court of Inquiry, the blank is to be filled in accordingly.

The signatures of each Officer composing the Board, etc., should be attached to the end of the proceedings.

PROCEEDINGS of a* Field General Court Martial

assembled at Godstone, Surrey

on the 30th day of October, 1941

by order of G.O.C., 1 Cdn Div.

for the purpose of trying by Field General Court Martial

M16114 Pte. DANDO, F.E., Edmn Regt. Cdn Army (Overseas)

PRESIDENT

Major J.D.Ogilvie, P.P.C.L.I.

MEMBERS

Capt. J.L. Malkin, Seaforths of C
Lieut. W.G. Harris Seaforths of C

Waiting Member Lieut. J.L. Hunter, P.P.C.L.I.

Prosecutor Lieut. D.P.H. Darlington, Edmn Regt.
Defence Lieut. R.G.M. Gammell, P.P.C.L.I.

XXXX

The Court is closed for consideration of sentence of the accused.

President — (J.D. Ogilvie) Major, P.P.C.L.I.

Members — (J.L. Malkin) Capt. Seaforths of C.,

(W.G. Harris) Lieut. Seaforths of C.,

Witnesses for Prosecution

M.15654 Sgt Linteris, P. - Edmonton Regiment

M.16173 C.S.M. Bryant, F.A. - Edmonton Regiment

Mr. E.C. Lush - Uvedale Road, Oxted, Surrey

M.16179 Sgt Shoubridge, C.F. - Edmonton Regiment

M.16585 Pte Birmingham, J. - Edmonton Regiment

M.15545 L/Cpl Wilson, W. - Edmonton Regiment

M.7267 Pte Merrill, W. - Edmonton Regiment

Witnesses for Defence

W. Markall, 13 White Cots, Holland, Oxted

Mr. H.R. Tidswell, Green Loaning, Greenhurst Park, Oxted.

Exhibit "A" the money stolen was reviewed by the Court. (one ten shilling note - three half crowns - two - two shillings pieces a total of twenty one shillings and six pence) Said amount was handed to Major Donald for distribution to the owners.

Pres.

Major

Capt.

Lieut

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

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

Signed this 30 day of Oct 5/44

[signature] Regt Sgt

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

M.16114 Pte Dando, F.E. of the **Edmonton Regiment, Cdn Army (O/S)**

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

Sum Part. 601, K.R., 1945.

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

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

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

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

Number of instances of gallantry or distinguished conduct.

or,

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

2. The accused has not been previously convicted,

or,

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

[illegible]

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

or,

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

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

for nil days in Civil Custody,

and 16 days in Military Custody.

Total 16 days.

Of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ record of service ~~xxxxxxxxxx~~ is 35

6. The date of his ~~commission~~ attestation ~~xxxxxxxx~~ specified in his ~~attestation paper~~ record of service ~~xxxxxxxxxx~~ is 25 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 years 27 days

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

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

10. The accused is ~~in possession of or entitled to no military decoration or military reward (or is in possession of or~~ entitled to Good Conduct Badge

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

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

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

		Date of Promotion.
In the rank of	years,	
In the rank of	years,	
In the rank of	years,	

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

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

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

Army Number, Rank and Name of the

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

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

(*Continued overleaf.*)

22 Oct 41

Sir:

I desire to have an officer assigned by the Convening Officer to represent me at my trial preferably Lt. Campbell PPCLI or Lt. Conway Seaforths of Canada

F. E. D. Dando

M.16114 Pte Dando, F.E.

I certify that I have this morning examined

No. M.16114 Pte. Dando, F.E.
of The Edmonton Regiment and in my opinion he is fit to undergo trial by Court Martial.

Station ...In.the.Field..

Date.....3.Nov.41..

.....
Medical Officer.

M.F.M. 6
(A.F.B. 122)
500M—8-39 (1703)
H.Q. 1772-43-18

No. M.16114 Name DANDO, Ernest Frederick Sqn., Battery, or Company H.Q. Corps

Date of enlistment 25 Sep 39 O.C. (Badges)

Service or Proficiency Pay

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. ONE

Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified true copy

[signature]

for (E.B. Wilson) Lt.Col.,
Commanding, Edmn R.

(P.T.O.)

Summary of evidence in the case of M.16114 Pte Dando F.E. A soldier in the Edmonton Regiment Cdn. Army (Overseas).

By direction of the Commanding Officer, the evidence was taken under oath.

1st Witness for the prosecution — M.15654 Sgt Linteris, P. Edmonton Regiment having been duly swwrn states:-

[redacted] On Sat. Oct 18 41 L/Cpl Wilson reported to me that 12/6 was missing from his room and Pte Merrill reported that 10/- was missing from his room. We searched all the platoon, and Dando being a suspect he was watched. On the inspection parade he was about 5 minutes late. When I asked him where he was, he told me he was speaking to the gardener. Dando had no money on him atthe inspection. After the inspection I went to see the gardener, and was told by him that Pte Dando had been speaking to him, and had just come from behind the shed. At this time Pte Hudson appeared, and we both made a search, and found the money under a half barrel. We did not touch the money, but reported the find to Sgt McCulloch and Sgt Shoubridge. I then put on two guards, one at the lavatory window, and one in the pantry to watch and see who would pick the money up. At approximately 1330 hours Pte Dando was seen to go behind the shed, by Pte Birmingham who was posted at the toilet window. Birmingham reported to Sgt McCulloch and he reported to me. I Then went to Pte Dando's room with Pte. Heath and searched him. When he emptied his pockets, there was one 10/- note, 3 half-crown pieces and 2 two shilling pieces. I then placed him under close arrest, and took him to the guard room.

Question 1 [redacted]

Answer 1

Question 2 How long has he been with your platoon?
Answer 2 About 7 months.
Question 3 Did the gardener specifically mention Pte Dando by name as having been behind the shed.
Answer 3 No Sir.
Question 4 Then how did you know that he was referring to him?
Answer 4 He described him as being a short dark fellow.

P. Linteris
M.15654 Sgt. Linteris P

The accused declines to cross-examine.

2nd Witness for the prosecution — M.16173 C.S.M. Bryant F.A. Edmonton Regiment, having been duly sworn states:-

[redacted] At 1130 hours Sat Oct 18, I was on an inspection of billets with Major Donald, when it was reported that two sums of money had been taken from two different rooms in " Ennoyene" (the house in which the men

were billeted) on that morning between approx. 1000 hours and 1100 hours. At that time it was established by the platoon Sgts. McCulloch, Linteris and Shoubridge that not more than 5 men were in the building at the time. One of the five was Pte Dando. Acting on Major Donald's instructions the whole of the personnel in the house was paraded. They turned their pockets out. When the parade was first fallen in, Pte Dando was absent. By the time that I had reached the second rank, he had taken his place there. He had no money. I asked him specifically if he had any money in his other clothes. This he denied and stated that he was flat broke. This was approximately 1150 hours At approximately 1210 hours it was reported to me that a certain sum of money had been found under a barrel at the rear of an outbuilding and that a watch had been posted. A watch was kept up from one to two hours when it was reported to me that the money had been removed, and had been found on Pte Dando. I went to the room where Dando was being searched and saw the money in his presence - one 10/- note, 3 half-crowns and two two shilling pieces. I placed the money in an envelope, sealed it, and reported to Major Donald.

..... S. A. Bryant .....
M.16173 C/S.M. Bryant S.A.

The accused declines to cross-examine.

3rd Witness for the prosecution — Mr. E.C. Lush, having been duly sworn states:-
I am the gardener at " Emoyene".

Question 1 — On the morning of Sat 18 Oct 41 did you see a soldier behind an outbuilding in the garden of " Emoyene"
Answer 1 — I saw him come to the shed door and go around the corner.
Question 2 — Do you recognise anyone in this room as being that soldier?
Answer 2 — The one sitting in the chair. (The accused)
Question 3 — Do you know his name?
Answer 3 — No Sir.

... E. C. Lush .....
Mr. E C. Lush

The accused declines to cross-examine.

4th Witness for the prosecution — M. 16179 Sgt Shoubridge, C Edmonton Regt. having been duly sworn states:-
I returned to " Emoyene" on Sat 18 Oct 41 at approx. 1045 hours. L/Cpl Wilson came in at 1100 hours and reported that a sum of money had been taken from his pocket. I contacted Sgt McCulloch and on the dismissal of the men we circulated a rumour that all men would be searched, and a watch was kept on the accused who had absented himself from the building. The matter was reported to Major Donald on his inspection and a search was made, of all the men resident at " Emoyene". Whilst the search was conducted, Sgt. McCulloch and I searched the accused's kit. No money was found. A watch was kept in two places overlooking the shed, where the money was hidden. On Pte. Birmingham reporting that the accused had been to the shed, I accompanied Sgt. McCulloch to the place where the money was hidden, and found that the money had been removed. The accused was searched in my presence, and a sum of silver and a 10/- note which was still muddy from where it had been placed

under the barrel was found on the person of the accused.

Chas T. Shoubridge
M.16179 Sgt Shoubridge

The accused declines to cross-examine.

5th Witness for the prosecution M.16585 Pte J Birmingham Edmonton Regiment having been duly sworn states:-
On Oct 18 I was put on watch by Sgt. McCulloch to watch a shed in the garden. I'd been on watch a few minutes when I saw the accused go to the shed. I reported the matter to Sgt. McCulloch and Sgt. Shoubridge. I went back to the place where I was watching and saw the accused come from the shed to the house.

J. Birmingham
M.16585 Pte Birmingham.

The accused declines to cross-examine.

6th Witness for the prosecution M.15545 L/Cpl Wilson W. Edmonton Regt. having been duly sworn states:-
I had placed about 14/- in my tunic pocket on Friday night Oct 17. The following morning I needed some money to get my laundry. When I looked, the money was gone. This would be about 1030 or 1045. I reported the matter to Sgt. Shoubridge.

Question 1 Have you any recollection as to what this money consisted of?

Answer 1 I distinctly remember 3 half-crowns, and two 2/- shilling pieces and a shilling. I can't remember the other denominations.

Question by the accused.

Question 1 How much money did you actually have?

Answer 1 I had roughly speaking about 15/-.

W Wilson
M.15545 L/Cpl Wilson W.

7th witness for the prosecution M.7267 Pte W. Merrill Edmonton Regiment, having been duly sworn states:-
I had a 10/- note in my fatique pants in my room, which I put there on Friday night Oct 17. The next morning when I came off parade I heard that L/Cpl Wilson had lost money. I went and looked for mine; but it was gone.

W Merrill
M.7267 Pte Merrill

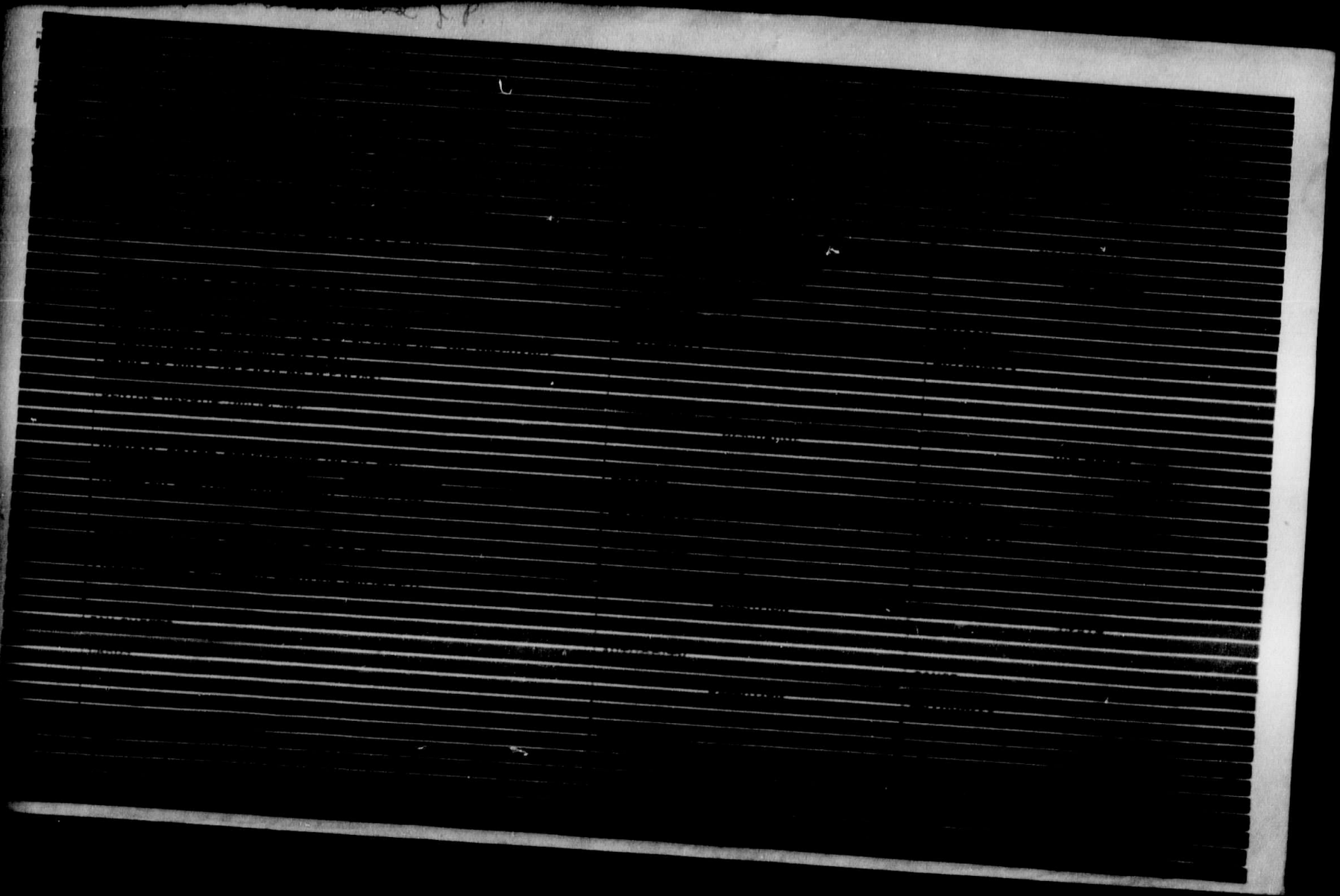
The accused declines to cross-examine.

R.P. 4 E having been complied with, the accused declines to make a statement, or to give evidence on oath.

Taken down by me at OXTED, SURREY, ENG., this 21st day of OCTOBER 1941, in the presence of the accused. R.P. 4 complied with.

A S Donald Maj
Major
Edmonton Regt.
(Officer taking summary)





SCHEDULE.

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

Accused: D144463 Pte Jean Paul Dandurand

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

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

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

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

Time in confinement awaiting present trial—a total of 34 days, of which 0 days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To undergo detention for (6) six months

(Sgd) ..... Judge-Advocate, if any. 20 Mar 46. Date awarded. (Sgd) A.D. Lucas LtCol President. (RP 45, 50.)

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

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

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

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 111-56, 120, MML pp 759-76; KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

I withhold the authority required by section 54 of the Army Act and I remit the finding and the sentence as in my judgment:

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

(Sgd) D. Rutherford Brig

Date 5 April 46 Commanding Dep Comd RCN Confirming Officer.

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

Accused.	Date.	Signature of Offr.
D-144463 Pte Dandurand JP X4 list CIC 3 Cdn Transit Camp, CPN.	6 Apr 46	A.C. Ross Capt Legal Offr 3 Cdn Transit Camp CPN

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN LAB 102-52-94

RECEIVED APR 12 1946 JAG'S BRANCH CMHQ

CFA96 (In lieu of AFA27) 40/P & B/1698 (40-1)

FIELD GENERAL COURT-MARTIAL 4/38B

Order of A.G.I. & 2 Base Comd 1 Cdn Corps dated 28 Mar 46

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D144463	(a) Pte (b)	Jean Paul	Dandurand	X-4 list C.I.C. 3 Cdn Transit Camp

PROCEEDINGS REVIEWED 15 Apr 46 C.H. Tait, Maj. RETURNING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held at Holland on (date(s)) 30 Mar 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

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

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

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

The shorthand writer is sworn.(1)

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

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

Ans No (2)

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

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

President	Lt. Col.	A.D. Lucas RCASC	3 Cdn Transit Camp
Member	Lt. Col.	L.B. Macdonald RCCS	3 Cdn Transit Camp
Member	Lt. Col.	R.W. Wilson C.I.C.	3 Cdn Transit Camp
Judge-Advocate			
Prosecutor	Lt.	L.R. Sanderson RCAC	3 Cdn Transit Camp
Defending Offr	Capt.	J.C.P. Hardy C.I.C.	3 Cdn Transit Camp

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

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 60(B) and fn 2 were not followed. See p 3.)

A8. The accused D144463 Pte Jean Paul Dandurand before arraignment makes (no) (~~a~~) plea. (1)

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

President to accused: Do you wish to make a statement? Ans No.(5)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

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

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

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

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

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

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

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

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

(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D9.*)

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

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

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

Ans.....Do you intend to call witnesses on your behalf?

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

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

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

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF Ms5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

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

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

Ans No.

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

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

(1. *AFB 252 or AF B 296.* 2. *MFM 6.* 3. *RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes on mitigation of punishment.(2)

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

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

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

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

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 1223. MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 98(2), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ex. A. h. a. 6

(RR(Can) Para 557)
(CFHQ CL 173)

MEDICAL OFFICERS CERTIFICATE

I certify that I have this day examined D-144463 (No.)

Pte (Rank) DANDURAND, J.P. (Name) and in my opinion he is

fit to under go trial by Court-Martial.

~~Unfit~~

Station Field

Date 30th March 1946

A Beaugard (Sgd),
Medical Officer

(Unit) 3 Cdn Transit Camp - CFN

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

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

First Witness for Prosecution.

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

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

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

Re-exam : None.

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

RP 82(B) complied with.

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

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

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-62 will apply so *far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being *fair* to the accused :

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

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

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

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

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

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

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

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

(i) Charge Sheet. (On top.)

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

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

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

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Con 580. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

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

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 768.*)

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

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-144463	Pte.		Je an Paul	DANDURAND,	X-4 1 ist CIC 3 Cdn Transit Camp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 26 Mar 46 endorsed by me, ~~or by an offr of my unit or unit~~, "To be tried by Field General Court-Martial". HB

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; HB

~~and that I do not consider it to be expedient to delay the trial on reference to a superior qualified offr.~~

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

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

~~I am unable to appoint to this Court, (b) as~~ President, for the reasons I have attached hereto. HB

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

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

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

PRESIDENT.

HB

(Rank.)	(Must be named. RP 106.)		(Unit.)
Lt-Col.	W.A. LUCAS	RCASC	3 Cdn Transit Camp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Lt-Col.	L.F. MacDONALD, ED,	RCCS	3 Cdn Transit Camp
Lt-Col.	R.W. WILSON	CIC	3 Cdn Transit Camp

WAITING MEMBER.

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

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in The Field
(Country.)

Date 26 March 1946

H F Baker
(Signed personally. RP 105 fn 2.)
(H.F. Baker) Lt-Col.
Commanding 1 Cdn Demob Depot

Lt-Col.
(Rank.)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Page (To Dnl of AF A2) 40-9 & 5/1691 (1951))

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

CHARGE SHEET

The accused, D-144463 Pte. Jean Paul DANDURAND, X-4 list, Canadian Infantry Corps, on strength of 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, at 0900 hrs 7 September 1945 Absented himself without leave until he was apprehended at 1400 hrs 29 October 1945.
(Absent 52 days 5 hrs)

SECOND CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, at 2300 hrs 6 November 1945 absented himself without leave until he surrendered, at AMSTERDAM Holland, at 2115 hrs 5 March 1946.
(Absent 118 days 22 hrs 15 mins)

M.A. Frank

(M.A. Frank) Major
Officer Commanding
3 Cdn Transit Camp, CFN.

IN THE FIELD
17 March 1946

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

H.F. Baker

(H.F. Baker) Lt-Col.
Commander
1 Cdn Demob Depot

IN THE FIELD
23 March 1946

Plea in mitigation
in the case of.

D.144

Pte Dandurand

The following plea will be a simple relation of the facts surrounding the alleged absence of the accused.

Pte Dandurand has seen action, first in Italy with the Royal 22e Rgt and later with the same unit has been through the campaign of Holland.

Immediately after VE day - in May 45 - while his unit was stationned in Naarden, Holland, Pte Dandurand was granted a pass to England along with a number of his companions.

Then, for NO reason the said pass was cancelled. I say, NO reason because even his Coy Comd answer was "He did NOT know about that!"

Two weeks later Dandurand was granted a pass to Brussels.

Again it was cancelled just previous to him leaving the Unit's Line.

Later he applied for a pass to Amsterdam. "NO" he was told "You can NOT go, we have been warned for the Occupation." (CAOF).

At that rate, Pte Dandurand, after spending 2 solid months in the kitchen as fatigueman was "gratified" with a "one-day pass" to see "Meet the Navy".

On 29th Aug 45 the accused was transferred to "le Rgt de la Chaudière" 3 Div. No specific reason given.

There he applied for a pass of some sort, stating what you have just heard.

The answer was "NO."

That was the end.

I wish, here, to stress the fact that this way of handling our men has NOT been uncommon. You will hear the same story in roughly 50% of the AWL cases.

I am asking the Court to consider the above and remember lastly the the man has surrendered himself in the end.

J.P. Hardy Capt.

Ex. B

SUMMARY OF EVIDENCE

In the case of B-144463 Pte. Jean Paul DANDURAND, X-4 list, Canadian Infantry Corps, on strength of 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas.

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

The following documents were laid before the Officer detailed to ta ke the Summary of Evidence, and marked as Exhibits "A" "B" "C" and "D" respectively and are initialled by him for the purposes of identification.

"A" A certified true extract of REGIMENT DE LA CHAUDIERE (CDA) Pt.II Order # 55 dated 9 Oct 45 showing the accused absent from 0900 hrs. 7 Sep 45.

"B" A certified true extract of X-4 list (13 Bn) Inf Gen Unallo Pt.II Order # 262 dated 3 Dec 45, Showing the accused TOS on apprehension at 1400 hrs. 29 Oct.45.

"C" A certified true extract of X-4 list (13 Bn) Inf Gen Unallo Pt.II Order # 262 dated 15 Dec 45, showing the accused absent from 2300 hrs 6 Nov. 45.

"D" A certificate of Surrender, of the accused, at AMSTERDAM, at 2115 hrs. 5 March 46.

The accused does not question the documents.

D R Saunderson

(D.R. Saunderson)Lieut.
Officer detailed to take
Summary of Evidence.

The accused was cautioned as follows:-

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

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

Certified that all the provisions of R.P. 4 (c)(d)(e) and (f) have been complied with. Taken down by me in the p resence and hearing of the accused this 11 day of March 1946, In the Field.

D R Saunderson

(D.R. Saunderson)Lieut.
Officer detailed to take
Summary of Evidence.

LIST OF WITNESSES

In the Case of D-144463 Pte. Jean Paul DANDURAND

(For the Prosecution)

NONE

(For the Defence)

NONE

LIST OF EXHIBITS

In the Case of D-144463 Pte. Jean Paul DANDURAND

(For the Prosecution)

"A" A certified true extract of REGIMENT DE LA CHAU/DIERE (CDA) Pt. II Order # 55 dated 9 Oct. 45, showing the accused absent from 0900 hrs 7 Sep 45.

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"D" A certificate of Surrender, of the accused, at AMSTERDAM, at 2115 hrs. 5 Mar 46.

(For the Defence)

NONE

CERTIFICATE OF ACCUSED

I, B-144463 Pte. Jean Paul DANDURAND, hereby acknowledge that I have received, free of charge, one copy of the Summary of Evidence and one copy of the Charge Sheet therein.

I also request that an officer be appointed to act as my Defending Officer at my forthcoming Court-Martial.

J. P. Dandurand

(J.P. DANDURAND)

TO: D & P

PART II ORDER EXTRACT FORM

4 "A" 218

99/20/

15 JAN 46 19

EXTRACTS FROM: UNIT REGIMENT DE LA CHAUDIERE (CDA)

Part II Order No. 55 dated 9 OCT 45

ABSENT WITHOUT LEAVE

AWL from 0900 hrs 7 SEP 45 Still absent 0900 hrs 15 SEP 45 (8th day)

D144463 Fte DANDURAND J.P.

Certified to be a true extract from the regimental books and records in my custody.

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Originating Clerk's Initials

Officer in Charge for
Canadian Section, GHQ, 2nd Echelon

1/70 RCH—6
40/P&S/1276 (6704)

Ex "B"

PART II ORDER EXTRACT FORM

TO: D & P

~~XXXX~~ 2 Ech CFN

6 Mar 1946

EXTRACTS FROM: UNIT X-4 List(13 Bn) Inf Gen Unallocated

Part II Order No. 262 dated 3 Dec 45

STRENGTH INCREASE

TOS X-4 List(13 Bn) from des on app at 1400 hrs 29 Oct 45

D-144463 Pte DANDURAND J P

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Certified to be a true extract from the regimental docket and documents in my custody.

Officer IC Records
Gdn. Sec. 2 Ech. HQ 21 ~~A~~ Gp.

Originating Clerk's Initials

for CFN

Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 ECH—6
40/P & S/1276 (6704)

Ex. "C"
DRS

PART II ORDER EXTRACT FORM

TO

99/20/

19

EXTRACTS FROM: UNIT x 4 List (13 Bn)Inf Gen Unallo

Part II Order No. 262 dated 15 Dec 45

ABSENT WITHOUT LEAVE

AWL form 2300 hrs 6 Nov 45.

D144463 Pte DANDURAND J.P.

The following documents are { attached. Please acknowledge receipt on attached duplicate. required. Please forward same.

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records
Cdn. Sec. 2 Ech. HQ 21 Dec

Originating Clerk's Initials

for

Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 RCH—6 4/F&S/1276 (6704)

Ex "D"
DRS.

"CERTIFICATE UNDER THE ARMY ACT, SECTION 163(1)(J)

I.....certify that

Reg. No. D144463 Rank PTE Name DANDURAND J.P.

REGIMENT REGIMENT de CHAUDIERE

UNIT.....

STATIONED AT....3rd CDN INF DIV (CAOF).....

Surrendered himself to No. M-10686 Rank SGT Name HODGES G.B.

of the No 11 CDN PROVOST COY (CAOF).....

on the 5th day of March 1946, at 2115 hours.....

..... AS AN ABSENTEE WITHOUT LEAVE.....

at the time of his surrender he was wearing (~~xxxxxxxxxxxxxxx~~)

or (civilian clothes)

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

A.E. BROCK LIEUT
OFFICER COMMANDING
NO 11 CDN PROVOST COY

11 PROVST COY
CANADIAN PROVOST CORPS

Ex. C. [illegible] ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-144463	Pte.	DANDURAND, JP.	3 Cdn Transit Camp, CFN

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

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

For NIL _____ times.

For NIL _____ times.

For NIL _____ times.

For NIL _____ times.

Date of first entry in Field Conduct Sheet NIL

Date of last entry in Field Conduct Sheet NIL

[illegible]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for 0 days in civil custody; and for ~~8~~ 34 days in military custody, *i.e.*, 0 days in open arrest, ~~8~~ 34 days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 20 yrs.

6. The date of his ~~[illegible]~~ attestation 29 Feb 44

[illegible]

8. The accused is in possession of† Italy Star, Fr.& Germ.Star, CVSM & Clasp

[illegible]

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

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

[illegible] 20,000 [illegible] 5/44 51-4761. Forms/B.296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

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

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

Signed this ~~XXX~~ ~~XXX~~ 30th day of March 46

(J.H. Watson) Lieut.

Ex. D.h.o.L

3/17 MFM 6
(AFB 122)
40/P&S/136 (5413)

No. D-144463 Name DANDURAND Jean Paul Sqd, Battery, or Company Corps CIC Date of enlistment 29 Feb 44 GC Badges Service or Proficiency Pay

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Entries NIL					

Certified true ex tract from the Regimental Books and documents in my custody.

(Sgd) G.C. Stewart Patterson)
.....
(G.C. Stewart-Patterson)Lieut.
2 Ech Sec Admin Section-HQ CFN

CERTIFIED TRUE EXTRACT OF ORIGINAL IN MY POSSESSION

J.H. Watson, Lieut.
(J.H. Watson)Lieut.
Officer having custody
of the original.

(PTO)

MMM-2L
PTE DANES J.A.

4

SCHEDULE.

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

Accused: K 74333 Pte James Alfred DAVIS - Westmr R (M)

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

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

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

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

Sentence Awarded by the Court:

90 days detention

24 Apr 44 (Sgd) [illegible] President. (RP 45, 50.)
Date awarded.

(Sgd) Judge-Advocate, if any.
(See back of Convening Order as to assembly and disposal of record after trial.)

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

Date 9 May 44 (Sgd) Commanding

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

(For duties and powers see AA 54, 57, RP 37(D), fn 6, 46(A), 51-56, 120, MML pp 758-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

I confirm the finding and sentence of the Court

~~I direct that the accused be not remanded to prison to undergo [illegible] until further ordered by (Military Authority)~~ ES

(Sgd) E Snow wBrig

Date 30 Apr Commanding 11 CIB Confirming Officer.

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

Accused.	Date.	Signature of Offr.
K 74333 Pte James J A	9 May 44	E W B Snow Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 MMM-26 6109

RECEIVED 30 MAY 1944 C.M.H.Q.

CFAMS (in lieu of AFA3) 40/P.A.S./1606 (9804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig T E Snow Comd 11 Can Inf Bde dated 22 Apr 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K 74333	Pte	James Alfred	Davis	Westmr R (M)

PROCEEDINGS REVIEWED 7 Jun 44

REVIEWING OFFICER'S BRANCH, CMHQ

13 MAY 1944

PROCEEDINGS OF TRIAL.

Held in the Fd (country) on (date[s]) 24 Apr 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

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

A3. The Court is opened. The accused is (are) brought before the Court. At 0940 hours trial commences.

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

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

~~The interpreter is sworn.~~(1) Do you object to [illegible] as shorthand writer? Ans —

~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

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

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

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

President	Lt Col	A Powis	17 Coy Fd Regt RCA
Member	Capt	L S Hand	17 Coy Fd Regt RCA
Member	Lt	E A Hickley	5 Fd Regt RCA
Judge-Advocate	N/A		
Prosecutor	Capt	R J Grinsted	Westmr R (M)
Defending Offr	Lt	B V Morgan	Westmr R (M)

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

A8. The accused ~~[illegible]~~ (3)

Q. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the arguments made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty on all charges, use second alternative in para* D8.) *thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

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

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

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

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

President to accused : Do you wish to make a statement ? Ans. *I do not* (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 116, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. *I wish to call character witness*
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *C* and Ex *D* respectively.(3)
(*1. AFB 255 or AFB 294. 2. MAM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. *No* (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to peform on with anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

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

E5. The Court considers the sentence.(1) The President records the sentence in Part 1 of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A)(b), KR Can 526, 530, 543-5(a), Overseas MO 309, 1323, RP 46. As to sentences assigned for civil offences by the law of England see AA 43(5), MML p 130. When accused MML p 60, 737-739. already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K74333, Pte. DANES, James Alfred the Westminster Regiment (Motor) a soldier of the Canadian Army Overseas is charged with:

First Charge
Sec. 15 (1) A.A. WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 1330 hrs. 2 April 1944 until 2100 hrs. 10 Apr 44.
(Total time absent 8 days, 7 hrs. 30 minutes.)

In the Field
19 April 1944

(G.C. Corbould) Lt.-col.
Comd
The Westminster Regt. (M)

To be tried by Field General Court-Martial.

(T E Snow) Brig
Comd 11 Cdn Inf Bde

In the Field
22 Apr 44

FIELD GENERAL COURT-MARTIAL

CFAO 5 (In lieu of AFAO 4) (Para/Time) (1968)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K 74333	Pte		James Alfred	DANES	Westmr R (M)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Apr 44 endorsed by me, ~~(or by my predecessor in office)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[as the delay occasioned by the assembly of a District Court-Martial would be prejudicial to good order and military discipline.]~~

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

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

4. ~~I have unable to appoint (a) other offrs for the trial of this accused by reason of the reasons I have stated herein.~~

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A. Powis	17 Fd Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed	17 Fd Regt RCA
Lt	To be detailed	41 Bty 5 LAA Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	To be detailed	Perth R.

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 22 Apr 44

Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

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

First Witness for Prosecution.

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

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

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

Re-exam: None.

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

RP 83(B) complied with.

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

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

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

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

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

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

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

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

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

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

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

(i) Charge Sheet. (*See log.*)

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

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

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

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

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

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 750.)

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

Ex "A"

The Westminster Regiment (Motor)

I have this morning examined K7+3[illegible] Pte [illegible] Danes

and find him fit to undergo trial by Court Martial.

In the Field this 26th. day
of April 1944.

Signed [illegible]

WESTMINSTER REGIMENT
APR 26 1944
ORDERLY ROOM

(1)

On 24 apr 44 the Prosecuting and Defending officers appeared before the court and jointly asked for an adjournment of 48 hrs in order to prepare this case for trial. Adjournment was granted and court adjourned to re-convene at 0900 hrs 26 apr 44

Agnos Davis Maj

B2. Statement of K 74333 James Alfred Vanes. Western R (M)

We were up at the front and I belong to the snipers platoon. Our job is pretty hard but not once did I fail to do my duty. We were withdrawn from the front and were training at a training camp. My platoon was sent to a school. I was left behind with the Regt. For about ten days I was not doing any thing and just laid in my tent from morning till night. Then the Regt was out for never crossing. I knew that I would be laying in my tent for another five days so I thought I would go out and make the best of it while I had the chance.

E1 First witness for defence
Lt. B.V. Morgan Western R (M) Swarm State.
Pte Bane since going into action has been in our snipers pl. This job consisted mainly of patrolling for a period of about five weeks and in some instances they were out twice in one night. Never once did he refuse to go out or shirk his duty in any way. In all other respects he has been a good soldier since coming to the Sp coy. I am an offr in the Sp coy and have known Pte Banes for about two years.

Cross exam - He has done the same amount of patrolling as the rest of the pl.

Re-exam - none

Exam by Court - none

CE P 83 B complied with

Appx A. April 11-19

At 2100 hrs. April 12-19 [illegible]
Ste Dame I [illegible] gave himself
[illegible] to me at our rear party
camp (carrier [illegible])
It appears this man [illegible]
been A.W.O.L. for the past
ten days.

J. W. McWilliams
Sgt.

I certify that, owing to the time and expense involved, this witness cannot be present at the taking of this summary.

A. Grimsted. Capt.
19 April 66

Appx. "A"

Documentary Evidence
Witnesses Statement

THE WESTMINSTER REGIMENT (M)
SUPPORT COMPANY

RE: CHARGE AGAINST K74333 Pte. Danes, J.A.

Statement of K47216 Sgt. McWilliams, J.W.

April 11-4-44

Sir -

At 2100 hrs. April 10-4-44 Pte. Danes, J.A. gave himself up to me at our rear party camp (Carrier Park).

It appears this man has been A.W.L. for the past ten days.

Signed J.W. McWilliams Sgt.

I certify that, owing to the time and expense involved, this witness cannot be present at the taking of this summary

R.J. Grinsted (Capt.)
19 April 1944

Certified true copy

R.J. Grinsted (Capt.)

Ex "B"

THE WESTMINSTER REGIMENT (M)

SUMMARY OF EVIDENCE in the case of K74333 Pte. Danes, J.A.
Support Company The Westminster Regiment (M) C.A. C.M.F.

Charged with Absenting himself without leave, Sec. 15 (1)A.A.

FIRST WITNESS K47117 C.S.M. Abbot, P. states as follows:-

I am K47117 C.S.M. Abbot, P. Company Sergeant Major
Support Company Westminster Regiment (M)

After having fallen in the Coy. Parade at 1330 hrs. 2 April '44 K74333 Pte. Danes, J.A. was reported absent off parade.

I was instructed by Lieut. R.G. Roberts to lay charges under Sec. 15 (1) A.A. against Pte. Danes for being absent without leave. Pte. Danes reported in at 2100 hrs. 10 April 44 to our rear party, having been absent 8 days, 7 hours and 30 minutes

---

The accused declines to cross examine the witness

P Abbot
K47117 C.S.M. Abbot, P.

SECOND WITNESS L47216 Sgt. McWilliams, J.W.

Documentary Evidence attached as Appendix A

The Statement of the above mentioned witness was read to the accused in accordance with R.P. 4 , he accepted as correct

The accused was warned as follows:-

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

The accused: I have nothing to say at this time.

J A Danes
K74333 Pte. Danes, J.A.

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

Taken by me in the field in the presence and hearing of the accused this 19 day of April 1944.

R Winterbyt

Sheet #1 destroyed 11-11-42 Ex "D"

No. K74333 Name Danes, J.A. | Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 27-3-41 | G.C. Badges | Service or Proficiency Pay NA

M.F.M.6 (A.F.B. 117) 175M—7-41 (1210-39) H.Q. 1775-39-1652

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Pr. Rupert	18-5-41	Pte.		Sec. 15 (1) AWL 0700 hrs. 18-5-41 to 2359 hrs. 20-5-41 (Total 2 days 16 hrs. 59 mins)	Cpl. Stephanishin	Admonished	21-5-41	LtCol J.S. Wood	FAI .149 (1 3 days pay
Pr. Rupert	21-6-41	"		Sec. 15 (1) A.A. AWL 2400 hrs. 21-6-41 to 0215 hrs. 22-6-41 (Total 2 hrs. 15 mins)	L/Cpl. Gaspard	5 days C.B.	23-6-41	Major H.F. McDiarmid	
Nanaimo	2-9-41	"		Sec. 40 A.A. - Conduct to prej. neglicent in Hut Orderlies Duties	Sgt. Lunn	3 days C.B.		Major H.F. McDiarmid	Extra Duties
North Van. B.C.	14-10-41	"		Sec. 15(1)AWL 1300 hrs. 14-10-41 to 1200 hrs. 16-10-41 (total 1day 23 hrs.	Cpl. Mulholland	7 days CB	7-10-41	Major H.F. Mc Diarmid	FAI 149(1)a 2 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30-7-42	Pte.		Sec. 15 (1) AWL (5 hours)	Sgt. Weinmeister	5 days C.B.	1-8-42	W.F. Meek Lt.	
Field	6 Apr. 43	"		Sec. 15 (1) absent without leave (10hrs. min.	Cpl. Sawicki, W.	5 days C.B.	6 Apr. 43	Capt. Neill	1 days pay AML 149 (1)
"	"	"		Sec. 11 Neglecting to obey orders	Cpl. Sawicki, W.	2 days C.B.	6 Apr. 43	Capt. Neill	
Field	22 Mar. 43	"		Sec. 40 AA conduct to prej. (1) Improperly dressed. (2) Smoking on parade (3) using violent language to superior officer	LT L.D. Mackenzie Sgt. Grinsted	7 days C.B.	22 May 43	W.J. Neill Capt.	
Field	4 Aug 43	"		Sec. 40 A.A. Con to prej. (insubordinate language)	Sgt. Grinsted, OR A/Cpl. Majury, WT	7 days CB	5 Aug 43	W.J. Neill Capt.	
Field	9 Dec 43	"		(1) AA Sec. 15 (1) AWL from 1800hrs. 9 Dec 43 till 2015 hrs. 9 Dec. 43 (2 hrs. 15 min	Sgt. Grinsted	14 days CB forf. 14 days pay AML 1, 149 (2)	10 Dec. 43	Lt Col R.L. Tindall	

M.F.M. 6
(A.F.B. 122)
175M—7-41 (1210-20)
H.Q. 1772-99-1402

No. Name

Date of last entry in Company Conduct Sheet

Sqn., Battery, or Company

No. and date of last drunk

Corps

Period not reckoning towards freedom from extra fine

Date of enlistment

Sheet No.

G.C. Badges

Signature O.C. Company, etc.

Service or Proficiency Pay

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Cont.				(2) AA Sec. 11, Reg. obey S. order - Out of bounds after Curfew					
Field	5 Dec. 43			Sec. 15 (1) AA AWL from 1900 hrs. 5 Dec. 43 to 1900 hrs. 6 Dec. 43 (absent 1 hour.)	Sgt. Grinsted.	7 days C.B.	6 Dec. 43	I.F. Douglas Major	

Certified true copy R.J. Grinsted (Capt.)

(F.T.O.)

Ex "C"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
*K74333	Pte.	DANES J.A.	Westminster Regt. (M)

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

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

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

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

	* Within last 12 months.		*Since Enlistment.	
For	Sec 15 (1) A.A.	2 times	7	times
For	Sec. 40 A.A.	1 times	3	times.
For	Sec. 11 A.A.	1 times	1	times.
For		times		times.
For		times		times.

~~[illegible]~~ EBR

or

There are ~~[illegible]~~ entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or ~~[illegible]~~ EBR by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

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

4. The accused has been in confinement, awaiting trial on the present charges, for _____ days in civil custody, and _____ days in military custody, making a total of 1 days, of which no days were spent in hospital.

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

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is EBR 27 Mar 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 years

8. The accused is entitled to deferred pay or gratuity in respect of 3 years service.

9. The accused is entitled to reckon 3 years service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~[illegible]~~ EBR

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

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

(*22647) [illegible] A.&E.W.[illegible] Gp.[illegible]
(22647) [illegible]

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

No. K74333 Rank Pte. Name DANES J.A. of Westminster Regiment (or as the case may be).

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

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NONE.		

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

Signed this 26th day of April 44

[illegible] Capt.

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

		Date of Promotion.
In the rank of	years,	
In the rank of	years	
In the rank of	years,	

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

JJJ-76 (Case #3)

PTE DANGOISNE W

See I-20 for last case
II-71 "Ind"

RECORDED AT CMHQ IN AB 160 [illegible]

CFAO6 (In lieu of AFA3) 40/P & R/1606 (1964)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig G.S.N. Gostling Comd "A" Gp, CRU dated 14 Apr 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-876	Pte	Walter	DANCOISNE	6 CIRU - CIC

PROCEEDINGS REVIEWED 3 May 44

[illegible] Lt Col

REVIEWING OFFICER, JA [illegible]

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date*) 15 Apr 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

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

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 0910 hours trial commences.

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

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

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

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

The shorthand writer is sworn.(1)

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

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

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

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

President	MAJOR	W.I. KEMP	(Perth R) 2 CIRU
Member	Capt	J. DUCHAINE, and R DECHENE (6CIRU)	
Member	Lt	P. LAUZON and R ROBBINS (6CIRC)	
~~Waiting Member~~ Judge-Advocate	Lt		
Prosecutor	LT	H.B. JACKSON	CHQ (6 CIRU)
Defending Offr	LT	J. SWITZMAN	TSR (6CIRU)

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 59 (B) and fn 2 were not followed. See DI p 31)

A8. The accused K-876 Pte. DANCOISNE, W. before arraignment make(s) (no) ~~(no)~~ plea. and

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 104), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 name and name of the accused making the plea.)

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

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

Accused: K-876 Pte Walter DANCOISNE - 6 CIRU - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.Sec.15(1)	Guilty	Guilty	
2nd A.A.Sec.24(2)	Not Guilty	Guilty	Rifle, oil bottle, pull-through, webbing bayonet, frog bayonet and bayonet Lanyard have been accounted for. Guilty of leaving greatcoat.
3rd			
4th			
5th			
6th			

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

At present under sentence for ——— beginning on (date) ——— (1) Nil

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

Time in confinement awaiting present trial—a total of 10 days, of which Nil days were spent in hospital.(1)

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

Sentence Awarded by the Court: To undergo six months detention
To be placed under stoppage of pay to amount of $2-10-7 for costs of apprehension.
To be placed under stoppage of pay to amount of $08.44 for loss of greatcoat.

Nil (Sgd) ——— 15 Apr 44 (Sgd) [illegible] President. (RP 45, 50)

Judge-Advocate, if any. Date awarded.

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

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

Date (Sgd) Commanding

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

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

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

Confirmed

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

Date 18 Apr 44 (Sgd) [illegible] Commanding COMMANDING "A" GROUP CANADIAN RECRUITS. Confirming Officer

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

Accused.	Date.	Signature of Offr.
K876 Pte Walter Dancoisne 6 CIRU CIC	22 Apr 44	[illegible] Capt Adjt 6 CIRU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. no.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

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

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 304, 330, 563-566. Overseas RO 309, 1323. MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 43(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No K-876, Private Walter DAUCOISNE, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15 (1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, did absent himself without leave from 2359 hours on the 27th day of February, 1944, until he was apprehended at Manchester at 1600 hours on the 4th day of April, 1944, thereby incurring expenses for his return to his unit to the amount of two pounds, ten shillings and seven pence (£2.10.7)

(Total absence: 36 days, 16 hours, 1 minutes).

SECOND CHARGE
SECTION 24 (c)
ARMY ACT

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

in that he,

at JASPER CAMP, WITLEY, SURREY, on the 13th day of April, 1944, was deficient of the following articles to the amount of Fifty-seven dollars and eight cents ($57.08), appraised value:

ARTICLES	LIST PRICE	APPRAISED VALUE
1 Greatcoat	$11.55	$08.44
✓ 1 Rifle	45.48	45.48
✓ 1 oil bottle	00.03	00.03
✓ 1 pul through	00.11	00.08
✓ 1 Scabbard, bayonet	00.61	00.46
✓ 1 Frog, bayonet	00.19	00.14
✓ 1 Bayonet	02.46	02.46
	$60.43	$57.08

.....
(W.E. MORGAN), Col.
Commander
6 Cdn Inf Rft Unit.

Witley, Surrey,
13 Apr 44.

To be tried by Field General Court Martial.

(C.S.N. Gostling) Brig,
Comd
"A" Gp Cdn Rft Units,
C.A.(O).

14 Apr 44
Witley, Surrey.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1097 (2068)

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
K-876	Pte		Walter	DANCOISNE	6 CIRU - CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Apr 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

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

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

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

4. ~~For trial of Sgt Cpl Pte only, the Court shall consist of a President and not less than four other members.~~

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

~~Except where otherwise specified hereunder, the Senior Offr present with the Court shall act as President.~~

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

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	W.I. KEMP	(Perth R)	2 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT		6 CIRU
Lt		6 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt		2 CIRU
	~~Senior Witness~~	
	(Must be named, if any. RP 106.)	

On Active Service in the Fd

in England (Country.)

Date 14 Apr 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G.S.N.Gostling)
Commanding "A" Gp Cdn Rft Units, A.(O)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

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

First Witness for Prosecution.

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

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

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

Re-exam : None.

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

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

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

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(2), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

M.L.

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No: K 876 Pte Dansereau M.W.
(Rank) (Name)
of 6 C.I.R.U. M.P.S. and in my opinion he is fit ~~unfit~~ to undergo
trial by Court Martial.

Station

Date April - 15 - 1944 Sgd [signature] (Medical Officer)

Under instruction

LT.	K.C.	CAMPKIN	2 CIRU
"	L.	WOODS	6 CIRU
"	J.H.A.	CARON	6 CIRU
"	J	TRUDEAU	6 CIRU
"	J.	DE PATIÉ	6 CIRU
"	G.	BOISCLAIR	6 CIRU
MAJ.	H.H.R.	CAMPBELL	~~[illegible]~~ L.S.R.
LT	E.B.	WILKINSON	2 CIRU
"	J.	[redacted]ESARUK	2 CIRU
"	D.S.	DUNCAN	2 CIRU
"	J.S.	ROY	2 CIRU

1st witness for the defense (1)

CQMS. BUCKLEY T.M. C. 20610

C.H. of D.
6 · CIRU.

defense is questioning

CQM.S Buckley on april the 13th
you checked the kit of the
accused

— yes sir

— you found the accused def.
of kit as stated in summary
of evidence

— yes sir

— Have you any reason to believe
that kit have been turned to you

— yes the rifle all these things
turned to A cap estores of 5 CIRU

— When

— last month

— you dont know exactly

— no sir

[signature]

Question by President of court.

- You say that the rifle was on the register
- Yes sir
- You remember because the accused was absent.
- Yes sir
- It was turned to you as the man's rifle.
- Yes sir
- ~~On your~~ That rifle was on charge of the accused
- Yes sir
- You can't remember the exact date at all
- No sir
- What was turned in with the rifle?
- One oil bottle, one pullthrough one scabbard, bayonet, one frog bayonet, and one bayonet.
- Have you any records to prove that the rifle was turned in
- No sir, all records have been lost at 5 CIRU

Questions by President

~~you had~~
where did you leave
- I left it at 5 CIRU, and all the ledger I had.
- who did you ask
They looked the whole place
- where were the rifles turned in
- 65 CIRU
- when did the stock go to
- they came to 6 CIRU
- there is possibility that the rifle had been re-issued at 5 CIRU
- any of these rifles came at 6 CIRU from 5 CIRU
- I could not say sir.

1015 hrs to 1045 hrs. Court adjourned for the purpose of the defence checking with Q.M. stores to find the rifle.

Plea in Mitigation of Punishment in the Case of K 876 Pte Walter Dancoisne, CIC. (6CIRU)

1. The accused has been handicapped throughout his army career by his youth, being under age for the first period of service

2. Has served in Merchant Navy and Canadian Army as well as in RAF before enlisting overseas, without ~~major~~ crime or loss of pay.

3. His record has shown no criminal ~~punis~~ tendencies. Rather the attempt at all times to get into more active service.
   (a) 1st Court Martial - AWL in order to keep from being sent back to Canada.
   (b) Could not get out to field - underage
   (c) Tried for paratroops
   (d) Passed as D/R Instructor
   (e) Enlisted twice in army in Canada,
   once Merchant Navy
   once in RAF
   finally in C.A.O

(4) Feeling of resentment & frustration
   (a) Due to being kept back from going to field
   (b) Threatened with return to Canada
   (c) Placed on draft to Italy in Nov 43 and then removed
   (d) Tried to get transfer to Western Unit (accused comes from Vancouver) and couldn't.

However, this feeling expressed itself in attempt to get into active operations, has tried to remain overseas and also to be sent on draft to Italy.

(5) The accused would like the court's recommendation that he be made available for draft to Italy or any active scene of operations, as soon as possible.

Final Plea: Court should consider its function now not only from the point of view of discipline and punishment but rather from the point of view of operations impending and recommend the accused be returned to training and service as soon as possible. J. Lintzman Lt. Defending Officer

Exhibit "H"

RECORD of the Declaration of a Court of Inquiry assembled at ALGONQUIN CAMP, WITLEY, SURREY on the 30th day of March 1944 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. K-876 Pte DANCOISNE, W., CH of O, 6 CIRU

DECLARATION

The Court declare, that No K-876, Pte DANCOISNE, W., CH of O, 6 CIRU, illegally absented himself without leave from 2359 hrs on the 27th day of February, 1944, that he is still so absent, and that, on the 27th day of February, 1944, he was deficient, and is still deficient, of the following articles to the amount of $139.55 (appraised value):

ARTICLES	VOCABULARY PRICE	APPRAISED VALUE
Anklets, web (1 pr)	$ .99	$ .74
Blouses, BD (2)	10.50	7.88
Trousers, BD (2)	10.98	8.09
Bonnet, Tam o' Shanter (1)	.60	.45
Boots, ankle (2)	10.92	8.19
Drawers, cellular, short (2)	.86	.65
Drawers, woollen (2)	2.40	1.80
Gloves, woollen (1)	.47	.35
Greatcoat (1)	11.55	8.66
Pullover, Jersey (1)	1.79	1.34
Shirts, angule (2)	4.06	3.05
Shirts, woollen (2)	2.40	1.80
Shoes, PT (1)	.65	.49
Socks, woollen (4)	1.48	1.11
Badge, cap (1)	.09	.09
Badges, shoulder "Canada" (3)	.09	.09
Badges, shoulder (Unit) (3)	.09	.09
Bags, kit (1)	1.02	.77
Braces (1)	.28	.21
Brasses, button (1)	.04	.04
Brushes, Button (1)	.26	.20
Brushes, cloth (1)	.46	.36
Brushes, hair (1)	.34	.26
Brushes, shaving (1)	.37	.28
Brushes, shoe polishing (2)	.28	.21
Brushes, tooth (1)	.11	.08
Cap comforter (1)	.34	.25
Comb, hair (1)	.04	.04
Discs, identity (3)	.03	.03
Dressing, first field (1)	.34	.34
	(See Overleaf)	

Names of President and Members:

President: Capt G. Frechette, CIC

Members: Lt G. Leduc, CIC
Lt H.J. Gillies, CIC

Signature of Commanding Officer W. E. Morgan, Col

CAPT.
ADJT., 6 CDN. INF. RFT. UNIT

Certified true copy

Signature of Officer having custody of original record.

ARTICLES	VOCABULARY PRICE	APPRAISED VALUE
Fork, table (1)	$ .07	$ .07
Holdall (1)	.19	.19
Housewife (1)	.17	.17
Knife, clasp	.86	.86
Knife, table (1)	.15	.15
Lanyard (1)	.02	.02
Razor (1)	.42	.42
Patches, distinguishing (3)	.09	.09
Ribbons, VSM (2)	.02	.02
Clasp, Maple Leaf (2)	.04	.04
Shorts, PT (2)	.86	.65
Spoon, table (1)	.07	.07
Vests, PT (2)	.72	.54
Towels, hand (2)	.64	.48
Overalls, denim, blouses (2)	5.28	3.96
Trousers, denim (2)	5.02	3.77
Brace, attachment (2)	.18	.14
Belt, waist (1)	.67	.50
Bottle, water (1)	.88	.88
Braces, web (2)	.60	.46
Carrier, water bottle (1)	.37	.28
Frog, bayonet (1)	.19	.14
Haversack (1)	1.79	1.34
Helmet, steel (1)	2.22	1.67
Pack (1)	1.84	1.38
Pouches, basic (2)	2.68	2.01
Straps, shoulder (2)	.64	.48
Straps, web supporting (2)	.26	.20
Tabs, securing, bayonet (1)	.04	.03
Messtin (1)	.35	.26
Net, camouflage (1)	.15	.11
Sheet, ground (1)	2.94	2.21
Blankets, (4)	12.28	12.28
Mug, drinking, enamel (1)	.13	.13
Detectors, gas, sleeve (4)	.24	.24
Eyeshields (6)	.45	.45
Ointment AG (2)	.30	.30
Respirator, AG (1)	4.66	3.49
Cloth, desinfecting (2)	.02	.02
Waste, cotton (1 oz)	.01	.01
Cape, AG (1)	2.76	2.76
Bayonet, Mk 4 (1)	2.46	2.46
Scabbard, bayonet (1)	.61	.46
Rifle, Mk 4 (1)	45.48	45.48
	$165.31	$139.15

Exhibit "B"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr.42

I certify that No. K/876 . . Rank. Pte . . Name. Dancoinse, M.W. . . . . .

Unit. No. 5. C. I. R. U. . . . . was arrested at. Manchester . . (Place)

at. 1600 . . (hour) on. 4 April 44 (date) and that at the time of his arrest he was wearing XXXXXXXXXXXXXXXXXX or (Civilian Clothes) Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

[signature] . . . . . Capt.,

London

(L.S. Grayson), D.A.P.M.,
London Area.

[signature]

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. K876 Rank Pte. Name Dancoisne Mt. Unit 6 C.I.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Manchester

Date	Particulars	Amount		
5 Apr 44	Escorts return fare from LONDON To Manchester	1	8	2
	Prisoners single fare to LONDON From Manchester		14	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares		8	4
	Total £	2	10	7

"C"

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R. J. Stinson
Capt. LIEUT
R. J. STINSON
ADMN. OFFICER - D.P.M's BR.
C.M.H.Q.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/P & S/483

Q.M. 9 - 2. Arms
Ap 15/44

Q.D.

This is to certify that Rifle No. 4 Mk 1 Registered no. 34L5643 is on No. 6 C.I.R.U. Arms register and in possession of Pte Campbell D. (G27918) having been reissued from stock of 5 C.I.R.U. on or about 20th March. /44

L. F. Hopper R.Q.M.S.
C.C.I.R.U. C.A.O.S.

M.A.

LIST OF WITNESSES

In the case of No K-876, Private Walter DANCOISNE, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Prosecution

Lt. R.T. Pigeon, of the Cdn Inf Corps, on the strength of 6 CIRU.

C-20610, CQMS Buckley T.M., of the Cdn Inf Corps, on the strength of 6 CIRU.

Defence

Nil

Witley, Surrey,
13 Apr 44.

LIST OF EXHIBITS

In the case of No K-876, Private Walter DANCOISNE, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Exhibit "A": Record of the Declaration of the Court of Inquiry.

Exhibit "B": Certificate in accordance with P.C. 2797 of 10 Apr 42

Exhibit "C": Expense Voucher Ref K.R. & O (Can) 539

Witley, Surrey,
13 Apr 44.

1. I acknowledge tht I have been served with a copy of the Summary of Evidence taken at Algonquin Camp, Witley, Surrey, prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charges upon which I am being bro ght to trial by Court-Martial.

2. I desire the services of an Officer to represent me at my trial by Court-Martial. I request the services of

.....Lt. HArrington, No 66 Gen Transport Coy.....

if he is available.

Pte. G. H. Darroin

Algonquin Camp,
Witley, Surrey,
13th day of April 1944.
1610 hrs.

SUMMARY OF EVIDENCE

In the case of No K-876, Private Walter DANCOISNE, of the Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness For The Prosecution

Lt. R.T. Pigeon, of the Cdn Inf Corps, on the strength of No 6 CIRU., having been duly sworn, states as follows:

I hereby produce the following documents relating to the accused, No K-876, Pte Dancoisne W.:

(a) Record of the Declaration of a Court of Inquiry purporting to be signed by Capt. L.C.A. Barette, Adjutant 6 CIRU. This document is attached to the Summary of Evidence and marked "Exhibit 'A'".

(b) Certificate in Accordance with P.C. 2797 of 10 Apr 42, purporting to be signed by Capt. L.S. Greyson, Officer in charge of A.P.M. at London. This document is attached to the Summary of Evidence and marked "Exhibit 'B'".

(c) Expense Voucher Ref: K.R. & O. (Can) 839, purporting to be signed by Lt. R.J. Stinson, officer issuing Railway Warrant and Expenses monies No 6 Pro Coy, Cdn Pro Corps, London. This document is attached to the Summary of Evidence and marked "Exhibit 'C'".

The accused declines to cross-examine this witness.

R.T. Pigeon.....Lt.

Second Witness For The Prosecution

C-20610, CQMS Buckley T.M., of the Cdn Inf Corps, on the strength of No 6 CIRU., having been duly sworn, states as follows:

On 13 Apr 44, I checked the kit of the accused and found him to be deficient of the following articles of kit which had previously been issued to him:

Articles	LIST PRICE	APPRAISED VALUE
1 Greatcoat	$11.55	$08.44
L Rifle	45.48	45.48
1 oil bottle	00.03	00.02
1 pull through	00.11	00.08
1 Scabbard, bayonet	00.61	00.46
1 Frog, bayonet	00.19	00.14
1 bayonet	02.46	02.46
	$60.43	$57.08

The accused declines to cross-examine this witness.

T.M. Buckley.....CQMS.

The accused is then cautioned as follows: "Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or to make any statement unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be given in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C), (D), (E), (F) and (G) have been duly complied with.

R.T. Pigeon.....Lt.
officer detailed to take the Summary of Evidence.

Witley Surrey
13 Apr 44

No K-876 Name Walter DANCOISNE Sqn, Battery, or Company

Date of last entry in Company Conduct Sheet: n/a

No and date of last drunk: n/a

Corps: Cdn Inf Corps

Period not reckoning towards freedom from extra fine: n/a

Date of enlistment: 6 jan 41

GC Badges: n/a

Service or Proficiency Pay: n/a

Sheet No 1

Signature OC Company, etc: J. Howkeris Capt.

MFM 6 (AFB 122) 4000/136 (3438)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 31 dec 41		Pte		1.AA.15(1)AWL fr 1100 hrs 31 dec 41 till 1720 hrs 3 jan 42(3 dys,6 hrs,20 mi) 2.AA.24(2) Losing by neglect his clothings equipment & regt necessaries to the value of £6.17.9.	Documentary	14 days C.B. 28 days pay.	6 jan 42	DO-8/10 jun 42	Forf 4 days pay for AWL
Field 10 feb 42		Pte		3.AA.40 Conduct to the prejudice of good order and military discipline Coss of apprehention £6.19.3.					
Field 26 mar 42		Pte		AA.40 Conduct to the prejudice of good order and military discipline(1.AA.15(1)AWL Fr 2200 hrs 26 mar 42 till 2359 hrs 17 apr 42(22 dys,1 hr,29 mi) 2.AA.24(2) losing by neglect his clothings equip & regt necessaries valued to £5.6.2½	Sgt.James Pte.Olsen Sgt.Milton Cpl.Wright	10 days C.B. 90 days Detn Stop:£5.6.2½ Released 21 jul 42	12 feb 42 15 may 42 Remi:28 days	RGL.Parker FGCM	Forf 23 dys pay for AWL & 17 dys pay for time in arrest

certified true copy dated [illegible]

J H Hackleman Lieut officer having custody of original documents.

(F350)

No K-876 Name Walter DANCOISNE Sqn, Battery, or Company — Corps Cdn Inf Corps — Date of enlistment 6 jan 41 — GC Badges n/a — Service or Proficiency Pay n/a — MFM 6 (AFB 122) 49/PAM/106 (3498)

Date of last entry in Company Conduct Sheet n/a — No and date of last drunk n/a — Period not reckoning towards freedom from extra fine n/a — Sheet No 1 — Signature OC Company, etc J. Hewkeris Capt. — Character

Place	Date of offence	Rank	Cases of drunken-ness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of earlier disposal with trial	By whom awarded	Remarks
Field	31 dec 41	Pte		1.AA.15(1)AWL fr 1100 hrs 31 dec 41 till 1730 hrs 3 jan 42(3 dys,6 hrs,30 mi) 2.AA.24(2) Losing by neglect his clothings equipment & regt necessaries to the value of £6.17.9. 3.AA.40 Conduct to the prejudice of good order and military discipline Cost of apprehention £6.19.3.	Documentary	14 days C.B. 28 days pay.	6 jan 42	DO-8/10 jun 42	Forf 4 days pay for AWL
Field	10 feb 42	Pte		AA.40 Conduct to the prejudice of good order and military discipline(	Sgt.James Pte.Olsen	10 days C.B.	12 feb 42	RGL.Parker	
Field	26 mar 42	Pte		1.AA.15(1)AWL Fr 2200 hrs 26 mar 42 till 2359 hrs 17 apr 42(22 dys,1 hr,29 mi) 2.AA.24(2) losing by neglect his clothings equip & regt necessaries valued to £5.2.2½	Sgt.Milton Cpl.Wright	90 days Detn Stop £5.6.2½ Released 21 jul 42 Remi:28 days	15 may 42	FGCM	Forf 23 dys pay for AWL & 17 dys pay for time in arrest

certified true copy dated [illegible] officer having custody of original documents. (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 7 aug 42		Pte		AA.15(1)AWL Fr 2300 hrs 7 aug 42 till 0900 hrs 8 aug 42(10 hrs)	Cpl.Blacklock	14 days F.P. 14 days pay.	8 aug 42	DO-192/ 15 aug 42	forf 1 day pay for AWL
Field 15 sep 42		Pte		AA.40 Conduct to the prejudice of good order and military discipline(Reluctance to obey an NCO on parade)	Sgt.Fitzgerald	5 days C.B.	16 sep 42	---	
Field 21 sep 42		Pte		AA.11 Desobeying unit standing orders	CSM.Fisher	5 days C.B.	21 sep 42	Maj.Plows	
Field 5 feb 43		Pte		AA.15(1)AWL 8 hrs 15 mi	CSM.Jackson Sgt.Meares	10 days pay. 10 days F.P.	6 feb 43	Lt/Col. Hewitt	Forf 1 day pay for AWL
Field 20 feb 43		Pte		AA.15(1)AWL Fr 2200 hrs 20 feb 43 till 0740 hrs 23 feb 43(2 dys,9 hrs,40 mi)	Documentary	7 days F.P. 7 days pay.	24 feb 43	DO-24 3 mar 43	Forf 3 dys pay for AWL
Field 27 feb 43		Pte		AA.40 Conduct to the prejudice of good order and military discipline(Failing to rise at reveille)	Cpl.Milum	7 days C.B.	27 feb 43	Maj.Paquet	
Field 19 apr 43		Pte		1.AA.15(1)AWL Fr 0600 hrs 19 apr 43 till 0115 hrs 24 apr 43(4 dys,19 hrs,15 mi) 2.AA.15(1)AWL Fr 0700 hrs 25 apr 43 till 2030 hrs 25 apr 43(13 hrs,30 mi)	Sgt.Show Sgt.Emms	12 days F.P. 12 days pay.	26 apr 43	Maj.Crofton	Forf 6 days. pay for AWL

certified true copy dated 2 mar 44 [illegible] officer having custody of original documents.

R + F

No K-876 Name Walter DANCOISNE | Sqn, Battery, or Company | Corps Cdn Inf Corps | Date of enlistment 6 jan 41 | GC Badges n/a | Service or Proficiency Pay n/a | MFM 6 (AFB 1227 40/PAM/138 (3438))

Date of last entry in Company Conduct Sheet n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 2 | Signature OC Company, etc J.Howkeris Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 apr 43	Pte		AA.40 Conduct to the prejudice of good order and military discipline(Failed to report on defaulters parade)	Sgt.Jackson	4 days C.B.	1 may 43	Capt.Cross	
Field	11 may 43	Pte		AA.15(1)AWL Fr 1315 hrs 11 may 43 till 1750 hrs 11 may 43(4 hrs, 35 mi)	Sgt.Robinson Cpl.Barber	14 days C.B.	11 may 43	Lt/Col.Hewitt	
Field	15 may 43	Pte		AA.15(1)AWL Fr 1245 hrs 15 may 43 till 0500 hrs 22 jun 43, thereby incurring expenses for appr & return to his unit to the amount of £1.17.11 (37 days, 16 hrs, 15 mi)	Documentery	90 days Detn Released 27 aug 43 Remisson 30 days.	29 jun 43	FGCM	Forf 38 days pay for AWL & 7 days pay for timein arrest
Field	5 dec 43	Pte		AA.15(1)AWL Fr 2359 hrs 5 dec 43 till 0815 hrs 6 dec 43(8 hrs, 16 mi)	Cpl.Finn	Admonished	7 dec 43	Maj.Palmer	Forf 1 day pay for AWL

certified true copy consisting of two pages dated [illegible] officer having custody of original documents.

(PTO)

24 C.

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K-876	Private	Walter DANCIGHK	Canadian Infantry Corps,

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not inserted in the proceedings.

† See para. 671, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheet, pre-enlistment being given in the usual serious offence or each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For A. A. 15 (1)	4 times	7 times.
For A.A. 40	1 times	5 times.
For A. A. 24 (2)	Nil times	1 times.
For A.A. 11	Nil times	1 times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

~~The accused has not been previously convicted of~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~The accused at the present time is under sentence of~~ ~~beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 10 days in military custody, making a total of 10 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 years old

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 6 Jan 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 years 11 7 d

8. The accused is entitled to deferred pay or gratuity in respect of 2 years 117 days, service.

9. The accused is entitled to reckon 2 years 117 days, service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~He is in possession of, or entitled to wear any military decoration or award~~

~~11. (In the case of an officer.) The accused before he was made a commissioned officer held the substantive~~ rank of

12. ~~(In the case of an officer.) The accused holds in the army the rank of dated~~ ~~and in his regiment (or corps or department) the rank of dated~~

(P1809) Wt.15882/144 (22,000) 8/42 A.&E.W.Ltd. Gp.698

AA. 8

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. K-876 Rank Private Name Walter DANCOISNE of Cdn Inf Corps Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	Field 15 May 42	A.A. 15 (1) AWL A.A. 24 (2)	90 days Detn Stop: £5.6.2½	22 days.
FGCM	Field 29 jun 43	A.A. 15 (1) AWL Cost of appr £1.17.11	90 days Detn Stop: £1.17.11	30 days.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15 day of April 1944

[signature]

officer having custody of original documents.

~~In the second has served as a non-commissioned officer continuously, without reduction, to the present date.~~

In the rank of ..... years

In the rank of ..... years

~~In the rank of~~ ..... years

Date of Promotion.

(Note: Cases of any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through unless that in the case of a trial by field general court martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

HB-109

PTE DANIEL B.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D137786 Pte Daniel B

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning ~~on (date)~~ .....

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 107 days, of which nil days were spent in hospital.(1)

(1. See RP 40(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labour for 4 (four) months

(S.jd) ..... 10 Oct 44 (Sgd) .....

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed Ewtt

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) Ewt Brandreth Br

Date 10 Oct 44 Commanding COMMANDER. I CDN BASE REP GROUP

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D137786 Pte Daniel, B	10-10-44	Officer Commanding 1 Bn 1 Cdn Base Reinforcement Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 413-109

CPA86 (In lieu of AFA3) 40/P & G/1698 (4/43)

FIELD GENERAL COURT-MARTIAL 4/38B

RECEIVED 9 NOV 1944 JAG BRANCH

Convened at H.Q. S.A.Lo M.C. by Comd 16 B.R.Gp dated 6 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D137786	Pte	Daniel	DANIEL	1 Bn CBRD

PROCEEDINGS REVIEWED

for Deputy Assistant Adjutant General

9 Nov 44

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 4 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 5a, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1305 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ~~Sjt~~ [illegible] as interpreter ? Ans NO

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer ? Ans .....~~ ~~The shorthand writer is sworn.~~(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 15, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	Ho L John (CIC)	28th Regt Italian
Member	Lieut	A L Moretto (CIC)	2 Cdn Field Regt
Member	Lieut	J. H. Pelletier (CIC)	1 Bn CBRD
Judge-Advocate			
Prosecutor	Lieut	W. J. Ross (CIC)	1 Bn 12 Bde
Defending Offr	Capt	J. L. Nicholson (CIC)	1 Bn 1 CBRD

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 60 (B) and fn 2 were not followed. See Div p 2.)

A8. The accused D 137786 Pte Daniel B. before arraignment makes(s) (No ~~no~~ plea.

(1. If a special plea is made for separate trial on one or more charges, RP 62(E), 108, or as to the jurisdiction of the Court, (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(does)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (in closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B 5, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 80(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. .....
Do you intend to call witnesses on your behalf?
Ans. .....
Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the name number, rank, name and corps as the accused. Admitted in evidence and marked Ex E 1 and Ex E 2 respectively.(3)
(*1. MFB 255 or MFB 284. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes by Defending Officer.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges or all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 306, 350, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D 137786 Pte DANIEL, [redacted]
1 Canadian Base Reinforcement Battalion,
1 Canadian Base Reinforcement Depot,
a soldier of the Canadian Army Overseas,
is charged with:-

FIRST CHARGE
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT
LEAVE,

in that he,

In the Field absented himself without leave at 2000 hours 5 February 1944, until he surrendered himself at 1300 hours 24 June 1944.
(Total absence 139 days 17 hours)

Vincent McKenna Lt-Col.,
(Vincent McKenna)
Officer Commanding,
1 Bn, 1 Cdn Base Rft Depot.

In the Field
[redacted].
25 September 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
6 Oct 44

[redacted] Colonel
[redacted] 1 Cdn Base Rft Dp
Cdn Army-CMF

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of APAR 40/P&S/169[illegible])

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D137786	Pte		Benoit	DANIEL	1 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 6 Oct 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) M B JOHN (CIC) (Must be named. RP 106.) 2 Cdn Reall Centre (Unit.)

MEMBERS.

Capt or Lieut to be detailed by OC 2 Cdn Reallocation Centre

Lieut (Rank.) J H PELLETIER (CIC) (Named or detailed. RP 106.) 1 Bn 1 CBRD (Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by OC 2 Cdn Reallocation Centre (Rank.) (Named or detailed, if any. RP 106.) (Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in Italy (Country.) (Signed personally. RP 105 fn 2.) Colonel (Rank.)

(G. A. LEE)

Date 6 Oct 44 T/ Commanding 1 Cdn Base Rft Gp-CMF Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had "enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 68(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 63.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 86(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 580. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an ex. ships marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE
(Kit (Can) 557)

I certify that I have this morning examined No D137786 Rank Pte
Name DANIEL R. of R22R 1Bn. and in my opinion he is
fit/unfit to undergo trial by Court Martial.
fit.

In the Field
Date 9-10-44.

John McEwen Capt
(MEDICAL OFFICER)

Statement in Mitigation of Punishment

D 137756 Pt Daniel, B.

The accused was seven months at the front then came out with his Unit to Rest. At this time he received a letter saying that his father was in hospital and his mother was very sick. The boys nerves were not too good after the actions he had been through and that along with the letter from home upset him mentally. He felt "sorry for himself" and the unit not being in action he went "awz. He surrendered himself with the intention of going back to his unit. His record as a soldier is good ~~only~~ and in considering sentence I would [illegible]

SUMMARY OF EVIDENCE

In the case of

D 137786 Pte DANIEL, B., 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, asoldier of the Canadian Army Overseas.

TheCommanding Officer directs that the evidence be taken on oath.

1st WITNESS For the Prosecution

D 95834 Pte MacLeod, D.D., a soldier of the Canadian Army Overseas, having been duly sworn states:

I am clerk at 1 Bn, 1 C.B.R.D. Orderly Room, as such I produce the following documents under AA Sec 163 (i)(m) .

1. A certified true extract from Daily Order Part II No. 10 dated 3 March 44, R22e Regt, issued by Cdn Sec GHQ 2 Echelon AAI, stating that the a/m soldier absented himself at 2000 hrs 5 February 1944. This document is attached and marked exhibit "A".

2. A certificate of surrendering under A.A. 163 (1)(m) signed by Lt C. Anderson, i/c of Provinical Police officers Police station stating that the a/m soldier surrendered himself at 1300 hours 24 June 1944. This document marked exhibit "B".

D. MacLeod, L.L.

Sgd D. MacLeod

The accused declines to cross examine the witness.

The two documents referred to by the witness, produced read overto the accused, marked exhibit "A" and "B", signed by me and attached hereto.

The accused having been duly and strictly warned in accordance with R.P. 4(e) elects to reserve his defence.

Summary of evidence composed of two pages and two exhibits marked "A" and"B" taken down by me in the presence of the accused this 12th day of August 1944. R.P. 4(e)(c)(d)(f) and (f) having been complied with.

Sgd D. Dion Capt.,
Offr Taking Summary

Int the Field
12 Aug 44

Note page 5 Para 4(g)

Last Order No. 9 25 Feb 44

ROYAL 22e REGIMENT
PART II ORDERS ISSUED BY
CANADIAN SECTION, G.H.Q., 2nd ECHELON (CMF)

No. 10 3 Mar 44

"A" OFFICERS

1. STRENGTH INCREASE:
(a) T.O.S. from R22eR X-4 List 4 Bn wef 27 Feb 44
(Auth: Cdn O2K/1 Div ARS/350 d/25 Feb 44)
Lieutenant H. Chasse

2. STRENGTH DECREASE:
(a) S.O.S. to X-8 List wef 29 Feb 44 (Auth: P.O. 463 d/1 Mar 44)
Lieutenant F. Brunet
Lieutenant J.M. Dussault

(b) S.O.S. to R22eR X-3 List wef 18 Feb 44
A/Captain M.E.J. Parisseault

3. APPOINTMENTS & PROMOTIONS:
(a) To be A/Captain wef 30 Nov 43 (Auth: Overseas H.Q. 4220)
Lieutenant R.J.G. Des Rivieres

"B" OTHER RANKS

4. STRENGTH INCREASE:
(a) T.O.S. from R22eR X-4 List 4 Bn wef 23 Feb 44
(Auth: Ech/1 CD/641 d/20 Feb 44)

D66239	Pte	Allain, J.M.
B57734	Pte	Boudreau, R.
B5890	Pte	Doucet, A.E.
B5117	Pte	Giroux, J.E.
C33788	Pte	Hunsault, J.L.
E10546	Pte	Leblanc, S.J.
D124717	Cpl	Nepveu, F.
D41030	Pte	Richer, F.R.
D63507	Pte	Trudeau, R.
D62633	Pte	Vaillancourt, R.J.R.

(b) T.O.S. from R22eR X-4 List 4 Bn wef 25 Feb 44
(Auth: Ech 1 CD/641 d/20 Feb 44)

B42370	Pte	Bolduc, L.
D38043	L/Cpl	Cotnoir, A.A.
B10311	Pte	Dube, R.
B5710	Pte	Gagnon, D.
D56297	Pte	Lavertu, F.
B4252	Pte	Lemelin, R.
D137104	Pte	Morvin, J.G.
D57103	Pte	Neagle, G.
D156611	Pte	Nepveu, C.
B6046	Pte	Ouellet, R.
D140522	Pte	Riendeau, J.H.
B5220	Pte	Robert, G.
B4377	Pte	Trottier, E.

(c) T.O.S. from H.Q. 1 Cdn Corps wef 27 Feb 44
(Auth: CMHQ/43/Post Gen/3 (A7) d/22 Feb 44)

B4301	CSM	Dagenais, D.

5. STRENGTH DECREASE:

(a)S.O.S - deceases - Killed in Action wef 20 Feb 44
(Auth: AFW 6014 Ser 192 P.4 d/26 Feb 44
G5386 A/L/Cpl Fraser, E.D.
G3691 L/Sgt Michaud, L.

(b)S.O.S. - deceased - died of wounds wef 20 Feb 44
(Auth: AFW 3014 Ser 192 P.4 d/26 Feb 44)
E23342 Pte Desrosiers, L.

(c)S.O.S. to R22eR X-6 List wef 20 Feb 44.
(Auth: AFW 3014 Ser 193 P.17 d/29 Feb 44)
E4616 Pte Forland, L.
D57306 Pte Lacombe, D.
G19866 Pte Tardif, C.

(d)S.O.S. to R22eR X-6 List wef 16 Dec 43.
Auth: AFW 3014 Ser 191 P.8 d/25 Feb 44
F4238 Sgt Senez, F.

(e)S.O.S to RCASC X-3 List wef 12 Feb 44
E4622 Pte Ostiguy, G.

(f)S.O.S. to X-8 List wef 27 Feb 44
(Auth: CECH/43/Post Gen/1 (A7) d/26 Feb 44)
D66161 Pte Desbiens, L.J.P.

(g)S.O.S. to R22eR X-4 List 4 Bn pending commital to a Mil Prison

E39044	Pte	Boullianne, J.B.	20 Feb 44
C51551	Pte	Demers, G.	25 Feb 44
E5736	Pte	Jobin, R.	20 Feb 44
E4361	Pte	Plante, P.E.	21 Feb 44
E4452	Pte	Regimbal, J.	21 Feb 44

(h)S.O.S. to 2 CIB Sp Gp (SLI) wef 18 Feb 44
(Auth: 1 CDR/6-2-2 d/9 Feb 44)
L2179 Pte Jubinville, J.

(i)S.O.S. to 3 CIB Sp Gp (SLI) wef 18 Feb 44
(Auth: 1 CDR/6-2-2 d/9 Feb 44)
M15656 Pte Gagnon, P.J.

(j)S.O.S as a deserter wef 18 Feb 44 having been dec illegally absent by a Ct of Inq from 2000 hrs 16 Dec 43. Definciencies in kit to the value of £3.6.9½
D62526 Pte Motte, R.

(k)S.O.S. as a deserter wef 11 Feb 44 having been dec illegally absent by a Ct of Inq from 1030 hrs 29 Dec 43. Defincies in kit to the value of £3.6.9½
E42252 Pte Cliche, C.
E5104 Pte Demers, O.

(l)S.O.S. as a deserter wef 6 Feb 44 having been dec illegally absent by a Ct of Inq from 0800 hrs 24 Dec 43. Deficiencies in kit to the value of £3.6.9½
E14662 Pte Cote, A.

3. STRENGTH DIGEST (Cont'd)

(m)S.O.S. as a deserter wef 6 Feb 44 having been dec illegally absent by a Ct of Inq from 1800 hrs 25 Dec 43. Deficiencies in kit to the value of £3.6.9½
B133077 Pte Emond, R.

(n)S.O.S. as a deserter wef 6 Feb 44 having been dec illegally absent by a Ct of Inq from 1800 hrs 24 Dec 43. Deficiencies in kit to the value of £3.6.9½
E100653 Pte Emond, R.

(o)S.O.S. as a deserter wef 6 Feb 44 having been dec illegally absent by a Ct of Inq from 1600 hrs 16 Dec 43. Deficiencies in kit to the value of £3.6.9½
E4120 Pte Veilleux, E.

(p)S.O.S. to R22eR X-3 List wef dates shown

B13190	Pte	Adams, P.	Carpenter "B"	27 Feb 44
H17087	Pte	Allard, J.O.		27 Feb 44
E4161	Cpl	Berube, C.A.		24 Feb 44
D66134	Pte	Boucher, J.H.M.		20 Feb 44
E5231	CQMS	Boulet, J.L.		23 Feb 44
E5353	Pte	Cabot, U.		20 Feb 44
D58084	Pte	Charbonneau, G.E.		22 Jan 44
E100132	Pte	Cloutier, L.		20 Feb 44
E5799	Pte	Cyr, E.		28 Feb 44
D106043	L/Cpl	Denis, J.E.	Dvr Mech "C"	20 Feb 44
E4948	Pte	Duchesne, J.		21 Feb 44
D83065	Pte	Dupuis, T.		19 Feb 44
E19138	Sgt	Durand, P.H.	Clerk "C"	16 Feb 44
E4875	L/Cpl	Fleury, L.		25 Feb 44
E42227	Cpl	Fourcaudot, M.		21 Feb 44
G672	Pte	Gagnon, E.J.		9 Feb 44
H204426	Pte	Gaudette, A.		15 Jan 44
E5117	Pte	Giroux, J.E.		24 Feb 44
D62933	Pte	Guerin, M.		16 Feb 44
E56229	L/Cpl	Hebert, A.		19 Feb 44
D106017	Cpl	Hoon, J.H.L.		19 Feb 44
E11034	Pte	Isabelle, M.P.		29 Feb 44
D62546	Pte	Kotsos, M.		23 Feb 44
E9156	Pte	Laflamme, P.		9 Feb 44
E42573	Pte	Laprise, G.		21 Feb 44
D41008	Pte	Laurendeau, B.		19 Feb 44
G63309	Pte	Levesque, O.		19 Feb 44
C42543	Pte	Martel, A.		15 Feb 44
D163072	Pte	Meloche, R.		24 Feb 44
E5302	Pte	Morin, J.C.		21 Feb 44
B137024	Pte	Nadeau, G.		9 Feb 44
D51147	Pte	Ouellette, R.J.J.		31 Jan 44
L27270	Pte	Ouellette, W.J.		22 Feb 44
D46232	Pte	Paquette, A.J.		28 Feb 44
E100807	Pte	Rioux, C.		21 Feb 44
D62724	Pte	Sonneville, J.E.P.J.		28 Feb 44
D124818	L/Cpl	St. Francois, R.		12 Jan 44
D62633	Pte	Vaillancourt, R.J.E.		28 Feb 44

5. STRENGTH DECREASE (Cont'd)

(q) AMENDMENT Part II Order No. 44 d/5 Sep 43 para 2(c) ~~xxxx~~ insofar as it refers to the u/m is amended to read "S.O.S. to ~~ROAMP~~ X-3 List"
E4603 Pte Denis, L.

(r) ~~AMENDMENT~~ Part II Order No. 4 d/24 Jan 44 para 5(c) insofar as it refers to the u/m is cancelled. (Auth: AFW 3014 Ser 191 P.15-25 Feb 44)
D63571 Pte Bergeron, D.

~~XXXX

6. ABSENT WITHOUT LEAVE (Cont'd)

(m)AWL from 0730 hrs 5 Feb 44. Still absent 0730 hrs 13 Feb 44 (8 days) Still absent 0730 hrs 27 Feb 44 (22 days)
D106067 Pte Cloutier, R.

(n)AWL from 2000 hrs 15 Feb 44. Still absent 2000 hrs 23 Feb 44 (8 days)
E4118 Pte Couillard, R.J.

(o)AWL from 0800 hrs 4 Feb 44. Still absent 0800 hrs 12 Feb 44 (8 days)
E5806 Pte Coulombe, J.B.

(p)AWL from 2200 hrs 4 Feb 44. Still absent 2200 hrs 12 Feb 44 (8 days) Ret'd from AWL 1245 hrs 20 Feb 44.
D57824 Pte Cudia, B.

(q)AWL from 2000 hrs 5 Feb 44. Still absent 2000 hrs 13 Feb 44 (8 days) Still absent 2000 hrs 27 Feb 44 (22 days)
D137786 Pte Daniel, J.E.B.

(r)AWL from 2030 hrs 4 Feb 44. Still absent 2030 hrs 12 Feb 44 (8 days)
C32603 Pte Desarmeaux, J.O.

(s)AWL from 1330 hrs 7 Feb 44. Still absent 1330 hrs 15 Feb 44 (8 days) Ret'd from AWL 1900 hrs 24 Feb 44.
D56989 Pte Dufresne, J.

(t)AWL from 2000 hrs 8 Feb 44. Still absent 2000 hrs 16 Feb 44 (8 days) Ret'd from AWL 1900 hrs 24 Feb 44.
E5687 Pte Giguere, L.

(u)AWL from 2200 hrs 4 Feb 44. Still absent 2200 hrs 14 Feb 44 (8 days)
D66118 Pte Gravel, J.L.

(v)AWL from 0700 hrs 6 Feb 44. Still absent 0700 hrs 14 Feb 44 (8 days)
E5938 Pte Jean, L.P.

(w)AWL from 0045 hrs 11 Feb 44. Still absent 0045 hrs 19 Feb 44 (8 days) Ret'd from AWL 2355 hrs 24 Feb 44.
D58511 Pte Lambert, L.

(aa)AWL from 1330 hrs 7 Feb 44. Still absent 1330 hrs 15 Feb 44 (8 days) Ret'd from AWL 1500 hrs 16 Feb 44.
E57762 Pte Laberge, L.

(bb)AWL from 0800 hrs 7 Feb 44. Still absent 0800 hrs 15 Feb 44 (8 days) Still absent 0800 hrs 29 Feb 44 (22 days)
E4092 L/Cpl Martel, R.

(cc)AWL from 2200 hrs 6 Feb 44. Still absent 2200 hrs 14 Feb 44. (8 days) Still absent 2200 hrs 28 Feb 44 (22 days)
E5922 Pte Gregoire, E.
D94104 Pte Menard, G.

6. ABSENT WITHOUT LEAVE (Cont'd)

(dd)AWL from 0830 hrs 6 Feb 44. Still absent 0830 hrs 14 Feb 44 (8 days) Still absent 0830 hrs 28 Feb 44 (22 days)
D94109 Pte Menard, L.

(ee)AWL from 0100 hrs 11 Feb 44. Still absent 0100 hrs 19 Feb 44 (8 days)
B5180 Pte Charron, H.
B42012 Pte Pelletier, A.
B4217 Pte Matte, C.E.
B57272 Pte Rouleau, V.

(ff)AWL from 0300 hrs 11 Feb 44. Still absent 0300 hrs 19 Feb 44 (8 days)
B4378 Pte Pilotte, S.

(gg)AWL from 1500 hrs 10 Feb 44. Still absent 1500 hrs 18 Feb 44 (8 days) Ret'd from AWL 1700 hrs 21 Feb 44.
D139380 Pte Pilon, J.F.E.

(hh)AWL from 1400 hrs 21 Jan 44. Still absent 1400 hrs 12 Feb 44 (22 days)
D3156 Pte Poirier, J.P.

(ii)AWL from 0045 hrs 11 Feb 44. Still absent 0045 hrs 19 Feb 44 (8 days) Ret'd from AWL [redacted] 1430 hrs 19 Feb 44
D150087 Pte Raymond, J.A.

(jj)AWL from 1100 hrs 10 Feb 44. Still absent 1100 hrs 18 Feb 44 (8 days)
D59200 Pte Sabourin, J.A.

(kk)AWL from 1300 hrs 21 Jan 44. Still absent 1300 hrs 12 Feb 44. (22 days)
B5615 Pte St. Hilaire, J.

(ll)AWL from 0800 hrs 7 Feb 44. Still absent 0800 hrs 15 Feb 44 (8 days) Redt'd from AWL 2320 hrs 22 Feb 44.
B4395 Pte Tardif, D.

(mm)AWL from 0830 hrs 11 Feb 44. Still absent 0830 hrs 19 Feb 44 (8 days)
D124769 Pte Yargeau, C.

(nn)AMENDMENT: Part II Order No. 5 d/29 Jan 44 para 5(b) insofar as it refers to the u/m is amended to read "Ret'd from AWL 1500 hrs 5 Jan 44"
C51551 L/Cpl Demers, C.

(oo)AMENDMENT: Part II Order No. 6 d/5 Feb 44 para 8(j) insofar as it refers to the u/m is amended to read "Ret'd from AWL 1155 hrs 18 Jan 44"
[redacted]
B4452 Pte Regimbal, J.

9. APPOINTMENTS:

(a) Appointed A/L/Sgt wef 23 Feb 44
R4904 Cpl Chamberland, L.

(b) Appointed A/S MG wef 24 Feb 44
R4766 Sgt Gauthier, G.

(c) Appointed A/L/Cpls wef dates shown
D41074 Pte Casavant, R. 23 Feb 44
D513 4 Pte Favron, J.P.L. 17 Feb 44
R57755 Pte Roberge, J.P. 17 Feb 44

8. REVERSIONS:

(a) Reverts to the rank of private at his own request wef 20 Feb 44
To draw daily rates of pay of $1.50
B73332 Pte(A/L/Sgt) Pettigrew, G.R.

(b) Revert to the appointment of L/Cpl on adm to hosp wef dates shown
D106043 L/Cpl(A/Cpl) Denis, J.E. Dvr Mech"J" 20 Feb 44
D124818 L/Cpl(A/Cpl) St.Francois, R. 12 Jan 44

(c) Revert to the rank of private on adm to hosp wef dates shown.
To draw daily rates of pay of $1.50
R5353 Pte(A/L/Cpl) Cabot, U. 20 Feb 44
R5799 Pte(A/Cpl) Cyr, E. 28 28 Feb 44
C42543 Pte(A/L/Cpl) Martel, A. 15 Feb 44
D62724 Pte(A/L/Cpl) Beauseville, J.B.P.J. 20 Feb 44

9. PAY AND ALLOWANCES:

(a) Granted a daily regimental rate of pay of $1.40 wef 15 Oct 43 having completed 4 months service with efficient and good conduct (Auth: GO 486/42)
D57306 Pte Lacombe, D.

(b) Granted a daily regimental rate of pay of $1.50 wef dates shown having completed 6 months proficient service (Auth: GO 486/42)
M100976 Pte Goulc, H. 16 Aug 43
D138629 Pte Gagnon, J.M.G. 19 Aug 43
D57306 Pte Lacombe, D. 15 Dec 43
R5725 Pte Michaud, A. 3 Aug 43

10. TRADESMEN'S QUALIFICATIONS:

(a) Qual Bricklayer "B" wef 4 Feb 44 (Auth: TMB Report d/4 Feb 44)
R4605 Pte Brien, G.
R5754 Pte Maheaux, R.
R5568 Pte Morin, L. (Bricklayer "B")

(b) Qual Carpenter "B" wef 4 Feb 44 (Auth: TMB Report d/4 Feb 44
R4074 Pte Belanger, J.
R59803 Pte Belanger, A. (Carpenter "C")

11. TRADESMEN'S RATES OF PAY:

(a) Reverts to regtl rates of pay of $1.50 per diem wef 15 Feb 44
R5464 Pte Larue, L. (Bricklayer "C")

12. PUNISHMENTS:

(a) On 12 Feb 44 tried by F.G.C.M.
CHARGE: AA.15(1) AWL from 0600 hrs 6 Dec 43 to 1155 hrs 18 Jan 44 (absent 43 days 5 hrs 55 mins)
FINDINGS: Guilty
SENTENCE: 2 years imp with hard labour
CONFIRMATION: Findings confirmed by Comd 3 CIB 13 Feb 44 but sentence remitted to one year imp with hard labour
CLOSE ARREST: In close arrest from 1155 hrs 18 Jan 44 to date of trial
FORFEITURES: Forf 44 days pay under FRAI 149(1)(a)
Forf 24 days pay under FRAI 149(1)(a)(i)
Forf 365 days pay under FRAI 149(1)(b)
Total forf of 433 days pay
H39044 Pte Bouillanne J.B.
H4452 Pte Reginbal J.

(b) On 8 Feb 44 admon for an offence under AA 15(1) AWL from 0800 hrs 1 Feb 44 to 1000 hrs 8 Feb 44 (absent 7 days 2 hrs)
Forf 8 days pay under FRAI 149(1)(a)
E100733 Pte Blackburn B.
H4552 Pte Parent P.M.

(c) On 23 Feb 44 admon for an off under AA 15(1) AWL from 1800 hrs 10 Feb 44 to 1000 hrs 21 Feb 44 (absent 10 days 16 hrs)
Forf 11 days pay under FRAI 149(1)(a)
H48850 Pte Bernard, D.
H4230 Pte Dorers D.

(d) On 23 Feb 44 admon for an off under AA 15(1) AWL from 1600 hrs 19 Feb 44 to 1930 hrs 20 Feb 44 (absent 1 day 3 hrs 30 mins)
Forf 2 days pay under FRAI 149(1)(a)
D99515 Pte Bigras A.

(e) On 23 Feb 44 admon for an off under AA 15 (1) AWL from 1830 hrs 15 Feb 44 to 1915 hrs 19 Feb 44 (absent 4 days 45 mins)
Forf 5 days pay under FRAI. 149(1)(a)
H42367 Pte Bisson J.P.

(f) On 23 Feb 44 admon for an off under AA 15(1) AWL from 1600 hrs 15 Feb 44 to 1700 hrs 19 Feb 44 (absent 4 days 1 hr)
Forf 5 days pay under FRAI 149(1)(a)
E57816 Pte Blais Y.

(g) On 28 Feb 44 awarded 21 days FP and a forf of 21 days pay for an off under AA15(1) AWL from 0800 hrs 31 Jan 44 to 1630 hrs 21 Feb 44 (absent 21 days 8 hrs 30 mins) In close arrest from 1630 hrs 21 Feb 44 to date of trial. Forf 22 days pay under FRAI 149(1)(a) Forf 21 days pay under FRAI.149(2) Forf 6 days pay under FRAI 149 (1)(a)(ii) Total forf of 49 days pay
D66304 Pte Boisson J.B.

(h) On 23 Feb 44 admon for an off under AA 15(1) AWL from 1830 hrs 15 Feb 44 to 1945 hrs 19 Feb 44 (absent 4 days 1 hr 45 mins)
Forf 5 days pay under FRAI 149(1a)(a) (Completely concurrent with the award of 10 Feb 44 vide Part II Order No. 8 d/18 Feb 44 para 12(c) - NIL net forf of pay
E100536 Pte Claval J.G.

12. PUNISHMENTS (Cont'd)

(i) On 27 Feb 44 awarded a forf of 14 days pay for an off under AA 15(1) AWL from 2200 hrs 4 Feb 44 to 1245 hrs 20 Feb 44 (absent 15 days 14 hrs 45 mins) Forf 14 days pay under FRAI 149(2) Forf 16 days pay under FRAI 149(1)(a) Total forf of 30 days pay

D57324 Pte Cudin B.

(j) On 28 Feb 44 awarded 28 days FP and a forf of 28 days pay for an off under AA15(1) AWL from 0800 hrs 25 Jan 44 to 2320 hrs 22 Feb 44(absent 28 days 15 hrs 20 mins) In close arrest from 2320 hrs 22 Feb 44 to date of trial. Forf 28 days pay under FRAI 149 (2) Forf 29 days pay under FRAI 149(1)(a) Forf 5 days pay under FRAI 149(1)(c)(ii) Total forf of 62 days pay

E4639 Pte Demers A.

(k) On 17 Feb 44 tried by F.G.C.M.

CHARGES: AA 15(1) AWL from 1800 hrs 13 Dec 43 to 1500 hrs 5 Jan 44 (absent 22 days 21 hrs)
AA 15(1) AWL from 0800 hrs 11 Jan 44 to 1400 hrs 21 Jan 44 (absent 10 days 6 hrs)

FINDINGS: Guilty on both charges

SENTENCE: 2 years imp with hard labour & reduced to rank of Private

CONFIRMATION: Findings & sentence conf'd by Cond 3 CIB 25 Feb 44

CLOSE ARREST: In close arrest from 1500 hrs 5 Jan 44 to 0800 hrs 11Jan 44 and from 1400 hrs 21 Jan 44 to date of trial.

FORFEITURES: Forf 14 days pay under FRAI 149(1)(a)
Forf 730 days pay under FRAI 149(1)(b)
Forf 52 days pay under FRAI 149(1)(c)(i)
Total forf of 796 days pay . To draw daily rest'l rate of pay of $1.50.

C51551 L/Cpl Demers G.

(l) On 27 Feb 44 awarded a forf of 5 days pay for an off under AA 15 (1) AWL from 2200 hrs 15 Feb 44 to 1450 hrs 17 Feb 44 (absent 1 day 16 hrs 50 mins) (2) for an off under AA 15(1) AWL from 1930 hrs 17 Feb 44 to 1900 hrs 22 Feb 44 (absent 5 days 3 hrs 30 mins) Forf 5 days pay under FRAI 149(2) Forf 8 days pay under FRAI 149 (1)(a) Total forf of 13 days pay

A57819 Pte Desgagnes J.G.

(m) On 27 Feb 44 awarded a forf of 5 days pay for an off under AA15 (1) AWL from 2200 hrs 15 Feb 44 to 1900 hrs 22 Feb 44 (absent 6 days 21 hrs) Forf 5 days pay under FRAI 149(2) Forf 7 days pay under FRAI 149(1)(a) Total forf 12 days pay

B4304 Pte Gagnon L.

(n) On 28 Feb 44 awarded 14 days FP and a forf of 14 days pay for an off under AA 15(1) AWL from 2000 hrs 8 Feb 44 to 1900 hrs 24 Feb 44 (absent 15 days 23 hrs) In close arrest from 1900 hrs 24 Feb 44 to date of trial. Forf 14 days pay under FRAI 149(2) Forf 16 days pay under FRAI 149(1)(a) Forf 4 days pay under FRAI 149(1) (c)(ii) Total forf of 34 days pay

B5687 Pte Gignac L.

12. PUNISHMENTS (Cont'd)

(o) On 12 Feb 44 tried by F.G.C.M.
CHARGE: AA 15(1) AWL from 0500 hrs 18 Nov 43 to 1510 hrs 6 Dec 43 (absent 18 days 10 hrs 10 mins)
FINDING: Guilty
SENTENCE: 9 months detention
CONFIRMATION: Findings & sentence conf'd by Comd 5 CIB 13 Feb 44
CLOSE ARREST: In close arrest from 1510 hrs 6 Dec 43 to date of trial
FORFEITURES: Forf 19 days pay under FRAI 149(1)(a)
Forf 274 days pay under FRAI 149(1)(b)
Forf 67 days pay under FRAI 149(1)(c)(i)
Total forf of 359 days pay
R5736 Pte Jobin N.

(p) On 8 Jan 44 admon for an off under AA15(1) AWL from 1500 hrs 2 Jan 44 to 1720 hrs 6 Jan 44 (absent 4 days 2 hrs 20 mins)
Forf 5 days pay under FRAI 149(1)(a)
R49562 Pte Leblanc R.

(q) On 12 Feb 44 admon for an off under AA 15(1) AWL from 2200 hrs 8 Feb 44 to 1000 hrs 11 Feb 44 (absent 2 days 20 hrs)
Forf 3 days pay under FRAI 149(1)(a)
H10546 Pte Leblanc S.J.

(r) On 23 Feb 44 admon for an off under AA 15(1) AWL from 1830 hrs 15 Feb 44 to 1700 hrs 19 Feb 44 (absent 3 days 22 hrs 30 mins)
Forf 4 days pay under FRAI 149(1)(a)
D138415 Pte Longval J.-.
D163122 Pte Pilon J.F.

(s) On 23 Feb 44 admon for an off under AA 15(1) AWL from 2015 hrs 15 Feb 44 to 1930 hrs 20 Feb 44 (absent 4 days 23 hrs 15 mins)
Forf 5 days pay under FRAI 149(1)(a)
R5772 Pte Normand A.

(t) On 27 Feb 44 admon for an off under AA 15(1) AWL from 1400 hrs 15 Feb 44 to 1345 hrs 20 Feb 44 (absent 4 days 22 hrs 45 mins)
Forf 5 days pay under FRAI 149(1)(a)
H15045 Pte Paradis E.

(u) On 28 Feb 44 awarded 21 days FP and a forf of 21 days pay for an off under AA 15(1) AWL from 0800 hrs 31 Jan 44 to 1630 hrs 21 Feb 44 (absent 21 days 8 hrs 30 mins) Forf 21 days pay under FRAI 149(2) Forf 22 days pay under FRAI 149(1)(a)
Total forf of 43 days pay
H10263 Pte Petry W.

(v) On 23 Feb 44 admon for an off under AA 15(1) AWL from 1500 hrs 10 Feb 44 to 1700 hrs 19 Feb 44 (absent 9 days 2 hrs) Forf 10 days pay under FRAI 149(1)(a)
H130300 Pte Pilon J.F.

12. PUNISHMENTS (Cont'd)
(w) On 22 Feb 44 admon for an off under AA 15(1) AWL from 1630 hrs 15 Feb 44 to 1730 hrs 18 Feb 44 (absent 3 days 1 hr 30 mins) Forf 4 days pay under FR&I 149(1)(a)
D156548 Pte Roberge, G.

(x) CR 22 Feb 44 reduced to the rank of private for an off under AA 40. To draw daily regt'l rate of pay of $1.50
E100582 A/L/Cpl Woods, W.

"G" TRAINING INCREMENT

OFFICERS

13. STRENGTH INCREASE:
(a) T.O.S. from R22eR X-4 List 4 Bn wef 27 Feb 44 (Auth: Cdn 02E/1 Div ARS/ d/25 Feb 44)
Lieutenant B.F.J. Hogan
Lieutenant L.R.P.G. Turcotte

(J.E. Campbell) Lieutenant,
for Officer i/c
CANADIAN SECTION, G.H.Q., 2ND ECHELON (CMF)

Certified true copy of Royal 22e Regiment Part II Order No. 10, d/3 Mar 44.

(J.E. Campbell) Captain,
for Officer i/c.
Cdn Sec GHQ 2 Ech AAI.

Exhibit "B"

CERTIFICATE IN ACCORDANCE WITH SECTION 163 (I) (m) OF THE ARMY ACT.

I CERTIFY that the person whose description is given below was ~~arrested~~ (or surrendered) at BERNALDA (Matera) at 1300 hours on the 24 day of June 1944.

Regimental particulars of officer or soldier referred to above.

(No. D 137786
(Rank.... Pte.
(Name.. Benoit, Daniel
(Unit 22nd Reg. 1st Div. 8th Army
(Age.....
(Height.....
(Complexion.....
(Hair.....
(Eyes.....
(Marks.....

Signature of officer of police in charge of police station where the above-named person was taken or placed in custody on arrest or surrender.

C. Anderson
Lt. C. Anderson
(in charge of Provincial Pol. Off. Police Station).
Matera

This is exhibit "B" referred to in the summary of evidence in the case of D137786 Pte Daniel Burnet 1 Bn 1 C B R.D. taken down by me this 17 Aug 44

[illegible]

ARMY FORM B 206
E1

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D137786	Pte	DANIEL B	16 B R Bn, 1 CBRD

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	* Within last 12 months.	*Since Enlistment.
For A A Sec 15 (1)	1 times	3 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, ~~gallantry or distinguished conduct~~ nil

or

~~There are no entries in the conduct sheets of the accused~~ nil

2. The accused has not been previously convicted. —

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 79 of the Army Act, are set out in the schedule annexed to this statement~~ nil

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence as follows~~ nil

beginning on the ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for 8 nil days in civil custody, and 107 days in military custody, making a total of 107 days, of which days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 11 Nov 42.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~or is in possession of, or entitled to, the following military decoration or reward~~ nil.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A dated

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (or corps or department) the rank of N/A dated

† See para. 577, K.R., 1940.

* The numbers herein stated should correspond with the numbers as entered in the conduct sheets, particular being given to the total number of offences or each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions as to the charge to be drawn up on the entries in conduct sheets to be read, signed and dated.

Note.—At a trial by field general court martial this summary may be compiled from the said conduct sheet(s). The conduct sheet(s) must also be produced at court with this statement for it to be referred to the prosecutor.

No. D137786 Name DANIEL, Joseph Edgar Benoit | Sqn. Battery Company | Corps C.I.C. | Date of enlistment 11-11-42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3429)

Company Conduct Sheet Date of last entry in | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc "?" | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sherbrooke	11-1-43	Pte.	Nil	A.A. Sec 15 AWL de 0600 hrs. le 11-1-43 @ 1220 hrs. le 11-1-43 (Abs. 6 hrs, 20 mins)	Evidence Documentary	1 days pay	12-1-43	Major J.A. Laine "L.L.L."	Forf 1 dys pay under FR &I Art 149
Farnham	6-3-43	Pte		AWL from 2359 hrs. 6-3-43 until 0650 hrs. 8-3-43 (A.A. Sec 15 (1) Abs: 1 day, 6 hrs., 51 mins.	L/C Desroches Documentary	5 dys C.B.	8-3-43	Major E. Allen	Aut. Forf 2 dys pay under FR&I
Field	24-12-43	Pte.		AA 15 (1) AWL from 0430 hrs. 24 Dec 43 until surrendering himself to Cdn Provost Corps at 1750 hrs. 15 Jan 44.		14 days F.P.	2/2/44	L/Col Allard	Forf 23 dys pay. Forf 23 days pay

(Over)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY FROM REGIMENTAL BOOKS IN MY CUSTODY		[illegible] Capt. Offr in Custody Regt'l Books			

STATEMENT BY THE ACCUSED

I certify having received free of charge, a copy of the Summary of Evidence, list of witnesses, list of Exhibits and Charge Sheet.

I desire the services of an Officer to represent me at the trial.

Date 25/9/44

CHARGE SHEET

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D137786 Pte Daniel, B.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

[illegible] of [illegible] "MBJ" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 107 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for 9 (nine) months

(Sgd) _____ Judge-Advocate, if any. 9 Oct 44 Date awarded. (Sgd) "MBJohn Maj" President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-571. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

[illegible] "EGH"

(1. AA 57A. Delete if not used.)

(Sgd) "g W Haldenby" Brig
COMMANDER
Commanding 1 CDN BASE REINFORCEMENT GROUP
Confirming Officer.

Date 10 Oct 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D137786 Pte Daniel, B.	13-10-44	"Vincent McKenna Lt-Col" Officer Commanding 1 Bn 1 Cdn Base Reinforcement Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

CERTIFIED TRUE COPY [illegible] D.M. Owen Capt

4B-109

CFAPS (In lieu of AF A22) 40 P.E. R/1658 (1954)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Cdn Sec GHQ 2 Ech AAI / CO/Lt-Col S.A. Lee M.C. T/Comd 1 CBRGp dated 6 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D137786	Pte	Benoit	DANIEL	1 Bn 1 CBRD

Proceedings Reviewed
25 Oct 44 "W P Taylor Major"
DJA

PROCEEDINGS OF TRIAL. Cdn Sec GHQ 2 Ech AAI

Held in the Fd in (country) ITALY on (date(s)) 9 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant instn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet [illegible] attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is [illegible] amenable to military law, and each charge discloses an offence.(3) "MBJ"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 1305 hours trial commences. "MBJ"

A4. The Prosecutor produces a Medical Certificate that accused is [illegible] fit to undergo trial by court-martial.(1) "MBJ"
[illegible] "MBJ"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to D56918 Sgt Labonte as interpreter? Ans No

The Interpreter is sworn.(1) [illegible] "MBJ"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 53, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	M.B. John	(CIC)	2 Cdn Reall Centre
Member	Lieut	A.J. Charette	(CIC)	2 Cdn Reall Centre
Member	Lieut	J.H. Pelletier	(CIC)	1 Bn 1 CBRD
Judge-Advocate				
Prosecutor	Lieut	W.J. Rinn	(CIC)	1 Bn 1 CBRD
Defending Offr	Capt	J.R. Nicholson	(CIC)	1 Bn 1 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 27 (B) and fn 2 were not followed. See D1 p 31)

A8. The accused D137786 Pte Daniel B. before arraignment make(s) (no) [illegible] plea "MBJ" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 162, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the submissions made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see reference in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is [illegible] arraigned [illegible] on all charges in the charge sheet.(1) The accused does [illegible] "MBJ" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. Where more than one Charge Sheet see RP 42; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge[redacted](1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge[redacted], call witnesses as to character and make an address in mitigation of punishment.(2) "MBJ"

(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge[redacted].(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4) "MBJ"

President to accused: Do you wish to make a statement? Ans. No (5)

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form* E. *5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly. "MBJ"

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea[redacted] of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) "MBJ"

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B5, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing at Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1) "MBJ"

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D6.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 116.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans.....Do you intend to call witnesses on your behalf?

Ans.....Are they witnesses as to character only? Ans.....

(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf AA* 56. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*a*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed by[redacted] and the proceedings are accordingly terminated.

(*1. AA* 54(*3*) (*b*), *RP* 45, 120(*A*). *2. AA* 54(*2*), *RP* 45, 117. *This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 4. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement[redacted] as to Character and Particulars of Service(1), and certified true copy (or [redacted]) of Conduct Sheet[redacted](2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier[redacted] having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E.1 and Ex E.2 respectively.(3) "MBJ"

(*1. MFR* 253 *or MFR* 294. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 3 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, by defending officer.(2)

(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or state anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(*5*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP* 70(*b*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 338, 330, 563-566, *Overseas AO* 309, 2323. *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*3*) (*b*), 98(*1*), *KR Can* 564. *2. RP* 50. *As to releases from arrest by Confirming Offr see KR Can* 547. *As to assembly and disposal of record after trial see leaflet on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"MBJ"

CHARGE SHEET

The accused D 137786 Pte DANIEL, Benoit
1 Canadian Base Reinforcement Battalion,
1 Canadian Base Reinforcement Depot,
a soldier of the Canadian Army Overseas,
is charged with:-

FIRST CHARGE
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT
LEAVE,

in that he,

In the Field absented himself without leave at 2000 hours 5 February 1944, until he surrendered himself at 1300 hours 24 June 1944.
(Total absence 139 days 17 hours)

"Vincent McKenna" Lt-col.,
(Vincent McKenna)
Officer Commanding,
1 Bn, 1 Cdn Base Rft Depot

In the Field
25 September 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
6 Oct 44

"S A Lee"
(S A LEE)Colonel
T/Comd 1 Cdn Base Rft Gp
Cdn Army-CMF

"MBJ"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname	Unit.
D130786	Pte		Benoit	DANIEL	1 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[illegible] named above as the accused, being subject to military law, has [illegible] committed the offence[illegible] set forth in the Charge Sheet[illegible] attached and on (*date*) 6 Oct 44 endorsed by me, ([illegible]), " To be tried by Field General Court-Martial ". "SAL"

2. And whereas I am of opinion that it is not practicable that such offence[illegible] should be tried by an ordinary General Court-Martial ; ([illegible]) "SAL"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[illegible], and to consist of the Offrs appointed or detailed hereunder.

4. [illegible] "SAL"

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible] "SAL"

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	M B JOHN	(CIC)	2 Cdn Reall Centre

MEMBERS.

Capt or Lieut to be detailed by OC 2 Cdn Reallocation Centre

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Lieut	J H PELLETIER	(CIC)	1 Bn 1 CBRD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 2 Cdn Reallocation Centre		

[illegible] "SAL"

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

In (Country.)	"S.A. LEE" (Signed personally. RP 105 fn 2.)	Colonel (Rank.)
Date 6 Oct 44	(S.A. LEE) T/Commanding 1 Cdn Base Rft Gp-CMF Convening Officer.	

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAMS (To form 3rd AFAS) W.F. & A/1947 5000)

(See overleaf for oaths and notes for use on trial.)

"MBJ"

MEDICAL OFFICER'S CERTIFICATE
(AF (Gen) 557)

I certify that I have this morning examined No D137786 Rank Pte
Name DANIEL B. of R 22 R 1 Bn and in my opinion he is
fit to undergo trial by Court Martial.

In the Field
Date 9-10-44

"John M Fraser Capt"
(MEDICAL OFFICER)

"MBJ"

STATEMENT IN MITIGATION OF PUNISHMENT
D137786 Pte DANIEL, B.

The accused was seven months at the front then came out with his Unit to Rest. At this time he received a letter saying that his father was in hospital and his Mother was very sick. The boys nerves were not too good after the actions he had been through and that along with the letter from home upset him mentally. He felt"sorry for himself" and the Unit not being in action he went AWL. He surrendered himself with the intention of going back to his unit. His record as a soldier is good and in considering sentence I would ask mercy of Court.

"MBJ"

SUMMARY OF EVIDENCE

In the case of

D 137786 Pte DANIEL, B., 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

1st WITNESS for the Prosecution

D 95834 Pte MacLeod, D.D., a soldier of the Canadian Army Overseas, having been duly sworn states:

I am clerk at 1 Bn, 1 C.B.R.D. Orderly Room, as such I produce the following documents under AA Sec 163 (1)(m).
1. A certified true extract from Daily Order Part II No. 10 dated 3 March 44, R22e Regt, issued by Cdn Sec GHQ 2 Echelon AAI, stating that the a/m soldier absented himself at 2000 hrs 5 February 1944. This document is attached and marked exhibit "A".
2. A certifieate of surrendering under A.A. 163(1)(m) signed by Lt C. Anderson, i/c, of Provinical Police officers Police station stating that the a/m soldier surrendered himself at 1300 hours 24 June 1944. This document marked exhibit "B".

"Pte MacLeod, DD."
Sgd D. MacLeod

The accused declines to cross examine the witness.

The two documents referred to by the witness, produced read over to the accused, marked exhibit "A" and "B"g, signed by me and attached hereto.
"D Dion Capt"

The accused having been duly and strictly warned in accordance with R.P. 4(e) elects to reserve his defence.

Summary of evidence composed of two pages and two exhibits marked "A" and "B" taken down by me inthe presence of the accused this 12th day of August 1944. R.P. 4(e)(c)(d)(f) and (f) having been complied with.

In the Field
12 Aug 44

"D Dion"
Sgd D. Dion Capt.,
Offr taking Summary

Exhibit A "MBJ" Not e page 5 Para 6 (8) "MBJ"

Last Order No. 9 25 Feb 44

ROYAL 22e REGIMENT
PART II ORDERS ISSUED BY
CANADIAN SECTION, G.H.Q., 2nd ECHELON (CMF)

No. 10 3 Mar 44

"B" OTHER RANKS

Page 5

"EXTRACT"

6. ABSENT WITHOUT LEAVE (Cont'd)
(q) AWL from 2000 hrs 4 Feb 44. Still absent 2000 hrs 12 Feb 44 (8 days) Still absent 2000 hrs 27 Feb 44 (22 days)
D137786 Pte Daniel, J.E.B.

Certified true copy of Royal 22e Regiment Part II Order No. 10, d/3 Mar 44.

"J.E. Campbell"
(J.E. Campbell) Captain,
For Officer i/c.,
Cdn Sec GHQ 2 Ech AAI

Exhibit "B" "MBJ"

CERTIFICATE IN ACCORDANCE WITH SECTION 163 (1)(m) OF THE ARMY ACT

I CERTIFY that the person whose description is given below was (or surrendered) at BERNALDA (Matera) at 1300 hours on the 24 day of June 1944.

Regimental particulars of officer or soldier referred to above	No D 137786 Rank Pte Name Benoit, Daniel (Surname) Unit 22nd Reg 1st Div 8th Army Age Height Complexion Hair Eyes Marks
Signature of officer of Police in charge of police station where the above-named person was taken or placed in custody on arrest or surrender	"Lt C. Anderson" Lt. C. Anderson (in charge of Provincial Pol Off Police Station) Matera

This is exhibit "B" referred to in the Summary of Evidence in the case of D137786 Pte Daniel, Daniel 1 Bn 1 CBRD taken down by me this 17 Aug 44

"D Dion Capt"

ARMY FORM B.[illegible].

E.1 "MBJ"

Exhibit "C"

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be)*
D137786	Pte	DANIEL B.	1 CBRBn, 1 CBRD

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—In a trial by field general court martial this summary may be compiled from the field conduct sheet.

The number shewing the punishment should be entered in words, not figures, and the statement must be signed and dated by the prosecutor.

† See para. 677, K.R., 1940.

* The accused's service should cover the period since he last joined the Army or since the commencement of the current period of service, if he has been discharged and re-enlisted, or since the date of his last commission, if he has been granted one.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15(1)	1 times	3 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

[redacted] "JAM"

or

[redacted] "JAM"

2. The accused has not been previously convicted, or

[redacted] "JAM"

[redacted] "JAM"

3. The accused is not under sentence at the present time, or [redacted] "JAM"

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 107 days in military custody, making a total of 107 days, of which [redacted] days were spent in hospital.

5. The present age of the accused according to his "JAM" attestation paper is 20

6. The date of his "JAM" attestation, as entered in his "JAM" attestation paper, is 11 Nov 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award [redacted] "JAM"

11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A dated

12. (In the case of an officer.) The accused holds in the army the rank of N/A and in his regiment (or corps or department) the rank of N/A dated

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N I L		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9 day of Oct 44

"JAMacDonald Capt"

11. The accused has served as a non-commissioned officer continuously, without reduction, to the present date, N/A

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

In the rank of ..... years, ...

(Insert above—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Exhibit "D"

No. D137786 Name DANIEL, Joseph Elzear Benoit Sqn. Battery or Company | Corps CIC | Date of enlistment 11-11-43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Mark | Date of last entry in | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | "?" | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sherbrooke	11-1-43	Pte	Nil	A.A. Sec 15 AWL de 0600 hrs. le 11-1-43 @ 1220 hrs. le 11-1-43 (Abs. 6 hrs, 20 mins)	Evidence Documentary	1 days pay	12-1-43	Major J.A. Laine "L.L.L."	Forf 1 dys Pay under FR &I Art 149
Farnham	6-3-43	Pte		AWL from 2359 hrs. 6-3-43 until 0650 hrs. 8-3-43 (A.A. Sec 15(1) Abs: 1 day, 6 hrs., 51 mins.	L/C Desroches Documentary	5 dys C.B.	8-3-43	Major E.Allen	Aut. Forf 2 dys pay under FR&I
Field	24-12	Pte		AA 15(1) AWL from 0430 hrs. 24 Dec 43 until surrendering himself to Cdn Provost Corps at 1750 hrs. 15 Jan 44.		14 days F.P.	2-2-44	L/Col Allard	Forf 23 dys pay. Forf 23 days pay E.2 "MBJ"

(over)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY FROM REGIMENTAL BOOKS IN MY CUSTODY					

"JAMacDonald Capt"
Offr in Custody Regt'l Books

"MBJ"

STATEMENT BY THE ACCUSED

I certify having received free of charge, a copy of the Summary of Evidence, list of witnesses, list of Exhibits and Charge Sheet.

I desire the services of an Officer to represent me at the trial.

Date 25/9/44 "Benoit Daniel"

CHARGE SHEET

BB-125

RFN DANIELS J.

BB-125 A.

Army Form A.3.

Correspondence to be PINNED here

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Second day of April, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 7 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~[I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~

* Omit if not applicable.

Proceedings Reviewed

[illegible] Maj. Gen.

for Reviewing Officer (A.C.) [illegible]

[illegible] 23 Apr 43

119

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	A.H. Plows	1 C Scot R

Members.

Rank.	Name.	Regiment.
Capt.	W.J.R. Wilson	3 Bn R Wpg Rif
Lieut.	E.C. Luxton	Regina Rif
Waiting Member Lieut.	W.H.F. Jolley	1 C Scot R

*Signed [signature]

(H.W. FOSTER) Brigadier,

Commanding 7 Canadian Infantry Brigade

Convening Officer

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L28036 Rfn. DANIELS, Joseph Regina Rif	First Charge A.A. Sec. 15 (1)	Guilty	~~Guilty~~ ~~Sentence~~ ~~Suspended~~ AHP	Finding & Sentence confirmed but I remit three months detention AHP
	Second Charge A.A. Sec. 24 (2) See Charge Sheet attached.	Guilty	~~Guilty to the~~ ~~charge but~~ ~~not guilty to~~ ~~the alternative~~ ~~charge~~ ~~Sentence~~ ~~suspended~~ ~~Sentence~~ ~~suspended~~ ~~Sentence~~ ~~suspended

CHARGE SHEET

B2.
A.H.Q. Instr. 1 Cdn Corps

The accused L26036 Rfn. Daniels, Joseph W., 1st Bn. The Regina Rifle Regiment, a soldier of the Canadian Army placed on active service, is charged with:

FIRST CHARGE
AA 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE, in that he in the field absented himself without leave at 2359 hrs 4 Dec 42 and remained absent until apprehended by Military Police in Brighton at 1150 hrs 24 Mar 43, a total time absent of 108 days, 11 hours, and 51 minutes.

SECOND CHARGE
AA 24 (2)

LOSING BY NEGLECT HIS EQUIPMENT AND REGIMENTAL NECESSARIES, in that he in the field on the 1st day of January 1943, was deficient the following articles:

ITEM		COST PRICE	15% of Cost Price
Badge, cap	1	£0-0-5½	£0-0-0½
Badge unit titles pr.	1	7½	5¾
Badges Div patches pr.	1	8	6
B.D. Serge trousers	1	1-7-11	1-1-0
Boots, ankle prs.	1	1-1-6	16-1½
Boot blacking tins	1	3½	2
Brasses button	1	5	3¾
Brushes shaving	1	1-4	1-0
Forks, table	1	5	3¾
Holdall	1	9	6¾
Knives clasp	1	5-2½	3-11¼
Knives table	1	9½	7¼
Spoons, table	1	4½	3½
Bags ration	1	1½	1
Bottle, water	1	3-11	2-8¼
Carrier water, bottle	1	3-3	2-5¼
Cover, mess tin	1	4½	3½
Haversack, T.E.	1	10-5	7-9¾
Helmet steel cover Cam.	1	8	6
Tins mess set	1	3- 1	2-3½
Cape A/C	1	1-3-6½	19-0¾
Ointment A/C		9½	7¼
		5-5-7	1-3-3

Remanded for trial by Field General Court Martial this 25th day of March 1943.

H. Sharp
(H. Sharp), Lt.-Col.,
O.C. Regina Rif

To be tried by Field General Court Martial.

H.W. Foster
(H.W. Foster), Brigadier,
Comd., 7 Cdn. Inf. Bde.

Dated this 31 day
of March, 1943.

MEDICAL OFFICER'S CERTIFICATE

I certify that No [illegible] Regiment

has been examined by me the 2 day of April 1943 and is fit to undergo trial by Court-Martial.

[illegible]
Signature of the Medical Officer

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for Field General ~~and District~~ AHP Courts-Martial.

Proceedings of a Field General Court-Martial held at in the field on the 2nd day of April 1943. by order of Brigadier H. W. Foster

Commanding 7 Canadian Infantry Brigade dated the 2nd day of April 1943.

President.

Major A. H. Clowe 1 C. Scot. R.

Members.

Capt. W. J. R. Wilson 3 Bn R Wpg Rif
Lieut. E. C. Luxton 1 Regina Rif

AHP, Judge Advocate.

Trial of* L 28036 Rfn Joseph Daniels
1st Bn The Regina Rifle Regt.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that AHP is not available to serve owing to AHP

AHP, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. D. D. Grosch 1 Regina Rif

AHP ~~Counsel~~‡ or defending officer† Lieut R. G. Shawcross 1 Regina Rif

At 1140 o'clock the Trial commences.

The order convening the Court is read, and is marked A, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No, sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16620/78. 25,000 pts. 6/41. K. & H., Ltd. G487/11. Forms A 9/35.

B

The President, members and judge-advocate are duly sworn.

~~The following officers under instruction are duly sworn.~~ ~~N.H.P.~~

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty, ~~Yes~~ N.H.P. sir *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty, ~~Yes~~ N.H.P. sir. *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ N.H.P. *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ N.H.P. *Question.*

Answer.

The accused having pleaded Guilty to both charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~ N.A.

The accused L28036 Rfn. Joseph Daniels, 1 Regina Rif. is found guilty of the First and Second charges.

†The summary (or abstract) of evidence is read, marked 1 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

No, sir.

Answer. The accused in mitigation of punishment says :—

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

N.A.

Instruction. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

I wish to call a witness, sir.

Answer.

Evidence as to character.

1st Witness having been duly sworn, states:

"I am L 27138 Sgt. Ross, N.H. / Regina Rif. I have known Rfn Joseph Daniels, the accused who I recognize, for some time. He was in the Platoon of which I was Platoon Sergeant. As such he was a very good soldier and a willing worker. That is all I have to say, sir.

The witness was subjected to cross examination by Prosecutor:

Question: How long was he on parade with you in your platoon?

Answer: Approximately one month, sir.

RPP.

D

SUMMARY OF EVIDENCE

In the case of: L26036 Rfn. Daniels, J., 1st Bn. The Regina Rifle Regiment.

1st Witness

L27054 C.Q.M.S. Jean, J. S., 1st Bn. The Regina Rifle Regiment, having been duly sworn states as follows:

"I am Coy C.Q.M.S. of C Coy., Regina Rifle Regiment. On the 4th day of December 1943 the Bn. was billetted at Lewes doing an exercise with tanks. Rfn. Daniels was helping in the kitchen at the time. On the night of 4 Dec 43 the senior cook asked that personnel in the kitchen be given a late pass that evening. I consented after having said that they would have to draw lots. Rfn. Daniels was one of the lucky ones to get a pass. On checking at 0630 hrs , reveille, the next morning 5 Dec 43 I found L26036 Rfn. Daniels, J. was absent, then I reported to C.S.M. Edwards that Daniels was an absentee and asked for a man to replace him in the kitchen. I then picked up what kit he had there and checked it. On returning to the Coy billets two days later I checked the remainder of Daniels kit. To the best of my knowledge Daniels had a complete kit before going on the scheme to Lewes."

J. S. Jean
C.Q.M.S.

The accused declines to cross examine the witness.

2nd Witness

L27899 L/Cpl. Warner, A. E., 1st Bn. The Regina Rifle Regiment, having been duly sworn states as follows:

"I am clerk of C Coy., Regina Rifle Regiment. On the 4th day of December 43 at approximately 1630 hrs I made out a late pass from 1630 hrs 4 Dec 43 to 2359 hrs the same night. I checked up with the kitchen and ascertained that Daniels would not be on duty. I gave the pass to L27899 Rfn. Yaschuk, J. of this Company at 1645 hrs. The pass was signed by Lieut. D. G. Brown. Daniels was reported absent to Bn.H.Q. the following morning and I saw the report each day thereafter for approximately 21 days go in to Bn.H.Q. that Daniels was still absent. It was at least until he was S.O.S. This office was notified on 25 Mar 43 that Daniels had been apprehended in Brighton and was then in the Regimental Guard House.

A E Warner L/Cpl.

The accused declines to cross examine the witness

D

3rd Witness

L27140 C.S.M. Edwards, B.A., 1st Bn. The Regina Rifle Regiment, having been duly sworn states as follows:

"I am C.S.M. of C Company and had knowledge that Rfn. Daniels was out on late pass 4 Dec 42 when the Company was at Lewes on tank training. We were billeted in the town of Lewes. I checked the Company billets at 2359 hrs and found Rfn. Daniels to be absent. Rfn. Yaschuk of this Company came to me that evening with Daniels pass and I told him to turn it in to the Orderly Room. All ranks had been notified by the posting of Daily Orders 3 Dec 42 para 4 that no leave of any discription could be granted to terminate later than 2200 hrs Sunday, 27 Dec 42. This is exhibit (a)

When Daniels had still not returned at 0630 hrs 3 Dec 42 I replaced him in the kitchen with another man.

On 25 Mar 43 I was notified by L27194 L/Cpl. Ralston of the Regimental Provost that he had apprehended Rfn. Daniels in Brighton that day and that Daniels was at present in the Guard House. Daniels had been continuously absent from 4 Dec 42 until 25 Mar 43.

W A Edwards

The accused declines to cross examine this witness.

4th Witness

L27194 L/Cpl. Ralston, G. J., 1st Bn. The Regina Rifle Regiment, having been duly sworn states as follows:

"I am in the Regimental Provost Section. On the 5th of December I received notice that Rfn. Daniels was an absentee. During the week of 21 Mar 43 and 27 Mar 43, the Adjutant, Lieut. Nash, instructed me to go to Brighton to pick up L27503 Rfn. Daniels, J.

On the 24th day of March 1943 I stopped my motorcycle in Brighton one block south of the station to light a cigarette. It was about 1150 hrs. I noticed four of our men on the corner, Rfn. Daniels was one of them. Three of them run off but he remained. I asked him when I came up to him if he was Daniels and he said he was. I asked him to come along with me and he said "Yes" He had a battle dress on, but no regimental flashes or divisional patches on it. He got on the back of my motorcycle and came with me to number 19 Old Steyne, the Provost Headquarters in Brighton, where I turned him over for safe custody and phoned for and escort. When the escort arrived Daniels was taken to Denne Park and placed in the Guard House by me. I then notified the duty officer and later C.S.M. Edwards.

G J Ralston

The accused declines to cross examine this witness

D RMP

The following caution was given to the accused who elected to give evidence on oath:

"Do you wish to make any statement or give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence"

"I am L26036 Rfn. Daniels, J. I went with the Company on the scheme at Lewes on 4 Dec 42. I was in the cooker. That night I asked for a pass but I left without it because one of the boys told me Rfn. Yaschuk had my pass. Then I went to Newhaven. I looked for Yaschuk but didn't find him. That night I missed the train to Lewes so I went to some people I knew in Newhaven and they put me up for the night. I arranged to be woke up at 0400 hrs with next morning but they didn't wake me until 0730 hrs. I went to catch the bus but found I couldn't get back to Lewes until 0900 hrs at the earliest, so I walked. I got to Lewes about 0930 and by this time was pretty disgusted and fed up. I had quite a bit of money so I took the train to Brighton and have been there until L/Cpl. Ralston picked me up on 25 Mar 43. All the time I was there I wore my uniform. I never did have Regimental flashes on it, but I did on my other one. I stayed in billets with other Canadian troops in Brighton. I also stayed with some civilian people I know there. I worked around the house at one place I stayed but never had any other job. All the time I was in Brighton I was never stopped by an M.P. until L/Cpl. Ralston picked me up. I have not dodged M.Ps. L/Cpl. Ralston's evidence on how he picked me up is correct. I have read the evidence of Rfn. Yaschuk on the Court of Inquiry and I knew he had my pass I cannot say whether the rest is correct.

J. Daniels Rfn

Taken by me in the field this 27th day of January, 1943

in the presence of the accused.

W W Trask Capt.

D RKP.

SUMMARY OF EVIDENCE

ADDITIONAL EVIDENCE BY FIRST WITNESS

L27054 C.Q.M.S. Jean, J.S., 1st Bn. The Regina Rifle Regiment, having been duly sworn states as follows:

"On the 30th day of March 1943 in the Regimental Guard House I made a further kit inspection of Rfn. Daniel's kit and I certify the items listed below were deficient. Rfn. Daniel's rifle, respirator and kit bag were forwarded to #3 C.D.I.R.U. on 30 Jan 43 and I have assumed that the articles in the kit bag are the same as when I checked it on the 29th of January 1943."

The accused declines to cross-examine this witness.

Item		Cost Price	75% of Cost Price
Badge, cap	1	£0-0-5½	£0-0-4½
Badge unit titles pr	1	5½	4½
Badges Div patches pr	1	8	6
B.D. Serge trousers	1	1-7-11	1-1-0
Boots, ankle, prs	1	1-1-6	16-1½
Boot blacking tins	1	2½	2
Brasses button	1	2	1½
Brushes shaving	1	1-4	1-0
Forks, table	1	5	3¾
Holdall	1	5	3¾
Knives clasp	1	5-3½	3-11½
Knives table	1	9½	7½
Spoons table	1	4½	3½
Bags ration	1	1½	1
Bottle water	1	3-11	2- 8¼
Carrier water bottle	1	3- 3	2- 4½
Cover mess tin	1	6½	5¼
Haversack W.E.	1	10-5	7- 8¾
Helmet steel cover Cam.	1	8	6
Tins mess set	1	3-1	2- 3¼
Cape A/G	1	1-3-6½	17-6½
Ointment A/G		9½	7¼

This additional evidence was taken before me in the field this 30th day of March 1943.

DD Grosch Capt

(D. D. Grosch), Capt.

D

LIST OF WITNESSES

(a) For the prosecution:-

L27054 C.Q.M.S. Jean, J. S.
L27569 L/Cpl. Warner, A. E.
L27140 C.S.M. Edwards, B. A.
L27194 L/Cpl. Ralston, G. J.

(b) For the defence:-

N I L

Extract Daily Order - Part 1 No. 294 d/3 Dec 42.

LEAVE DURING CHRISTMAS SEASON 1942

1. Owing to the pressure of industrial and military traffic on the railways, it is necessary to adjust the dates of travel on privilege leave and to restrict short pass movement by rail during the holiday period.

2. Personnel may be despatched on privilege leave on 16, 18, 19, 20, 21, 22, 23 Dec and may return by rail on 23, 26, 29 Dec only.

3. There will be NO OUTWARD travel for privilege leave on 24-28 Dec both dates inclusive.

4. Short passes will NOT be granted, by rail, between 22 - 28 Dec both date inclusive, EXCEPT that 1% of each sub-unit may travel outward on 23 Dec. returning on 26 Dec and 1% may travel outward on 25 Dec returning 27 Dec provided that the destination is not further away than 20 miles. Passes of such personnel will be endorsed in red ink "authorized to travel not exceeding 20 miles from Steyning".

5. Personnel will not be despatched on 14 days leave or 9 days leave on such a date as will necessitate their return during the period 24 - 28 Dec.

6. Passes granted for compassionate leave during the restricted period will be endorsed in red ink "with permission to travel by rail."

7. It is pointed out that the above restrictions apply to leave involving travel by rail only. Where no rail travel is intended, normal leave regulations apply provided that NO LEAVE OF ANY DESCRIPTION WILL BE GRANTED TO TERMINATE LATER THAN 2200 hrs SUNDAY 27 Dec 42.

E

~~Finding.~~ ~~N.A.~~

**To be struck out except in cases where trial has taken place on a plea of "Not Guilty."*

~~The Court is closed for the consideration of the finding.~~ ~~N.A.~~

~~The Court find that the accused~~ ~~N.A.~~

Proceedings on Conviction *before* Sentence.

**When the Court is already open this sentence will be struck out. Evidence of character, &c.*

*The Court being re-opened, the accused is again brought before it.

Capt D. D. Grosch 1 Regina Rif is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, sir

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked C, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes, sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes, sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes, sir

~~Cross-examined by the accused.~~ ~~N.A.~~

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps or otherwise, the finding of the Court renders him liable to any co-ordinate punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* ~~Yes, sir~~ No, sir ~~N.A.~~

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused *Sentence.*

L28036 Rfn Joseph Daniels
1st Bn The Regina Rifle Regt.
to undergo one years' detention
with stoppages of pay to the
total of £4-0-3 for kit
deficiencies.

A H Plows
Maj
1C. Scot. R.
2 April 43

AHPlans
Maj
1 Cad R

No. 2[illegible]036 Name Daniels, J. Sqn., Battery, or Company Corps Regina Rif Date of enlistment G.C. Badges Service or Proficiency Pay

M.F.M. 6
(A.F.R. 172)
175M—7-41 (1219-20)
H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet NIL No. and date of last drunk NIL Period not reckoning towards freedom from extra fine Sheet No. TWO Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19-10-42	Rfn		AA Sec 40 Dirty rifle on parade	Sgt Taylor R	3 days C.B.	20 Oct 42	Capt. R. J.	Orr

Certified true copy

(P. H. Mash), Lieut.,
Adjt., Regina Rif.

(P.T.O.)

PHL [illegible] May [illegible]

No. L28036 Name Daniels, J. Sqn., Battery, or Company Corps Regina Rif Date of enlistment 9 May 41 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 172) 175M—7-41 (1215-20) H.Q. 1772-20-1603

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. ONE Signature O.C. Company, etc. Lt.Col Sim W.L.M. ~~xxxxx~~ Character Fair

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dismissing with trial	By whom awarded	Remarks
Regina	22-6-41	Pte		AWL from2200 hrs 22-6-41 to 0110 hrs 24-6-41	Sgt Hoyer	7 days C.B. Auto. Forf.	24-6-41	LtCol Sim	~~2 days pay~~ FR & I 149 (1)(a)
Regina	29-6-41	Pte		AWL from 0600 hrs 29-6-41 to 1800 hrs AWL from 2200 hrs 5-7-41 to 0745 hrs 7-7-41	4-7-41 Cpl Arthur	5 days forf. AA 46(2)(d)	7-7-41	Maj. Anderson	7 days forf. FR&I 149(1)(a)
Debert	17-8-41	Rfn		AA 15- AWL from 0600 hrs 17-8-41 to 2400 hrs 19-8-41 absent 2 days, and 18 hrs - AA 11 Neg. to obey camp orders in that he was found at Millbrook Res. a place out of bounds	L/Cpl Klughart	7 days C.B.	20-8-41	Major D.G. Scott-Calder	Forf. 3 days pay FR&I 149 (1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert	21-8-41	Rfn		AWL 2200 hrs to 0600 hrs 24-8-41 - 2 days 8 hrs	Cpl Bailey, WR	5 days forf AA 46 2 d	5-9-41	LtCol Hamlin	Forf 3 days pay FRAI 143(1)(a)
Aldershot	18-9-41	Rfn		SPECIAL TRANSPORTATION ISSUED ON 1/LV. Special transportation warrant issued on 1st privilege leave					
Woodlands	5-11-41	Rfn		AWL 2200 hrs 24-1-42 to 1430 hrs 25-1-42 - AA Sec 15(1)	Cpl Bailey WR Cpl Koester JV	3 days C.B.	26-1-42	Maj D. G. Scott-Calder	Forf 1 days pay FRAI 143(1)(a)
Cuckfield	21-1-42	Rfn				2 days C.B.	9 Mar 42	Maj D. G. Scott-Calder	
Cuckfield	8 Mar 42	Rfn		AWL 2200 hrs 8-3-42 to 2230 hrs 8-3-42 Absent - 30 mins	Cpl Dowling				
In the Field	28-3-42	Rfn		AA15(1)- Absent from parade	Sgt Allen, AB	4 days F.P.	2-4-42	LtCol Sharp	4 days forf of pay
do	31-3-42	"		AA15(1)- " " "	Sgt Baxter	4 days F.P.	2-4-42	LtCol Sharp	4 days forf of pay
do	31-3-42	"		Breaking out of barracks	CSM Sweetnam	20 days F.P.	2-4-42	LtCol Sharp	20 days forf of pay
do	30-7-42	Rfn		Failing to take turn at pinquet AA 40	L/Cp. Bell	3 days C.B.	2-8-42	Capt Orr	
do	7-8-42	"		AWL from 1730 hrs 7-8-42 to 1630 hrs 26-8-42 (18 days 23 hrs) AA Sec 15(1)	Rfn Tenkle L/Cpl. Bergin Sgt. Taylor, E.	28 days F.P.	27 Aug 42	Maj Matheson	28 days forf of pay

A.F.O. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

NUMBER	RANK	NAME	RECIMENT (or as the case may be)
1-28036	Rfn.	Daniels, F.	1 Bn. THE REGINA RIFLE REGT.

Note.—At a trial by field general court martial this summary may be compiled fro the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

N.B. See paras. 677, K.R., 1940
The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	WITHIN LAST 12 MONTHS	SINCE ENLISTMENT
FOR Absence without Leave	3 TIMES	10 TIMES
FOR A.A. Sec. 40	2 TIMES	TIMES
FOR A.A. Sec. 11	TIMES	1 TIMES
FOR A.A. Sec. 16(4)	TIMES	1 TIMES
FOR	TIMES	TIMES

Number of instances of gallantry or distinguished conduct,

2. The accused has not been previously convicted, or

3. The accused is not under sentence at the present time or

4. The accused has been in confinement awaiting trial on the present charges,

for 7 days, total of 7 days, of which no days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24 years

6. The date of his attestation specified in his ~~current of service~~ attestation paper is 9 May 1941

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yr 16 mons 13 days

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award.

11.

12

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT, OF SUMMARY AWARDS UNDER SECTION [illegible] ARMY ACT AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED.

NO.....RANK.....NAME.....of.....REGIMENT (or as the case may be).

(INSTRUCTION--A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under AA 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30 day of March 1943

[signature]
Adjt.

11. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		DATE OF PROMOTION
IN THE RANK OF	, years,	
IN THE RANK OF	, years,	
IN THE RANK OF	, years,	

(Instruction.--If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be wholly thrown, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

GG-45 (Case #2)

RFN DANIELS J

See BB-125 for 1st case

Correspondence to be PINNED here.

GG-45

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

On Active Service, this Ninth day of June, 1943.

A. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 7 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[illegible]

	President.	
Rank.	Name.	Regiment.
Major	A.S. Gregory	Regina Rif
	Members.	
Rank.	Name.	Regiment.
Capt.	P.F. Ramsay	1 C Scot R
Lieut.	J.A. Taylor	P.A. Volunteers
Waiting Member Lieut.	D.A. Hobkirk	R Wpg Rif

*Signed John Meldram
(J.M. MELDRAM) Lt.-Col.,
Commanding A/Bde Comd, 7 Canadian Infantry
Convening Officer. Brigade

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L.28036 Rfn. DANIELS, Joseph Regina Rif	First Charge A.A. Sec. 15 (1)	Guilty	Guilty	I confirm the finding and sentence of the Court. J.M.M.
	Second Charge A.A. Sec. 40	Guilty a&b not guilty	Guilty	
	Third Charge A.A. Sec. 40	not guilty	Guilty	
	Fourth Charge A.A. Sec. 40	not guilty	not guilty	
	as per charge sheet attached.		To undergo detention for a period of 16 months and to be put under stoppages of pay until he has made good the sum of one pound, thirteen shillings and four pence (£1-13-4). In the Field 10 June 1943 A Gregory, Major	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No sir.

(Signed) J.M. Meldram (J.M. MELDRAM) Lt.-Col., A/Bde Comd, 7 Canadian Infantry Brigade.
Convening Officer (d)

(Signed) A Gregory Major (A.S. GREGORY) Major, Regina Rif
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 10th day of June 1943

A Gregory Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. a&b

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suppression.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~ J.M.M.

Signed this 10 day of June 1943

J.M. Meldram
Confirming Officer.
(J.M. MELDRAM) Lt.-Col.,
A/Bde Comd, 7 Canadian Infantry Brigade.

Promulgated and extracts taken in the case of L.28036 Rfn. Daniels, J.

(a) (Dated) 11 June 43 (Signed) [illegible], Lt-Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused L.28036 Rfn. DANIELS, Joseph, 1st Battalion The REGINA RIFLE REGIMENT, a soldier of the Canadian Army (Overseas), Being on active service, is charged with:-

1st Charge
15(1) A.A.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

absented himself without leave at 2115 hrs 13 Apr 43 whilst serving sentence awarded by a Field General Court Martial and remained absent until apprehended at 1145 hours 18 May 43, thereby incurring expenses of apprehension and return amounting to £1-13-4. Total time absent 34 days 14 hours and 30 minutes.

2nd Charge
40 A.A.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Nottingham, Nots, England on 18 May 43 was in possession of a document purporting to be a genuine leave pass, well knowing the same not to be genuine.

3rd Charge
40 A.A.

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Nottingham, Nots, England on 18 May 43, was not in possession of his Service Book (M.B.M.1)

4th Charge
40 AA

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Nottingha, Nots, England at 1145 hours 18 May 43, when apprehended by the C.M. Police, gave a false name.

(F.M. Matheson), Lt-Col.,
O.C., Regina Rif.

To be tried by Field General Court Martial.

(J.M. MELDRAM) Lt.-Col.,
A/Bde Comd, 7 Canadian Infantry Brigade.

9 Jun 43

BZ
Gregory major.

1st Bn. THE REGINA RIFLE REGIMENT

19 Jun 43.

This is to certify that L.26036 Rfn. Daniels, J. is fit to undergo trial by Field General Court Martial.

(W.S. Huckvale), Capt.,
Medical Offr, Regina Rif.

Surgery major

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held ~~at~~ In the Field on the 10th day of June 1943 by order of Lt. Col. J. M. Meldram, A/Bde Comd.

Commanding 7 Canadian Infantry Brigade

dated the 9th day of June 1943

President.

Major A. S. Gregory, Regina Rif.

Members.

Capt. P. F. Ramsay, 1 C. Scot. R.

Lieut. J. A. Taylor P.A. Vols.

~~Judge Advocate~~ ASG

Trial of* L28036, Rfn. Joseph Daniels, Regina Rifle Regt.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~ ASG.

~~, waiting member takes his place as a member of the Court~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.*

The accused is brought before the Court.

Prosecutor,† Capt. D. D. Grosch Regina Rif.

ASG ~~Counsel,~~ or defending officer† Capt. F. C. Munroe Regina Rif.

At 10 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No sir

A Gregory Major

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

* I have satisfied myself that none of the officers detailed as members of this Court have previously served upon any Court of Enquiry respecting the matters forming the subject of the charges before this Court Martial. A Gregory Major

B

AAG.

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Nil.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Guilty sir

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Guilty, sir.

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

Not Guilty, sir

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

not Guilty sir

Answer.

The accused having pleaded Guilty to 1st & 2nd charges the provisions of Rule of Procedure 35 (B) are here complied with.

AAG.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

Charge 3 & 4

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

No.

The prosecutor makes an opening address [hands in a written address which is read, marked N.A., signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

7689313 Sgt Twist J., CMP.

being duly sworn, is examined by the prosecutor.

Q. Accused is Rfn Daniels - can you identify him?

A. Yes (does so)

Q. Story

A. At Nottingham on 18 May 43 I was on duty Carrington St. where I saw accused whom I now know to be Rfn Daniels. I checked him and asked if he was on leave. He replied "Yes" and produced a pass made out in the name of Pte Walker which expired on 11 May 1943 (Pass produced) I pointed out that the pass was expired - he replied "Oh yes I have another pass for 48 hrs." and made an attempt to find it. He was unable to do so.

Q. What did accused do to try and find the pass

A. He searched his pockets and was unsuccessful.

Gregory, Major

Q. Did you address him as WALKER
A. I do not rightly remember?
Cont'd:- He then stated "I must have left the pass in my case at the YMCA." I accompanied him to the YMCA in Shakespeare St. and a check was made in the room of which he gave me the number. There was no kit there. He then helped me to search the Register of deposited kit. There was no kit deposited in his name.
Q. What name was searched for in the records
A. Walker or Pascal. Sir.
Cont'd I took up to the Castle guardroom and told him I was placing him under arrest as an absentee.
Q. Did he have his paybook with him then
A. No Sir. I asked him before (when originally questioning him) and he said then that it was with his kit. He did not have his pay book on him.
Q. Were you present when his possessions were taken from him.
A. Yes Sir
Q. Was there a P.B. amongst them
A. No Sir
Q. Did he at any time tell you his name was Daniels or did he deny his name was WALKER
A. No Sir.
Prosecution declines to question further

[illegible]

C-3

Defense

Q. Did you at any time search Rfn Daniels

A. No Sir

Q. So you do not know whether Rfn Daniels had his paybook on him?

A. I was presented when Rfn Daniels was searched

Q. How long after you had appr him was this search made in your presence

A. Within ½ h or 1 hr Sir

Q. ~~Sgt Swist~~ Are you prep to swear under oath that Rfn Daniels was not in possession of a paybook at the time you apprehended him.

A. At the time he was searched he did not have a paybook.

Q. Do you know then when the accused came into possession of his PB

A. No Sir

Q. Do you know whether or not he had a PB when he left N to go to London

A. No Sir

Q. Defending Officer applies to change plea on 2nd Charge to NOT GUILTY. (Granted by the Court) (see page CC)

Examination by Pros

Q. Were you with Daniels from the time you asked him for his pass until he was ~~taken~~ turned over in the Guard room

A. Yes

Sgt Swist "I asked Daniels to explain how he had got two periods of leave together" he stated that his former leave had been sick leave for the period covered by the pass.

Adjudg Major

D.O. Declines to give further questions
Accused declines to give further questions
Rule of P. 83 B complied with

Chapter Two

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No.

Question. Do you intend to call any other witness in your defence?

Answer. YES

Question. Is he a witness as to character only? *Answer.* YES

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence? As to sentence only

Answer. ~~The accused in his defence says†~~ A.S.G.

~~[hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

L27042 Sgt. Karnus, J.H. being duly sworn states Sir from 1940 to 1942 I was Platoon Sgt of No 13 Pl approximately April 1941 Rfm Lamick was posted to 13 Pl. He was with me from the time I left to go back to Canada in Mar 1942 I found him to be a very good soldier. He done his work well and obeyed all orders given to him.

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence

Q. Do you wish to cross examine

P. Question: I think you are wrong about your dates. Daniels was attested in May 1941. Is it right that he was not in your Platoon until May.

A. ~~After~~ about the time he was attested I couldn't say. It was either April or May

Q. He was in your Pl until March the following year?

A. Yes

Q. How often was he on parade with your Platoon

A. Practically all the time except leaves etc

~~Q. Your Ann't~~ Court stops questioning in grounds of inadmissible

Prosecution declines further questioning

R.P. 83 (b) complied with.

Gregory, Major

Prosecutor sums up: Evidence of Sgt Quist shows that accused did have a pass which purported to be a genuine leave pass and by his actions showed that he knew that the pass was not genuine. The evidence also shows that when searched he could not produce a P.T.I. pay book. When stopped he handed over a pass with a false name and when searching the Y.M.C.A. records he looked for the name of Walker and never denied that his name was Walker.

Defending officer sums up: He was arrested on May 18 and the pass he had expired on May 11 so the document did not purport to be a genuine leave pass. It had expired and was not altered. The only evidence of giving a false name is the handing over of a leave pass which is the substance of the second charge so is really an alternative charge and not a separate charge to the second one.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charges to which he has pleaded "Guilty" read to him again.]

The accused L28036 Rfn Daniels, Joseph, Regina Rif is found guilty of the first charge on the charge sheet *

†The summary (or abstract) of evidence is read, marked "C" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

yes, sir.

Answer. The accused in mitigation of punishment says :—

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

I am 28 yrs old, married with two children. I have a Gr. V education. I went to school for two yrs in Balcaires, Sask. then I was adopted by an old lady and for two yrs I didn't go to school. She then sent me to an Indian Industrial school at Beaudon where I stayed for 3 yrs and during which time I never saw my parents only the old lady who adopted me. I then went back to the old lady. I was 19 yrs old and did what I wanted and went where I pleased. She had a son who was a little crooked and he nearly got me into a lot of trouble but I managed to

Gregory, Major

Instruction. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

* The Court considers that the accused does not understand the effect of his plea of "guilty" with regard to the second charge, alters the record and enters a plea of "not guilty". Gregory, Major

DD

keep out. I eventually went out on my own until I went back to my parents when I was 19. I never had a steady job. I got married when I was 20 not because I wanted to but because I had to. We never got along so I decided to join the Army. I tried to get in with the Army Service Corps but they wouldn't take me. I went back home and in 1941 I joined the 2nd Bn Regina Rifle Regt. I intended to be a good soldier but in two months had an AWL charge against me. I was drafted to the 1st Bn but wasn't there long before I had a charge against me. Then all the charges against me are because of the boys in my company and the N.C.O.s. Everything I did wrong, they crimed me. I think I got a raw deal in the cay of this Bn but I take some of the blame myself. I have 4 brothers in the Canadian Army overseas. I don't associate (below)

Do you wish to give evidence yourself or to call any witnesses as to character? yes sir.

Question to the accused.

Answer.

Evidence as to character.

See Page "D".

Abregory, major

much with them, as I was away from home so much they don't seem like brothers. I haven't received any mail from home since Nov. 1942. I went AWL from detention because I received a letter from a girl in Brighton who told me that she was in trouble and if I didn't go and see her she would report me to the Regiment so I decided to go right down and see her. When I got there I found she was only kidding me. I then went to London to see my brother who is at CMHQ. I stayed in London 3 weeks where I was never questioned or stopped. I left London and went to Nottingham where I was picked up. Now after all the trouble for which I am sorry, I am willing to be a good soldier when I come out from my punishment.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused L28036, Rfn Joseph Daniels, Regina Rif guilty on the 1st three charges and not guilty on the fourth charge.

In the Field
June 10, 1993
Akhurgory, Major

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Capt. D. P. Grosch, Regina Rif is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes sir.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "D", signed by the President, and annexed to the proceedings.

Akhurgory Major

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes sir.

Cross-examined by the accused.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment or adjudication to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and account of that exceptional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* yes sir (see page CC)

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence.

The Court sentence the accused L28036, Rfn Joseph Daniels, Regina Rif to undergo detention for a period of 16 months and to be put under stoppages of pay until he has made good the sum of one pound, thirteen shillings and four pence (£1-13-4).

In the Field
June 10, 1943
Abrogard, Major

LIST OF EXHIBITS

1. Certificate in accordance with P.C. 2797 of 10 Apr 42
   - Marked Exhibit "A".
2. Expense Voucher (Ref: K.R. & O. (Can) 539)
   - Marked Exhibit "B".
3. Expense Voucher (Ref: K.R. & O. (Can) 539)
   - Marked Exhibit "C".
4. Army Form B. 295 (Pass)
   - Marked Exhibit "D".
5. Cdn Provost Corps: Exhibit & Property Report No. 520
   - Marked Exhibit "E"
6. Certificate in accordance with P.C. 2797 of 10 Apr 42.
   - Marked Exhibit "F"
7. Army For B.252
   - Marked Exhibit "G".
8. Army Form B.252
   - Marked Exhibit "H".
9. Army Form A.3
   - Marked Exhibit "I"

Gregory, major

Exhibit "A"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42.

I CERTIFY that No. L-28036 . Rank Rfmn. . Name Daniels, J. . . . . .

Unit "C" Coy. Regina Rifle Regt. was arrested at Nottingham . . . . . (Place)

at 1145. . .(hour) on . 18-May-43 .(date) and that at the time of his arrest he was wearing (Military Uniform) or (~~xxxxxxxxxxxxxxxxxx~~). Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

[signature] . . . . . Capt.
(W. Fern) D. A. P. M.,
London Area

"C"
Almgary, major

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

Reg. No. L-28036 Rank Rfmn Name Daniels, J. Unit Reg. Rifles

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ ~~Unit From~~ London from Nottingham

Date	Particulars (½ portion	Amount		
[illegible] May 47	Escorts return fare from LONDON To Nottingham		9	6
	Prisoners single fare to LONDON From Nottingham		9	6
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares (½ portion		2	4
	Total £	1	0	4

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Chargeable major

[signature] CAPT.
(W. FERRO) D.A.P.M.
SALVAGE AREA, Lieut.

"C"

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

Exhibit "B"

[illegible] 1000/55
[illegible] & S/483

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. L.28636 Rank Rfm Name Daniels, J Unit Regina Rifles

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
22 May 43	Escorts return fare from LONDON To New Haven		8	8
	Prisoners single fare to LONDON From			
	Prisoners fare from London To New Haven		4	14
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		13	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

"C" Albrecht, Major

[signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

Exhibit "C"

C.M.H.Q. 1000-55
40/P & S/489

If a calling-out of the whole Army Reserve is ordered, every soldier on pass must return immediately to his unit without waiting for instructions.

No ..... Regiment "A" Coy. 1st Bn. R. REGT. C.

Army Form D295
(In pads of 100)

PASS

No. L13073 (Rank) Pte (Name) Walker J

has permission to be absent from his †quarters/duty, from AD

2359 Hrs. 27 apr 43. 2359 Hrs. 11 May 43.

for the purpose of proceeding to* London

(Station) in 20 field

(Date) 22 Apr 43.

THE ROYAL REGIMENT OF CANADA
ROOM
27. apr 43.

Commanding
O.C. "A" Coy. 1st Bn. R. REGT. C.

† Delete whichever is not applicable.
* Destination [illegible] unless absence is to exceed 24 hours, unless notification is [illegible] local conditions or is necessary to enable purchase of a [illegible] fare.

CROWN COPYRIGHT RESERVED

Exhibit "D"

C
Attorney [illegible]

CANADIAN PROVOST CORPS.

Exhibit and Property Report No. ~~XXXX~~ 520

COMPANY: S.I.S. **FORMATION:** C.M.H.Q.

FILE NO.: ~~SI~~ SIS/E/2-42

DATE: 21 May 43. **PLACE:** London.

SUBJECT: Reg. No L-28036, Rfmn. DANIELS, J.
Regina Rifle Rgt. 1 Cdn. Corps.
False Leave Pass.

The property described below came into our possession on 20 May 43

At: SIS. C.M.H.Q. London. By: being in possession of a/m soldier when arrested as absentee.

ITEM NUMBER	DESCRIPTION OF PROPERTY
	(1) One False Leave Pass in name of Reg. No. L-13073, Pte. WALKER, J. bearing Orderly Room stamp R.C.R. "A".

A/Sgt.
C42046, Taylor, C.A.E. (SIS)
Cdn. Provost Corps. C.M.H.Q.

The property described above has been disposed of

At: On: By:

Receipt/destruction of the property described above is hereby acknowledged/certified.

WITNESS: "C" Allegory, Major

SIGNATURE OF RECIPIENT:

Exhibit "E"

C.M.H.Q./1000/44
40/P & S/1343 (10/42)

P.C. 2797 of 10 Apr 42.

Certificate in accordance with [illegible]
(Art. 4, Para. 1(a) of 1941).

I certify that No. L. 13073 Rank. PRIVATE

Name. WALKER. J. Unit. "A" COY. 1st BN.

THE ROYAL REGIMENT OF CANADA

NOTTINGHAM 1145 18 MAY 43

and at the time of his arrest he was wearing military uniform.

Signature of Provost Marshal, A.P.M.,
D.A.P.M., or other Officer into whose
custody the above-named person was
taken on arrest.

Place. Nottm

Date. 19/5/43

HARRISON, A/DJUTANT, THE ROYAL REGT. OF CANADA

Exhibit "F"

Lieut-Colonel

CHARGE. Army Form B 252
(See King's Regulations)

THE ROYAL REGIMENT OF CANADA. Regiment

"A" Coy., 1st Bn. Battery / Squadron / Troop or Company

CHARGE against No. L 13073 Rank Pte.

Name WALKER J.

Place ..... Date of Offence .....

OFFENCE W.O.A.S. (1) absent from ? until apprehended by the Military Police in CARRINGTON STREET, NOTTINGHAM on the 18th MAY 1943 about 1145 hours.

(2) Not being in possession of his A.B. 64.

J. C. Sutton Major.
ASSISTANT PROVOST MARSHAL
152 H.Q. PROVOST COMPANY
NORTHERN COMMAND

Names of Witnesses :-

Sgt. TWIST. J., C.M. POLICE

Signature of O.C. Battery, Squadron, Troop or Company .....

Punishment Awarded .....

By whom Awarded .....

"C" Sturgeon Major

Adjutant.

P.T.O

Exhibit G

Statement of **EVIDENCE** in the case of-

No. L. 13073 Pte. WALKER. J.
"A" Coy. 1st. Bn. The Royal Regt of Canada
CANADIAN ARMY IN ENGLAND

Sir,

At NOTTINGHAM on the 18th MAY 1943 about 1145 hours I was on duty in CARRINGTON STREET where I saw the above named soldier whom I checked for his pass. He produced the attached pass which expired on the 11th MAY 1943 but stated that he was in possession of another pass which he had left with his Army Pay Book in a case at the Y.M.C.A. SHAKESPEARE STREET.

I accompanied him to the above Y.M.C.A. but he was unable to produce the case or the document stating that it had been defaced by a companion who was with him at the time he was checked. After a further search of the City for the Canadian soldier who had been his companion I told him that as he could not satisfy me that he was on leave I was placing him in close arrest as an absentee without leave.

REMARKS

I conducted him to the BARRACK DETENTION ROOM where I handed him over to the M.C.O. to be detained.

NOTTINGHAM.
18 May 1943.

J. Smart. Sgt.
C.M. POLICE.
152 HQ PROVST COY.

CHARGE

Army Form B 252
(See King's Regulations)

Regina Rifle Regt. — Regiment
"C" Coy. — Battery / Squadron / Troop or Company

CHARGE against No. L-28036 Rank Rfmn

Name Daniels, J.

Place London Date of Offence 20-May-43

OFFENCE W.O.A.S. Using a Name and Regt. number other than his own when in custody of the Canadian Provost Corps from Nottingham to London until checked at about 2200 hrs. on the 20-May-43.

Names of Witnesses:—
Sgt. Ferguson, W.J. Canadian Provost Corps.
Cpl. Koenig, P. Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Exhibit H

Statement of **EVIDENCE** in the case of
L-28036 Rfmn. Daniels, J.
"G" Coy. Regina Rifle Regt.

Sir;

At London on the 20-May-43 at about 2200 hrs. I was on duty as N.C.O. i/c cells when the a/m soldier was brought in by L/Cpl. Belcher, No 6 Coy. Cdn. Provost Corps. On taking over the documents I questioned him regarding his absence and he then admitted that he was not Walker but that his correct name was Daniels. with the above Unit. He gave as his reason for the C.M.Police getting his wrong name was that he had the pass in his pocket with the wrong particulars and that he was drunk and they had taken the particulars from the pass.

.....Sgt.
(M-20806 Ferguson, W.J.)

London
21-May-43

Sir;

I have read over and corroborate the above statemen

.....Cpl.
(H-16082 Keenie, P.)

London
21-May-43

REMARKS

...8th Bn. THE REGINA RIFLE REGIMENT NOT TO BE PUBLISHED

DAILY ORDERS - PART 1

By Lt.-Col., H. Sharp, D.C.M., Officer Commanding No. 74

5 Apr 43 CERTIFIED TRUE COPY

1. DUTIES

Paying Company	5 Apr 43	"B" Company
Next for Duty	6 Apr 43	"C" Company
Duty Officer	6 Apr 43	Lieut. E. C. Luxton
Next for Duty	7 Apr 43	Lieut. J. S. Nelles
Bn Orderly Sgt	6 Apr 43	Sgt. McVeigh, J. P.
Next for Duty	7 Apr 43	Sgt. McVeigh, J. P.

2. NOTICE BOARD INFORMATION

Attention is directed to Overseas R.Os 3266, 3267, 3268, 3269, 3270, 3271, 3274, 3275, 3285 and 3286 which have been forwarded separately as Notice Board Information.

3. DISPLAY OF SAND TABLES

There is a display of cloth models and sand tables at the Drill Hall, Horsham which all Officers are urged to see. The Drill Hall is open during the day and during the evening.

4. FIELD GENERAL COURT MARTIAL

1. L280345 Pte. Daniels, J., 1st Bn. The Regina Rifle Regiment was tried by Field General Court Martial on 2 Apr 43 in the field, in the United Kingdom and was found guilty on the following charges:

(a) A charge under A.A. Sec. 15(1) relating to absence without leave for a period of 108 days, 11 hrs, 51 minutes.

(b) A charge under A.A. Sec. 24(2) relating to losing by neglect clothing and regimental necessaries amounting to £4.0.2.

He was on 2 Apr 43 sentenced to NINE MONTHS DETENTION AND TO UNDERGO STOPPAGES OF PAY IN THE AMOUNT OF FOUR POUNDS AND TWO PENCE.

The findings were duly confirmed by Brigadier H. W. Foster.

2. L271330 L/Cpl. Gibbs, W. S., 1st Bn. The Regina Rifle Regiment was tried by Field General Court Martial on 2 Apr 43 in the field, in the United Kingdom and was found guilty on the following charges:

(a) A charge under A.A. Sec. 15(1) relating to absence without leave for a period of ten days.

(b) An act to the prejudice of good order and military discipline relating to possession of a false pass.

(c) A charge under A.A. Sec. 15(1) relating to absence without leave for a period of four days.

He was on 2 Apr 43 sentenced to BE REDUCED TO THE PERMANENT GRADE OF RIFLEMAN AND TO NINETY DAYS DETENTION AND TO UNDERGO STOPPAGES OF PAY IN THE AMOUNT OF ONE POUND, TWO SHILLINGS AND TWO PENCE.

The findings were duly confirmed by Brigadier H. W. Foster.

5. FILM - "DESERT VICTORY"

The film "Desert Victory" will be shown at the Ocson Cinema, Kemp Town, Brighton at 1030 hrs, Tuesday, 6 Apr 43. Price of admission is one shilling. Leave for all ranks will be approved to attend this film at the individual's expense which will include rail fare to and from Brighton. Sub-units will issue passes to personnel desiring to attend. NO seats are reserved.

6. SHOOT - DIV ARTILLERY

Div Arty will do a 72 gun Shoot, 6 Apr 43. A, B, C, & S Coys will detail one officer to attend. Officers RV Bn.H.Q. at 0845 hrs and proceed to spectators RV at 523312 via rd June 528335 to arrive by 0945 hrs. T.C. will provide one station wagon.

(P. H. Nash), Lieut.,
A/Adjt., Regina Rif.

NOTICE - LOST

One watch G.S. 3 rial #654. Black face, luminous figures and small dint in back of case. Finder return to B Coy.

Allegany Mayor

SUMMARY OF EVIDENCE

In the case of L.28036 Rfn. DANIELS, Joseph, 1st Bn. THE REGINA RIFLE REGIMENT.

1st Witness

L.64418 Rfn. Pryce, R.L., 1st Bn. THE REGINA RIFLE REGIMENT, having been duly sworn states as follows:-

"On the night of April 13th Daniels asked to go to the latrine. Cpl. Young detailed me to take him and when we were leaving the latrine he ran. I caught up to him and got a hold of him but he escaped again. I then reported it to Cpl. Young."

The accused declines to corss-examine this witness.

Rfn R L Pryce

2nd Witness

L.27819 L/Cpl Carson, J.H., 1st Bn. THE REGINA RIFLE REGIMENT, having been duly sworn states as follows:-

"Acting upon instructions I proceeded to the Newhaven Station to receive the accused from his escort on the 22nd of May at approximately 1414 hours. I then took him to the Guard Room and kept him under close arrest."

The accused declines to cross-examine this witness.

[illegible]

3rd Witness

L.27835 L/Cpl Tenklei, E.S., 1st Bn. THE REGINA RIFLE REGIMENT, having been duly sworn states as follows:-

"I am in No. 1 Section, 13 Pl of which Daniels is a member. From 2115 hrs 13 Apr 43 to 1145 hrs 18 May 43 Daniels was never present with the platoon."

The accused declines to cross-examine this witness

E S Tenklei

4th Witness

Capt. W. Fern, D.A.P.M., London Area states as follows:-

"I certify that L.28036 Rfmn DANIELS, J. "C" Coy, Regina Rifle Regiment was arrested at Nottingham at 1145 hrs on 18 May 43 and that at the time of his arrest he was wearing Military Uniform."

Signed (W. Fern), Capt.,
D.A.P.M., London Area.

Expense Voucher Re:-

L.28036 Rfmn Daniels, J., Regina Rifles. The following expenses were incurred in apprehending and returning the M/N soldier to London from Nottingham. Date 27 May 43 Escorts return fare from London to Nottingham 9/6, prisoners single fare to London from Nottingham 9/6, Escorts & Prisoners expenses for Meals, Bus fares (½ portion) 2/4. Total - £1-0-4. I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Signed (W. Fern), Capt.,
D.A.P.M., London Area.

Expense Voucher Re:-

L.28036 Rfn. Daniels, J., Regina Rifles. The following expenses were incurred in apprhending and returning the M/N soldier to his Unit From London 22 May 43. Escorts return fare from London to Newhaven 8/8. Prisoners single fare from London to Newhaven 4/4. Total - 13/0. I certify that the above statement of expenses is Correct, and that the amounts are fair and just

Signed (W. Fern), Capt.,
D.A.P.M., London Area.

"C"
Allegary Maj

SUMMARY OF EVIDENCE

5th Witness

C.42046 A/Sgt Tayler, C.A.E., Canadian Provost Corps, C.M.H.Q. states as follows:-

"The property described below came into our possession on 20 May 43 at S.I.S. C.M.H.Q. London by being in possession of L.28036 Rfman DANIELS, J. Regina Rifle Regt. when arrested as absentee:- (1) One False Leave Pass in name of Reg. No. L.13073, Pte. Walker, J. bearing Orderly Room stamp R.C.R. "A".

Signed (C.A.E. Taylor), A/Sgt,
C.42046, Taylor, C.A.E. (SIS)
Cdn Provost Corps, C.M.H.Q.

6th Witness

Sgt. Twist, J., C.M. Police 152 HQ Provost Coy states as follows:-

"Statement of evidence in the case of:- No. L.13073 Pte Walker, J. "A" Coy, 1st Bn. The Royal Regt of Canada, Canadian Army in England. Sir, at Nottingham on the 18th May 1943 about 1145 hrs I was on duty in CARRINGTON STREET where I saw the above named soldier whom I checked for his pass. He produced the attached pass which expired on the 11th May 1943 but stated that he was in possession of another pass which he had left with his Army Pay Book in a case at the YMCA SHAKESPEARE STREET.

I accompanied him to the above YMCA but he was unable to produce the case or the documents stating that it had been deposited by a companion who was with him at the time he was checked. After a further search of the City for the Canadian soldier who had been his companion I told him that as he could not satisfy me that he was on leave I was placing him in close arrest as an absentee without leave. I Conducted him to the BARRACK DETENTION ROOM where I handed him over to the N.C.O. i/c to be detained.

Signed (J. Twist) Sgt
C.M. Police,
152 HQ Provost Coy.

Nottingham
18 May 1943

7th Witness

"Capt B.J. Garrison Adjutant, Nottingham states as follows:-

"I certify that L.13073 Private Walker, J. "A" Coy, 1st Bn. The Royal Regiment of Canada was arrested at Nottingham at 1145 hrs 18 May 43 and at the time of his arrest he was wearing military uniform.

Place Nottingham
Date 19 May 43.

Signed(
Garrison Adjutant, Nottingham

8th Witness

M.20808 Sgt. Ferguson, W.J., 6 Coy, Canadian Provost Company states as follows:-

"Statement of Evidence in the case of L.28036 Rfn. Daniels, J. "C" Coy Regina Rifle Regt. Sir, At London on the 20 May 43 at about 2200 hrs I was on duty as N.C.O. i/c cells when the a/m soldier was brought in by L/Cpl Belcher, No. 6 Coy Cdn. Provost Corps. On taking over the documents I questioned him regarding his absence and he then admitted that he was not Walker but that his correct name was Daniels., with the above Unit. He gave as his reason for the C.M. Police getting his wrong name was that he had the pass in his pocket with the wrong particulars and that he was drunk and they had taken the particulars from the pass."

London,
21 May 43.

Signed (W.J. Ferguson) Sgt.
(M.20808 Ferguson, W.J.)

9th Witness

M.16082 Cpl. Keenie, P., 6 Coy, Canadian Provost Corps states as follows:
"Sir, I have read over and corroborate the above statement."

London
21 May 43.

Signed(P. Keenie), Cpl.
(M.16082 Keenie, P.)

SUMMARY OF EVIDENCE

The accused declines to cross-examine the 4th, 5th, 7th, 8th and 9th witnesses and waives his right to demand their attendance for the purpose of giving oral evidence. Certified that the expense and loss of time involved renders it inexpedient to require the attendance of these witnesses.

(W.D. Grayson), Lieut.

The accused wishes to cross-examine the 6th Witness and therefore wishes to take advantage of his right to demand his attendance at his Field General Court Martial.

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so; but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused declines to make any statement or give evidence.

Rules of Procedure 4 paras c. d. e. f. and g. complied with.

Taken by me in the field this 1st day of June 1943 in the presence of the accused.

W.D. Grayson, Lieut

"C"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Cuckfield	8 Mar 42	Rfn.		AWL 2200 hrs 8-3-42 to 2230 hrs 8-3-42 Absent 1 half hour.	Cpl Dowling	2 days C.B.	9 Mar 43		
In The Field	28-3-42	Rfn.		A.A. 15 (1) Absent from parade	CSM Sweetnam Sgt Allen	4 days F.P. 4 days forf of pay	2-4-42	H. Sharp Lt-Col	
In The Field	31-3-42	Rfn.		A.A. 15 (1) do do do A.A. 10 (4) Breaking out of barracks	Cpl Coester Sgt Taylor Cpl Lewis CSM Sweetnam Rfn. Grunerud Cpl Baxter	4 days F.P. and 4 days forf of pay 20 days F.P. and forf 20 days pay	2-4-42 2-4-42	H. Sharp Lt-Col H. Sharp Lt-Col	
In The Field	30 Jul 42	Rfn.		A.A. Sec 40 Failing to take his turn at picquet	Rfn. Tenklei, L/Cpl Bell, KS	3 days C.B.	2 Aug 42	RJ Orr Capt	
Field	7-8-42	Rfn.		AWL from 1730 hrs 7-8-42 to 1630 hrs 26 Aug 42 (18 days 23 hrs AA 15 (1)	CSM Sweetnam L/Cpl Bergin	28 days F.P.	27 Aug 42	Maj Matheson	Total forf of 47 days pay FR & I
Field	19-10-42	Rfn.		AA S c 40 dirty rifle on parade	Sgt Taylor RC	3 days C.B.	Oct 20/42	R.J. Orr Capt	
Field	4 Dec 43	Rfn.		AWL from 2359 hrs 4 Dec 43 to 1150 hrs 24 Mar 43. Absent 108 days, 11 hrs and 51 mins. (2) Losing by neglect his equipment and regimental necessaries.		275 days for of ya. 9 months detention.	2 Apr 43	F.G.C.M.	109 aut forf of pay. Stoppage of 4-0-3 for loss of equipment.

"D"
Alexander, Major

CERTIFIED TRUE COPY. [signature] Capt. Coy

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2965)

No. L.28036 Name DANIELS J. | Sqn., Battery, or Company "X" "C" Corps Regina Rif. | Date of enlistment 9-5-41 | G.C. Badges | Service or Proficiency Pay | Character Fair

Date of last entry in Company Conduct Sheet Nil | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. One | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Regina	22-6-41	Pte		AWL from 2200 hrs 22-6-41 to 0110 hrs 24-6-41	Sgt. Hoyer	7 days CB Auto aut forf	24-6-41	Lt-Col Sig	2 days pay FRA I. 149 1 (a)
Regina Sask	29-6-41	Pte		AWL from 0600 hrs 29-6-41 to 1800 hrs 4-7-41	Cpl Arthus	5 days forf of pay XXX.A.A. 46(2) d	7-7-41	Major G. Anderson	7 days auto forf of pay FRAI 149 (1)(a)
D Debert	17-8-41	Rfn.		AWL from 2200 hrs 5-7-41 to 0745 hrs 7-7-41 AA 15 - AWL from 0600 hrs 17-8-41 to 2400 hrs 19-8-41 total of 2 dys and 18 hrs. AA 11 - Neglecting to obey camp orders in that he was found at Millbrook Reserve a place out of bounds	L/Cpl Klughart	7 days C.B.	20-8-41	Major D.G. Scott-Calder	For 3 dys pay FRAI 149 (1)(a)
Debert	21-8-41	Rfn.		AWL from 2200 hrs 21-8-41 to 0600 hrs 2 days 8 hrs.	24-8-41 Cpl Bailey WR	Forf 5 days pay AA 46 (2) d)	5-9-41	Lt-Col Hewitt	forf 3 dys pay
Aldershot	18-9-41	Rfn.		SPECIAL TRANSPORTATION WARRANT ISSUED ON L/LEAVE					
Woodlands	5-11-41	Rfn.		Special Transportation warrant issued on 1st Priv Leave.					
Cuckfield	24-1-42	Rfn.		AWL 2200 hrs 24-1-42 to 1430 hrs 25-1-42 A.A. Sec 15 (1)	Cpl Bailey WR Cpl Koester, JV	3 days C.B.	9 Mar 43.		

(F.T.O.)

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L.28036	Rfn.	DANIELS, Joseph	1st Bn. THE REGINA RIFLE REGIMENT

1. [redacted]

	Within last 12 months	Since enlistment or appointment
For	Absence without leave 2 times	TEN times
For	AA 11 - Neglecting to obey orders times	One times
For	A.A. 10 (4) Breaking out of Barracks times	One times
For	A.A. Sec 40 Two times	times
	Losing by neglect equip One Time	

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [redacted]

or,

Previous convictions of the accused by a court-martial [redacted] of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. [redacted]

or,

The accused at the present time is under sentence for 9 months beginning on the 2nd day of April 1943.

4. The accused has been in ~~confinement~~ undergoing sentence awaiting trial, ~~on the present charges~~, for ~~XX No days~~ in ~~civil custody, and 13 days in military custody, making a total of 13 days in custody, of which No days were spent in hospital.~~

5. The present age of the accused according to his [redacted] attestation paper is 24 years.

6. The date of his [redacted] attestation specified in his record of service is attestation paper 9 May 41.

7. The service which the accused is allowed to reckon towards discharge is 2 years 22 days.

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no [redacted] military decoration, or [redacted] military reward [redacted]

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force N/A

AB

"D" Chargery major

11. (In ~~the case of an officer, the [illegible] in the Royal Canadian Air Force the rank of~~ Permanent Force unit

..... ~~dated~~ ....., ~~and in the regiment for corps, the rank of~~

..... ~~dated~~ .....

12. The ~~[illegible]~~ present date:—

..... Date of promotion.

~~In the rank of~~ ..... ~~xxxx~~

~~In the rank of~~ ..... ~~xxxxx~~

~~In the rank of~~ ..... ~~xxxxx~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number L.28036 Rank Rfn.

Name DANIELS, Joseph of 1st Bn. The Regina Rifle Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Field General Court Martial.	In The Field. 2 Apr 43.	Absence without Leave (108 days) (2) Losing by neglect his equipment and gregimental Necessaries.	9 months detention.	Nil.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st day of June 1943.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "D" signed by the president, and annexed to the proceedings.

1 Jun 43.

To: Commanding Officer,
Regina Rifle Regiment

I do not wish to have an officer to represent me at my trial by Field General Court Martial.

Daniels J.
(L.28036 Rfn. Daniels, J.)

Whereas a lawyer was present during the court martial that a lawyer also represented the accused.
Always major



Always major

12 Oct 45

J.A.G. Rev

Original proceedings despatched Bomber to DND.

This H.Q. 10/Daniels J/1

Dated 11 Oct 45

[illegible], Capt

A G Rev

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : L28036 Pte Joseph DANIELS RCASC att 1 Cdn Dis Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	Guilty	Guilty	
2nd AA 40	Guilty	Guilty	
3rd AA 15 (1)	Guilty	Guilty	
4th AA 40	Guilty	Guilty	
5th AA 40	NotGuilty	NotGuilty	
6th AA 40	NotGuilty	NotGuilty	

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 47 days, of which Nil. days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labour for a period of two years, and to be discharged with ignominy from His Majestys Service.

(Sgd) ..... Judge-Advocate, if any. 16 Mar 45 Date awarded. (Sgd) "G B H Cox" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761; KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(7). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(*) GSNG

(*. AA 57A. Delete if not used.)

(Sgd) "GSN Gostling"

Date 20 Mar 45 Commanding 2 C B R G Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
L28036 Pte Daniels J	19 Apr 45	"J Redhurst",Lt-Col Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CR # 522
1 last, d/29 Mar 45

56-1

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA81) 40/P & S/1698 (46510) 4,38B

Convened by Order of Brigadier G S N Gostling, Comd 2 C B R G dated 13 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L2836	Pte	Joseph	Daniels	RCASC att Cdn Dis Centre

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 16 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed. GBC

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) GBC

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 48, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1630 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ GBC

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~
~~The shorthand writer is sworn.(1)~~ GBC

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N/C (2) GBC

(1. RP 110. 2. If no objection, waiting member retires. RP 58(6). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	GBH Cox	CAC - att 1 Cdn Dis Centre
Member	Major	A LEFROY	Seaforth Highrs att 1 Cdn Disc Centre
Member	Lieut	TJ Robinsom	CIC 11 CBR Bn
Judge-Advocate	———	———	
Prosecutor	Captain	JP Pollock	Can Fus Att 1 Cdn Disciplinary Centre
Defending Offr	Captain	JH Labrie	R de Mais att 1 Cdn Disciplinary Centre

Questions by President : Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See Div p 2.)

A8. The accused L28036 Pte JosephDANIELS before arraignment makes(s) (as) plea of guilty on the first four charges but NOT guilty on the fifth and sixth Charges. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 24, 155(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~does~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. GBC

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. JRA

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans. N O [5]
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. N O [1]
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) opening address.[1] S B C
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1] Exhibit B.C. on file charge and Exhibit D for the charge
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ~~left~~ Sixth charge(s).[2] The Court is closed, and considers the submission.[2] The Court is re-opened, and the President announces that the submission is disallowed on the ~~charge(s)~~ and allowed on the Sixth charge(s), and that, accordingly, ~~the trial will proceed on the former, but the accused is (are)~~ found Not Guilty on the latter charge(s).[4] S B C
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Do you intend to call witnesses on your behalf? Ans. Are they witnesses as to character only? Ans.
(1. *RP 115.* 2. *RP 40(A), see 80(C).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 42(A) fn 4, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. *AA 54(3) (4), RP 45, 120(4).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]

Ans. N O
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (~~copies~~) of Conduct Sheet(s), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex F and Ex G respectively.[2] S B C
(1. *MFB 255 or AFB 2146.* 2. *MFM 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. Yes on Allegation of Previous Convictions
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should prevent accused or his witnesses from giving evidence on oath, unless he has already done so, or previously stated which would affect the question of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. *AA 54(6), RP 120(4).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~[2]
(1. *When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 543-564, Overseas Act 309, 2323, MML p 62, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 132. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit 'A' [illegible]

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 557.)

I certify that I have this day examined L28036 Pte

Daniels J and in my opinion he is fit/unfit to undergo

trial by Court Martial.

Station 1 Cdn Disciplinary Centre

Date 16 Mar 45

"A.A. Tomes" Capt (Sgd)
Medical Officer

1 Cdn Disciplinary Centre
Unit

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 762, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 86 fn 1*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 46 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subjects of sentence except as provided by RP 46(E), KR Can 569(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 567.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 143 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.
(vii) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 739.*)

3. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

CFA95 (In lieu of AFA3)
40/P&R/1697 (2868)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 305, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 28036	Pte		Joseph	DANIELS	RCASC att 1 Cdn Dis Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) G B H COX (Must be named. RP 106.) CAC - att 1 Cdn Dis Centre (Unit.)

MEMBERS.

Major (Rank.) A LEFROY (Named or detailed. RP 106.) Seaforth Highrs att 1 Cdn Dis Centre (Unit.)

Lt (Rank.) to be detailed by OC 11 CBR Bn (Named or detailed. RP 106.) 11 CBR Bn (Unit.)

WAITING MEMBER.

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

~~JUDGE ADVOCATE.~~

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

"G S N Gostling" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G S N Gostling)

Commanding 2 Cdn Base Hft Gp Convening Officer.

Date 13 Mar 45

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for sasths and notes for use on trial.)

CHARGE SHEET

The accused, L-28036 Pte Joseph DANIELS, 63 ATC - RCASC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
AA Sec 15(1)

in that he

in the Field, absented himself without leave from 0800 hrs 9 Nov 44 until apprehended in LILLE, France at 1840 hrs 3 Jan 45. (Guilty)

(Total time absent 55 days, 10 hours and 40 minutes)

SECOND CHARGE — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
AA Sec 40

in that he (Guilty)

in the Field, on 3 Jan 45, improperly and without authority used W D Vehicle No 5833957 for private purposes.

THIRD CHARGE — WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
AA Sec 15(1)

in that he (Guilty)

in the Field, whilst under arrest, absented himself without leave from 2200 hrs 17 Jan 45 until apprehended in ALLE DES MARRONIERS, LILLE at 1315 hrs 31 Jan 45.

(Total time absent: 13 days, 15 hours and 15 minutes)

FOURTH CHARGE — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
AA Sec 40

in that he (Guilty)

in the Field, on 31 Jan 45, improperly used WD Vehicle No. M5539018 for private purposes.

FIFTH CHARGE — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
AA Sec 40

in that he (Not Guilty)

in the Field, at 1315 hrs 31 Jan 45, was found to be improperly wearing a uniform and rank badges to which he was NOT entitled, i.e. masquerading as an officer of the Canadian Army.

SIXTH CHARGE — WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
AA Sec 40

in that he (Not Guilty)

in the Field, at 1315 hrs 31 Jan 45 was found to be in improper possession of 23,050 Francs, a cheque book, and documents to which he was not entitled.

"A C Hood"
(A.C. Hood), Lt-Col.,
Commanding
1 Cdn Disciplinary Centre.

In the Field
9 Mar 45

To be tried by Field General Court-Martial

"GSN Gostling"
(G S N Gostling) brig
Comd
2 Cdn Base Aft Gp

In the Field
13 Mar 45

Exhibit "B"
"GBC"

L28036 Pte DANIELS, 63 ATC RCASC

PLEA OF NOT GUILTY ON FIFTH AND SIXTH CHARGES

Prosecution:-

(5)th Charge - Submits AFB 252 with written statement by L/Cpl Webb J, 242 HQ Provost Coy CMP (Exhibit "B")

Court Q. Can you produce witness to substantiate this document.

A. No Sir, due to exigencies of the service they are unavailable.

Prosecution Rests.

Defence. The Defending Officer submits that the evidence for the prosecution does not establish a prima facie case against the accused on the 5th charge.

Submission allowed on 5th charge.

Prosecution:-

(6th Charge (1) Submits MBM Pt (II) purport to be pay book of L28036 Pte Daniels Joseph. (Exhibit "D")
Accused is shown as only drawing (2400) francs between 20 July 44 & 9 Nov 44 the date of apprehension. When apprehended he was found in possession of 23,050 francs.

(2) Submits a document purporting to be a statement signed by L28036 Pte Daniels J. on 28 Feb 45 (Exhibit E) No witness available to substanciate nor are the articles, cheque book or documents available.

Prosecution Rests.

Defence:- The Defending Officer submits that the evidence availabel for the Prosecution does not establish a Prima facie case against the accused on the 6th charge.

Submission allowed on 6th charge.

Exhibit"1"
"GBC"

STATEMENT made by L28036 Pte Joseph DANIELS (RCASC)

1. I went A.W.L. on the 9 Nov 44 to 1840 hrs 3 Jan 45.

2. I was using with some others Ptes the Veh. 5833957 for private purposes without knowing that this vehicle was stolen or taken without permission.

3. I was also A.W.L. from 2200 hrs 17 Jan 45 until apprehended at 1315 hrs 31 Jan 45.

4. I was also using with a British soldier another WD Veh M5539018 for private purposes without knowing it was stolen or taken without work ticket on the 31 Jan 45.

5. The francs in my Pockets (23,050 francs) were obtained by playing cards, and gambling in my unit lines before going AWL and with Americans soldiers when I was AWL.
I didnt made any black markets or stolen any bodies.
In relation with the cheque book and documents in the coat's pockets. I never seen it.

6. I never had any badges on my uniform and never masquerading officers.

7. I am married, father of two children in Canada and I am the only one who supports them.

8. I am ready going back to the front. I am only 29 years old and I can be useful to the army and I swear that in the future I will be a good soldier.

"J. Daniels"

Note: The reason I went A.W.L. is:- I wanted a transfert from the RCAS to the infantry with my own unit "Regina Rifles"- They never less se go there. I was paraded to my pl. Comdrs, but he never let me go to my Coy Comdrs, so I went a A.W.L. thinking in that way I would be able to go to the front. I was in France 4 months and I never seen the front line.

"J. Daniels"

16 Mar 45
"H Labrie"Capt)
Def. Off.)

Sign: Joseph Daniels
L.28036

Exhibit "J"
"GEC"

PLEA OF MITIGATION

in the case of

Pte L.28036 JOSEPH DANIELS
(RCASC)

Pte Daniels is a soldier of 29 years old, married with two children in Canada.

He enlisted May 41, Dengland Sept 41 and landed in France July44 He had pleaded guilty of AWL and using Army vehicles with some others for personnel purposes. This man had tryed manny times getting a transfert to infantry for seeing action and he never succeded. Fed up, he went AWL. By nature he likes to be infantry man but never had a transfert. I ask the court taking in consideration the future good will of Daniels, he is trained and fit.

"Henri Labrie"
Capt
Def. Off.

16 Mar 45

44 days close arrest, waiting trial.

Exhibit "A"
"OBC"

Summary of Evidence in the case of L-28036 Pte Joseph DANIELS, 63 ATC-RCASC, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charges - Absence without leave (two charges)
Conduct to the prejudice (four charges)

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 38 dated 18 Nov 44.

Exhibit "B" - Certificate of apprehension dated 3 Jan 45.

Exhibit "C" - Statement of accused dated 28 Feb 45 taken by Sjt MATTHEW A of 1 Cdn Disc Centre, showing date of commencement of second AWL as 2200 hrs 17 Jan 45.

Exhibit "D" - Army Form B252 with written statement by L cpl WEBB J, 242 WD Provost Coy CMP giving evidence of WD Vehicle No M5539018.

Exhibit "E" - Certificate of apprehension dated 31 Jan 45.

Exhibit "F" - Army Form B252 with written statement by L cpl TAYLOR D, CMP giving evidence of WD Vehicle No M5833957.

Exhibit "G" - MBM I Pt II of the accused, as produced by Capt J E DIBB.

FIRST WITNESS

M-36743 Sjt MATTHEW A, SIS 1 Cdn Disciplinary Centre sworn states:-

On the 28th day of Feb 45, I interviewed the accused L-28036 Pte Joseph DANIELS, attached to 1 Cdn Disciplinary Centre, whom I now recognize. After making known my identity I cautioned him as follows:-"You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be used in evidence". The accused understood the caution and signed his name to the statement which was read over to him. It is attached to these proceedings as Exhibit "C".

"A Matthew"
M36743 Sjt MATTHEW A

The accused declines to cross-examine this witness.

D WITNESS

Capt J E DIBB, Adj Officer, 1 Cdn Disciplinary Centre, sworn states:-

As Adm Officer of 1 Cdn Disciplinary Centre, I have custody of all documents concerning soldier held in custody here. I now produce MBM I Pt II concerning L-28036 Pte Joseph DANIELS, attached to 1 Cdn Disciplinary Centre, showing a credit balance as of 23 Feb 45, amounting to $106.12 This document is attached to these proceedings and marked Exhibit "G".

(J E DIBB) Capt

The accused declines to cross-examine this witness.

SECOND WITNESS L/Cpl WEBB J 242 HQ Provost Coy, CM Police submits a typed statement signed by him in lieu of appearance.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable, and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "D".

"W D Hungerford" Capt
(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

I do not require the attendance of L cpl WEBB J for the purpose of cross-examination.

"J Daniels"
(the accused)

THIRD WITNESS L cpl TAYLOR D 242 HQ Provost Coy, CM Police submits a written statement signed by him in lieu of appearance.

I certify that in my opinion the attendance of this witness is, owing to the egigencies of the service, not readily procurable, and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "F".

"W D Hungerford" Capt
(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

I do not require the attendance of L cpl TAYLOR D for the purpose of cross-examination.

"J Daniels"
(the accused)

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. No.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that AP 4 (C) (D) (E) (F) and (G) have been complied with.

"W D Hungerford" Capt
(W D Hungerford) Capt
Officer detailed to take Summary of Evidence.

Dated in the Field
8 Mar 45

PART II ORDER EXTRACT FORM

99/20/63 A TPT COY RCASC/1 (A5E)

TO:

9 FEB 19 45

EXTRACTS FROM: UNIT 63 Cdn Army Tpt Coy RCASC

Part II Order No. 38 dated 18 Nov 44.

ABSENT WITHOUT LEAVE
(a) AWL from 0800 hrs 9 Nov 44
L28036 Pte DANIELS J

Certified to be a true extract from the regimental books and documents in my custody

"G E Mavin"
Officer IC Records,
Cdn Sec GHQ 2 Ech 21 Army Gp 9Feb45

Exhibit "A"
"WD Hungerford" Capt

The following documents are attached. Please ack receipt on att duplicate required. Please forward same, for infm

Originating clerks initials ..... for
Officer in Charge
Canadian Section GHQ 2nd Echelon

EXHIBIT "B"

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 76(1)

"WD Hungerford"
Capt

I certify that No. 128036 Rank. Pte Name. DANIA S J

of. A7 G.T. Coy. R.C.A.S.C.12 Bn2CBRG. unit was arrested at LILLE

.....(place) at 18.40 hrs on 3 Jan 45

(date). He was dressed in uniform/~~xxxxxxxxxxxxxxxxxx~~

Date. 3 Jan 45 Signature of Provost Marshal, APM, or other officer into whose custody the a/m person was taken on arrest.

Signature & Rank. "H. Jaffery" (H. FEFFERY) Capt.

Unit or appointment OC. 242 HQ PROVOST COMPANY, C.M.P.

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer 'for' another or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

STATEMENT OF L-28036 Pte Joseph DANIELS

Copy of Exhibit "C" "WD Hungerford" Capt

28 Feb 45

Exhibit "B" "GBC"

I have been cautioned by Sjt MATTHEW SIS, that I need not say anything, but that anything I do say will be taken down in writing and may be used as evidence, to show that I understand this caution, I sign my name here.

"DANIELS JOSEPH"

I am 28 yrears of age, I enlisted in the Cdn Army on Mat 10th, 1941. After training in REGINA Sask, I was posted to the Regina Rifles Regt and came overseas with them, landing in UK on 1st Sep 41. I remained with Regina Rifles in UK until about Mar 43, when I was transferred to the RCASC as a cook. I came to France with this unit as cook on 22 Jun 44. I am a married man, my wife and two children reside at BALCARESS Sask. My assignment of pay is $20.00 monthly.

On 8th Nov 44 we were employed moving hospital personnel from BAYIEUX to GHENT. On 9th Nov 44 at 0800 hrs I went AWL from my unit, RCASC and obtained a ride from RAF personnel as far as LILLE. I met another Cdn soldier in LILLE who was AWL, he was intending going back to Holland, I do not know his name but he was with the armoured corps; he told me that he knew where there was an abandoned jeep outside LILLE. Since he told me that he intended returning to HOLLAND, I decided to go with him if the jeep would operate, and I would return to my unit. We went to where this jeep was abandoned and found it was out of gas, we stopped a truck and got a jerry can of gas, got a push from the truck and the jeep started. This incident took place about the end of Nov 44.

In the intervening time, that is from 9th Nov 44 until we got this jeep, I had stayed in LILLE. I had approximately 30,000 French Francs, I had stayed in LILLE. I was able to eat at Cafes and Canteens in LILLE, I was invited to several civilian homes where I slept, I also slept at an English Army Camp on quite a few occasions. I went in with the English soldiers and was not checked for a pass, I also ate there while staying at this camp.

About the end of Nov 44 when I contacted this other Cdn I already mentioned, I had decided to return to my unit, but on obtaining the jeep we proceeded to ROUEN where we met an American unit. We stayed with the Americans for about four days and then went with an American truck to PARIS, we left the jeep at the American unit in ROUEN while we had this trip. We stayed at an American canteen while in PARIS, once while there got into a crap game where in one night I made 17,000 Francs. We stayed there for about a week. This American unit in ROUEN were engaged transporting mechanical equipment to PARIS area, and after this week in PARIS, we both got a ride back with them to ROUEN, and found that the jeep we had left there was still intact. We used this jeep to travel around the area, we stayed at civilian homes most of the time then and we then decided to return to LILLE on 3rd Jan 45. We stopped at a cafe and left the jeep outside, we were checked there by the CMP, found that we were both AWL, placed us under arrest and took possession of the jeep we had been using. We had taken turns in driving this vehicle over the period we had it in our possession, there was no log book or work ticket with this vehicle. I had approximately 29,000 French Francs in my possession when arrested at this time, but had it in my dress shirt pocket and although I was searched by the CMP, they did not locate this money. They took possession of my documents, pay book etc. I was escorted to 12 CBRG on 5th Jan 45 along with my companion. I was subjected to a further search at the guard room 12 CBRG; I still had this money in my shirt pocket but they did not locate it. This money consisted of one 5000 franc note, several 1000 notes and the balance in 500's. I was held in custody at 12 Bn CBRG guard room until 17th Jan 45 when I escaped custody at approximately 2200 hrs. I was dressed in Cdn Cdn Battle Dress, having removed the suit of deniums that we usually wore over the battle dress. I walked out of the main gate without being questioned for a pass. I stayed in a Cafe in GHENT over night, I still had all the 29,000 Francs (French) with me.

I stayed around GHENT the following day and obtained a ride into FRANCE with the RAF and made my way back to LILLE. I remained there a few days, went to ARRAS by hitch hiking and remained there until about the 28th or 29 Jan 45. I stayed in hotels in ARRAS and had my meals there. On the 29th Jan 45 I obtained a ride to LILLE, I stayed there until 31 Jan 45 when I was arrested by the CMP about 1315 hrs. The circumstances surrounding my arrest on this occasion are as follows. I was in a barber shop in LILLE about 1300 hrs on that date, another soldier who was English asked me if I knew where the petrol supply point was located, he said he was AWL. I told this English soldier that I knew where to get petrol and went outside with him. He had a Jeep parked there. He drove the jeep and I rode with him to get petrol; he didn't tell me that this was a stolen jeep. We arrived at the petrol supply point and while this English soldier stayed in t the jeep, I went into the Report centre to check in for petrol. There was a Capt there who asked for my identity card etc., which I could not produce as they were held at guardroom 12 CBRG and he held me at the office while he phoned for the CMP. Meantime, the English soldier who was driving the jeep apparently saw that I was being questioned and he left on foot. On arrival of the CMP I admitted that I was AWL. They took me over to the jeep that had been abandoned by the English soldier and drove me in the jeep to their HQs. They did not ask me anything about this other soldier or how I came to be with this vehicle. They located what money I had left in my possession amounting to 23,000 French Francs and took possession of same.

With regard to my dress when arrested, I was wearing a long waterproof DRs coat which I had got in the jeep when I accompanied this English soldier. There were not gadges of rank on this coat, either on the shoulders or elsewhere and I do not know what the pockets contained. I have no knowledge of any cheque book or documents belonging to one Lt N J BURNSIDE (36236), these documents were not shown to me by the CMP. If they obtained such documents, I do not know where they obtained them, I still had possession of this coat and all my uniform until I was handed over to 12 Bn CBRG on 1st Feb 45. I was questioned by the CMP as to my activities at LILLE area, they believed I was in the Black Market because of the amount of money I had when arrested. My battle dress blouse did not have any badges of rank on it either, I still have this blouse; the coat was taken possession of by the staff at the reception office at 1 Can Disc Centre as they claimed I was not entitled to such kit.

I have had only one FUCW, that being in England in 1943 for being AWL for approximately 118 days and was awarded 9 months Detention. Any other crime in the army was short periods of AWL in England. When I went AWL from RCASC on 9th Nov 44, I had approximately 30,000 French Francs in my possession, I had obtained this amount by gambling at the unit, my pay book shows that I drew my pay for the period 1st - 31st Oct 44, immediately prior to my going AWL.

Sgd "DANIELS J"

Feb 28th 1945
Witnessed "A MATTHEW" Sjt

Statement of Evidence in the Case of
No. L/28036 Pte DANIELS, J.,
No.63 CANADIAN TRANSPORT COMPANY
THE ROYAL CANADIAN ARMY SERVICE CORPS

Sir, At Lille on ~~evening~~ JAN 1945 at about 1315 hrs in company with L/Cpl PARKER, A., C.M.Police I was on duty in ALLE DES MARRONNIERS, where I saw the a/n soldier.

He was dressed as an officer of the Can Army, and wearing the badges of rank of a Lieutenant. He stated he was the driver of J Jeep No. M5539018. which was in his possessio He was in possession of 23,050 frances a cheque-book, and documents of Lieut N J BURNSIDE (36236).

He could not produce any means of identification and admitted he was an absnetee.

I arrested him and conducted him to the Town Guard Room, Lille where he was handed ov over to the N.C.O. i/c the Guard to be detainged.

Handing-over Certificate and Certificate of Arrest attached.

"L Webb" L/Cpl
242 H.Q. Provost Company C.M.Police

I have read over and corroborate the above statement.

"AA Parker"L/Cpl
242 H.Q. Provost Company C.M.Police

REMARKS

Exhibit "D"

"WD Hungerford" Capt

On completion to be disposed of in accordance with

CHARGE

Exhibit "C"

Army Form B 252
(See King's Regulations)

THE ROYAL CANADIAN ARMY SERVICE CORPS 360

63 CANADIAN TRANSPORT

Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. L28036 Rank Pte

Name DANIELS J

Place LILLE Date of Offence

OFFENCE W.O.A.S. (1) Ansent from
until apprehended by the Military Police in
ALLE DES MARRONNIERS at about 1315 hrs on 31
Jan 45 (2) Being in unauthorixed possession
of W D Car 5cwt 4x4 No. M5539018.
(3) Masquerading as an officer of the Can
Army
(4) Not being inpossession of his MBM I

Names of Witnesses :— L/Cpl WEBB J CM POLICE
L/Cpl PARKER A CM POLICE
SGT HOWARD S NCO i/c
GUARD

Signature of O.C. Battery, Squadron, Troop or Company "J Maieladier" Capt
DAPM

Punishment Awarded HQ No 15 L of C Sub-Area

By whom Awarded Exhibit "D"
"WD Hungerford" Capt

Adjutant.

P.T.O.

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 103(1)(i)

I certify that No.L28036....Rank.Pte....Name.Daniels.J.....

of..63.CdnTPT Coy..... unit was arrested at .LILLE...

.....(place) at.1315...hrs on.31.Jan.45

... .(date). He was dressed in uniform/xxxxxxxxxxxxxxxx

Date.31.Jan.45.... Signature of Provost Marshal, APM, or other officer into whose custody the c/m person was taken on arrest.

Signature & rank.....(H.JEFFERY) "H.Jeffery" Capt.....

Unit or appointment O.C.242.HQ PROVOST COMPANY, C.M.P.

Exhibit "E"
"WD Hungerford"
Capt

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer 'for' another or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

STATEMENT OF EVIDENCE IN THE CASE OF
No. L28036 PTE J DANIELS.
47 GENERAL TRANSPORT COMPANY
12 BATTALION CAN. BASE RPT. GROUP
ROYAL CANADIAN ARMY SERVICE CORPS

Sir.

At LILLE on the 3 JANUARY, 1945 at about 1840 hrs I was on duty at 242 HQ PROVOST COMPANY HEADQUARTERS accompanied by L/Cpl COOMBS C.M.POLICE. When I saw the a/n Soldier.

He was questioned and he could not give satisfactory as to being in LILLE and being in possession of a W D Ford 4x4 ¾ Cwt No. M5833957.

I arrested him for being absent without leave and detained the A/M W.D. VEHICLE.

I obtained his particulars verified same from his A.B.64 and conducted him to the TOWN GUARD ROOM where he was handed over under arrest to the N.C.O. i/c GUARD.

Handing over certificate and certificate of arrest attached.

"D Taylor" L/Cpl
242 HQ Prov Coy CMP

Sir,

I have read over and corroborate the above statement.

REMARKS

"H COOMBS" L/C CMP
242 HQ PROV COY

Exhibit "P"

"WD Hungerford" Captain

To be disposed of in accordance with K.Rs 1940 Para 563(b)

Army Form B 252
(See King's Regulations)

CHARGE

ROYAL CANADIAN ARMY SERVICE CORPS

47 GENERAL TRANSPORT ~~Battery~~ ~~Squadron~~ ~~Troop or~~ 24. Company

CHARGE against No. L28036 Rank Pte

Name J DANIELS

Place LILLE Date of Offence

OFFENCE WCAS ABSENT FROM UNTIL APPREHENDED BY THE MILITARY POLICE AT ABOUT 1840 HOURS ON THE 3 JANUARY 1945 (2) BEING IN IMPROPER POSSESSION OF A W.D. Vehicle WD FORD 4 X 4 5 cwt No W58339S7

Names of Witnesses:—

L/Cpl D TAYLOR C M POLICE

L/CPL HG COMBES C M POLICE

CPL RJ WILLIAMS NCO I/C GUARD

Signature of O.C. Battery, Squadron, Troop or Company "H Jeffery" Capt. for DAPM 15 LofC

Punishment Awarded Copy of Exhibit "B"

By whom Awarded "HD Hungerford" Capt

Adjutant.

P.T.O.

Exhibit "F." BC.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
L-28036	Pte	DANIELS	RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA 15 (1) AWL ..... 5 times.

For AA 10 Breaking out of Bks ..... 1 times.

For AA 40 ..... 3 times.

For ..... times.

Date of first entry in Field Conduct Sheet 28 Mar 42

Date of last entry in Field Conduct Sheet 13 Apr 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for No beginning on the N/A day of N/A

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 44 days in military custody, i.e., Nil days in open arrest, 44 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 29

6. The date of his attestation is 9 May 41

7. The service which the accused is allowed to reckon is ////////////

8. The accused is in possession of: No.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date.

Date of Promotion.

In the substantive rank of ////////////////

In the war substantive rank of ////////////////

In the acting rank of ////////////////

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*State the military decorations (if any) held by accused.

[illegible] A.& E.W.Ltd. Gp.698 Form W.2 S.(War)4

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Field	AA Sec 15 (1) AWL 100 days 11 hrs 51 mins AA Sec 40 Losing by neglect his equipment.	9 mos Detn Forf 275 days pay FR&I 149 (1) (b)	Record not available
FGCM	Field 10 Jan 45	AA Sec 15 (1) AWL 34 days 14 hrs 30 mins AA Sec 40 (2 charges) Nature of offences not recorded on RFM 6	1 mos Detn forf 16 months pay FR&I 149 (1) (b) forf 35 days pay FR&I 149 (1)(a)	Record not available

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 16 day of Mar 45

"JA Dibb" Capt

EXHIBIT "G"

No L28036 Name DANIELS J | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 9 May 41 | GC Badges | Service or Proficiency Pay GBC | MFM 6 (AFB 122) 40/F&S/136 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc J FitzRandolph Maj | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On 9 Nov 41 having completed six months service clear of any entries in FD Concuct sheet previous sheet destroyed									
Field	28 Mar 42	Pte		AA Sec 15 (1) AWL from Parade	Sgt Allen Cpl A Baxter	4 days FP 4 days pay FR&I 149 (2)	2 Apr 42	Lt Col Sharp	
Field,	31 Mar 42	Pte		(1) AA Sec 15 (1) AWL from Pde (2) AA Sec 10 (4) Breaking out of bks	Sgt Taylor Cpl Lewis CSM Sweetman Cpl Baxter	4 days pay FR&I 149 (2) 20 days FP 20 days pay FR&I 149 (2)	2 Apr 42	Lt Col Sharp	
Field,	7 Aug 42	Pte		AA Sec 15 (1) AWL from 1730 hrs 7 Aug 42 to 1630 hrs 26 Aug 42 Absent 18 days 23 hrs	L/C Bergen CSM Sweetman	28 days pay FR&I 149(2) 28 days FP	27 Aug 42	Maj Mathieson	19 days pay FR&I 149(1a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field, 4 Dec 43		Pte	(1)	AA Sec 15 (1) AWL from 2359 hrs 4 Dec 43 to 1150 hrs 24 Mar 43 absent 100 days 11 hrs, 51 mins	Documentary	9 months det forf 275 days pay FR&I 149 (1) (b)	2 Apr 43	FGCM	101 days pay FR&I 149 (1a) Stop of pay 4-0-5
			(2)	AA Sec 40 losing by neglect his Eqpt					
Field 13 Apr 43		Pte	(1)	AA Sec 15 (1) AWL 34 days	Documentary	16 months detn forf 16 mos pay FR&I 149 (1) (b)	30 Jan 43	FGCM	forf 35 days pay FR&I 149 (1)(a)
			(2)	AA Sec 40 14 hrs 30 mins					
			(3)	AA Sec 40					

LIST OF WITNESSES

PROSECUTION

Capt J E DIBB Adm Officer 1 Cdn Disciplinary Centre

M-36743 Sjt MATTHEW A SIS 1 Cdn Disciplinary Centre

Lcpl WEBB J 242 HQ Provost Coy, C M Police

Lcpl TAYLOR D 242 HQ Provost Coy, C M Police

DEFENCE

NIL

LIST OF EXHIBITS

Certified true copy of Extract from Pt II Order No 38 dated 18 Nov 44	"A"
Certificate of apprehension dated 3 Jan 45	"B"
Statement of accused dated 28 Feb 45 taken by Sjt MATTHEW A of 1 Cdn Disciplinary Centre, showing date of commencement of second AWL as 2200 hrs 17 Jan 45	"C"
AFB 252 with written statement by L cpl WEBB J, giving evidence of WD Vehicle No M5539018	"D"
Certificate of apprehension dated 31 Jan 45	"E"
AFB 252 with written statement by L cpl TAYLOR D CMP giving evidence of WD Vehicle no M5833957	"F"

I, L-28036 Pte Joseph DANIELS, hereby certify that I have received one copy of charge sheet and one copy of Summary of Evidence free of charge on 6 Mar 45.

" J Daniels "
L28036 Pte DANIELS J

48-78

Pte Daniels J.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H 102787 Pte James Ross DANIELS PPCLI

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
AA 1st Sec 18(1)(a) "DGD"	"DGD" Not Guilty	"DGD" Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for nil beginning on (date) N/A "DGD" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which nil days were spent in hospital.(1) "DGD"

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Four (4) years penal servitude

(Sgd) "DGD" Judge Advocate, if any. 23 Jan 45 Date awarded. (Sgd) "D.G. Duncan, Major" President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation

Date 26 Jan 45 (Sgd) "M.E. Bogert, Brig" Commanding 2 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) to 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be varied; AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 152, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

"I confirm the finding and sentence and I direct that a part of the sentence not exceeding two years shall be served in a military prison"

~~I confirm the finding but not the sentence. I withhold confirmation of the finding and sentence.~~

(1. AA 57A. Delete if not used.)

Date 17 Feb 45 (Sgd) "E.G. Weeks" Major-General
Commanding CANADIAN MILITARY HEADQUARTERS IC Administration
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused. Date. Signature of Offr.

G-102787 Pte Daniels, J.R. PPCLI 22 Feb 45 S.S. Fraser Lt Actg Staff Capt (A&Q) HQ 1 Can Heavy Bty CAC(W.D.)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 45-78

CERTIFIED TRUE COPY

(D M Gowan) Capt

CFA86 (To lieu of AFA2) 40/P & S 6/1005 (1-43) 4/38B

FIELD GENERAL COURT-MARTIAL dated 19 Jan 45

Convened by Order of 1 Fe.B 45. (D M Gowan) Capt Lt-col R.F. Clark T/Comd 2 Cdn Inf Bde

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R/ (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H102787	Private	James Ross	DANIELS	PPCLI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 23 Jan 45 "DGD"

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA~~ if any, and Offrs under instr, if any, assemble, and the "DGD" Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for necessary instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(2) attached thereto.(1) "DGD" The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and "DGD" each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 8. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1120 hours trial commences. "DGD"

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) "DGD" ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 80 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to "DGD" as interpreter? Ans —

The Interpreter is sworn.(1) Do you object to "DGD" as shorthand writer? Ans —

The shorthand writer is sworn.(1)

—————C." RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2) "DGD"

(1. RP 110. 2. ~~Any~~ objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA~~ if any, and Offrs under instr, if any, are sworn.(1) The following are the "DGD" ranks, names and units of the offrs comprising this Court, etc:

President	Major	D.G. Duncan	Sen/ of C.	"DGD"
Member	Capt	J.H. Prowse	L E R	"DGD"
Member	Lt.	J.A. McNally	L E R	"DGD"
~~Judge Advocate~~	"DGD"	R.F. Black	PPCLI	"DGD"
Prosecutor	Lt.	A.M. Campbell	PPCLI	"DGD"
Defending Offr	Capt.			

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1) "DGD"

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused H 102787 Pte J.R. Daniels before arraignment make(s) (no) (~~a~~) plea "DGD" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (or one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned separately on all charges in the charge sheet.(1) The accused does ~~not~~ "DGD" not object to any charge.(2) There is no amendment to be made to the Charge Sheet. The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 7 of Instrs p 2. 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A94 to record proceedings. 3. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared~~) considers the Instrs on Procedure after Arraignment at top of p 2. The pro- "DGD" ceedings are continued on Record Form D "DGD"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H 102787 Pte James Ross DANIELS PPCLI

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
	"DGD"	"DGD"	"DGD"	
AA 1st	Sec 12(1)(a)	Not Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for nil beginning on (date) N/A "DGD" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which nil days were spent in hospital. (1) "DGD"

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:

Four (4) years penal servitude

(Sgd) "DGD" 23 Jan 45 (Sgd) "D.G. Duncan, Major"

Judge Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation

Date 26 Jan 45 (Sgd) "M.P. Bogert, Brig" Commanding 8 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 563 577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

"I confirm the finding and sentence and I direct that a part of the sentence not exceeding two years shall be served in a military prison"

~~I direct that the proceedings be submitted to ... for determination whether ...~~ (1. AA 57A. Delete if not used.)

(Sgd) "E.G. Weeks" Major-General

Date 17 Feb 45 IC Administration

Commanding CANADIAN MILITARY HEADQUARTERS

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G-102787 Pte Daniels, J.R. PPCLI	22 Feb 45	Lt-Col Regimental Adjt for OC 2 Cdn Reinforcement Unit CMHQ

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

(D M Owen) Capt

A/Adjt

RECORDED AT CMHQ IN AB 16D, 45-78

CFA66 (To replace AFA51) 40/P.M.S./1698 (Apr 61)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by order of Maj Lt-Col R.F. Clark T/Comd 2 Cdn Inf Bde dated 19 Jan 45 1 Feb 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H102787	Private		James Ross	DANIELS	PPCLI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 23 Jan 45 "DGD"

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA~~ if any, and Offr under instr, if any, assemble, and the "DGD" Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto (1) "DGD" The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and "DGD" each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1120 hours trial commences. "DGD"

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial. (1) "DGD" ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (1) "DGD"

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ... as interpreter? Ans --

The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans --

The shorthand writer is sworn. "DGD"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2) "DGD"

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA~~ if any and Offr under instr, if any, are sworn.(1) The following are the "DGD" ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.G. Duncan	Seaf of C.	"DGD"
Member	Capt	J.E. Prowse	L E R	"DGD"
Member	Lt.	J.A. McNally	L E R	"DGD"
~~Judge Advocate~~	"DGD"			
Prosecutor	Lt.	R.F. Black	PPCLI	"DGD"
Defending Offr	Capt.	A.M. Campbell	PPCLI	"DGD"

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2) "DGD"

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 59 (B) and fn 2 were not followed. See Dr p 3.)

A8. The accused H 102787 Pte J.R. Daniels before arraignment make(s) (no) ~~(a)~~ plea "DGD" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ "DGD" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~ADJOURNS~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro- "DGD" ceedings are continued on Record Form D "DGD"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)"DGD"

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as finality, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1-as D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) "DGD"

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)"DGD"

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and ~~the President announces~~ that the submission is disallowed on the ..... charge(s), and allowed on the ..... "DGD" charge(s), and ~~that, accordingly~~, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter~~ charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Give evidence myself as witness "DGD"

Do you intend to call witnesses on your behalf ? Ans No "DGD"

Are they witnesses as to character only ? Ans N/A "DGD"

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I "DGD" of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated." Part I of the Schedule is dated and signed.(2) "DGD"

(*1. RR 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) "DGD"

Ans No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true "DGD" copy ~~XXXX~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for "DGD" examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3) "DGD"

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 158. If above documents not produced, see RP 46 fn 3 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No (2)"DGD"

(*1. RP 27(C), 47(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and now reads as follows~~ "DGD"

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 335, 563-566. Overseas RO 309, 2323. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 46, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 48(1), KR Can 564. 2. RP 50. As to release from arrest (ie Confirming Offr) see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, H102787 Private James Ross DANIELS, Princess Patricia's Canadian Light Infantry, a soldier of the Canadian Army Overseas, CMF, is charged with:-

t Charge
s 12(1)(a) AA

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, In Italy, on 20 Dec 44, when serving with "B" Company PPCLI in a forward area, with intent to avoid such service, absented himself without leave from "B" Company PPCLI from 1700 hrs 20 Dec 44 until surrendering to M42036 L/Cpl Ockey D.W., Regtl Police PPCLI, at 2000 hrs 4 Jan 45 (Absent 15 days 3 hrs)

"R.P. Clark"
(R P Clark) Lt-Col
CO, PPCLI

In the Field
17 Jan 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"R.P. Clark"
(R P Clark) Lt-Col
T/Comd 2 Cdn Inf Bde

In the Field
19 Jan 45

"AMG"
18 Jan 45

"DGD"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2662)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 102787	Private		James Ross	DANIELS	PPCLI

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 19 Jan 45 endorsed by me, ~~for by an offr of my staff for me~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ "DGD"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D G Duncan	Qmaf of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.H. Prowse	L S R
Lieut	T.A. McNally	L S R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	R W W Salter	Qmaf of C

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
in Italy	"H.T. Clark"	Lt-Col

Date 19 Jan 45 T/Commanding 2 CANADIAN INFANTRY BRIGADE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"DGD"

MEDICAL OFFICER'S CERTIFICATE
(K R (Can) para 557)

I certify that I have this morning examined H 102787
Pte DANIELS J.R. of PPCLI and in my opinion
he is fit to undergo trial by Court Martial.

Station In the Field (????)
Dat 23 Jan 45 (Medical Officer)

"DGD"

Opening address for the prosecution in the case of H102787 Pte Daniels, J.R.

In this case I intend to establish a prima facie case against the accused, by submitting evidence to show that the accused was fully aware of his units' position and his own responsibilities in that connection, yet he absented himself without leave. I shall call two witnesses H17836 Sgt. Michele, A. M12245 Cpl Crossman J.W., to show that the accused was warned that the unit was proceeding to a forward area and that he absented himself from an F.U.P. on 20 Dec 44. The Third Witness M42036 L/Cpl Cokey D.W. will testify that the accused surrendered himself as an absentee on 4 Jan 45.

"DGD"

Page 1

First Witness for the Prosecution H17836 L/Sgt Michele A., B Coy PPCLI in the case of H102787 Pte Daniels J.R., being duly sworn states

Q. Would you identify yourself?
A. I am H17836 L/Sgt Michele A
Q. Would you tell the court in your own words the circumstances surrounding the case of Pte Daniels.
A. On 29 Nov 44 and during Dec 44 I was acting Pl Sgt for 11 Pl B Coy. The Coy was paraded at Riccione and was warned they were moving to a forward area. All ranks would be on 24 hrs notice. The accused, whom I now recognize, was in my pl and present on that parade. This parade was held on 27th Nov 44. On 20 Dec 44 at B Coy F.U.P. at approx 1700 hrs I checked my pl and found the accused to be absent. I immediately reported him as such.
Q. by Court:- Sgt can you tell us the approx visinity of the F.U.P.
A. Bagnacavallo, Sir.

R.P. 83(b) complied with "DGD"

Second witness for the prosecution M12245 Cpl. sworn states "DGD"
Q. Would you identify yourself.
A. I am M12245 Cpl Crossman J.W. B Coy PPCLI
Q. Would you tell the court in your own

"DGD"

Page 2.

words the circumstances surrounding the case of Pte Daniels.
A. On 29th Nov 44 I was acting as Cpl of 5 Sec 11 Pl B Coy when the Coy was paraded and warned we were on 24 hrs notice to move to a forward area. Pte Daniels was on that parade. On 20th Dec 44 around 1700 hrs at B Coy's F.U.P. Pte Daniels was missing.

No examination by defence.
Q. by Court:- Doyou recognize Pte Daniels now?
A. Yes Sir

R.P. 83(b) complied with "DGD"

Third Witness for Prosecution M42036 L/Cpl Cokey D.W. sworn states "DGD"
Q. Would you identify yourself?
A. I am L/Cpl Cokey D.W. PPCLI R.P.
Q. Would you tell this court the circumstances surrounding Pte Daniels reporting to you as an absentee?
A. At approx 2000 hrs 4 Jan 45 Pte Daniels reported to me as being absent from the unit. I placed him under close arrest and reported his apprehension to the Orderly Room. This was in X area at Cattolica.

Q. by Defence Cpl Cokey did Pte Daniels surrender, was he apprehended or did he report to you.

"DGD"

A. He surrendered himself Sir.

Q. By Court:- Where did Pte Daniels surrender himself to you?

A. He surrendered himself to me on the street while at meal parade.

Q. By Court:- Did he make any statement at the time of surrender?

A. Only that he was absent Sir.

Q. by defence through Court.

I would like to know whether Pte Daniels surrendered to Cpl Ockey or whether the Sgt Major of X area turned Pte Daniel over to Cpl Ockey.

A. The Sgt Major told me that Pte Daniel would be on one of the trucks, while at meal parade Pte Daniel came to me.

R.P. 83 (B) complied with "DGD".

FOURTH WITNESS for Prosecution:- H.16329 CSM RAINBIRD C. being duly sworn states:-

Q. Will you identify yourself?

A. I am H.16329 CSM RAYNBIRD C HQ COY P P C L I.

Q. Would you tell the court what you know of the return from absence of t the accused, Pte Daniels.

A. On 4 Jan 45 at approx 2000 hrs I was in Coy Office of X area. I was there alone at the time. The accused Pte Daniels whom I now recognize reported to me and wished to be

"DGD"

taken on strength. I asked him where he had come from and he said he was A.W.L. from the unit. I then told him to report to L/Cpl Ockey who was in charge of the R.Ps of X area. I checked at a later hour to see that the accused had reported in, and that he was fixed up for the nite.

Prosecution decline cross examination.

Q. by Defence:- Did you tell xxix L/Cpl Ockey that he would find Pte Daniels on a vehicle.

A. As far as I can remember, No.

R.P. 83 (B) complied with "DGD"

Defence :- Accused witness in defence being duly sworn states "DGD"

Q. Would you identify yourself to the court?

A. I am H.102787 Pte Daniels J.R.

Q. Will you tell the court anything you know referring to the case against you.

A. I realize now what I have done. I did not know because I was very nervous after what I had done. I wish to go back to my Pl. I think I could make out a whole lot better now, as I am getting back my nerves.

Prosecution declines to cross-examine.

"DGD"

Q. by members of the Court:- Were you under fire, and if so, what type of fire when you went away?

A. I was under shell fire when I went.

R.P. 83 (b) complied with "DGD"

No closing address for the defence.

No plea of mitigation "DGD"

"DGD"

Closing address for the prosecution in the case of H.102787 Pte Daniels J.R.

I have submitted evidence to show the accused was warned his company was proceeding to a forward area. This warning took place at Riccione on 29 Nov 44. The evidence further shows that at a stand-to in an F.U.P near Bagnacavello on 20 Dec 44, the accused was absent without leave and was so absent until surrendering himself on 4 Jan 45. I submit that the accused was duly warned, and was fully aware of his responsibilities when he absented himself from a forward area. Therefore he absented himself with intent to avoid service in a forward area.

"DGD".

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H102787	Ete	DANIELS J.R.	PPCLI

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entrants in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Only Temporary sheet available ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is not under sentence for ..... beginning on the xxxxxxxxxxxxxxxxxxxxxxxx day of xxxxxxxxxxxxxxxxxxxxxxxx "RPC"

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 10 days in military custody, *i.e.*, nil days in open arrest, nil days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 22 years 5 months

6. The date of his attestation / calling up for military service is 22 Oct 42

7. The service which the accused is allowed to reckon is 2 years 3 mths.

8. The accused is in possession of the accusedis in possession of "RPC"

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date:—

	Date of Promotion.
In the substantive rank of:	
In the war substantive rank of:	
In the acting rank of:	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1 55000/1002 10,000 3/44 21-4761. Forms/B.296(War)/2

EX A "DGD"

MFM 6
(AFB 122)
49/P&S/136 (3458)

No. M102787 Name DANIELS J.R. Sqn, Battery, or Company "B" Corps CIC Date of enlistment 22 Oct 42 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc (Sgd) (A.M. Mill) Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary Sheet					
				Certified to be a true copy as from Regtl books in my custody "R.P. Clark" (R.P. Clark) Lt-Col CO, PPCLI					
							Ex. B "DJL"		

(PTO)

LRPG V LRIZ SR (45)

FROM: CANMILITRY 191350

TO: CEN OZE CMF

A 2075 (.) RESTRICTED (.) PARA ONE FGCM PROCEEDINGS L108184 BROWN
RG SERIAL 38/1 B 145298 CLARKE ME H10365 OMEEFE DH B133602
TAYLOR CW SERIAL 107/1 K51739 MORIN LAJ SERIAL 36/1 B136423
STEEN RG SERIAL 943/1 ENDORSED BY MGA 17 FEBRUARY 45
AND PROCEEDINGS A50556 SAUVE AM A106077 KIRKORIAN R C122065
LALONDE LA A11058 OLIVER DL C103055 BURN AD SERIAL 107/1
C102613 MARSHALL NH M50700 MOORE H M11956
CONNERY LW SERIAL 38/1 L50691 MCARTHUR RR K40109 FLETCHER GF
K73593 CLAPPERTON AA K1961 GUENTHER MC SERIAL 37/1 H102787
DANIELS JR SERIAL 36/1 F55865 MCNEIL DJ SERIAL 43/1 F32511
JOBE JM SERIAL 357/1 ENDORSED 17 FEBRUARY 45 QUOTE I CONFIRM THE
FINDINGS AND SENTENCE AND I DIRECT THAT A PART OF THE SENTENCE
NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY PRISON
UNQUOTE (.) PARA TWO (.) FGCM PROCEEDINGS L 93711 WILLS CJ
SERIAL 37/1 ENDORSED BY MGA 18 FEBRUARY 45 QUOTE I CONFIRM THE
FINDINGS AND SENTENCE BUT I REMIT ONE YEAR PENAL SERVITUDE . I
DIRECT THAT PART OF THE SENTENCE NOT EXCEEDING TWO YEARS
SHALL BE SERVED IN A MILITARY PRISON UNQUOTE ..

BT 192325 JN B C B S E AR TO U

LRPG RD 192325 MP K

X-109.
Ste. Daniels. N.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : M-60483 Pte MICHAEL, DANIELS R Highrs of Canada No 3 Cdn Reallocation Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See instr'n 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec. 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To undergo detention for a period of fifty Days J.A.

(Sgd) ..... Judge-Advocate, if any. Date awarded 2 January 1945 (Sgd) ..... President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 740.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 56. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) (G H Gosling) Brigadier

Date 4 JAN 45 Commanding 2 CDN INF BDE RPT GP Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

M-60483 Pte DANIELS, Michael John 8 JAN 45 W.W. Hemmant Major
R. Highrs of Canada
attached
No 3 Reallocation Centre
A/C 2 Cdn Reallocation Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 16 MAR 1945 CMHQ BRANCH

RECORDED AT CMHQ IN AB 164 4X-109

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AF A81) 40/1 & 2 Lds (8144) 4/38B

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 20 DEC 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) promotion or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-60483	Pte	MICHAEL	DANIELS	R Highrs of Canada No 3 Cdn Reallocation Centre

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) NW EUROPE on (date) 2 JAN. 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 18/98.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (and) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 1. 2. AA 46, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (and) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (and) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(2), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....

The shorthand writer is sworn.(1) N/A.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(5). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, J.A. if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	W. W. Hemmant	10 CBRG
Member	Capt.	H. H. Hause	10 CBRG
Member	Lieut.	J. G. Theriault	11 CBRG
Judge-Advocate			
Prosecutor	a/Major	M. C. Green	Glen Road C.I.C.
Defending Offr	Capt.	R. R. Robertson	

Questions by President : Is the Prosecutor a lawyer ? Ans Yes. Is the Defending Offr a lawyer ? Ans Yes (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment under RP 89 (3) and fn 2 were not followed. See D1 p 83.)

A8. The accused MICHAEL DANIELS before arraignment makes(s) (and) (a) plea of GUILTY (1)

(1. If a special plea is made for separate trial on any or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(4), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (and) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, assess and make appropriate record per Notes.)

A10. The Court ~~is cleared~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B 98.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), or call witnesses as to character and make an address in mitigation of punishment.(1)
(1. *RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty,(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N/O (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement.* / *Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 40(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 42, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans N/O
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 4. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified true copies (copies of Conduct Sheet(s))~~, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(2)
(1. *AFB 255 or AFB 29re.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) ~~and Conduct Sheet(s)~~, and in mitigation of punishment ?(1) Ans YES
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove an oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). Give sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso. It to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 161, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 98(7), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. M 60483 Pte Daniels, M, Royal Highlanders of Canada, attached to No 3 Cdn Reallocation Centre, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A A Sec 15 (1) Whilst on Active Service absenting himself without leave,

In that he, In the Field, absented himself without leave from 0815 hrs on the 24 October 1944 until apprehended at approximately 2135 hrs on the 4 December 1944 by the C Prov C.
(Absent 40 days 13 hrs and 20 minutes)

(N M Swaffield) Major
Commanding
3 Cdn Reallocation Centre

In the Field
20 December 1944

~~To be tried by Field General Court Martial.~~

~~(G. Francoeur) Brigadier~~
~~Commander~~
~~Headquarters~~ 2 CHR Gp

~~In the Field~~

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
27 DEC 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23.

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets RP 87(B).

As to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-60483	Pte		MICHAEL	DANIELS	R Rghts of Canada No 3 Cdn Reallocation Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) [illegible] endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(8), 107(A). Delete this whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJ	J D LEARMENT,	10 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	M H HOUSE RC ~~To be detailed to HQ 10 CBR Bn~~	10 CBR Bn
Lieut	J. G. THEINE RC ~~To be detailed to HQ 11 CBR Bn~~	11 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	J LEMAY ~~To be detailed to HQ 12 CBR Bn~~	12 CBR Bn

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 27 DEC 44

C Fraser Dan (Signed personally. RP 105 fn 2.)

(C Fraser Dan)

Brigadier (Rank.)

Commanding 2 Cdn Base Rft Gp Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for seals and notes for use on trial.)

4/3BA (FAAS (To Dft of AFAS) 40/F & B/1567 1400)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined M 60483 (No.)

Pte (Rank) DANIELS M (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

Station In the Field

Date. 2 Jan 45

(Sgd)
Medical Officer
(unit) 3 Cdn Reallocation Centre

PLEA OF MITIGATION ON BEHALF OF M.60463, Pte. Daniels, E. BY HIS DEFENDING OFFICER

In this case we have pleaded guilty because it is admitted that Daniels was AWL. However, there are many extenuating circumstances which I believe should cause the sentence in this case to be as light as possible.

Daniels is charged with being AWL over 40 days beginning on the 24th Oct 44. However the defendant states that he was in camp after that date. Due to the transient population of 3 CRC it is not possible to prove that he was there after the above date and according to unit roles he did not answer his name but I am quite sure he did not leave camp till later bringing his period of AWL down to 30 some days. Though this cannot be proven I feel the court will consider this statement in passing sentence.

Daniels has been in the army nearly 3 years and this is his first crime. In these three years he has been a good soldier causing no trouble whatsoever. Even now he has no intention that there will be any more crimes. This point I feel is an extremely important one in favour of the accused.

Daniels had no intention of going AWL. He went down town in the evening, enjoyed himself and started back to camp. Those, who know the location of 3 C.R.C. will know that it is a difficult place for an intelligent man to find in the day light and is extremely difficult for a man of Daniels mental ability to find at night. At any rate he missed the way, by the time he realized he was lost it was too late to get back to camp. He was taken in by civilians and treated so nicely and urged so warmly to stay that the next day, realizing he was going to be charged as AWL in any event consented to remain. The longer he stayed away the more frightened he was of returning. Daniels is very dull mentally and it would not be difficult for a civilian to convince him. I feel they are more to blame than he, he had and still has no intention of doing wrong.

A str ng factor in this case is the defendant's mental state. He has been recommended for an M4 rating by the psychiatrist and is actually an M3 already. It is stated - "Patient shows evidences of temperamental instability characteristic of mentally dull." It is a well known fact that men of low mental ability and unstable are more apt to cause crimes than those of more ability. But Daniels, in spite of his limitations has managed to keep his crime sheet clean so far. Nothing should be done to make him change his mind, as a severe sentence might. Moreover, even in his normal state of mind, he is not actually accountable for his actions, when a state of battle exhaustion is superimposed on top of that we cannot expect too much.

Daniels enlisted almost 3 years ago at age 17. It is well-known that it is difficult to employ 17 year olds, especially those unable to absorb trade training, in Canada until they are old enough for overseas service. Consequently they must take either advanced training over and over again or else they must be put on fatigues. They become so "fed up" that they are apt to get into a great deal of difficulty and often their crime sheets are long. But here we have a man that enlisted at 17, had to remain in Canada for two years but in spite of that has no crimes.

He arrived in France with his regt. on the 6 Jul 44, was wounded, hospitalized in England, came back to the continent and once again served with his unit. At all times he did his very best, finally had to be evacuated because of exhaustion but is still anxious to serve. A man, patriotic enough to enlist at 17, be wounded in battle and still go back in and do his best, I feel, should be given every consideration.

After leaving his unit he was hospitalized, sent to reinforcement battalion, special employment companies and Reallocation Centre. Already confused, exhausted, dull, it is little wonder that he lost his reason for a while and committed this breach. However, he has now rested and is himself. I am sure will cause no more crimes. The purpose of a sentence is either to deter the criminal from committing further crimes or to prevent others from committing the same crimes. Neither purpose is obtained by giving this man a long sentence. He already realizes his mistake, will not commit another crime if given a short sentence - the very fact he was so long in the army without a crime proves that. It will not deter others in his unit as the population of 3 CRC moves so quickly that no one who knows Daniels or about his crime will be there when the sentence is published. It will have no effect on the people who are there at that time.

No witnesses as to character have been brought before the court because this man is far away from his original unit. He knows no one in this area well enough to make a worth while statement regarding his character. However, I am sure, in the short time that I have known him, that he will always do his best and am sure that if members of his unit were here that they would speak well of him. I am mentioning this because I wish the court to know that the lack of character witnesses is caused by the exigencies of war not by this man's conduct.

In conclusion I would like to sum up these extenuating circumstances. Daniel was not AWL quite as long as charged; this is his very first crime in almost 3 yrs in the army; he had no intention of going AWL and could not help it as far as the first day was concerned. His intelligence is so low and he is of such an unstable nature that he should not have come o/s let alone to France, probably would be of more use in civilian life than in the Army, is not altogether accountable for his actions. He has seen considerable action, has been wounded. He has no intention of committing further crimes so I hope will have a light sentence as no useful purpose could be served by the sentence being severe.

A A Robertson, Capt
3 Can. Reallocation Cen.

APPENDIX 2 E.B. 23 Jan.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of M 60483 Pte Daniels M of the Royal Highlanders of Canada and attached to No 3 Cdn Reallocation Centre, Cdn Army Overseas.

FIRST CHARGE Absence without leave

FIRST WITNESS
For the Prosecution

Lieut G W Lovett RCASC of No 3 Cdn Reallocation Centre having been duly sworn states:

"I am Lieut G W Lovett Adm officer of No 3 Cdn Reallocation Centre and I produce Declaration of a Court of Enquiry dated 18 Nov 44 regarding the absence of the accused M 60483 Pte Daniels M RHC attached to No 3 Cdn Reallocation Centre (marked exhibit A). I further produce copy of Part II Orders X 9 List dated 7 Nov 44 showing the accused as being absent from 0815 hrs 24 Oct 44 (marked exhibit B). I further produce Army Form B 252, a certificate of apprehension, showing the accused as having been apprehended at approximately 2135 hrs 4 Dec 44 (marked exhibit C).

G W Lovett

(G W Lovett) Lieut
Administrative Officer
3 Cdn Reallocation Centre

The accused declined to question the witness.

The accused was warned in accordance with Rules of Procedure 4E and declined to make a statement and reserved his defence.

I certify that the foregoing Summary of Evidence consisting of one page plus Exhibits "A" "B" and "C" attached was taken down by me in the presence and hearing of the accused on the 9th day of December 1944 and that RP 4(c) (d) (e) (f) and (g) were complied with.

W C Green

(W C Green) Capt
Selection of Personnel Officer
3 Cdn Reallocation Centre

EXHIBET A

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 18th day of November 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. M 60483 Cpl Daniels, M, R H C

DECLARATION

The Court declare that No. M 60483 Cpl Daniels, M of No 3 Cdn Reallocation Centre

illegally absented himself without leave

at In the Field on the 24th day of October 1944

that he is still so absent, and that on the 14 November 1944 he was deficient, and that he is still deficient of the following articles:—

ARTICLES		VALUE	ARTICLES		VALUE
Badges Cap	1	$ .09	Discs Identity	1 set	.02
Braces	1	.28	Dressing First Field	1	.24
Brushes Tooth	1	.11	Vests Cotton	2 prs	.72
Combs Hair	1	.04	Net Camouflage Helmet	1	.15
Forks	1	.07	Veil Face	1	.43
Holdall	1	.19			
Knives Clasp	1	.86			
Knives Table	1	.15			
Razor Safety	1	.06	Total		$30.17
Shirts Angora	2	.03			
Sox Worsted	1 pr	.37			
Spoon Desert	1	.07			
Towels Hand	1	.32			
Anklets Web	1 pr	.99			
Blouses Battle Dress	1	5.25			
Boots Ankle	2 prs	10.92			
Capt (Beret)	1	.56			
Trousers Battle Dress	1	5.39			
Shirts Cellular	2 prs	.86			

Capt N J Ball President

Signed at In the Field

Capt A A Dougan Member

this 23rd day of November 1944

Capt R R Robertson Member

Signature of Commanding Officer (N M Swaffield) Major

Certified true copy G W Lovett

(G W Lovett) Lieut

Signature of Officer having custody of original record

M.F.B. 376
A.F.B. 118
MM-4-43 (700)
H.Q. 1775-10-217

Exhibit "B"

NOV 12 1944

3 Reallocation Le entre 18

Exhibit "X" D Jtk.

X-9 LIST

Last Order No 34 5 NOV 44 — PART II ORDERS Issued By CANADIAN SECTION G H Q 2nd ECHELON - 21 ARMY GROUP — No 35 7 NOV 44

"A" OFFICERS

NIL

"B" OTHER RANKS

1. STRENGTH INCREASE

(a) TOS from X-3 List R Regt C wef 20 AUG 44 Auth - Reallocation

G24031	Pte	DOUCET	WJ		R Regt C

(b) TOS from X-34 List units shown wef 30 SEP 44 Auth - Reallocation

B103163	Tpr	CLINTON	BD		CAC(B)
D37547	Tpr	CLARKE	BH	Dvr Mech Tk "C"	CAC(C)
H230	Tpr	GARDNER	AF	Dvr Mech Tk"C"	CAC(C)
D46952	Tpr	GARLAND	HJ	Dvr Mech Tk "C"	CAC(C)
F65710	Gdsm	JOHNSON	SW		CAC(C)
D26073	Gdsm	HOLDAWAY	W	Gnr Op "C"	CAC(C)
D27125	Gdsm	OMME	AE	Gnr Op "C"	CAC(C)
D46303	Tpr	PAGE	KE	Dvr Mech "C"	CAC(C)
H87865	Gnr	COOK	OC	Dvr Op "C"	RCA(B)
F51832	Gnr	BLEASDALE	FC		NCA(D)
B32568	Spr	ARMSTRONG	GF	Pioneer "C"	RCE
B113178	Spr	ARMSTRONG	TG	Plumber "C"	RCE
B70317	Pte	BOOTH	R		R Regt C
B134350	Pte	CLARK	RR		R Regt C
F7486	Pte	DENRICK	RA		R Regt C
L102434	Pte	CHERNIK	C		Essex Scot
C78058	Pte	DUNCAN	AG		Essex Scot
M60483	Cpl	DANIELS	M		RHC
M11903	Pte	ALLISON	AT		Calg Highrs
H19238	Cpl	CHILD	SW		Camerons of C
A107844	Rfn	BANKS	VW		R Wpg Rif
M104140	Rfn	DALLYN	GS		R Wpg Rif
L10737	Rfn	DERKOUSOFF	FA		R Wpg Rif
H40880	Rfn	DESORCY	PE	Dvr Mech "C"	R Wpg Rif
B134665	Rfn	ARMSTRONG	JT		Regina Rif
K62008	Cpl	BOYD	DF		1 C Scot R
H10622	Pte	CANADA	M		1 C Scot R
D70317	Pte	DENNETT	RG		1 C Scot R
A50416	Pte	ERCADLEY	JW		HLI of C
F57377	Pte	BAKER	GA		Nth NS Highrs
A116372	Pte	BURY	JE		A&SH of C
E15236	Sgt	ARTEAU	JTJP		RCAMC
H 41788	Rfn	DYNDSKY	J		R Wpg Rif

(c) TOS from X-4 List QOR of C wef 26 OCT 44 Auth - EA7x/8978 d/ 20 OCT 44

B18591	Pte	MURRELL	OF	QOR of C

1. STRENGTH INCREASE(CONT'D)

(d) TOS from Alq R wef 25 OCT 44 Auth - EA7x/8741 d/13 OCT 44

B41936 Cpl HARRIS CA Alq R

(e) AMENDMENT: Part II Order No 28 para 3(d) d/20 OCT 44 insofar as it refers to the u/n is amended by deleting "A/S sjt and substituting "Sjt"

K98293 A/S sjt SONNAY R Inst Mech "A" RCEME

(f) AMENDMENT: Part II Order No 31 para 3(c) d/28 OCT 44 insofar as it refers to the u/n is amended by adding "Clerk "C"

B50124 S sjt PALMER WR 23 OCT 44 RCEME

2. ABSENT WITHOUT LEAVE

(a) AWL from 0815 hrs 24 OCT 44

M60483 Cpl DANIELS M RHC

B85201 Pte GINOU X J RCASC

(b) AWL from 0915 hrs 29 OCT 44

C94294 Pte HAWKINS RR RCOC

(c) AWL from 0915 hrs 29 OCT 44

H18591 Pte MURRELL OF QOR of C

3. STRENGTH DECREASE

(a) SOS to A-3A Unit units shown wef dates shown att 20 Cdn Special Emp Coy Auth - Reallocation

B103163	Tpr	CLINTON	BD		27 OCT 44	CAC(B)
R37547	Tpr	CLARKE	BM	Dvr Mech Tk"C"	27 OCT 44	CAC(C)
D46952	Tpr	GARLAND	HJ	Dvr Mech Tk"C"	27 OCT 44	CAC(C)
F65710	Gdsm	JOHNSON	SW		28 OCT 44	CAC(C)
D26073	Gdsm	HOLDAWAY	W	Gnr Op "C"	27 OCT 44	CAC(C)
D27125	Gdsm	ORME	AE	Gnr Op "C"	28 OCT 44	CAC(C)
D46303	Tpr	PAGE	KE	Dvr Mech"C"	28 OCT 44	CAC(C)
H87865	Gnr	COOK	OC	Dvr Op "C"	27 OCT 44	ACA(B)
F51832	Gnr	BLEASDALE	FC		28 OCT 44	ACA(D)
B27568	Spr	ARMSTRONG	GF	Pioneer "C"	27 OCT 44	ACE
B113178	Spr	ARMSTRONG	TG	Plumber "C"	29 OCT 44	ACE
B70317	Pte	BOOTH	R		27 OCT 44	R Regt C
B134350	Pte	CLARK	RR		27 OCT 44	R Regt C
F7486	Pte	DEDRICK	AA		27 OCT 44	R Regt C
G24031	Pte	DOUCET	WJ		2 SEP 44	R Regt C
L102434	Pte	CHEUNIK	C		27 OCT 44	Essex Scot
C78058	Pte	DUNCAN	AG		27 OCT 44	Essex Scot
M11903	Pte	ALLISON	AP		27 OCT 44	Calg Highrs
A107844	Rfn	BANKS	VW		27 OCT 44	R Wpg Rif
M104140	Rfn	DALLYN	GS		27 OCT 44	R Wpg Rif
L10737	Rfn	DERKOUSOFF	PA		27 OCT 44	R Wpg Rif
H40880	Rfn	DESORCY	PE	Dvr Mech"C"	27 OCT 44	R Wpg Rif
H41788	Rfn	DYNESKY	J		27 OCT 44	R Wpg Rif
B134665	Rfn	ARMSTRONG	JT		27 OCT 44	Regina Rif
H230	Tpr	GARDNER	AF	Dvr Mech Tk"C"	27 OCT 44	CAC(C)

3. STRENGTH DECREASE(CONT'D)

(b) SOS to X-34 List units shown wef dates show att 20 Cdn Special Emp Coy

K62008	Cpl	BOYD	DF	27 OCT 44	1 Scot R
H10622	Pte	CANADA	M	27 OCT 44	1 Scot R
K70817	Pte	DESSETT	RC	27 OCT 44	1 Scot R
A50418	Pte	BROADLEY	JW	27 OCT 44	HLI of C
F57377	Pte	BAKER	GA	27 OCT 44	Nth NS Highrs
A116372	Pte	BURY	JE	27 OCT 44	A&SH of C

(c) SOS to X-4 List RCASC (12 Bn) wef 16 SEP 44 on being trans from CIC to RCASC Auth - Reallocation

B74626	Pte	O'GRADY	MJ	1 C Scot R

(d) SOS to X-4 List RCAMC(12 Bn) wef 31 OCT 44 Auth - Reallocation

E15238	Sjt	ARTEAU	JTJP	RCASC

(e) SOS to X-6 List wef 26 OCT 44 Auth - Reallocation

B60716	Tpr	BULLOCK	HLJ	C.A.C(C)

(f) AMENDMENT: Part II Order No 34 para 6(g) d/5 NOV 44 insofar as it refers to the u/n is amended by deleting "A/S sjt" and substituting "Sjt"

K98293	A/S sjt	SONNAY	R	Inst Mech "A" RCEME

(G C STEWART-PATTERSON) LIEUTENANT
for Officer IC

/AM CANADIAN SECTION G H Q 2nd ECHELON - 21 ARMY GROUP

Exhibit "E" E Joh

7 - DEC 1944

Joh.

CERTIFICATE UNDER ARMY ACT. SECTION 53 (1) (j)

Certified that No. M.60453 Rank PTE. Name DANIELS, M.

of the 3 CDN REALLOC UNIT. 21 ARMY GRP. Regt., ~~surrendered~~ to No. B.97765

Rank L/CPL Name STACEY was apprehended by of the 2 CDN LOFC PROV COY

DETACH at GHENT at 2135 hrs, on the 4TH

day of DECEMBER as an absentee without leave.

He was wearing Military Uniform at the time of his ~~Surrender~~ arrest.

~~Civilian~~ Clothes.

R A McDonald

R.A. McDONALD. LIEUT

Canadian Provost Corps. COY.

GHENT DETACH.

GHENT BELGIUM.

Place

Date 7 DEC 44

2 L of C

12/5/34 GHENT

CHARGE

Army Form B 252
(See King's Regulations)

B Bog
3 CDN REALLOC UNIT
21 ARMY GRP

Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. M 60453 Rank PTE

Name DANIELS M

Place GHENT BELGIUM Date of Offence 4 DEC 44

OFFENCE WOAS

1. AWL FROM
UNTIL APPREHENDED BY MEMBER CDN
PROVOST CORPS AT APPRX 2135
HRS 4 DEC 44

R A McDonald
R A McDONALD
1/C GHENT DETACH
2 CDN L of C PROV COY

Names of Witnesses :— 21 ARMY GRP.

B 93765 4/CPL STACEY E.H.
M 50870 4/CPL HOLEY VE.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Statement of **EVIDENCE** In the case of

M. 60483 PTE DANIELS M. B.Coy 3 CDN
REA LLOC. UNIT
21 ARMY GRP

1. AT APPROX 2135 HRS 4 DEC 44.
A COMPANIED BY. M. 56740 L/CPL HULEY W.
ON INFORMATION RECEIVED, I PROCEEDED
TO 162 MIMOSA STRAAT, GHENT. I THERE
ACCOSTED AS OLDIER NOW KNOWN TO ME
AS THE M/N OR. HE COULD NOT PRODUCE
AUTHORITY ALLOWING HIM TO BE ABSENT
FROM HIS UNIT.

2. I PLACED HIM UNDER CLOSE
[illegible] TO DET HQ WHERE
PARTICULARS WERE TAKEN. LATER HE
WAS TAKEN TO HIS UNIT, AND A LIVE BODY
RECEIPT, OBTAINED.

E H Stacey L/CPL
B 97765 STACEY E. H.

1. I have read the Statement of
Evidence above and corroborate same

[signature] L/CPL
REMARKS
M. 56740 HULEY. W.

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M 60483	Pte	Daniels M	Royal Highlanders of Canada

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 627, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishment being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	Unknown	times	Unknown	times.
For	(M.F.P. 6 not available)	times		times.
For		times		times.
For		times		times.
For		times		times.

[redacted]

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* [redacted] day of

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and days in military custody, making a total of days, of which Nil days were spent in hospital.

5. The present age of the accused according to his [redacted] record of service is 20 years and 4 months

6. The date of his [redacted] attestation specified in his [redacted] record of service is 13 Jan 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 10 mos.

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 10 months service.

9. The accused is entitled to reckon 2 yrs 10 months service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* [redacted]

11. (*If the accused is a warrant officer.*) [redacted]

12. (*In the case of an officer.*) [redacted] dated

[redacted] dated

(71/5/42) W.26500/1731 30,000 10/42 A.& E.W.Ltd. Gp.A48
(2nd ed.) W.45004/1439 12,000 4/44

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M60483 Rank Pte. Name Daniels, M. of R.H.R. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Unknown (MFMC Not Available)		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of December 1944

W. M. Swaffield

11. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ..... Date of Promotion

In the rank of ..... years, ...

In the rank of ..... years .....

In the rank of ..... years .....

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

III 63

PTE DANIELS VAD

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F35152 Pte Victor Archibald Dunwood DANIELS, WNSR (1 CBRRgt)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which ~~NIL~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To suffer Field Punishment for 28 days, and to forfeit all ordinary pay for a period of 28 days.

(Sgd) ..... Judge-Advocate, if any. 21 Mar 44 Date awarded. (Sgd) A.E. Sweetland President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 66(A), 51-56, 120, MML pp 758-761, KR Con 562-571. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign hand personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) Ewrt

(1. AA 57A. Delete if not used.)

Date 24 Mar 44 (Sgd) Edw Hawkesbury Brig Commanding COMMANDER 1 CDN BASE ~~RET GROUP~~

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
F 35152 PTE DANIELS V.A.D.	28 Mar 44	(A E Davidson) Captain A/Adj, 4 Cdn Base Rft Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 160 1 III 63

FIELD GENERAL COURT-MARTIAL

CFA98 (To Incl of AFA3) 40-P.S.S-1608 (2864)

Convened by Order of Brig E.W. Haldenby Comd 1 CBRRgt dated 13 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 169. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F35152	Pte	Victor Archibald Dunwood	DANIELS	WNSR (1 CBRRgt)

CANADIAN SECTION 4 APR 1944 PROCEEDINGS REVIEWED

V.C. Asst Lieut. 27 Apr 44 Revd

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 21 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~Judge-Advocate~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 44(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused : Do you object to ..... as interpreter ? Ans .....~~

~~The interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 168, MML p 742.)

A7. The President, Members, ~~Judge-Advocate~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	A.E. Sweetland	4 CBR Bn
Member	Captain	A.D. Talbot	RCA "B"
Member	Captain	R.D. Polk	RCA "C"
Judge-Advocate			
Prosecutor	Lieut	J.B. Martin	Sask LI
Defending Offr	Lieut	H. Bookbinder	P.L. Fus

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyr ? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dig p 3.)

A8. The accused F35152 Pte Daniels, V.A.D. before arraignment make(s) (no) (~~no~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(6), 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 70), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rule cited. Insert in A8 reads and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 25 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans no (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty of the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answers and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans neither Do you intend to call witnesses on your behalf ? Ans yes Are they witnesses as to character only ? Ans no
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 101(H).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty~~, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~(or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith) and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans no
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(1) and Conduct Sheet(2), and in mitigation of punishment ?(3) Ans no
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty, RP 48. As to sentences see AA 44, (38, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 335, 563-566, Overseas NO 309, 2323, MML p 60, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

ELECTED TRIAL By FGCM

ES

CHARGE-SHEET

THE ACCUSED, F 35152, PRIVATE DANIELS, VICTOR ARCHIBALD DURWOOD, WNSR, 4 CDN BASE REINFORCEMENT BN, 1 C.B.R. GROUP, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH:-

1st Charge

A.A. Sec 15

(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field, on 15th Feb 44, absented himself without leave from 0830 hrs until apprehended by Military Police at ~~43, Contrato Prato~~, Bari, at about 2130 hrs 28 Feb 44. (Total time absent - 13 days - 13 hrs)

EWH

(R. E. Merrick) Lt.-col.,
T/Comdr,
4 Cdn Base Reinf Bn.

IN THE FIELD
6 Mar 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

EWHaedenty Brig.
Comd. 1 Cdn Base Rft Group.

13 Mar 44

FIELD GENERAL COURT-MARTIAL

CFA105 (To lieu of AFA2) 40/FA/R/1607 (2958)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.35152	Private		Victor Archibald Durwood	DANIELS (WNSR)	4 Bn.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~xxx~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 13 Mar 44 endorsed by me, (~~xx my xxxx xx xx xxx xx xxx~~) "To be tried by Field General Court-Martial". Ord

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and whereas xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx~~) Ord

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx

MEDICAL OFFICER'S CERTIFICATE
K.R. (CAN) Para 557

I certify that I have this morning examined No. F35162.....

Pte. DANIELS V.A.....4 Bn., 1 Cdn Base Reinf Depot,

and in my opinion he is fit/~~unfit~~ to undergo Trial by Court Martial.

In the Field
21st March 1944.

A.A. Grossman Capt.
(A.A. Grossman) Capt.,
Medical Officer, 4 Bn, 1 C.B.R.D.

D3

1st Witness for Prosecution:-

A11729 Sgt. McConnell, P.J.S. 4 CBK Bn. being duly sworn states:-

I was Orderly Sgt D Coy 4 CBK Bn on 15 Feb 44. I was present when the roll was being called at about 0830 hrs. The name of Pte Daniels was called but not answered. I searched the area of D Coy, incl tent lines, kitchens, and the area generally, making enquiries as to his whereabouts. His name was again called on noon meal parade, but he did not answer. I am on practically every parade, but did not see or hear of Daniels again until he came before his Coy Comd on charge of AWL.

The man referred to above was not known to me by sight at the time he was first missing from roll-call. He is F 35152 Pte Daniels, West NS R and is the man previously referred to as being on charge of AWL before his Coy Comd. I recognize him only by name and number.

Cross-Examination.

When the roll is called, a tick is placed against a man's name if he is not present on parade. I then go through my duty-books to see if the man is employed. If he is not, I check through the camp to try and locate him. I make a note of the time he was first absent, and if he is not located during the day he goes on the daily absentee report. The name is continued to be called for 21 days.

I did not search outside D Coy lines for Daniels on ~~[illegible]~~ the 15 Feb

D3

because all personnel are warned not to leave Coy lines during parade hours. But I did cover the lines and kitchen area calling his name.

At the 0830 hrs parade, the Coy less employed, were fallen in and the roll called and the employed men checked. I sent a man to K.O.R.C. but to try to locate Pte Daniels, without success. As is my custom in the case of men I'm searching for I called his name on meal parade and at several other times among groups of men.

I do not know if there were a Pay parade that day, but if so I did not parade it.

All offrs were C.B. to Coy lines until after afternoon parade, and rolls were called at irregular times. On 15 Feb, roll-call was between 0500 hrs + 0900 hrs, and independent of any roll calls for fatigues.

(R.P. 83(3) complied with)

2nd Witness for Prosecution

K67700 L/Cpl Bradley, J.S. 4 CBR Bn,

being duly sworn states:-

I was on R.P. duty with 4 CBR Bn 3 Mar 44 when the accused, whom I recognize was handed over to ~~his~~ me at 1000 hrs to be placed in close custody

No Cross-Examination

(R.P. 83(3) Complied with)

D3 3rd Witness for Prosecution.

a/Captain J. Martin, 4 CBRBn, being duly sworn:-

ON 5 Mar 44 I was Adjutant, 4 CBRBn. I produce Certificate of Arrest under AA 163 (i) (j) received by me on that date in connection with the accused whom I recognize (att Appx A)

(R.P. 83(B) Complied with)

D6 1st Witness for Defence

Captain R. M. Brousseau, RCAPC. 4 CBRBn, duly sworn states:-

I am Paymaster, 4 CBRBn. On 15 Feb 44 I paid the accused, whose name and number appear on my acquittance roll No 54. The pay parade was held in D Coy lines, but I cannot recall the time. But it certainly was after 0830 hrs.

Cross-examined.

It is quite possible that a man who was not paraded could slip into the line, and providing he had a pay-book he would be paid. There is always a W.O. or N.Co. on parade who identifies men as best he can, considering the rapid flow of ops through the Coy.

(R.P. 83(B) Complies with)

D6 Closing Address by Defending Officer:

In the first place it is obvious that the accused was not absent on 15 Feb 44. The mere fact that he was paid at a Coy parade supervised by an N.C.O. in the Coy lines, shows that he was not absent from 0830 hrs as charged. If Lt McConnell was so interested in finding out the whereabouts of men absent, he would have called the accused's name at pay parade.

I maintain that the evidence produced by the Prosecution is insufficient to find Daniels guilty of the charge as stated. The Prosecution has not been able to definitely prove the time of departure nor can they prove any other date on which he might have left.

I maintain that the system used in keeping track of men in the Coy was faulty and does not cover any event nality which may explain a man's absence. It has been definitely stated that there was no official time of roll-call, but that it varied. Daniels undoubtedly was visiting friends in another Coy.

I also maintain that the Lt concerned could not have made an efficient check, because he did not recognize Daniels, but knew him as a name and number only.

D6

Reply by Prosecution.

The defence stated Pte Daniels was not absent on 15 Feb XV because he was paid in his coy lines that date. It has, however, been shown that a man could possibly be paid without being on parade with his coy. Five minutes previous on a pay parade does not change the fact that he was absent at roll-call about 0830 hrs that day.

It is not necessary to prove the exact minute of the accused's departure. It is enough to prove that he was absent from roll-call on the morning parade.

Although the defence claims that the accused was visiting a friend in another coy - no friend is named, no coy designated, and the fact is ignored, that being C.B. to coy lines, the accused was absent by merely being in another coy lines.

The system of roll-call in the coy may be faulty, but the man was apprehended in Paris, and no system of roll-call could be expected to reach him there.

GB.

E3 Address in Mitigation of Punishment.

Daniels joined Army in June 40 & came to England in 1942. He arrived in Chis Theatre and was posted to West N.S.R. spending six months in action with them. - as a rifleman all the while. He was wounded by shrapnel at the approaches to Orsona x-ds, and was in hospital for six days. He was sent right back to the unit in action again.

This man has a wife and four children, and though he has received mail from home he has not heard from his wife for over nine months. His family would write either, so he has been worried as to his children.

He has already been in custody for 21 days, and in view of the circumstances surrounding the evidence, I plead that as lenient a sentence as possible be meted out. He is a battle trained infantryman who has stated his willingness and desire to return to his unit at first possible opportunity. I again request that he be dealt with leniently.

Exhibit A

COPY. Exhibit "A" H Martin Lt.

CERTIFICATE OF ARREST UNDER Army Act 164 (1) (11).

I, Capt. T. Hunt certify that No. F 35152. Rank PTE.

Name DANIELS, V. Unit C.B.R.D.

was arrested at BARI at about 2130 hrs on the 28th. FEB. 1944.

28th. FEB. 44.

T. Hunt Captain.
Officer Commanding,
230 L of C Provost Company.
The Officer into whose custody
the above named person was taken
on arrest.

COPY

EXHIBIT "A" Exhibit A - EP.

CERTIFICATE OF ARREST UNDER A.A. 163 (1) (ii).

I, CAPT G F HUNT certify that No. F 35152 Rank PTE

Name DANIELS V Unit C.B.R.D.

was arrested at BARI at about 2130 hrs on the 28th Feb44

Signed(G F Hunt) Captain
Officer Commanding
230 L of C Provost Company
The Officer into whose custody the above
named person was taken on arrest.

28th FEB 44.

Certified true copy:

(J. Martin) Capt.,
Adjutant,
4 Cdn Base Reinf Bn.

7 Mar 44.

Summary of Evidence in the Case of, F 35152 Pte. Daniels, V.A.D. "D" Coy. No. 4 Bn., 1 Coln. Base Reinforcement Group, C.M.F., Charged with Absence without leave (A.A. Sec. 15, (1)

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness:

A 11729 Sgt McConnell. P.S., "D" Coy, 4 Bn. 1 C.B.R. Group, Sworn, states:

on 15 Feb 44, I was orderly Sgt, "D" Coy. 4 Bn, 1 C.B.R. Gp. and have been continuously since that date. At approx. 0830 hrs 15 Feb 44, I called the roll. The accused did not answer his name. I searched the Coy area and did not find him. I reported him absent. I have been present at roll calls from 15 Feb 44 until 28 Feb 44 and the accused did not answer his name at any time.

I next saw the accused 4 Mar 44 at approx. 1330 hrs at Coy office.

P.J. McConnell.

The accused declines to cross examine this witness.

2nd Witness:

K 67700 L/Cpl Bradley, J.S., Sworn, States:

I am desk Cpl Regt'l police, 4Bn 1 C.R.X Gp and was so acting on 5 Mar 44. at 1000 hrs I received Pte Daniels into custody. This is the man. (Points to Pte Daniels)

J.S. Bradley

The accused declines to cross examine this witness.

Third Witness:

N 104 244, Pte Mohr, A Sworn, states

I am N 104 244 Pte Mohr, A, orderly room clerk 4Bn 1 C.R.X Gp. I was acting in that capacity on 5 Mar 44. I received document certifying arrest of F 35152 Pte Daniels V. from DAPM. 6 Base Sub Area.

The accused declines to cross examine this witness.

The documents referred to by the witness, produced, made over to the accused, marked "Exhibit "A" Signed by me and attached hereto.

J.B. Martin Lieut

The accused is cautioned as follows:

Do you wish to make any statement or give any evidence upon oath? You are not obliged to make a statement or give any evidence unless you wish to do so, but any statement you make or any evidence you give will be taken down in writing and may be used as evidence

F.A.D. Daniels

Certified that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused this sixth day of March 1944, and that Rule of Procedure 4 c. 5 E F & G have been complied with

In the Field
6 Mar. 44

J.B. Martin Lieut
Officer Taking Summary.

SUMMARY OF EVIDENCE IN THE CASE OF 35152, PTE DANIELS V.A.D. "A" COY, NO. 4 BN., 1 CDN BASE REINFORCEMENT GROUP, C.M.F., CHARGED WITH ABSENCE WITHOUT LEAVE (A.A.Sec 15 (1))

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS: A 11729, Sgt Mc Connell P.J. "D" Coy 4 Bn., 1 C.B.R. Group, sworn, states:

On 15 Feb 44, I was orderly Sgt, "D" Coy, 4 Bn., 1 C.B.R. Group, and have been continuously since that date. At approximately 0830 hrs 15 Feb 44, I called the roll. The accused did not answer his name. I serched the Coy area and did not find him. I reported him absent. I have been present at all roll calls from 15 Feb 44 until 28 Feb 44 and the accused did not answer his name at any time. I first saw accused 4 Mar 44 at approximately 1330 hrs at Coy office.

The accused declines to cross-examine this witness.

Signed (P.J. McConnell) Sgt.

SECOND WITNESS: K 67700, L/Cpl Bradley, J.S., sworn, states:

I am desk Cpl, Regt'l Police, 4 Bn., 1 C.B.R. Group and was acting on 3 Mar 44. At 1600 hrs I received Pte Daniels into custody. This is the man (points to Pte Daniels).

The accused declines to cross-examine this witness.

Signed (J.S. Bradley) L/Cpl.

THIRD WITNESS: M 104244, Pte Mohr, A., sworn, states:

I am M 104244, Pte Mohr, A., orderly room clerk, 4 Bn., 1 CBR Group. I was acting in that capacity on the 3 Mar 44. I received document certifying arrest of M 35152, Pte Daniels V from D.A.P.M. 6 Base Sub Area.

The accused declines to cross-examine this witness.

Signed (A. Mohr) Pte.

The documents referred to by the witness, produced, read over to the accused, marked Exhibit "A", signed by me and attached hereto.

Signed (J.B. Martin) Lieut.,
Officer taking Summary.

The accused is cautioned as follows:

Do you wish to make a statement or give any evidence upon oath? You are not obliged to make a statement or to give any evidence unless you wish to do so, but any statement you make or any evidence you give will be taken down in writing and may be used as evidence.

The accused declines to make a statement.

Signed (V.A.D. Daniels) Pte.

Certified that the foregoing Summary of Evidence consisting of 2 pages was taken down by me in the presence and hearing of the accused this Sixth day of March 1944, and that Rule of Procedure 4 (C)(D)(E)(F) & (G) have been complied with.

Signed (J. B. Martin) Lieut.,
Officer taking Summary.

In the Field
6 Mar 44.

No. F 35152 Name DANIELS V.A.D Sqn., Battery, or Company — Corps W.A.A.S.R. — Date of enlistment — G.C. Badges — Service or Proficiency Pay — E & C — M.F.M. 6 (A.F.B. 122) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	SUPPLEMENTARY OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Certified true copy from the Regt'l Books in my custody.					
				(J. Martin) Capt., Adjutant,					
				10 Mar 44. 4 Cdn Base Reinf Bn.					

P.T.O.

Ex B

ARMY FORM B.200

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F 35152	PTE	DANIELS V.A.D.	WNSR on strength 4 Bn 1 CBR Gp.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for [illegible] are not to be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for from 2130 hrs 28 Feb 44 days

~~XXXXXXXXXXXX~~ 21 days 2½ hrs days in military custody, making a total of 21 days 2½ hrs ~~XX~~,

of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 27 yrs 3 months

6. The date of his commission / attestation specified in his record of service / attestation paper is N/A

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated _____ and in his regiment (*or* corps or department) the rank of N/A dated N/A

(72854) W.L.31702/1877 25,000 10/42 A.A.F.W.2.1d. Gp.498
(23867) W.L.32858/1297 25,000 3/43

L. C. M. B - 34

Lieut. (A/Capt.) Daniels, H.G.

RECORDED AT CMHQ IN AB 160 GCM-B-34 1

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General ~~and District~~ Courts-Martial.

15 Jan 45

RECEIVED 23 JAN 1945 JAG BRANCH C.M.H.Q.

Proceedings of a General Court-Martial held at 1 C.G.R.U. on the 15th day of January 19 45 by order of Major General J.H. Roberts

Commanding Cdn Reinforcement Units.

dated the 13th day of January 19 45.

President.

Col. H.M. Bailey, OBE VD 1 COMBRU

Members.

Major J.R. Joly	4 CITR
Major J. R. Couillard	4 CITR
Major G.W. Gordon	2 CACRU
Capt T.A. Bate	1 CITR

PROCEEDINGS REVIEWED 23 Jan 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Capt. W.R. Marshall Barrister-at-Law HQ CRU Judge Advocate.

Trial of*

Lieut A/Captain William Frederick DANIELS
RCASC HQ CRU

The order convening the Court, the charge-sheet medical certificate and the summary ~~of~~ of evidence are laid before the Court.

The Court satisfy themselves that Capt E.F.Henry 3 CACRU is not available to serve owing to the exigencies of the Service and Capt. T.A.Bate No. 1 CITR, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor.† Lieut R.W. Allan - Barrister - 1 CITR

~~Prosecutor~~ defending officer† Capt. S.T. Patterson HQ CRU

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked "X" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

2

B

Do you object to W.3275 Pte. Boorman M.E. as shorthand writer? Answer No sir.

W.3275 Pte. Boorman M.E. is duly sworn.

The President, members and judge-advocate are duly sworn

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec 46 (3) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you which you have heard read ? *Question to the accused.*

GUILTY SIR. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

GUILTY SIR. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.*

GUILTY SIR. *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read ? *Question.*

Answer.

The accused having pleaded Guilty to 1st, 2nd & 3rd charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C-H-A-R-G-E S-H-E-E-T

THE ACCUSED, LIEUTENANT, ACTING CAPTAIN, WILLIAM FREDERICK DANIELS, ROYAL CANADIAN ARMY SERVICE CORPS, ON STRENGTH OF HEADQUARTERS, CANADIAN REINFORCEMENT UNITS, AN OFFICER OF THE CANADIAN ARMY, OVERSEAS, IS CHARGED WITH:-

FIRST CHARGE: CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

Section 40 Army Act

in that he

At Aldershot, Hants, on the night of 8th/9th January, 1945, at approximately 2359 hours, created a disturbance at Scott-Moncrief Square Married Quarters by banging at the door of Flat No 60 and shouting in a loud voice.

SECOND CHARGE: CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

Section 40 Army Act

in that he

At Aldershot, Hants, on the 9th January, 1945, at Headquarters, 15th Provost Coy, Corps of Military Police, while there awaiting escort, used abusive language to 3518699, CSM John COWIN and 2656174, Sgt G.H.S. SMITH by saying, "If you were a quarter of a man, I'd punch you on the fucking nose", and "You know what the Australians and Canadians think of you fellows".

THIRD CHARGE: CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

Section 40 Army Act

in that he

At Aldershot, Hants, on the night of 8th/9th January, 1945, did wear civilian clothes contrary to Overseas Routine Order 4144, appendix "A", Part 1, Section 1, paragraph 5, directing that officers may wear civilian clothes when (1) away from their stations whilst on leave (2) at their stations while engaged in athletic exercise for which a special dress is necessary.

D.F. Spankie

(D.F. Spankie) Colonel
Colonel i/c Administration
Canadian Reinforcement Units.

In the Field,
11 January, 1945.

TO BE TRIED BY GENERAL COURT/MARTIAL.

J.H. Roberts

(J.H. Roberts) Maj.-Gen
Commander
Canadian Reinforcement Units.

In the Field,
13 January, 1945.

B 2

MEDICAL OFFICER'S CERTIFICATE:

I certify that I have this morning, ~~15~~ January, 1945, examined Lieutenant, Acting Captain WILLIAM FREDERICK DANIELS, R.C.A.S.C., and in my opinion he is FIT to undergo trial by COURT-MARTIAL.

Headquarters,
Canadian Reinforcement Units

15 January, 1945

(J. ROUSSEAU,) Captain,
RCAMC, Medical Officer,
H.Q., Cdn Rft Units

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been reopened, the accused is again brought before it, and the charge to which he has pleaded Guilty read to him again.]

The accused Lieut A/Captain William Frederick DANIELS, is found guilty of the First, Second and Third Charges.

*The summary (or abstract) of evidence is read, marked "G" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked, signed by the President, and attached to the proceedings.]

Gentlemen, you understand this situation. Something has occurred. There is nothing I can do or say that alters that fact, it has been, and is there. An explanation may clarify it to some extent.

On this night in question, the 8th and 9th of January I left the Office about 6 o'clock, proceeded to the Mess and on my arrival at the Mess I had 2 gins, and a beer before dinner. I went in to dinner, and immediately after dinner proceeded back to the office until 8:30 at which time I left and went to Aldershot and had several beers at the Public House there. I returned to the Mess around 9:30 or 10 o'clock and had other beers from that time until 11 o'clock. During that period I sent upstairs and put on my flannels and sport jacket. At 11:30 I decided to go down and visit some friends who lived at Scott-Moncrief Square. As I was going out the Hall I picked up my trench coat, put it on, and my scarf and brown khaki gloves. I proceeded to visit this place.

The people I go down to visit are friends of mine. I can prove that very easily. All the barrack blocks are similar to thousands of others in Aldershot, and in the blackout at night you cannot tell the difference between one door and the next. The people I know live on the second floor. You go in the entrance, up the stairs, then turn right and it is the first door on the left. Now I thought I was at the right door and started to knock, there are no bells. I increased my banging

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

and knocking because these flats are made so you go in the door to the living room, there is another door on the left hand side leading upstairs to the second floor, and the bedrooms have doors on the top floor, making three doors between the bottom door and the upstairs. If anyone is sleeping upstairs you have to make a lot of noise to be heard. I started knocking on this door and then this Mrs. MacKenzie eventually opened the door, whether she told me to run off in the meantime I cannot clearly state, but the moment I saw her I did the natural thing and I said I was sorry and that I had arrived at the wrong house.

This S/M from the APM Office started throwing a lot of questions, asking who I wanted to see. The statement says Mimi Jones. Well I ask you, the mere fact they used the name Jones is something I am sure I did not. I can prove I know people living there by the name of Adams and a person by the name of Mina.

The S/M was at the top of the stairs, I had on a Cdn Officers trench coat and I do not speak like an Englishman. In the Summary of Evidence the S/M admits that I stated I was a Canadian. If you were asked if you were a civilian or a soldier the logical reply is you are a soldier. I then proceeded without any trouble, I was not abusive to them, down to their Hq and immediately we got into this room there was a telephone and I asked if I could use it. They said no. The chap sat down at the table and said would I make a statement. I said no, I wanted to use the telephone and would make one after I got an officer. Prior to that they asked me for an identification card and I found it in my back pocket. I did not know if I had it as I always carry it in the inside upper pocket. When I made those rash statements down there I was behind the 8 ball to put it bluntly, I had one C.M. over here. This chap had everything right on me and I wanted to get to the phone so I could get things straightened out. It was a most difficult position, I tried to keep control of myself, I was quite ready to slug him. Every statement I made, was made while I was walking up and down the room, I was agitated, I was not trying to pull a quickie there, you can appreciate that.

I can prove I have friends there. I can prove that by 20 people. I was not abusive andfollowed the MP to the HQ. They admit I asked for a telephone repeatedly and I was denied. I asked for a pencil and paper so I could cover myself, it was no go.

You can imagine my disturbed state in that Provost Office. I had this one Court Martial behind me, and I tried, honestly I tried.

That is all.

E

Finding.*

**To be struck out except in cases where trial has taken place on a plea of "Not Guilty."*

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

**When the Court is already open this sentence will be struck out.*

Evidence of character, &c.

Proceedings on Conviction *before Sentence.*

~~*The Court being re-opened the accused is again brought before it.~~

~~is duly sworn.~~

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Prosecutor.

I produce AFB 296 and MFM 6

The above statement, and MFM 6 with the schedule of convictions and of cases in which trial has been dispensed with, is read, marked "Y & Z" signed by the President, and annexed to the proceedings.

Question by the President.

~~Is the accused the person named in the statement which you have heard read? Answer by the Witness.~~

Question.

~~Have you compared the contents of the above statement with the regimental books? Answer.~~

Question.

~~Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? Answer.~~

~~Cross-examined by the accused.~~

[Instruction.—If by reason of the nature of the service of the accused in a differential [illegible], or otherwise, the finding of the Court renders you liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

~~Do you wish to [illegible] the Court [illegible]~~

The Court is closed for the consideration of the sentence.

The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later, and the proceedings in open court are accordingly terminated.

10

F

Sentence.

The Court sentence the accused Lieut. A/Captain William Frederick DANIELS, Royal Canadian Army Service Corps, on strength of Headquarters, Canadian Reinforcement Units, to be Reprimanded.

Sentence

REPRIMAND

M R Marshall ....Captain
Judge Advocate

Harry M. Baily ....Colonel
President

In the Field
United Kingdom
15 Jan 45.

Confirmed.

J M Roberts
Major General
Comd Cdn Rft Units.

IN THE FIELD
16 JAN 45

Sentence promulgated & extracts taken this 17 day of January 1945

A E Jeffrey, MAJOR,
CAMP COMMANDANT,
HQ. CAN. REINF. UNITS

COURTS - MARTIAL ARMY FORM A 47

FORM OR ORDER FOR THE ASSEMBLY OF A GENERAL ~~OR DISTRICT~~ COURT MARTIAL

.....ORDERS BY Maj-Gen J.H. Roberts, DSO, MC.....

Commanding the Cdn Rft Units.....

(Place & Date) Field, 13 Jan 45.....

Lieut(A/Capt) William Frederick DANIELS, RCASC HQ CRU

The detail of officers as mentioned below will assemble at .....1 CGRU at 1000 hrs on the ...15th.... day of January 1945 for the purpose of trying by a General Court-Martial the accused person (~~persons~~) named in the margin (and such other person or persons as may be brought before them)

PRESIDENT

Col H.M. Bailey, OBE VD, 1 COMERU. is appointed president

MEMBERS

Major J.R. Joly	4 CITR
Major J.R. Couillard	4 CITR
Major G.W. Gordon	2 CACRU
Capt E.F. Henry	3 CACRU

"X"

WAITING MEMBERS

Capt T.A. Bate	1 CITR
Capt G.N. Tweedie	3 CACRU

JUDGE- ADVOCATE

Capt W.R. Marshall, Barrister-at-Law, HQ CRU

~~has been (or where the convening officer has the appointment of a judge-advocate~~, is hereby) appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to Col i/c Adm, HQ CRU

Signed this ,,13th.. day of ....January. ~~1944~~ 1945

(J.H. Roberts) Maj-Gen
Comd
Cdn Rft Units

13

CANADIAN ARMY OVERSEAS ROUTINE ORDER 4144 dated 31 Dec 43.

DRESS REGULATIONS 1943 - Officers, Canadian Army Overseas and Supervisors, Auxiliary Service Organizations Overseas.

5. CIVILIAN CLOTHES - Officers may wear civilian clothes (i) away from their stations while on leave, (ii) at their stations only while engaged in athletic exercise for which a special dress is necessary.

Certified true extract

(E.W.E. Plant) Lt.
A/Adjutant,
1 Cdn Inf Depot Bn.
15 Jan 45.
Officer having custody of the original.

EX "A"

S-U-M-M-A-R-Y O-F E-V-I-D-E-N-C-E

in the case of

Lieutenant (Acting Captain) William Frederick DANIELS, Royal Canadian Army Service Corps, on the strength of Headquarters, Canadian Reinforcement Units, an officer of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

FIRST WITNESS: for the Prosecution:

3518699, CSM John COWIN, Corps of Military Police, 158 Headquarters Provost Coy, British Army, having been duly sworn, states:--

"I am 3518699, CSM John Cowin, Corps of Military Police, 158 H.Q. Provost Coy. On the morning of 9 January, 1945, at about 0020 hours, I was asleep in my married quarters, which is No 79 Scott-Moncrieff Square. I was awakened by hearing a woman screaming and loud bangs. I got out of bed and as I was about to open my Quarter door I heard someone kicking at a door and a man's voice saying, "Will you open the door, or do I have to bring the Guard?" I opened the door and saw a man dressed in plain clothes standing on the landing. He was wearing civilian clothes, blue suit with pin-stripe, no head-dress and a wide khaki woollen knitted scarf. I asked him who he was and what he wanted. He said he was a civilian. I then asked him to show me his identity card and he said he wasn't in the habit of carrying it. I asked him again why he was at the Married Quarters. He said, "You know these things." By this time Sergeant Smith, who lives below me in No. 77 opened his door and I called him to come upstairs. The door of No. 80 had by this time been opened by Mrs. McKenzie. I asked Mrs. McKenzie if she knew the man dressed in civilian clothes. She said, "No", that she had never seen him before he had knocked at her door a few minutes before and she had told him to go away. Sergeant Smith and I brought the civilian, as he was then as far as we knew, down to the Military Police Office at 158 H.Q. Provost Coy, Provost Road, Aldershot. On arrival at the Police Office I again asked the man for his identity. At first he refused to give any identity and I told him that he would be searched, whereupon he took a small wallet out of his hip trouser pocket and produced an identity card, issued by the Canadian Army Identification Bureau, in Ottawa, on 1 August, 1944. I ascertained that he was Captain William Frederick Daniels, R.C.A.S.C., and I now recognize him as the accused. I asked him for the location of his Unit. To this he replied, "If I don't give it to you, I suppose you will beat it out of me". I telephoned to the Duty Officer at R.C.A.S.C. Unit, Blenheim Barracks, Aldershot, and as a result of this telephone Lieutenant M. Basstien, R.C.A.S.C., came to the Police Office and took Captain Daniels away in arrest. During the time I was waiting for the escort to come along, Captain Daniels became very abusive, making such remarks as, "If you were a quarter of a man, I'd punch you on the fucking nose." "This is what we've traveled forty-four thousand miles for." "And you know what the Australians and Canadians think of you fellows."

SUMMARY OF EVIDENCE IN THE CASE OF A/CAPTAIN WILLIAM FREDERICK DANIELS:

CONTINUED FROM PAGE ONE:

FIRST WITNESS FOR THE PROSECUTION:

3518699, CSM John Cowin (Continued)

No answer was made to any of these abusive remarks and I asked Captain Daniels please to keep quiet until the escort arrived."

END OF STATEMENT.

THE ACCUSED ELECTS TO CROSS-EXAMINE THIS WITNESS:

Q.1 Sergeant Major, when we arrived at your office, I asked permission to use the telephone. This was not permitted. Is this true?

A.1 Quite True, Sir.

Q.2 I asked if I may have a pencil or a pen. This was not permitted?

A.2 That is quite true, Sir.

Q.3 I didn't offer any physical resistance, did I?

A.3 Had resistance been offered, it would have been stated in the evidence, Sir.

Q.4 When I used abusive language, it was because I had been annoyed by being refused to be allowed to use the telephone, was it not?

A.4 That is difficult to say. I don't know why you used abusive language. We were careful not to answer back because it might cause provocation.

Q.5 Did the language complained of take place after I was refused the use of the telephone?

A.5 You requested to use the telephone quite five times, and it was really difficult to keep you quiet; and you used abusive language between the various requests to use the telephone.

END OF CROSS-EXAMINATION.

J. Cowin CSM.
J. Cowin, CSM, 3518699
1100 hours, 11 January, 1945

SECOND WITNESS: For the PROSECUTION:

Mrs. Marion MacKENZIE, 80 Scott-Moncrieff Square, Aldershot, having been duly sworn, states:--

"I am Mrs. Marion Mackenzie, and am the wife of Private K. Mackenzie, Seaforth Highlanders, and I reside at 80 Scott-Moncrieff Square, Aldershot. On Monday, 8 January, 1945, at about midnight I had gone to bed. Shortly after midnight I was awakened by m y sister and I came downstairs. I heard knocking and banging at the door of my flat. I called, "Who do you want to see?". I was answered very rudely, "Never mind who I want to see. I just want Mimi Jones". I simply said, "Mimi Jones doesn't live here. Will you please go away." While the door was still being hammered I was answered, "I don't care who the hell lives here. I want to see

SUMMARY OF EVIDENCE IN THE CASE OF A/CAPTAIN WILLIAM FREDERICK DANIELS:

PAGE THREE:

SECOND WITNESS FOR THE PROSECUTION:

Mrs. Marion MacKenzie (Continued)

CONTINUED FROM PAGE TWO:

Mimi Jones." The door was still being shaken and knocked, almost forced in. After repeatedly asking for whoever it was to go away, I didn't know what to do. I open my scullery window and called several times for the guard but got no reply. I shut my window and the door was still being hammered so I opened the window and shouted for the guard. I then heard that someone had come and heard voices outside my door and knowing someone was there, I opened my door to explain matters. I saw my neighbor's husband, who is a Sergeant Major in the Military Police. There was also another man there who was in civilian clothes. There was no light in the passage but my neighbor had a torch and I couldn't see very much. I might know him to see him again in civilian clothes. I recognize the accused as the man who was there. While I was talking to the Sergeant Major, Sergeant Smith came up from the flat below. I explained to the Sergeant Major and the Sergeant that my door had been banged and that I had been afraid to open it. The man in civilian clothes then apologized and stated that he had made a mistake and didn't intend coming to my Quarter. While he was still apologizing I went in and shut the door."

END OF STATEMENT:

THE ACCUSED ELECTS TO CROSS-EXAMINE THIS WITNESS:

Q.1 When you enter the building of your quarters you go up a flight of stairs to a landing, turn and go up another flight and the door of your flat is on the left-hand side on the next landing. Is that correct?

A.1 Yes.

Q.2 All the buildings there are the same, are they not?

A.2 They are all similar.

Q.3 They are built on the same style?

A.3 Yes, to the best of my knowledge.

END OF CROSS-EXAMINATION.

A.M. MacKenzie (Mrs.)

THIRD WITNESS: For The PROSECUTION:

2656174, Sergeant C.H.S. Smith, 158 Provost Coy, Corps of Military Police, British Army, who having been duly sworn, states:--

"I am 2656174, Sergeant Smith, C.H.S., 158 Provost Coy, Corps of Military Police. At Aldershot, on 8 January, 1945, at about 2355 hours, I was going to bed in my Married Quarter, No 77 Scott-Moncrieff Square, when I heard somebody fall up the stone stairs which lead to the Married Quarters above. I waited a few seconds and I heard the noise again.

SUMMARY OF EVIDENCE IN THE CASE OF A/CAPTAIN WILLIAM FREDERICK DANIELS:

CONTINUED FROM PAGE THREE:

THIRD WITNESS FOR THE PROSECUTION:

2656174, Sgt. Smith, G.H.S.

(Continued)

I put on my trousers and slippers and went to the front door and into the passage-way, where I put on the electric light. On looking up the stairs I saw a man dressed in civilian clothes looking over the hand-rail. I recognize the accused as the man I saw. He asked me if everything, and came staggering down the stairs and asked me if Mimi Jones or Mrs. Adams was in. I informed him that no persons of that name lived in this block of quarters. He then asked me who lived in this block of quarters and I told him that the Sergeant Major lived on one side and Mrs. Mackenzie on the other. When I said, "Mrs. Mackenzie", he remarked, "That is the name". He then said goodnight to me and went upstairs, I into my quarters. At about 0010 hours, I heard the noise of a door being kicked. This noise grew worse. I got dressed and went out into the passage and went upstairs to the top quarters. On reaching the top of the stairs, I saw CSM Cowin, Mrs. Mackenzie and the civilian who I had already spoken to. Sergeant Major Cowin asked him what he wanted and if he was a civilian. He said he was, so the Sergeant Major asked him for his identity papers which he refused to show and said he hadn't got. Sergeant Major Cowin then told me to detain the civilian while he, Sergeant Major Cowin, got dressed. I then assisted Sergeant Major Cowin to escort the civilian down to the Military Police H.Q. On checking on this civilian's identity, which he produced in the office on being asked again, he was found to be Captain Daniels, R.C.A.S.C. Sergeant Major Cowin telephoned. During this Officer's stay in the Sergeant Major's office, he became very abusive to all, saying such remarks as, "This is what we come forty-four thousand miles for, to fight for you bastards", and, "You know what the Australians and the Canadians think of you", also, to Sergeant Major Cowin he said, "If you were a quarter of a man, I would punch your fucking nose". An Officer arrived and Captain Daniels left with him about 0215 hours, 9 January, 1945."

END OF STATEMENT:

THE ACCUSED ELECTS TO CROSS-EXAMINE THIS WITNESS:

Q.1 Sergeant, would you state whether you thought I had been drinking or not?

A.1 Yes, you certainly had been partaking in alcoholic liquor, Sir.

Q.2 When I produced my identification card, did I not state, I didn't think I had it with me, and then I found it in my xxxxxx back pocket?

A.2 That's right Sir. You got it from your back pocket.

Q.3 When we were on the landing in the Married Quarters did I not state that you could tell by my accent that I was a Canadian?

SUMMARY OF EVIDENCE IN THE CASE OF A/CAPTAIN WILLIAM FREDERICK DANIELS:

CONTINUED FROM PAGE FOUR:

THIRD WITNESS FOR THE PROSECUTION:

2656174, Sgt. Smith, G.H.S.

A.3 Yes. When I asked you if you were a civilian or a soldier, you made that remark and said, "I am a soldier."

END OF CROSS-EXAMINATION:

G.H.S. Smith, Sgt.

11 January, 1944

THE ACCUSED WAS CAUTIONED: "Do you wish to make any statement or give evidence on Oath? You are not obliged to say anything, or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence".

THE ACCUSED ELECTED TO GIVE EVIDENCE UPON OATH:

"I am Captain William F. Daniels, RCASC, on strength Headquarters, Canadian Reinforcement Units. I accept full responsibility for my regrettable and unfortunate actions and statements during the night 8/9 January, 1945, which arose under the following circumstances: On the night in question I decided to make a night of it. I returned to the Mess from the Office, changed from battle dress to my grey flannels and light grey sport jacket, continued to wear my khaki shirt and tie. When I eventually decided to go out again, I picked up my Canadian Officer's trench coat, khaki woollen muffler and gloves, to proceed to visit friends living on Scott-Moncrieff Square. Due to my very befuddled state or condition from liquor and similarity of these flats, I commenced knocking and banging on the wrong door in a very noisy and loud manner. The moment I saw Mrs. Mackenzie I realized my error and acted accordingly. The statements made by me in the A.P.M.'s Office were wild and inaccurate, made generally when unable to use the telephone or acquire pen or pencil. I regret exceedingly my actions and inconvenience caused to all people concerned and do accept full responsibility and guilt of any charges laid against me."

W.F. DANIELS, Captain

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF FIVE (5) PAGES WAS TAKEN DOWN BY ME IN THE PRESENCE OF THE ACCUSED AT HEADQUARTERS, CANADIAN REINFORCEMENT UNITS, FARNBOROUGH, HANTS, THIS 11th DAY OF JANUARY, 1945, AND THAT RULES OF PROCEDURE 4 (C), (D) and (E) HAVE BEEN COMPLIED WITH.

(R.B. ALLAN) Lieutenant,
No 1 C.I.T.R.
Officer detailed to take the Summary of Evidence

In the Field,
11 January, 1945

"Y" WREN

25

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number *Rank* *Name* *Regiment (or as the case may be)*

Lieutenant (Acting Captain) William Frederick DANIELS (RCASC)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement awaiting trial for the present charge for days to civil custody, and days in military custody, making a total of days, of which days were spent in hospital.

5. The present age of the accused according to his record of service is 33 years and 145 days

6. The date of his commission specified in his record of service is 5 June, 1941

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 years & 212 days

8. The accused is entitled to deferred pay or gratuity in respect of 3 years & 212 days service.

9. The accused is entitled to reckon 3 years & 212 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to (*state any military decoration or reward*). Canadian Volunteer Service Medal with Clasp

11. (*If the accused is a commissioned officer.*) The accused before he was made a commissioned officer held the engagement rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of Lieutenant, dated 1 June, 1941 and in his regiment (*or corps or* department) the rank of Acting Captain dated 5 May, 1944

W.A.3765/1100 10M. 1/45. P. Ltd. T12.3.

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13. If the accused has served as a non-commissioned officer commonly without reduction, in the present case

Date of Promotion

Initial rank of 1945

Initial rank of 1945

Initial rank of 1945

INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs conserved amended accordingly.*

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* A/Captain Name W.F. DANIELS of RCASC Regiment (or as the case may be)

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
GCM	"In the Field" 19 Nov, 1942	WOAS: 1st Charge: DRUNKENNESS (AA Sec. 19) 2nd Charge: CONDUCT TO THE PREJUDICE OF GOOD ORDER & MILITARY DISCIPLINE (AA Sec. 40) 3rd Charge: STRIKING HIS SUPERIOR OFFICER (AA Sec. 8(2)	(i) Loss of 6 Months' Seniority (ii) Severe Reprimand	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th **day of** January, 1945

A.E. Lefroy. Major

(A.E. LEFROY) Major Camp Commandant - HQ Cdn. Rft. Units.

(Lieut)(A/Capt) William Frederick DANIELS #41 Cdn. Gen. Transport Coy

No. Name Sqn. Battery, or Company Corps RCASC Date of enlistment G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 500M—6-39 (1793) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
"IN THE FIELD"	24 Oct 42	Lieut.		WOAS: 1st Charge: DRUNKENNESS (A.A. Sec. 19) 2nd Charge: CONDUCT TO THE PREJUDICE OF GOOD ORDER & MILITARY DISCIPLINE (A.A. Sec. 40) 3rd Charge: STRIKING HIS SUPERIOR OFFICER (A.A. Sec. 8(2)		(i) 6 Months loss of seniority (ii) Severe Reprimand	19 Nov 1942	G.C.M.	

CERTIFIED: A true extract of proceedings of GCM held 19 Nov 42 which document is in my possession.

(A.E. Lefroy) Major
Camp Commandant [illegible]

12 Jan 45

(P.T.O.)

PLEA IN MITIGATION

Gentlemen, I want to say something in the nature of a plea in mitigation of sentence.

When I was approached by this Officer to act in his defence I did so gladly, because I have known him some considerable time, and my inclinations are to be sympathetic to someone who has a good reputation. If I had known this Officer had a bad reputation I would not have been here. I think it is apparent to the Court that this Officer realizes the gravity of the situation. I have realized myself that he is in a most difficult situation. When I did agree to his request I had no idea whether it was advisable for him to plead Guilty or Not Guilty. When I saw that biased and prejudiced Summary of Evidence, and when I realized every witness appearing on that evidence was an English provost or English woman it was my firm conviction at all costs to keep these witnesses out and it lead me to conclude the best thing to do, which was his own inclination I might say, was to plead Guilty, well knowing the consequences. It is not for me to criticize the technicalities of the Summary. I know that there are some things said under oath that generosity could lead a person to exclude. They do not have to repeat verbatim, but could indicate something they have seen without repeating certain detrimental words.

I want you gentlemen to appreciate the situation he is in. He has pleaded Guilty. I want to also point out that I do not think we should come to the conclusion that because of 15 or 20 minutes that it is indicative of this Officer's reputation or character. I think it is a most difficult thing to judge a human being. You may judge him by his actions if you have only met him a short time, or if you only know him slightly, but nine times out of ten judgements of this sort are wrong.

This case is not indicative of his nature. I might say he was drunk, but I do not want to bring in the word drunkenness because of certain things which would be erroneous. Might I just take a minute or two to discuss the reactions of a few drinks on the accused. Might I say that I have known him as a fellow Officer in the Mess. I have seen him drunk once, some few months ago. I do not know how much he takes. I do not think he should drink. He knows it himself. It got him into trouble two years ago. Since then he has toed the mark. He knows his weakness, he knows the effect it has on him. For two years, with one exception of drinking very little, he has caused no trouble. It was remarkable how easily he did get drunk.

I want to reiterate, two years following a piece of bad luck he has rigidly toed the mark. For two years he has been employed as a staff officer at HQ CBU with a Branch of the Service which is under tremendous pressure. I have seen him come in at 10 O'clock after long hours of hard work. I do want to show the Court that there is nothing wrong with an officer who can carry on three years duty overseas to the utter satisfaction of his Superior Officers. Moreover, there is not only the strain of his work, but I want to make a suggestion - we are going into our sixth year of war, officers who have had to endure separation have had psychopathic results, some officers and men of strength of will and character may not get psychopathic results, but do get fits of depression. This Officer has had three years service over here. He has suffered as most of us suffer from the result of the strain of soldiering in this country.

I also want to bring to the Court's attention that this difficulty took place a few days after Christmas and New Years. They were not happy days by any means, I happen to have seen him over that period, they were not happy days. Everyone indulged in an effort to relieve their feelings, he did not touch a drop. He knew his weakness and moreover he was on duty. He has spent 15 hours a day under accumulative strain, the strain of his job, the strain of being away from home, and the depression of which he has suffered.

We come to this night - at 8:30 he has a drink when he goes to the Mess with the usual effects, and he has gone out and made a bit of an ass of himself, being foolish for 15 or 20 minutes. I venture to suggest that if the Canadian Provost Corps had said get on your way, it would have been the end of the matter.

I do not know as there is much more to say. I do not think you can look at him and say he is not a clean-cut lad. He is like any of the rest of us, doing a good job to the satisfaction of his superior officers, and because he wavers one might finds himself in the dreadful situation he is now in. Therefore I would most anxiously, and seriously, and earnestly, ask you to take into consideration the fact he has served here three years, a total service of four years, and I want you to consider the effect on the Cdn Army if they are to dispose of the services of a chap with a good record

(over)

I am certain that the Court has noticed that when this Officer spoke on his own behalf he was visibly moved. He is not a callous chap, who does not care, but on the contrary he is a chap who feels deeply, and is most heartily ashamed of finding himself misbehaving for 10 or 14 minutes while under the influence of liquor.

I seriously consider that the assets on the balance sheet far outweigh the things indicated in the Summary of Evidence.

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I hereby waive my right to 7 days notice of the prosecuter having legal qualifications pursuant to RP 89(b).

W. F. Daniels Capt.

.....

Lt.(A/Capt) W.F.Daniels.

13 Jan 45.

L. C. M. - 23

Lieut. A. T. Daniels.

G.C.M. - 23

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

19 Nov 42

Proceedings of a General Court-Martial held at In the Field on the 19th day of November 1942 by order of Brigadier R.J. Leach, MC, ED, Commanding 1 Canadian Artillery Group dated the 12th day of November 1942

President.

Lieut-Col W.A. Townsley, MC,
2 Cdn Med Regiment, R.C.A.

Members.

Major W.J. Blais, 3 Bn, RCE, First Cdn Army Troops
Major G.G.K. Peake, 2 Hy A.A. Regt R.C.A.
Capt J.E. Wilson, 2 Hy A.A. Regt R.C.A.
Capt A.D. Langmuir, 2 Bn RCE, First Cdn Army Troops

T.G. Norris Major Judge Advocate

Major T.G. Norris, MC, KC, JAG Branch, CMHQ, Att HQ, First Cdn Army, Judge Advocate.

Trial of*

Lieut W.F. Daniels,
41 Cdn Gen Tpt Coy R.C.A.S.C.,
Att HQ, 1 Cdn Arty Gp.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

The Medical Certificate is laid before the court and marked 'A' ~~is not available~~ ~~I am informed by the~~ ~~accused that~~

~~, acting member takes the place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt D.D. Gordon-Carmichael,
1 Cdn Army Ord Wkshop, RCOC.

~~Counsel~~ or defending officer† Capt W.L.P. Carter,
41 Cdn Gen Tpt Coy R.C.A.S.C.

At 0930 o'clock the Trial commences.

The order convening the Court is read, and is marked A1 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q.1. *Question by the President to the accused.* Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

A.1. No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

(1)

W.A. Townsley Lt Col
President

Proceedings of General Court-Martial on Lieut W.F. Daniels, 41 Cdn Gen Tpt Coy RCASC, Att HQ, 1 Cdn Arty Gp

Medical Officer 5 Dec 42

Reviewed CMHQ

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.
Major A. DeMaio, 10 Cdn Non-Div Ord Wkshop RCOC
Capt W.V. Hillary, 1 Cdn Svy Regt R.C.A.
Capt C.A. Wakeham, 10 Cdn Non-Div Ord Wkshop RCOC
Capt A.M. Stephenson, First Cdn Army Sigs
Lieut R.N. Chisholm, First Cdn Army Sigs

Q.2. Do you object to Sgt Crone acting as shorthand writer? A.2. No Sir
The shorthand writer is duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 40 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Q.3. Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

A.3. Not Guilty sir. *Answer.*

Q.4. Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

A.4. Not Guilty sir. *Answer.*

Q.5. Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

A.5. Not Guilty sir. *Answer.*

[redacted] *Question.*

Answer.

[redacted]

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

W A Connolly Lt Col
President

CHARGE SHEET

THE ACCUSED, LIEUTENANT W. F. DANIELS, 41 CANADIAN GENERAL TRANSPORT COMPANY, R.C.A.S.C., AN OFFICER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH:

FIRST CHARGE
Army Act 19

WHEN ON ACTIVE SERVICE, DRUNKENNESS

in that he

in the Field on 24 Oct 42 was drunk in a public place, that is to say, the Village Drill Hall, WALTON-ON-THE-HILL, Surrey.

SECOND CHARGE
Army Act 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, on 24 Oct 42 did push and kick one Pte Thompson, C.T. and did push Ptes Hawkes and Bulbuck, private soldiers of the Canadian Army and did use foul and abusive language in a public place, namely The Village Drill Hall, WALTON-ON-THE-HILL, Surrey, in such a manner as to reflect discredit on the Canadian Army Overseas.

THIRD CHARGE
Army Act 8(2)

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER

in that he

in the Field, on 24 Oct 42 did strike Capt. W. A. Cummings, his superior officer.

W. A. Lucas

FIELD
31 Oct 42.

.....
(W. A. Lucas) Major
O.C. 41 Cdn Gen Tpt Coy,
R.C.A.S.C., C.A.O.S.

TO BE TRIED BY GENERAL COURT MARTIAL

R J Leach

(R.J. Leach) Brigadier,
Commanding,
1 Cdn Artillery Group. B II

In the Field
Nov 42

W A Formsby Lt Col.
President

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Q.6. Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A.6. Answer. No sir.

The prosecutor makes no opening address [illegible], and the Prosecutor calls witnesses in the proceedings.

In the opinion of the Judge Advocate and the Court, it is not necessary to comply with R.P.83(B) The prosecutor proceeds to call witnesses.

First witness for prosecution. Capt W.A. Cummings, 41 Cdn Gen Tpt Coy R.C.A.S.C.

being duly sworn, is examined by the prosecutor.

Q.7. Do you recognise the accused?
A.7. I do.
Q.8. What is his name?
A.8. Lieut Daniels, 41 Cdn Gen Tpt Coy.
Q.9. Capt Cummings, where were you on the night of October the 24th?
A.9. Until about a quarter after ten, in the Officers' Mess.
Q.10. And after that?
A.10. After that I proceeded up the road possibly a hundred yards to a drill-hall at Walton-On-The-Hill, where a dance was being held.
Q.11. Did you see the accused there?
A.11. I did, about half an hour after I arrived.
Q.12. Will you tell the court under what circumstances you saw the accused at the Drill Hall?
A.12. I was dancing over by the far side of the hall from the door. When the music stopped, I was approached by one of the civilians and he spoke to me. As a result of what he said, I went over to the door and Lieut Daniels was in an argument with two or three soldiers and I asked him if he would step outside and talk it over, which he did.
Q.13. In your opinion was the accused sober or drunk?
A.13. In my opinion if anyone is not in control of themselves they are drunk. I would say he was not drunk.
Q.14. It is your opinion, that at that time, the accused was not drunk? Did you have occasion to see the accused after this alleged action took place? Did you see the accused again after this occurrence took place?
A.14. Yes. We - I tried to persuade the accused to go back to the mess and we had a little bit of an argument in the hallway of the Drill Hall and eventually I went outside into the street and suggested that he come outside and I tried to get him to come outside. Outside, we had a further argument.
Q.15. And then what happened?
A.15. After considerable argument, he was persuaded to go back to the mess. I believe two soldiers went back with him - two or three.
Q.16. What did you do?
A.16. I went back into the dance hall and Mr Andrews invited me into the kitchen where they were drinking beer.

Q.17. Did you see the accused again, after that?
A.17. Yes. About half an hour later he returned and came into the kitchen. There was a bit more of an argument, but not a great deal. He had two soldiers with him, the same two that seemed to be with him before, and he was persuaded to leave with them again and go back to the mess.
Q.18. Did you see him on any further occasions that night?
A.18. Yes. After the dance had ended, I waited around until most of the people had left the hall and then I walked down to the mess myself and he met me just as I went through the gate into the mess. He was waiting for me there and we had a slight argument.
Q.19. What do you mean by 'slight argument'?
A.19. The argument was just a slight one - what you might term a 'wrestling match' for about ten minutes.
Q.20. Then what?
A.20. As a result of what other officers had said and done, Daniels went upstairs to go to bed.
Q.21. He went upstairs to go to bed?
A.21. Yes. I went into the mess. After I told Capt Shaw what had happened from my point of view, we sat downstairs for a while and then I decided to go to bed. As I went up the stairs, I went round the corner about seven steps from the top and I saw Daniels at the top of the stairs. I went on up and started to go by and suddenly he kicked me in the face.
Q.21. Did he say anything?
A.21. No, he didn't say a word at that time and then he made a dive at me. I tried to get hold of him and push him in the corner. There was a bit of a scuffle before Capt Shaw and Capt Kitchen and I believe Mr Cooke intervened.
Q.22. At this time, was the accused drunk of sober?
A.22. He had been drinking but I wouldn't say that he was drunk.
Q.23. In your opinion, was he capable of carrying out his duties?

Judge Advocate: You mean 'capable' in what respect? Is it a question of training; or physical or mental condition due to drinking, or what?

The Prosecutor continues the examination of the witness.

Q.23. Do you think he had had sufficient drink as to be incapable of carrying out his duties? Was he so much under the influence of alcoholic stimulants as to be incapable of carrying out his duties?
A.23. No. I think in an emergency he would be capable of carrying out his duties if he had been ordered to do any.
Q.24. At any time during the evening, did you hear any bad language being used? By the accused?
A.24. I don't recall any, no.
Q.25. At any time during the evening?
A.25. No, I don't.
Q.26. You stated previously that the accused kicked you in the face?
A.26. Yes.
Q.27. Did you provoke him in any way?
A.27. He may have considered that I had provoked him, but at that time it was not.

The witness is cross-examined by the Defending Officer.

Q.28. Prior to the time the civilian Mr Andrews called you and you came over to the accused, did you notice any particular commotion there?
A.28. No sir. There was a big crowd there, and the band was playing. I didn't notice any particular commotion at all.
Q.29. According to what you have just said, the accused didn't strike you at any time prior to the time of the argument which you had at the top of the stairs.
A.29. Yes, that is correct.
Q.30. Definitely correct?
A.30. Yes.
Q.31. You are positively sure that the accused was not drunk?
A.31. That is my own opinion of drunkenness.
Q.32. He was not, definitely, drunk and could have carried out his duties?
A.32. Yes. I think in an emergency, he would have been able to carry out

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COUNTER NUMBER 537639

HOUR 945

OPERATOR'S INITIALS E.R.

RELIEVING OPERATOR R.D.

his duties if ordered to do so.

Q.33. As regards using foul and abusive language. You are quite sure he didn't use any?

A.33. Well, he was in my presence and I didn't hear him.

Q.34. You are quite sure you didn't hear any in the kitchen?

A.34. Yes.

Q.35. Quite sure?

A.35. Yes.

Q.36. Roughly what time did the dance finish?

A.36. About 12 o'clock.

Q.37. You are quite sure it was about 12?

A.37. Yes.

Q.38. When you left the Drill Hall for the last time, it would be after 12 then?

A.38. Yes.

Q.39. You went towards the mess?

A.39. Yes.

Q.40. And you met Daniels on the lawn of the officers' mess?

A.40. Yes.

Q.41 Where you said a 'wrestling match' ensued?

A.41. Yes.

Q.42. Did the accused strike you in the course of that 'wrestling match'?

A.42. No sir.

Q.43. You are quite sure?

A.43. Yes. Quite sure.

Q.44. From there, you parted and came into the mess?

A.44. Yes.

Q.45. What time would that be - a rough guess - twenty minutes afterwards

A.45. It would be at least half past twelve. The dance closed at twelve.

Q.46. How long were you in the mess before you started to go upstairs?

A.46. Between half an hour and an hour.

Q.47. Approximately what time would the argument be on the stairs?

A.47. Approximately one-thirty.

Q.48. Approximately one-thirty?

A.48. Yes.

The witness is re-examined by the Prosecutor.

Q.49. You stated just now, when asked in your own opinion as to whether or not the accused was drunk, that he was not. You qualified your statement by saying that he would be capable of carrying out his duties if he were called upon 'in an emergency'. Now will you answer that question again, leaving out 'in an emergency'?

A.49. I don't think I am a competent witness to answer that except that I would say that he was capable of carrying out his normal duties, considering the hour and the time of day.

Q.50. In your opinion, he had been drinking?

A.50. Yes.

Q.51. What do you base your assumption on?

A.51. I base my assumption on the fact that I had had a drink with him.

Q.52. Is that the only thing you base your assumption on?

A.52. Well, he didn't seem quite as reasonable --

Q.53. In what way?

A.53. In listening to what I had to say to him and during the two or three arguments we had on several different occasions.

The witness is questioned by the court.

Q.54. To your personal knowledge, was the accused drinking in your mess before this dance?

A.54. Yes. Earlier in the evening.

Q.55. The same evening?

A.55. Yes.

Q.56. How many drinks did you see him have?

A.56. Two. I would say.

Q.57. Was drink available at the dance?

A.57. Only beer.

Q.58. Did you see the accused have any beer at the dance?

A.58. No, I didn't.

The witness is questioned by the Judge Advocate.

Q.59. Now, Captain Cummings, you have given evidence that this

officer was not drunk, that he had numerous arguments with you and that he kicked you in the face.

A.59. Yes sir.
Q.60. On what basis do you account for his kicking you in the face if he was not drunk?
A.60. I don't know sir. My opinion of drunkenness --
Q.61. Let us have your opinion.
A.61. One who is capable of controling his actions --
Q.62. What do you mean by that?
A.62. I consider that he was able to walk down a straight line. I can't say anything about a mental condition because I am not a phsyciatriet.
Q.63. Then this is purely a question of physical ability?
A.63. Yes sir.
Q.64. Your opinion has nothing to do with his mental condition as a result of liquor?
A.64. No sir.
Q.65. Then, according to your way of thinking, if a man can walk straight and control his arms, he is not drunk?
A.65. No sir.
Q.66. You take no account of his mental condition?
A.66. No, I wasn't taking that into account when I answered the question.
Q.67. Then, if this officer was not drunk? how do you account for his actions to which I have referred?
A.67. Sir, I don't know. I couldn't say.
Q.68. You couldn't eh?
A.68. No sir.

Second Witness for the Prosecution: Mr James Andrews, 12 Sandlands Road, Walton-On-The-Hill, having been duly sworn, is examined by the Prosecutor.

Q.69. Do you recognize the accused?
A.69. Yes.
Q.70. Will you point him out?
A.70. Yes(pointing out the accused) - there.
Q.71. Do you know his name?
Q.71. Only by what has been given me. Daniels. I didn't know him before yesterday.
Q.72. Where were you on the night of the 24th of October, 1942?
A.72. At the Dance Hall at Walton-On-The-Hill.
Q.73. Did you see the accused that evening?
A.73. Yes. He came into the hall about a quarter past eleven. I wouldn't be certain of that time as I haven't got a watch and there isn't a clock in the hall.
Q.74. Under what circumstances did you first see the accused?
A.74. I am pretty sure he was under the influence of drink.
Q.75. Was he drunk or was he sober?
A.75. I should say he was drunk sir.
Q.76. Have you any reason for making that statement?
A.76. He walked in the hall and put his coat and hat on the table that is used for taking tickets. He went into the dance hall where the people were dancing and he danced with my sister-in-law and she came back and as a result of what she told me, he was not fit to be in the dance hall.

Defending Officer: I object to that sir.

Judge Advocate: You must give evidence only of what you saw or what you said. Was the accused there when this conversation took place?

Witness: No sir. And then, the next dance was the "Palais Glide".

Judge Advocate: What is the "Palais Glide"?

Witness: It is a dance where three or two or four or more people dance abreast and one of the steps is a kick forward and a kick backward. There was four of your soldiers dancing in the hall. This was a bit unusual there are usually girls in the party and when the four soldiers came opposite Mr Daniels, he appeared to know one of them.

The Prosecutor continues with the examination of the Witness:

Q.77. Was Mr Daniels dancing?
A.77. He was commencing to dance with a young lady. He kicked one of the soldiers as he was coming along behind them. The soldier turned around and said "What did you kick me for?" I don't know if those are the exact words or not, but it was something to that effect. Then the officer said "I can do what I like" and he proceeded to push the soldiers out of the dance hall. His arms were under their chins. I thought there was going to be a bit of a bother as they appeared to dislike what he said and I thought I had better get another officer to go to him and see if he could stop it. I got another officer, I don't know his name, I have seen him in the Orderly Room just now and he called him "Bill".

Prosecuting Officer: Call Captain Cummings.

The first witness for the Prosecution, Capt W.A. Cummings is re-called.

Prosecuting Officer: While we are waiting for Capt Cummings I will ask a few more questions.

Q.78. During the first part of your statement you described this dance or one step of this dance as being a kick forward and a kick backward. Could this kick be done in the course of the dance, or was it deliberate?
A.78. I should say it was done in the course of the dance because different people have different ideas of a kick and I should not say - I really should not say it was done deliberately.
Q.79. Was the pushing done in the course of the dance?
A.79. I - Oh no! That was done to push these four soldiers off the dance floor.

Defending Officer: I object!

Q.80. Did you see the four soldiers being pushed off the floor?
A.80. Yes.
Prosecuting Officer: I think that takes care of your objection.

The witness continues:

These four soldiers circled around the officer, on three sides like this (demonstrating to the court) and then I thought there was going to be rather an ugly situation there.

Court: We are not interested in what you thought.

The first witness for the Prosecution is brought before the court.

Q.81. Is this the officer you were referring to?
A.81. Yes sir.
Q.82. Do you recognize him as the Captain you spoke to that night?
A.82. Yes sir.

The first witness for the Prosecution withdraws.

Q.83. When you approached Capt Cummings and spoke to him, what did he do?
A.83. I asked him if he would go and see if he could pacify him and he went and asked him if he would come off the dance floor into the lobby.
Q.84. You were present?
A.84. I was present.
Q.85. Did you hear any bad language?
A.85. Yes.
Q.86. Will you repeat what you heard?
A.86. He called him a "Dirty Bastard" and "If he didn't leave him alone he would kill him" and some other words - "f"-ing and what-not. They proceeded to the lobby and he said if he didn't leave him alone he would kill him. I was with them all the time the C[illegible]

was trying to pacify him, telling him not to be silly. I am sure he did all he could do. He didn't want to go home, he just seemed to want to create a scene. He struck Captain Cummings with his hand and he kneed him in his privates and eventually wrestled with him and during this the Capt lost his glasses. He couldn't see and he was rather knocked about a bit. I recovered his glasses and tried to get him on his feet as there was six or eight other privates holding the Lieutenant away. There was a lot of talking and they agreed that these officers should go outside the hall and fight it out. We kept inside the hall. They proceeded outside on the tarmac and after two or three minutes we thought we had better go out. The Captain had the Lieutenant on the ground by his shoulders shaking him and the Lieutenant was trying to push him off with his hands and eventually they got up and eventually got the Lieutenant to go home. The Captain came in the hall with me and I saw that he was rather upset and there was nothing to drink in the way of refreshment so I asked him if he would like a bottle of beer which I had in my pocket. We went into the refreshment room. Nobody could get in only through the door and I opened the bottle of beer and gave it him. He half-drank this half-pint and the door opened and in walked the Lieutenant again. I said "Why don't you go home?" and he took no notice of me. He went straight up to the Captain and wrestled with him during which time a basket of crocks were knocked over. Then a couple of soldiers came in and a sergeant I hadn't noticed this sergeant before, and he went up to the Lieutenant and said "Why don't you go home?" and he walked out out then - well - just as if nothing had happened. Really the only point I would like to stress that I was interested in this case is because if the privates had struck an officer it would be much more serious and I was a witness to it and that is why I was interested in the case.

Q.87. Now, I want you to think very carefully before you answer this question. When Capt Cummings approached the accused, did he provoke him in any way?

A.87. No. He just got hold of his arms - gently like. He went to assist him into the hall. There was no roughness at all.

Q.88. Was he bullying or aggressive?

A.88. No. I am sure he used all the tact that he could to keep it a quiet'do'.

The witness is cross-examined by the Defending Officer.

Q.89. Prior to the time that you saw the accused push the four soldiers, and prior to the time of the kicking, the accused was dancing?

A.89. He had half a dance. What I mean is that the lady left him before the dance had finished.

Q.90. When the following dance was this 'Palais Glide'?

A.90. Yes.

Q.91. And in that dance, you say there is kicking forward and backward?

A.91. Yes. Like this. (The witness demonstrates with the Defending Officer, the actions of the 'kicking step' of the dance)

Q.92. Whereabouts did the accused kick this private?

A.92. In the behind.

Q.93. Whereabouts did the kick land?

A.93. About here (Indicating the right hip)

Q.94. And there were quite a lot of people doing that dance?

Judge Advocate: Where he kicked the private would be on the right buttock, would it?

Witness: Yes sir. On the right hip.

Q.94. How far away from the accused were you at that time?

A.94. About ten feet.

Q.95. About ten feet?

A.95. Yes.

Q.96. And then you could see everything that went on?

A.96. Yes.

Q.97. You are quite sure as to where the kick landed?

A.97. Yes.

Q.98. It wouldn't have landed below the hip would it?

A.98. No.

Q.99. Now, why was it highly irregular for the four soldiers to be dancing together?

Prosecutor: I object. The witness did not say it was highly irregular for the four soldiers to be dancing together, he said it was a bit unusual.

Q.100. Why did you allow them to go on dancing together?
A.100. Well, they seemed to be enjoying themselves.

Judge Advocate: He didn't suggest that there was anything against it.

Witness: The M.C. never lets two men dance together. We try to get it all even like. It is our particular arrangement. The four soldiers were dancing together and they were having a good time and there was nothing against it really.

Q.101. I misunderstood you to say that it was highly irregular.
A.101. No. It is just a bit unusual, but there is nothing wrong with it.
Q.102. When the Prosecutor asked you if the kick was deliberate, I think I understood you to say that you are quite sure that it was not, that it was just accidental.
A.102. No I wouldn't say it was deliberate.
Q.103. It could have been just a result of this particular dance. Just an accident. There was quite a crowd there?
A.103. Yes it could have been.
Q.104. There is a kick forwards and then a kick backwards?
A.104. Yes, just like I showed you.
Q.105. Now, as regards the accused pushing the four soldiers, I understand he put his arms like this and he walked off the floor.
A.105. Yes. Pushing them like this in front of him. (Demonstrating to the court)
Q.106. And they were four privates?
A.106. Yes. Well, there might have been a corporal but I think they were privates.
Q.107. They were all men?
A.107. Yes. Four soldiers.
Q.108. And he pushed them offin this fashion?
A.108. Yes. When he walked naturally the four soldiers would go backwards, wouldn't they.
Q.109. And after the accused had kicked this private you said that he turned around and faced him?
A.109. Yes.
Q.110. Did you notice any aggressive action on the part of the privates?
A.110. No, I didn't.
Q.111. I would like to know if one of these privates turned round with his fist up in a threatening attitude?
A.111. No they didn't. They were just pushed off the floor like this (witness demonstrates)
Q.112. They were facing you then, and the accused had his back to you?
A.112. No. I was standing there and the soldiers had their backs to me and the officer had his face to me.
Q.113. And you could see everything?
A.113. Yes. Oh yes.
Q.114. And then you went and got the Captain?
A.114. Yes.
Q.115. And he came over to the accused?
A.115. Yes
Q.116. Do you recall what he said to the accused?
A.116. "Why don't you go home?"
Q.117. And he replied that he didn't want to go home and the Captain got hold of his arms and walked with him out to the lobby?
A.117. He took him by the arm; and walked with him out to the lobby.
Q.118. How far away from them were you then?
A.118. I was just with Capt Cummings.
Q.119. Within a matter of two or three feet then?
A.119. Yes.
Q.120. And when you decided to go outside the hall, you found the accused on the ground and the Capt on top of him.
A.120. It was arranged by the soldiers that the two officers should go

outside and fight it out and after they had been out there for a matter of two or three minutes we decided to go out and I saw the Lieutenant on the ground. The Capt had hold of him like this (demonstrating) and shaking him.

Q.121. And you didn't see anybody strike anybody?
A.121. No sir.
Q.122. Prior to that you said that you went from the dance hall into the little hall, where an argument ensued?
A.122. Yes.
Q.123. What happened there?
A.123. The Lieutenant struck the Captain.
Q.124. Did you actually see the Lieutenant strike the Captain?
A.124. Yes.
Q.125. He hit him?
A.125. Yes.
Q.126. Did you see the Captain strike the Lieutenant?
A.126. No sir. He was more sort of a smothering nature. His action was really to smother him and keep his hands from striking him.
Q.127. He sort of grabbed him?
A.127. Yes, that's right.
Q.128. At this time, when they started fighting, what happened? Who was knocked down?
A.128. The Captain was knocked down.
Q.129. Was the Lieutenant knocked down?
A.129. No.
Q.130. The Lieutenant was holding the Captain down?
A.130. Yes. The Lieutenant was holding the Captain down. I should say eight or more men, including rather a tall sergeant - he didn't take any action in the affair atall. They were sort of trying to pull the Lieutenant away from the Captain. Well, these eight men were trying to keep the Lieutenant from striking the Captain. The Captain had lost his glasses and he was practically helpless. He said "Mind my glasses" "Pick my glasses up somebody" I said to the Captain "Get up now" Then these soldiers helped him to get up and took hold of the Lieutenant and I told the Captain "It is all right". I helped him up.
Q.131. You are sure the Captain was on the floor?
A.131. Yes.
Q.132. And the Lieutenant was standing up?
A.132. Yes. The soldiers were holding the Lieutenant and the Captain was sitting on the floor. I told him I had his glasses and I helped him up.
Q.133. At the time of the argument in the kitchen, are you quite sure that the door was closed?
A.133. No. It couldn't have been closed because afterwards he walked in. So he must have known he was in there.
Q.134. And then the door was open?
A.134. It must have been open, yes.

The witness is questioned by the court.

Q.135. When the Captain first requested the Lieutenant to leave the dance floor, did you hear the accused using this fould language? I think you described it.
A.135. Yes.
Q.136. In the subsequent struggle, did you hear anybody using obscene language?
A.136. Only the Lieutenant sir.
Q.137. Will you tell us what he said?
A.137. He called him a 'Fucking Bastard' and a 'dirty bastard'. 'Bastard' was used quite a lot and 'Fucking' and Dirty Rotten and all that sort of thing. He told him if he didn't leave him alone he would kill him. He used the name of 'Bill' all the time.
Q.138. On how many occasions did you see the accused strike the Captain?
A.138. Five or six times sir.
Q.139. Deliberately five or six times?
A.139. Yes sir. Five or six times.
Q.140. Where did he strike the Captain?
A.140. In the lobby sir. The Captain was bending over and the Lieutenant was hitting him sir, from behind.

Q.141. Was the Captain on the floor looking for his glasses?
A.141. He had been pulled down. The soldiers were pulling the Lieutenant and the Lieutenant had hold of the Captain so of course as the soldiers pulled the Lieutenant, the Lieutenant pulled the Captain. I picked up his glasses and tried to help the Captain up after I had his glasses.

The witness is questioned by the Judge Advocate:

Q.142. Did the Lieutenant at any time say anything to the Captain about his glasses?
A.142. Yes. In the lobby he asked the Captain to take off his glasses.
Q.143. Yes, but did he say anything further about them?
A.143. He said he would fight him without his glasses on in case he broke them. The Captain didn't want to fight at all and he didn't want to take off his glasses.

The court is adjourned for five minutes in order that an original statement by the witness might be obtained.

The court is re-opened.

Defending Officer: Mr Andrews, is this your writing, and is this your signature? (showing the witness the original statement)
A.144. Yes.
Q.145. I would like you to read it again and check it.
A.145. Yes sir.
Q.147. That letter is one that you wrote as a result of being asked to make a statement as to what happened?
A.146. Yes.

The original statement is tendered by the Defending Officer as an exhibit, and is marked "C" by the President.

Third Witness for the Prosecution: Capt D.C. Shaw, 41 Cdn Gen Tpt Coy R.C.A.S.C., having been duly sworn, is examined by the Prosecuting Officer:

Q.147. Do you recognize the accused?
A.147. I do.
Q.148. What is his name?
A.148. Lieut Daniels.
Q.149. Capt Shaw, on Saturday the 24th of October of this year, at approximately 2245 hours, where were you?
A.149. In the mess of 41 General Transport.
Q.150. Did you see the accused that evening?
A.150. Yes, I did.
Q.151. Will you tell the court in your own words the circumstances arising from your meeting the accused?
A.151. I was sitting in the mess when someone opened the door and put his head round the corner. I recognized Mr Daniels. He just looked in and went right out again. He didn't come in. I noticed he had a cut over his eye. I didn't think anything about it for a minute. And then I got up and followed him out. I realized what it was.
Q.152. What do you mean "You realized what it was?"
A.152. I realized that something was wrong so I went to find out what it was. I went outside into the grounds to see if there was anything going on. I walked up the path and heard the sound of scuffling at the side of the grass and I went over to see what it was and I found two officers, Lieutenant Daniels and Captain Cummings. They were not fighting then, they were locked together. I ordered Mr Daniels to get up which he did. When he recognized me I told him to go to bed. I then asked Captain Cummings what the trouble was.

Judge Advocate: Was Daniels there at that time?
Witness: He was a short distance away.
Judge Advocate: Could he hear what you said?
Witness: I wouldn't say sir.
Judge Advocate: Then you can't give that conversation.

The witness continues:

After Daniels had gone I told Capt Cummings to get along to bed as well. I figured that the morning would be the time to find out further about it. Capt Cummings was proceeding up the stairs to bed when Daniels came out of his room again and shouted at him "Come on and fight". I can't say whether those were his exact words I'm afraid.

Q.153. Did you hear any abusive words used?
A.153. Yes.
Q.154. Could you tell the court what you heard?
A.154. I can't tell you all but he yelled "Dirty Bastard" at him. Then I yelled at Daniels to go to bed. Before I could get up the stairs he had met Cummings and the two of them fell in the corner.
Q.155. Will you be more explicit?
A.155. I didn't see the first part of it because I was on the way up I just saw the second part of it.
Q.156. Did you see the accused strike Captain Cummings?
A.156. Yes, I did. And I saw Capt Cummings strike the accused.
Q.157. Who struck the first blow?
A.157. I would say definitely Daniels did. I once more separated them with the assistance of two other officers and I went with Daniels to put him in his room. He went quite quietly and then I went down stairs to see how Cummings was and went back upstairs to Daniels room. I stayed with Daniels for some time after that in an endeavour to quieten him and find out what it was all about.
Q.158. In your opinion, was Daniels drunk?
A.158. I would say he was drunk in the usual method of deciding in the army whether or not a man is drunk. He didn't appear to be drunk at first, it was only after I went to his room and got him quietened down and in bed. He was incoherent in his speech and there was a strong smell of liquor and his words were not connected in any way. He would talk of one thing and then another, shifting from one thing to another. It is hard to say just what he said for the simple reason that when I had got him quietened down, he went to sleep and I left his room.
Q.159. Did Capt Cummings appear to be drunk?
A.159. Not before the fight started.
Q.160. After the fight?
A.160. He had two or three drinks after the incident was over but that had nothing to do with the case.

The witness is cross-examined by the Defending Officer.

Q.161. Capt Shaw, do you remember at what time in the evening did you assume that the accused was drunk?
A.161. After the two incidents when I had got him back to his room in bed again.
Q.162. You were definitely of the opinion that the accused was not drunk prior to the time that he was in his bed?
A.162. I didn't think of it because he didn't appear to be drunk at the time I spoke to him on the grass. He obeyed my command to go to bed. I didn't take the time to find out if anybody was drunk at that time. It was only in his room when I had a chance to talk to him that I thought he was drunk.
Q.163. From the time of the incident on the lawn to the time that he was in his bed, how long would that be?
A.163. About fifteen or twenty minutes. I was talking to Capt Cummings for a while.
Q.164. Mr Daniels had a cut over his eye?
A.164. Yes.
Q.165. You have no idea how he got that cut, have you?
A.165. No sir.
Q.166. That was before this business on the lawn?
A.166. Yes.
Q.167. Were there any blows on the lawn?
A.167. None that I saw. They were both locked together.
Q.168. What time did you come into the mess [illegible]?
A.168. About eleven o'clock or eleven-fifteen.
Q.169. How long were you in the mess before the accused came in?
A.169. About fifteen minutes.

Q.170. It would be roughly eleven-thirty then?
A.170. Yes. It might have been fifteen minutes later or before.
Q.171. There were about twenty minutes then, intervening between the argument on the lawn and the argument on the stairs?
A.171. Approximately, yes. It is very hard to judge because of the excitement and people were asking questions and nobody worried about time.
Q.172. Did Capt Cummings tell you there was a dance?
A.172. Only after the incidents yes.
Q.173. To the best of your knowledge what time was the argument on the stairs?
A.173. Roughly about a quarter to twelve I should think.
Q.174. This is your signature signed to your statement taken at the time of the Summary of Evidence?
A.174. Yes.
Q.175. And you signed this statement as being correct?
A.175. Yes.
Q.176. I would like to point out to you that in this statement you said "Approximately 2340 hours, I returned to the mess"
A.176. Well, it might have been any time actually, I can check that definitely if you wish for time because I got off the train at BECHWORTH Station and it generally gets in at ten to eleven. It might have been anywhere between that time and twelve o'clock. I came straight up to the mess.
Q.177. This argument on the stairs might have been after twelve o'clock then?
A.177. It might have been, yes. I have nothing to judge the time from except that I came straight up from the station.
Q.178. It might have taken place any time then, after twelve o'clock?

Judge Advocate: Are you trying to establish that the assault took place on a different date? I invite your attention to Rule of Procedure 44(D) footnote 6.

The Witness is re-examined by the Prosecutor.

Q.179. From the time you arrived back at the mess until the time of the argument, did the accused have anything to drink in the mess?
A.179. Nothing.
Q.180. What time does your bar close?
A.180. On Saturday night at twelve o'clock.
Q.181. From the time you entered the mess, the accused was not served with a drink?
A.181. No, he wasn't. He wasn't in the mess.

Fourth Witness for the Prosecution: Lieut T.P. [illegible], 41 Can Gen Tst Sqy R.C.A.S.C., having been duly sworn, is examined by the Prosecutor.

Q.182. Do you recognize the accused?
A.182. Yes, I do.
Q.183. Do you know his name?
A.183. Yes.
Q.184. What is it?
A.184. Lieutenant Daniels.
Q.185. At approximately 2215 hours on the 24th of October 1942, where were you?
A.185. At the Dance Hall at Walton-On-The-Hill. I think it is the Lord Riddell Memorial Hall.
Q.186. Did you see the accused that night?
A.186. Yes sir, I did.
Q.187. Where?
A.187. At the same dance.
Q.188. In your opinion was the accused drunk or sober?
A.188. I wouldn't say he was drunk but I would say that he had been drinking.
Q.189. On what did you base your observations?
A.189. On his actions.
Q.190. Will you describe his actions?
A.190. Well he was very happy, a trifle hilarious but behaving in a respectable manner - nothing untoward, but I believe in my own mind that he had something to drink.

Q.191. Did you see him take anything to drink?
A.191. No sir.
Q.192. Then your remarks are based solely on his conduct?
A.192. Yes sir.
Q.193. What time did you leave this dance - approximately?
A.193. Approximately twenty-two-thirty-five, somewhere around there.
Q.194. Then where did you go?
A.194. Down to the mess hall, located in the "Barn"
Q.195. You went into the Mess Hall?
A.195. Yes.
Q.196. Did you hear or see anything when you went in there?
A.196. Just about the time I was ready to leave, I heard a scuffle and a few remarks passed at the top of the stairs on the landing but I couldn't see who was involved.
Q.197. Did you recognize any of the voices?
A.197. Yes, I recognized one of the voices.
Q.198. Whose?
A.198. Capt Cummings.
Q.199. Did you recognize any other voice?
A.199. No sir.
Q.200. You say in your statement that there was some swearing at the top of the stairs. Was Capt Cummings swearing?
A.200. Yes. I heard him pass a remark, I wouldn't like to say that I can phrase it exactly as it was said but it was something like "Jesus Christ, what did you do that for?"

Judge Advocate: Was the accused there at that time?
Witness: I couldn't say, sir, I didn't see him?
Judge Advocate: Then it isn't evidence.
Prosecutor: It may be established by some other witness.

The witness is cross-examined by the Defending Officer.

Q.201.& During the time between the dance and the incident on the lawn, were you in the mess?
A.201. Yes, I was.
Q.202. Did you see Mr Daniels come in?
A.202. Yes.
Q.203. What time?
A.203. It is hard to remember exactly, I would say shortly after eleven o'clock.
Q.204. Did you notice at that time if the accused had a cut over his eye?
A.204. Yes. He just put his head in the ante-room of the mess and turned round and walked out and I noticed that he was, well slightly ruffled, but no remarks were passed.
Q.205. Did he have a cut over his eye?
A.205. Yes, I think so.
Q.206. When you first saw the accused in the Drill Hall, you say that he had been drinking?
A.206. I would assume he had sir.
Q.207. Was he drunk?
A.207. No.
Q.208. You are quite sure?
A.208. Yes. I am quite sure his actions were all right - nothing untoward.

The witness is questioned by the court.

Q.209. In the Dance Hall, did you see any struggle between the accused and Capt Cummings?
A.209. No sir.
Q.210. And you saw no struggle outside the Dance Hall?
A.210. No sir. Mr Daniels left the Dance Hall to the best of my knowledge, at least I didn't see him any more from that time until I saw him in the mess. As far as I am concerned he had left. The next time I saw him was in the mess, in the an te-room.

The witness is questioned by the Judge Advocate.

Q.211. This dance, how many people were there?

A.211. It was fairly crowded. I would say there were over 200 there.
Q.212. A great many civilians, I suppose?
A.212. It was a civilian dance. There were quite a few.

Fifth Witness for the Prosecution: Lieut M.G. Grigsby, 41 Cdn Gen Tpt Coy R.C.A.S.C., having been duly sworn, is examined by the Prosecutor.

Q.213. Do you recognize the accused?
A.213. Yes sir. (Indicating the accused)
Q.214. What is his name?
A.214. Lieut Daniels.
Q.215. On the night of the 24th of October, did you see the accused?
A.215. I did.
Q.216. Under what circumstances did you see the accused?
A.216. At approximately eleven-forty-five, I came down to the Drill Hall. As I came out of the mess, I saw the accused and Capt Cummings apparently trying to fight. Capt Shaw was trying to separate them.
Q.217. Did you see any blows struck?
A.217. No, I didn't.
Q.218. In your opinion, was the accused drunk or sober?
A.218. I would say he had been drinking.
Q.219. On what do you base your observations. Did you see him drink?
A.219. Yes, I was with him.
Q.220. You were drinking with him?
A.220. Yes.

Judge Advocate: This is your witness. You had better not cross-examine him.

The witness is cross-examined by the Defending Officer.

Q.221. Did you see the accused come into the ante-room of the mess?
A.221. Yes.
Q.222. In what condition was he? Was there blood on his face?
A.222. Yes.
Q.223. And over his uniform?
A.223. I didn't notice any on his uniform.
Q.224. But there was blood on his face?
A.224. Yes sir.

Sixth Witness for the Prosecution: Capt G.S. Kitchin, 41 Cdn Gen Tpt Coy R.C.A.S.C., having been duly sworn is cross-examined by the Defending Officer.

The Prosecutor declines to examine this witness.

Q.225. You were in the mess at the time of the incident on the stairs?
A.225. That is correct.

Judge Advocate: Get him on at least the night. This officer is not even in the picture as yet.

Defending Officer: I was just trying to short-cut it.

Judge Advocate: Well, don't short-cut it that much.

Q.226. On the evening of the 24th of October you were in the ante-room of 41 Cdn General Transport Mess?
A.226. Yes.
Q.227. Did you hear a noise outside on the stairs?
A.227. Yes.
Q.228. And you went to investigate?
A.228. Yes.
Q.229. What did you see?
A.229. I saw a scuffle on the stairs. I assisted in pulling Captain Andrews from on Captain Cummings from Lieutenant Daniels.
Q.230. Was Captain Cummings on top?
A.230. Yes.

Q.231. Was he punching Lieut Daniels?
A.231. Yes.

Seventh Witness for the Prosecution: Lieut M.R. Cooke, 41 Cdn Gen Tpt Coy, R.C.A.S.C., having been duly sworn, is examined by the Prosecutor.

Q.232. Do you recognize the accused?
A.232. I do.
Q.233. What is his name?
A.233. Lieut Daniels.
Q.234. On the 24th of October, 1942, where were you?
A.234. I was in the Mess of 41 Cdn Gen Tpt.
Q.235. Did you see the accused?
A.235. I did.
Q.236. Will you tell the court in your own words under what circumstances you saw him?
A.236. The accused came in and he was feeling rather happy. That's about the only thing I can say. He was just a little over-exuberant.
Q.237. Was he drunk or sober?
A.237. I couldn't say.
Q.238. You couldn't say?
A.238. No, I couldn't say. I want to be fair. I imagine he had a few drinks. He was sent upstairs to his room, which he did.
Q.239. Why?
A.239. Captain Shaw told him to go upstairs and go to bed.
Q.240. Why was he told to go to bed?

Judge Advocate: He wouldn't know what was in Captain Shaw's mind.

Witness: No, I had no knowledge of what had happened. I went out in the hall a little later and I heard a scuffle upstairs and Captain Cummings came in and started to go upstairs to his room.
Q.241. Was this previous to your hearing the noise?
A.241. Yes, previous. Mr Daniels went upstairs and Captain Cummings came in and started to go upstairs to his room. I was in the hall-way and I heard the commotion. It was just an argument going on upstairs. Captain Shaw and I went upstairs and pacified them and that is all there was to it.
Q.242. Of what nature was this argument?
A.242. Loud talking and things of that nature.
Q.243. Any abusive language?
A.243. Yes.
Q.244. Who by?
A.244. They were out of sight at the time the talking took place and I didn't see who said what.
Q.245. What did you see with reference to the scuffle?
A.245. Oh a certain amount of pushing around.
Q.246. Who started it?
A.246. I couldn't say. It started before I got to the stairs - Captain Shaw and I.

Judge Advocate: You may not cross-examine this witness unless you want to ask the court to declare him a hostile witness.

Q.247. Will you go through that very carefully again?
A.247. Captain Shaw and I were in the hall. We went to the foot of the stairs to see what it was about and we saw Mr Daniels at least I saw Mr Daniels about two or three steps down from the top. Captain Cummings was below him and they were talking in rather loud voices and it developed into a scuffle. Both of them fell into the corner of the stairs and when that took place Captain Shaw and I went upstairs and separated them.
Q.248. Who was the aggressor in this case?
A.248. I would say Mr Daniels was.
Q.249. In your opinion was the accused drunk or sober?
A.249. I couldn't say.

The witness is cross-examined by the Defending Officer.

Q.250. Prior to the incident in the mess, you - no prior to the incident on the stairs, you were in the mess?
A.250. Yes.

Q.251. Did Mr Daniels come in?
A.251. He came in twice during the evening while I was there.
Q.252. Did you notice anything unusual about his appearance, the second time he came in?
A.252. He was dressed different the second time he came in. He didn't really come in, he just stuck his head round the door and then went right out again.
Q.253. Did he have a cut over his eye, the second time he came in?
A.253. I believe he did.
Q.254. You are quite sure about that?
A.254. Yes.
Q.255. When Captain Cummings was going up the stairs, did Mr Daniels put his hand out to stop him?
A.255. I didn't see the start of this thing, I only saw the finish of it. The scuffle started before Captain Shaw and I got to the foot of the stairs. It was more or less working up to that point.
Q.256. On what basis do you say that Mr Daniels was the aggressor?
A.256. When we got to the foot of the stairs Captain Cummings was standing below Mr Daniels. He was about two steps above Captain Cummings and Daniels reached forward and pushed him. That is the start of the aggression, in my opinion.
Q.257. Did Captain Cummings strike Mr Daniels - in all fairness?
A.257. I don't believe he started it.
Q.258. Did he strike the accused?
A.258. I don't believe so. Captain Cummings didn't start the aggression.

Court: We don't know or care who you are covering up, but you must answer the questions properly.

The witness continues.

The altercations started when I was in the hall. Captain Shaw and I went to the foot of the stairs. I saw Mr Daniels about three steps from the top, facing Captain Cummings, who was going upstairs to his room. They were talking loudly and the next thing I saw was Mr Daniels pushed Captain Cummings and Captain Cummings lost his balance and he swung round and grabbed him by the legs as far as I could see and there was a certain amount of scuffling and then they both fell into the corner. By that time Captain Shaw and myself got there and I grabbed hold of Captain Cummings. Then Mr Daniels and Captain Shaw went to Mr Daniel's room and Captain Cummings and I came back downstairs to the mess.

Q.259. Did you later in the evening see Mr Daniels?
A.259. I went upstairs to ask Captain Shaw if there was anything that I could do.
Q.260. What condition was Mr Daniels in then?
A.260. He was kind of sobbing. I didn't speak to him at all.

The witness is questioned by the Judge Advocate.

Q.261. Why did you ask if there was anything that you could do? What more could you do?
A.261. I was just trying to help out.
Q.262. You assumed this man was sober, so why should there be any reason for helping in any way?
A.262. I have been with the police for quite a number of years and I naturally took an interest. And I wanted to know if there was anything I could do to help out.
Q.263. What police were you with?
A.263. Mounted Police.
Q.264. How many years?
A.264. Six years sir.
Q.265. Do you expect to go back?
A.265. No sir, I don't. I have been out of them now for quite a few years.

Eighth Witness for the Prosecution: H87365 Pte Thompson, C.T., 41 Can Gen Tpt Coy R.C.A.S.C., having been duly sworn, is examined by the Prosecutor.

Q.266. Do you know Lieutenant Daniels?
A.266. Yes sir.
Q.267. Point him out?
A.267. Right there sir. (Indicating the accused)
Q.268. On the night of the 24th of October, did you see Lieutenant Daniels?
A.268. Yes sir
Q.269. Where?
A.269. At the dance sir.
Q.270. Under what circumstances did you see him?
A.270. When I first noticed him was when I was kicked.
Q.271. By whom were you kicked? Where were you kicked?
A.271. On the right hip sir.
Q.272. What did you do after you had been kicked?
A.272. I swung round and raised my fist sir. I immediately asked him why he kicked me.
Q.273. What did he say to you?
A.273. He said "Don't try to push me around"
Q.274. And then?
A.274. He pushed me slightly back and then he saw Private Packenham.
Q.275. You say he kicked you and then you turned round with your fist up. Then what?
A.275. I saw it was one of our officers so I lowered my fist and asked him why he had kicked me.
Q.276. And then he pushed you?
A.276. He didn't really push me sir, he just put his hand up. And when he saw Private Hawkes, he put his hands on him.
Q.277. What - where did he put his hands on you and on Hawkes?
A.277. Right here sir. (Indicating) Just pushed me like that.
Q.278. And then what happened?
A.278. Then Hawkes says "Take your hands off me or I'll hit you" And then Captain Cummings took him off to the lobby, and then the scrap started.
Q.279. Were you present then, at this scrap?
A.279. Yes sir.
Q.280. Will you tell in your own words what happened at the scrap?
A.280. Well, as soon as they went out into the lobby, Hawkes, myself and Lee went out also and they started an argument about --
Q.281. Who do you mean, 'they'?
A.281. Captain Cummings and Lieutenant Daniels. They started to fight.
Q.282. Who was the aggressor?
.282. What do you mean sir?
Q.283. Who started it?
A.283. Lieutenant Daniels sir. And it was getting pretty rough so Lee took hold of Mr Daniels and I took hold of Captain Cummings. We all fell on the floor and I let Captain Cummings up and he told Lee to release Mr Daniels. There was some more arguing and I went back into the dance hall and that is all I saw.
Q.284. Was Mr Daniels drunk or sober?
A.284. He was drunk sir.

The witness is cross-examined by the Defending Officer.

Q.285. You said Mr Daniels was drunk?
A.285. Yes sir.
Q.286. On what do you base your opinion. Why do you say he was drunk?
A.286. By his actions sir.
Q.287. By his actions?
A.287. Yes sir.

Judge Advocate: That is the first straight answer we have had on that question this morning. That doesn't mean that you may not pursue that. It is very refreshing to know that there is somebody in this unit that knows when a man is drunk.

The Defending Officer continues with the cross-examination.

A.288. In the dance --

Judge Advocate: Mr Defending Officer don't think I was getting you off. If you want to go into the question of 'actions', you do that.

The Defending Officer continues with the cross-examination.

Q.289. The dance was the 'Palais Glide'?
A.289. Yes sir.
Q.290. And you were kicked during that dance?
A.290. Yes sir, that's right.
Q.291. Did you see Mr Daniels before you turned round?
A.291. No sir. I never noticed him.
Q.292. He could have been dancing then?
A.292. Yes sir. He could have been dancing.
Q.293. You don't know whether the kick was deliberate or not do You?
A.293. It could have been the dance, I guess.
Q.294. You are quite sure you turned round when you were kicked, with your fist cocked?
A.294. That's right sir.
Q.295. When Mr Daniels was pushing you off the floor, did he have his hands folded like that? (demonstrating the manner in which the actions were described by the witness Andrews)
A.295. No sir.
Q.296. His elbows were not up like this?
A.296. No sir. He didn't try to push me off sir, he just pushed me aside.
Q.297. Did you see him push any other privates like this?
A.297. No. He just pushed us aside.
Q.298. Returning to this business of Mr Daniels being drunk. Your assumption was that he was drunk?

Judge Advocate: He didn't say that it was an assumption.

The Defending Officer continues.

Q.299. Would you mind explaining why would you say that he was drunk?
A.299. By the way he talked and walked and what he was doing. If he hadn't been drunk, he wouldn't have walked up to me and kicked me on the dance floor.
Q.300. You are quite sure it was a deliberate kick?
A.300. No sir. I'm not sure it was, no.

The witness is questioned by the court.

Q.301. When this argument occurred, did you hear any bad language?
A.301. No sir.
Q.302. Did you see the accused strike anybody?
A.302. No sir.
Q.303. In the struggle outside?
A.303. No sir. I never seen him strike anybody but I seen him take a crack at Captain Cummings, but he didn't hit him.

The witness is questioned by the Judge Advocate.

Q.304. I understand that in this particular dance there is a certain amount of kicking. Now, when you got a kick in the pants, would you say that was a part of the dance or was it a deliberate kick?
A.304. I didn't think it was sir because it was a hard kick for part of the dance.
Q.305. Where did it hit you?
A.305. In the right hip sir, right here (indicating).

Ninth Witness for the Prosecution: C32423, L/Cpl Lee, 41 Con Gen Tpt Coy R.C.A.S.C., having been duly sworn, is examined by the Prosecutor.

Q.306. Do you know Mr Daniels?
A.306. I do sir.
Q.307. Can you point him out?
A.307. Yes sir. There. (Indicating the accused)
Q.308. On the night of the 24th of October where were you?
A.308. I was present at a dance at the Drill Hall sir.
Q.309. Did you see Mr Daniels there?

A24

A.309. I did sir.
Q.310. Under what circumstances? Will you tell the court in your own words?
A.310. Just a normal position sir.
Q.311. I didn't say 'position', I said circumstances.
A.311. Just normal sir.
Q.312. You say you saw Mr Daniels?
A.312. Yes sir.
Q.313. What was he doing? Tell us about what he was doing.
A.313. Well, during the night, I can't just recall the time, but it was between ten and eleven to my estimation, there was an argument took place between Mr Daniels, and four privates.
Q.314. What did you see Mr Daniels do?
A.314. I saw him standing in front of them and then I noticed the lady friend that Mr Daniels was dancing with leave him and then he kicked Private Thompson.
Q.315. When you saw Mr Daniels kick Private Thompson, was he dancing?
A.315. Yes sir.
Q.316. Who with?
A.316. Some girl.
Q.317. You just said that the girl left him?
A.317. Well, at the time that he kicked Thompson, he was alone.
Q.318. He was alone at that time?
A.318. Yes sir, he was alone at that moment.
Q.319. And then what happened?
A.319. Private Thompson naturally turned around to see who it was and he had his fist raised but when he saw who it was, he put his fist down and told the officer to watch what he was doing.
Q.320. Those are the words that were used?
A.320. Yes sir.
Q.321. And a few moments later Captain Cummings appeared on the scene?
A.321. Yes sir. He asked Mr Daniels to come outside. There was an argument, I don't recall the words, but just that Captain Cummings asked him to come outside. After they went out, I went out too.
Q.322. Did you follow them out?
A.322. Not just right after. It was a few seconds later sir.
Q.323. What did you see when you went out?
A.323. Well sir, it was confusion and there was a tustle and Private Thompson and I stepped in and tried to separate them. I took hold of Mr Daniels who started it. At least that is what I thought. It had already started when I got out there.
Q.324. It was already started when you got there?
A.324. Yes sir, it was all confusion.
Q.325. Then what?
A.325. We parted them and somewhere in the struggle somebody tripped and fell on the floor and Private Thompson immediately released Captain Cummings and he got to his feet and he told me to release Mr Daniels and then they proceeded outside and there was another argument and another chap and I went out shortly after and there was another confusion and argument which led into a slight bit of a tustle and Private Packebusch appeared on the scene. He said --

Judge Advocate: Was Mr Daniels there then? Could he hear this conversation?

Witness: I couldn't say sir.

Judge Advocate: Then it is not admissable in evidence.

The Prosecutor continues with the examination.

Q.326. In your opinion, was Mr Daniels drunk or sober?
A.326. I couldn't say sir. He seemed quite normal to me sir.
Q.327. And now about this pushing episode. Who pushed who?
A.327. As close as I could see sir, Mr Daniels walked among these four privates and pushed them back with his arm.
Q.328. Did he say anything?
A.328. Not that I could hear sir.
Q.329. Did you hear any bad language from anybody any time during the evening at the dance?
A.329. I heard swearing sir, but who it was I couldn't say.
Q.330. Can you remember the words you heard?
A.330. No I can't sir.

Q.331. Was it foul language?
A.331. Yes sir, it was.
Q.332. And you don't know who it was that said it?
A.332. No sir, I don't.

The witness is cross-examined by the Defending Officer.

Q.333. While Mr Daniels was in your hearing, did you hear him swearing?
A.333. No, not that I heard sir.
Q.334. You said that you did see Private Thompson turn around with his fist raised?
A.334. Yes sir.
Q.335. So you were apparently in a position where you could see the four privates?
A.335. Yes sir.
Q.336. Did you see Mr Daniels dancing on the floor at the same time as you saw the privates?
A.336. Yes sir. I just happened to look up sir and saw him.
Q.337. They were all on the floor?
A.337. Yes sir, facing me.
Q.338. At the time of the kicking, the time Thompson received the kick, was Mr Daniels in the area of the floor on which they were dancing. Was Mr Daniels on the dance floor or was he along the side where the other people were standing?
A.338. He was where they were dancing, in the floor, inside the crowd.
Q.339. He was dancing then?
A.339. Yes sir.
Q.340. You are quite sure that Mr Daniels was dancing?
A.340. Yes sir. Well, I couldn't say that he was actually dancing, but he wasn't standing along the side where the crowd was watching the dancing.
Q.341. In this particular dance, they do a kick forward and a kick backward, is that right?
A.341. Yes sir, they do.

The witness is questioned by the Judge Advocate.

Q.342. Did you meet Mr Daniels afterwards and have a conversation with him in the doorway?
A.342. I did.
Q.343. What did you say to him?
A.343. I said to him "Why go back in?"
Q.344. Why did you say that to him?
A.344. Well, I had witnessed these arguments before sir and just naturally I didn't care to see any more.

At 1220 hours, the court is adjourned.

At 1345, the court as above, re-assembles.

The First Witness for the Prosecution, Capt W.A. Cummings, is recalled and questioned by the Judge Advocate.

Q.345. You are still under oath, Captain Cummings. The Court wishes to clear up certain parts of your evidence. The recollection of the court is first of all, that you stated that the accused was not drunk and you gave your reasons, and secondly that there were no blows struck prior to the time that you met in the mess afterwards. Is that right?
A.345. Yes sir.
Q.346. And I think you said that there was no bad language used? Is that your evidence?
A.346. Yes sir. I don't recall any sir.
Q.347. And I am not sure what you said about the pushing.
A.347. I didn't see him sir.
Q.348. What was your reason for taking him off the dance floor?
A.348. Others were trying to do the same thing sir.
Q.349. He was then doing what?
A.349. He was acting as though he didn't wish to go and there was an argument between he and some soldiers. It was fairly obvious to me that what the civilian had told me was right.
Q.350. It is right then, that you thought that he should not be on the dance floor because of that?
A.350. He was arguing with these soldiers and was quarrelsome sir.

Q.351. Very definite evidence has been given that the term 'bastard' was used against you?
A.351. I don't recall it sir.
Q.352. That is the best you can say about that?
A.352. Yes sir.
Q.353. After, you were wrestling outside with him?
A.353. You might put it that way sir. I was holding his arms and trying to get him to go back to the mess.
Q.354. And this other affair on the lawn at the officers' mess, what was that a result of?
A.354. The previous difficulties sir.
Q.355. And I suppose those difficulties arose out of the fact that you tried to get him to leave the dance hall?
A.355. Yes sir.
Q.356. After you left that dance hall, there was a soldier holding you, and a soldier holding him, is that right?
A.356. No sir.
Q.357. Nobody stepped between you?
A.357. No sir. I don't recall that sir. I don't see why they should.
Q.358. In the ante-room at the dance hall, or in any other room - the vestibule, you don't remember any fracas there?
A.358. No sir.
Q.359. Let's get this clear. You went to the dance hall and got him to leave.
A.359. We just went outside the door where an argument ensued.
Q.360. An argument ensued?
A.360. Yes sir.
Q.361. Did it end in blows?
A.361. No sir.
Q.362. Did it end in anybody holding anybody else?
A.362. Yes sir, I held his arms.
Q.363. Why?
A.363. It seemed to me that he might try to hit me then and I tried to persuade him to go back to the mess.
Q.364. You held his arms. Were there any private soldiers there?
A.364. Yes sir.
Q.365. What were they doing?
A.365. As far as I remember they were just standing there.
Q.366. Did you fall on the floor?
A.366. I believe we fell on the floor.
Q.367. Did you loose your glasses?
A.367. No sir.
Q.368. Not prior to that, in the dance hall?
A.368. No sir.
Q.369. When you got to the garden of the mess, where did you meet him? Did you come home with him from the dance?
A.369. No sir. He went home and returned and came into the kitchen. I was in the kitchen. Mr Andrews had asked me to come in and have a bottle of beer.
Q.370. What happened there?
A.370. Just a slight argument there sir.
Q.371. No blows?
A.371. No sir.
Q.372. Did he take hold of you?
A.372. No sir.
Q.373. Did you take hold of him?
A.373. No sir.
Q.374. After that what happened?
A.374. He left accompanied by two soldiers.
Q.375. Which two soldiers?
A.375. I'm not sure, I believe Private Packebusch was one.
Q.376. Why did they go with him?
A.376. They followed him into the kitchen. They tried to persuade him not to cause any trouble.
Q.377. And he went back and you followed later?
A.377. After the dance, yes sir.
Q.378. How much later?
A.378. About half an hour.
Q.379. Was there any blood on his face or had it been marked in any way?
A.379. I don't remember.
Q.380. Did you see any blood on his face?
A.380. Later on.

Q.381. Did you mark him?
A.381. Sir, later on there were marks on his face. I guess I did it.
Q.382. Where did you see him next?
A.382. I saw him in the garden of the mess.
Q.383. What happened?
A.383. He was standing on the grass beside the gate.
Q.384. What did he say?
A.384. He obviously wanted to fight with me.
Q.385. Did he strike you?
A.385. He tried to sir.
Q.386. You wrestled with him?
A.386. Yes sir.
Q.387. You were both on the grass?
A.387. Yes sir.
Q.388. And two officers came out?
A.388. Yes sir. Captain Shaw was one of them.
Q.389. Did you see Andrews that night at the dance hall? He was the man that complained, was he?
A.389. Yes sir.
Q.390. He has nothing against Mr Daniels?
A.390. No sir. I don't think he ever saw him before. He didn't know him by name.
Q.391. Were you sober?
A.391. Yes sir. I had three drinks about seven-thirty. Nothing between nine and ten-thirty.
Q.392. You had three drinks prior to nine o'clock?
A.392. Yes sir.
Q.393. What were those drinks?
A.393. Gin, Lime and soda-water.
Q.394. And about ten-thirty you went to the dance?
A.394. Yes sir.
Q.395. And when you got to the dance, did you dance right away, or what did you do?
A.395. I saw a young lady I know and was dancing with her when the complaint was made to me.
Q.396. Were you at any time aggressive with him?
A.396. I don't think so sir.
Q.397. Did you initiate any trouble on these four separate occasions?
A.397. Not other than that I was trying to make him come out of the dance and keep out of trouble.
Q.398. Do you remember Andrews returning you your glasses?
A.398. No sir. But I believe I took them offin the kitchen. I had been outside and when I came in they got fogged over and I couldn't see so I took them off and laid them on the counter.
Q.399. How well do you know Andrews?
A.399. That was the first time I had seen him sir.
Q.400. That was the first time you had seen him?
A.400. Yes sir.

Judge Advocate: Mr Daniels, you need not give evidence on oath unless you wish to do so. But if you do give evidence on oath, you are liable to be cross-examined by the Prosecutor or questioned by the Court. I must warn you that evidence given on oath will carry more weight with the court than a statement not given on oath. You are now placed upon your defence.

Q.401. Do you wish to give evidence yourself as a witness?
A.401. No sir.
Q.402. Do you intend to call any other witnesses in your defence?
A.402. No sir.
Q.403. Have you anything to say in your defence not upon oath?
A.403. No sir.
Q.404. Do you wish to call any witnesses as to character?
A.404. No sir.

The Prosecutor makes the following closing address.

I am going to run through the facts as submitted by the evidence of the Prosecution. I am going to take each charge separately. First, the charge of 'Drunkenness' under Army Act Section 19. The evidence that

has been produced, first by Captain Shaw was to the effect that the accused was drunk. Mr Andrews stated that the accused was drunk. This was corroborated by one of the other witnesses, that the accused was drunk in a public place. - the Dance Hall. There were several officers who say that the accused was served in the mess previous to the dance, with drinks. They also state that he was not served in the mess after eleven o'clock that night with any alcoholic refreshment. If Captain Shaw thought that this accused was drunk at a later time than that charged, it was due to previous indulgence in alcoholic stimulants, before twelve o'clock. I submit sir, that the accused was drunk at eleven o'clock and was still drunk at twelve o'clock.

As for the second charge, that is that he "Did kick privates Thompson and Hawkes, the witness Andrews says that he saw the accused kick Private Thompson. He stated that he could not say definitely whether or not the kick that he saw delivered was a deliberate kick, or whether it was done in the course of the particular dance that was in progress, but he further states that he saw the accused deliberately and maliciously push the privates. He himself heard the accused call Captain Cummings a 'dirty bastard' and also make the statement that he would kill him. Captain Shaw also heard 'dirty bastard'. When Lee was in front of you, he made the statement that the accused had been dancing with a girl and just prior to this occurrence, he had stopped dancing and that in his mind, the kick was deliberate. If we trace further the actions of the accused after the xxxx kicking - if this kick were accidental and done during the course of the dance, the logical thing to do would be to apologize to the one kicked. But instead of doing that, he xxxxxxx began to throw his weight around and pushed the four privates off the dance floor.

As for the third charge, that of striking a superior officer, Captain Cummings himself has told you that he was struck. Lieutenant Cooke after much persuasion, admitted to the court, that the accused as the aggressor. Captain Shaw also gave similar evidence that he saw the accused strike Captain Cummings.

In view of the charges, I submitthat the accused will be found Guilty on all three charges.

The Defending Officer makes the following closing address.

The Prosecution have made a great deal of use of the evidence of Mr Andrews. I would like to refer the court to exhibit 'C'. You will note that in Para 4 -- Mr Andrews was asked to make this statement as he had given his name to Captain Cummings of his own accord. In this statement, Mr Andrews stated that Mr Daniels, the accused had kicked the private in the shin. Today he seems quite sure that the private was kicked in the right buttock, which apparently was the case. Then the private turned around with his fist cocked at the accused. Mr Andrews says that the private didn't raise his fist. Private Thompson, the private in questionsays himself that he did raise his fist and when he saw that it was an officer of his own unit, he lowered it. He also says that when the accused was allegedly pushing the four privates off the floor with his elbows raised, that such was not the case. Other witnesses say that the accused did not have his arms folded in the manner described to the court by the witness Andrews. I would like to point out these points sir, because I don't think the statements of Mr Andrews can be relied upon.

As regards the first charge, Captain Shaw did not say that the accused was drunk in the hall. It was some time after that, after he had got the accused to bed that he thought that the accused was drunk.. Andrews also stated that the accused was drunk and when he was asked to give his reasons, he was not very co-operative. Private Thompson said he was drunk due to his actions - that he believed that he was drunk. I think Captain Cummings testified that he was with the accused in the Mess and that the accused was drinking with him. He says they had two drinks only, and he goes on to testify that in the dance hall there was nothing but beer to drink. There was no hard liquer at all. All they were able to obtain was beer.

As regards the second charge, that of kicking one Private Thompson. It has been given in evidence that the accused was definitely on the dance floor, where people were dancing. It has also been given that such a kick could have been a result of the dance itself where one of the steps involve making a kick forward and a kick backward. Further, I submit that this kick

was not deliberate, that it was done in the course of the dance, which was at that particular time the dance that has been described as the 'Palais Glide'

As regards pushing the privates. Private Thompson says that he turned around with his fist raised and wanted to know why the accused had kicked him. His attitude may have been a threatening one and the pushing may actually have been just a pushing aside rather than a deliberate and malicious attempt to put him off the dance floor.

As regards using foul language. I believe there were five witnesses who said that the accused did not use foul or abusive language in their presence, and they are supposed to have been there all the time that is in question.

Captain Cummings has stated that he was not struck prior to the time they went into the mess and met on the stair way. Captain Cooke said that the accused was on the top step and Captain Cummings was going up the stairs and that he grabbed the accused and they fell into the corner. Captain Kitchen after that said that in the corner, Captain Cummings was on top. There is no evidence that the accused kicked Captain Cummings in the face, or anything else. I submit sir, that the accused be found Not Guilty of the charges.

The Judge Advocate makes the following summing-up.

My duty before this court is to advise you on the law. You will take the law from me except for a good cause, of which a record must be made. You are the judges of the facts and my duty with regard to the facts is simply to make some sort of a general outline so that you may appreciate the law applicable here. I will outline the facts giving the salient points, but you are not bound to follow such outline. You must be satisfied that the particulars charged in the charge sheet the particulars of the offence - have been proved and that these particulars constitute the offence charged.

The offences are, first of all, 'Drunkenness' in that he in the Field on the 24th October was drunk in a public place, that is to say, the Village Drill Hall, Walton-On-The-Hill, Surrey. You must decide. You must use your own knowledge as reasonable men, your own military knowledge as to whether or not the actions of the accused were sufficient to show that he was drunk. There is no special 'Yard-Stick' by which you can measure this, you must decide it for yourselves. One man may be drunk and may be able to walk in a straight line and not fall down. Another may not. You will have to decide on the evidence as given to you today whether or not the actions and conduct of the accused was that of a drunken man. It is for you to say whether he was drunk or whether he was just boisterous. Everything he did that night may be taken into consideration. That is all I will say on the question of drunkenness. You have heard the evidence of Andrews and Thompson and the rest of them of what occurred that night at the dance hall. You have heard the evidence of the other officers as to what happened after the incident at the dance hall. All that evidence may be considered in deciding whether or not the accused was drunk.

He is charged that he did push and kick one Private Thompson and did push Privates Hawkes and Bulbuk, private soldiers of the Canadian Army. The suggestion is that the kick was purely and simply a result of the particular dance which was in progress at the time of the kick. It has been given in evidence that the kick might have been an inadvertant one and not done deliberately. Lee says that the accused, that he saw the accused leave the girl that he was dancing with and turn round and kick the private. There is evidence that the other privates were pushed. There is no evidence to the contrary, no conflicting evidence on that point.

On the question of the foul language, you have the evidence of Mr Andrews that it certainly was used. He described the language that he heard. Others gave evidence that they didn't hear any.

When we come to that which happened in the mess on the stairs. All these things are part and parcel of the same thing, culminating from the primary argument in the dance hall. That is to say you are entitled to consider all these things to be an aftermath of the original argument. It is for you to say whether or not such actions are to the discredit of the

Canadian Army. It is for you to say whether or not such actions would make the people of this country say "That is how the Canadians carry on".

As to the striking of Captain Cummings. The evidence of Mr Andrews is that he was struck in the dance hall. Whether he was struck or not, Captain Cummings was holding the accused and ordered him off the dance floor. It is for you to say whether or not Captain Cummings would order him off the floor without good reason. There is the evidence of Mr Andrews that Captain Cummings was struck by the accused. There are the subsequent incidents, all of which might tend to show that the accused was following up Captain Cummings because of his endeavour to keep things in order. It may have been due to his condition of drunkenness. Drunkenness is of course, no excuse for the commission of a crime. I advise it has not been shown in this case, that the accused did not know the nature and quality of his act nor the difference between right and wrong.

As to the striking on the stairs. There seem to have been blows on both sides. As to the time of the striking, it is open for you to bring in a special finding as to the date.

I must however charge you on the important matter of doubt. The accused is entitled to the benefit of any reasonable doubt. Now, a reasonable dount does not mean some fantastic doubt which you may conjure up in your minds, it means a doubt on the whole case which you, as reasonable men would find in your minds after hearing all the evidence.

Again, I must remind you that the onus of proof is upon the Prosecution. It is not for an accused to show that he is not guilty of the charge. The Prosecution must show, by positive evidence that the accused is guilty of the offences charged against him. The whole proposition of doubt has been illustrated in a very famous case. "Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the Prosecution to prove the prisoner's guilt, subject to what I have already said about the defence of insanity and subject also to any statutory exception. If at the end and on the whole case there is a reasonable doubt created by the evidence given by either the Prosecution or the prisoner as to whether the prisoner killed the deceased with malicious intention, the Prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial the principle that the Prosecution must prove the guilt of the prisoner is part of the Common Law of England and no attempt to whittle it down can be entertained".

It is the duty of the Prosecution to prove beyond a reasonable doubt the guilt of the accused. It is for you, the court, to decide whether or not that has been done.

The court is closed for consideration of the finding.

The court is re-opened.

I don't think there is very much to say sir. On passing sentence on the accused, I would ask you to take into consideration this report as to the accused's condition and as to his nervous state. I believe it would perhaps have some bearing on the passing of sentence on him. I would also like to point out that none of these charges are serious ones. It is just unfortunate that the accused should be charged with these offences. I am sure that there are a great many of us who are guilty of similar offences at one time or another but nothing happened.

As regards that report, there is one point that might have a certain amount of bearing on the case. The accused has just returned from a months' ~~x~~ Commando Course and I am sure that it was a strain in his particular case. I would like you to take that into consideration in passing sentence on the accused.

The court is closed for consideration of sentence.

(I certify that the above is a true transcript of the shorthand notes taken by me at the trial described on page 1)

(P4610 Sgt W.J. Crone)R.C.A.,
HQ, First Canadian Army.

23 Nov 42.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Guilty of the First Charge
Guilty of the Second Charge with the exception of the words "and did use foul and abusive language"
Guilty of the Third Charge

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Lieut G.W. Manley, 41 Cdn Gen Tpt Coy, R.C.A.S.C. is duly sworn.

Evidence of character, &c.

Q.405. Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

A.405. I have sir, certified copy of MFM6 and AF8296

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked D signed by the President, and annexed to the proceedings.

Q.406. Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

A.406 He is sir.

Q.407. Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

A.407. I have sir.

Q.408. Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A.408. *Answer.* They are sir.

Cross-examined by the ~~accused~~ Defending Officer.

Q.409. Do you recall the time when this report was made?

A.409. I have never seen it before. I do remember once when you and Mr Daniels left to have this done.

Q.410. This is a report on the accused?

A.410. Yes.

Copy of Neuropsyciatrist's Report is entered as exhibit 'F'

Q.411. Question to the accused. Do you wish to address the Court? *Answer.*

A.411. Yes sir. (Defending Officers address C47.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused Lieut W. H. Daniels 41 Canadian General Transport Company R.C.A.S.C. attached Headquarters 1 Cdn Artillery Group to take rank and precedence in his corps and in the Canadian Army as if his appointment as Lieutenant bore date the 16 April 1942 and to be severely reprimanded

Sentence. 6 months loss of seniority
Severe Reprimand

Signed in the Field this 19th day of November 1942.

E. Morris Major
Judge Advocate

W. A. Tommley Lt Col.
President

Confirmed

[illegible]
Brigadier
COMD. 1 CDN. ARTY. GP.
FIRST CDN. ARMY

26 Nov 1942

Promulgated and attached letter this 1 Dec 42

[illegible] Capt.
S.C.R.A. 1 CDN. ARTY. GP.
FIRST CDN. ARMY

FIELD, 19 Nov. 42.

1. I hereby certify that I have this morning examined Lieutenant W. F. Daniels of No. 41 Cdn. Gen. Tpt. Coy, R.C.A.S.C. and in my opinion he is fit to undergo trial by Court Martial.

J M Robertson Capt .....RCAMC

Medical Officer,
attached 62 Cdn. Gen. Tpt. Coy,
R.C.A.S.C., C.AOS.

A

W A Formerly Mar
President

Army Form A 47

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial.

ORDERS BY Brigadier R.J. Leach, MC, ED.
Commanding the 1 Canadian Artillery Group
(Place and Date) Field Nov 42

The detail of officers as mentioned below will assemble at Recreation Hall, 41 Cdn Gen Tpt Coy R.C.A.S.C. on the 19th day of November, 1942 at 0930 hours, for the purpose of trying by a General court-martial the accused person [persons] named in the margin [and such other person or persons as may be brought before them].*

PRESIDENT.

Lieut-Col W.A. Townsley, MC, 2 Cdn Med Regt, RCA. is appointed president.†

MEMBERS.

Major W.J. Blais, 3 Bn RCE, First Cdn Army Troops
Major G.G.K. Peake, 2 Hy A.A. Regt R.C.A.
Capt J.E. Wilson, 2 Hy A.A. Regt R.C.A.
Capt A.D. Langmuir, 2 Bn, R.C.E., First Cdn Army Troops

Lieut W.F. Daniels
41 Cdn General Transport Coy R.C.A.S.C.
Att'd HQ, 1 Cdn Artillery Group

Note.—The president must be named. The members and the waiting members may be mentioned by name, or the number and rank and the unit to which they belong may alone be named.

A.1
W.A. Townsley Lt Col
President

WAITING MEMBERS.

Major G.F. Hartling, R.C.A., HQ, First Cdn Army
Capt A.M. Stephenson, First Cdn Army Signals

JUDGE-ADVOCATE.

Major T.G. Norris, MC, KC, JAG Branch, CMHQ, Att HQ, First (Cdn Army) [illegible], is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to DJA, HQ, First Cdn Army

Signed this Twelfth day of November 1942

(E.O. Leach) Brigadier,
Commanding, 1 Can Artillery Group.

* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," (or as the case may be).

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." *(See Army Act, s. 48 (9).)*

‡ *The "unit," in the case of Royal Artillery, is a Brigade, where such organization exists.*

(11400) W'L30663/3399 20,000 11/39 A.R.& S.W.Ltd. 6[illegible]/6[illegible]
(11400) W'L44057/3399 40,000 [illegible] Forms A 47/39

List of Witnesses.

TRIAL OF Lieutenant W.F. Daniels,
41 Cdn General Transport Coy, R.C.A.S.C.
Att'd HQ, 1 Cdn Artillery Group.

II	Mr J Andrews, 12 Sandlands Road,	WALTON-ON-THE-HILL, Surrey.
III	Capt D.C. Shaw,	41 Cdn Gen Tpt Coy R.C.A.S.C.
I	Capt W.A. Cummings,	41 Cdn Gen Tpt Coy R.C.A.S.C.
V	Capt G.S. Kitchin,	41 Cdn Gen Tpt Coy R.C.A.S.C.
VII	Lieut M.R. Cooke,	41 Cdn Gen Tpt Coy R.C.A.S.C.
VI	Lieut M.G. Grigsby,	41 Cdn Gen Tpt Coy R.C.A.S.C.
IV	Lieut T.P. Reed,	41 Cdn Gen Tpt Coy R.C.A.S.C.
	C32423 S/L/Cpl Packenham, D.W.	41 Cdn Gen Tpt Coy R.C.A.S.C.
	H87365 Pte Thompson, C.T.	41 Cdn Gen Tpt Coy R.C.A.S.C.
	A9889 Pte Urrutia, M.	41 Cdn Gen Tpt Coy R.C.A.S.C.
	C32425 L/Cpl Lee H.J.	" "

re incident which occured at Dance
24th Oct 1942. Ex. C.

Sir

before beginning this statement
I should like to say I am very
sorry indeed it happened and my
action of interferring was to stop
what I thought would be a
serious crime.

I saw Lieut — enter Drill Hall
about 11.15. and leave his hat, coat
& torch on table at entrance.
I must say that he was the
worse for drink. he commenced
dancing. When the dance finished
he went toward refreshment
bar. and stood talking to two
young ladies

The next dance was a
Pali Glide. which you may

known, the dancers kick their legs to the rear during the steps.

4 of your men were dancing together, and I may say quite engaging themselves and at their best behaviour, when I came opposite unit — he kicked one of the soldiers on the shin, and from what I saw, seemed to me to be a ~~deliberate~~ deliberate kick.

The 4 soldiers stopped dancing at once and turned facing officer, and asked him what he had done it for.

The officer then folded his arms level with his shoulders and proceeded to push soldiers off floor. But putting

2.

his elbows in Soldiers chests.

The Soldiers of course resented this and I thought one of them would strike officer. this I knew would be a very serious crime for the soldier although the officer was asking for trouble.

I turned and saw Capt standing a little way away talking to 2 young ladies. I went to him and asked him if he would come with me and get the Lieut away before any harm was done.

As soon as the Lieut saw Capt. he immediately became very offensive and went with Capt out to the Lobby. they were followed by several

soldiers.

On reaching the lobby that Capt. tried his best but tactfull means to get the Lieut to go home, but the Lieut sparred up to Capt. and struck at Capt. and told the Capt to take off his glasses and his would give him a good hiding.

The Capt refused to take off his glasses and tried again to get Lieut to go home.

The Lieut then closed with Capt and during to struggle, his glasses came off and one of the soldiers picked them up, in the meanwhile the soldiers done their best to part officers and both officers went outside hall to fight it out.

5 I followed outside and both officers were struggling. then the Lieut slipped and Capt was on top of him. he was pressing Lieut shoulders to the ground telling him not to be a fool but to go home.

Then a Serg. who had been who watching helped to part officers and eventually the Lieut ~~was~~ went away escorted with a Soldier and I thought went home.

I went back in half with Capt. and asked him if he would like a drink. he said he would so I took him into the refreshment bar and gave him a light ale. and I must say that during the whole affair

7 the Capt behaviaured as a gentleman and did all he could to stop disturbance.

As we were talking the door of Bar opened and in walked the Lieut again and commenced striking Capt again and using bad language, a struggle commenced in which a basket of Cups & Saucers was knocked out and several broken.

Finally a soldier and a orderly walked in and parted officers and got the Lieut to go away.

That is all and as I have said I am very sorry but the Lieut was most aggressive all

the time, but I am sure if he had been sober I am sure nothing would have happened and he would have joined in the fun.

Your gentleman are a long way away from home and things dont always go right and one tries to forget their troubles and have a drink.

I was in the last war from '14 to '19 and I know what striching an officer means.

This I write is a true statement

J. Andrews.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
N/A	Lieutenant	DANIELS, W. F.	41 Cdn. Gen. Tpt. Coy, RCASC.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number or answer in the conduct sheets, punishment being given for the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times.	times.
For	times.	times.
For	times.	times.
For	times.	times.
For	times.	times.

Number of instances of gallantry or distinguished conduct, Nil

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, ~~or~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and four days in military custody, making a total of four days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~attestation paper~~ is 30 years.

6. The date of his ~~commission~~ ~~attestation~~ specified in his ~~record of service~~ ~~attestation paper~~ is 5 Jun. 41.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is from 5 Jun. 41

8. The accused is entitled to deferred pay or gratuity in respect of one year 4 mos 23 ~~days~~

9. The accused is entitled to reckon 16 mos 23 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)). Nil

11. ~~(*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of~~

12. (*In the case of an officer.*) The accused holds in the army the rank of Lieutenant dated 16 Oct. 41 and in his regiment (or corps or department) the rank of Lieutenant dated 16 Oct. 41

(*20240) WL.30244/6902 70,000 12/40 A.S.R.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. N/A Rank Lieutenant Name DANIELS, W.F. of the Company [redacted] (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 31st day of October, 1942.

O.C. 41 Cdn. Gen. Tpt. Coy, RCASC.
C.A.O.S.

13. The personnel has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of	
In the rank of	years,
In the rank of	years,
In the rank of	years,

(Signature)—(If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be collected from such papers as are available and the paragraphs retained amended accordingly.)

M.F.M. 6
(A.F.B. 172)
175M—7-41 (1215-20)
H.Q. 1772-39-1662

No. Name DANIELS, Lieut W.F. Sqn., Battery, or Company 41 CGT Corps R.C.A.S.C. Date of enlistment 5 June 1941 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Ex. E. W.A. Tremblay Pres.					
				"CERTIFIED THAT THIS IS A TRUE AND EXACT COPY OF THIS OFFICER'S ORIGINAL MF MC."					
				A.W. Tremblay Lieut.					
				for (W.A. Lucas) Major. O.C. 41 Cdn.Gen.Tpt.Coy. R.C.A.S.C. C.A.Overseas.					

(P.T.O.)

Ex. F.
W.A. Gormely Hbl.
Sunday 82

DEPARTMENT OF NEUROPSYCHIATRY

No..... Rank Lieut Name: DANIELS 41 Cdn. Gen. TrsnCoy. RCASC
Age 30

Date 30/10/42.

Complaint:- None

Family History:- Father quick tempered, afraid of him as a child, Mother nervous.

Past Illnesses:-Childhood diseases, no operations just minor injuries.

Personal History:-
Preschool/ Played with other children, no fears recalled.
School:- Started at 6, played games and sports, Senior Matric at 18. Taken extra studies in commercial sense.
Work:- Started at 18 in bank and then brokerage office. He was holding a responsible position. Liked steady work.
Army:- Enlisted 5/6/42 for duty. Overseas 10/3/42 He is a bit fed up with inactivity. Would like to transfer.
Social:- Liked to mix and going to parties. Sporadic drinker. Smokes 50 cigarettes daily.
Sexual:- First contact at 16, Then different girls. Married at 24 Wife 22. No children. No complications.
Religion:- Doesn't bother about it.

Examination:- In civilian life he felt perfectly satisfied with his life. He was very happy in his home life as their interests were in common. He was doing well in his work life and having considerable responsibility. He has reacted quickly to situations all his life. Since coming overseas he has noticed a gradual increasing tension within himself. He has puzzled over this and has wondered if it has been due to being separated from his wife as she has been an anchor for him in the years of their married life. He has not been sleeping properly for two months, he has been noticing an increasing jumpiness and tension within himself. He has been in considerable emotional conflict over sexual matters as he feels he should not have expression except with his wife. He has noticed that he has not been able to concentrate on his work as he should. He has had the feeling that he had been picked on but stated he thought it was his imagination. He cooperated well, he showed tension and pre-occupation. No clouding of sensorium, no divergence of thought and emotion. Insight and judgement good.

Impression:- This officer is of the hyper-reactive group. He has built his emotional life around his wife and the separation has built up a very great tension. The behaviour under the influence of alcohol was a physically disguised protest. This officer is essentially good material but his problems have to be understood otherwise he may be lost. He responded well to explanation of his difficulties which is a hopeful sign.

Diagnosis:- Severe tension state.

Disposal Proper understandable handling.

C.D. Taylor
(C.D. Taylor) Capt. RCASC
Neuropsychiatrist.

First Charge
The accused is charged under Section 8 (2) of the Army Act in that he while on Active Service struck Capt. W.A.Cummings, his superior officer.

Second Charge
The accused is charged under Section 40 of the Army Act in that he while on Active Service behaved to the prejudice of good order and military discipline in that he on the day and date mentioned so conducted himself in a manner unbecoming the character of an officer and a gentleman; i.e. did use foul and abusive language in a public place, namely the "Drill Hall" Walton-on-the-Hill in such a manner as to reflect discredit on the Cdn. Army Overseas.

Third Charge
The accused is charged under Section 19 of the Army Act with while on Active Service Drunkeness in that he on the day and date mentioned was drunk in a public place, i.e. the Village Drill Hall, Walton-on-the-Hill.

SUMMARY OF EVIDENCE IN THE CASE OF

LIEUT. W.F.DANIELS, 41 CDN.GEN.TPT.COY., R.C.A.S.C.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution.
Capt. W.A.Cummings, 41st Cdn.Gen.Tpt.Coy., RCASC, having been duly sworn states:-

I am Capt. W.A.Cummings, 41 Cdn.Gen.Tpt.Coy., RCASC. On the evening of 24 Oct 42 I was attending a Benefit dance (civilian) in the local Drill Hall. At approximately 2300 hours I was dancing on the far side of the hall, opposite the entrance, when I was approached by a civilian (Mr. Andrews) who asked me to remove one of "our" officers as he was creating a disturbance. I found Mr. Daniels arguing with soldiers who were trying to persuade him to leave the hall. I persuaded him to go as far as the vestibule where an argument ensued. I left the hall suggesting he follow, hoping thus to be able to get him outside and then on to the Mess. Lieut. Daniels followed me out. He took exception to my having asked him to leave the hall and I had some difficulty in restraining him from taking physical action. It was necessary for me to hold him arms and later place him on the ground where I held his arms down. While holding him in that position I tried to persuade him to agree to go back to the mess and forget the incident. I eventually persuaded him to return to the mess accompanied by two soldiers. I then returned to the Drill Hall. The two civilians operating the dance thanked me for what I had done and invited me into the kitchen to have a drink of beer. At approximately 2330 hours Lieut. Daniels came into the kitchen accompanied by two soldiers. Again I had difficulty in preventing physical violence. He was eventually persuaded to leave accompanied by two soldiers. I finally left at 2400 hours. I waited for the crowd to clear away and then proceeded toward the mess. As I went through the gate leading to the Mess, Lieut. Daniels ran at me. I was unable to subdue him, consequently a fight ensued which lasted a couple of minutes until it was broken up by Capt. Shaw and several other officers who had come out of the Mess. Capt. Shaw told Lieut Daniels to go to his bed. I explained to Capt. Shaw what had taken place and on his suggestion started upstairs to bed. As I turned the corner approaching the top of the stairs I saw Lieut. Daniels standing at the top. As I came towards him he kicked me in the face and then charged at me. I was able to hold him and push him into

Continued on Page 2.

First Witness for the Prosecution continued from Page 1.

a corner of the stairway. I was prepared to have a real fight by this time but was restrained from doing so by Capts. Shaw and Kitchen and Lieut. Cooke.

The accused declines to cross-examine the witness. (R.P. 4 (d))

W.A. Cummings Capt.

(W.A.Cummings)Capt.
41 Cdn.Gen.Tpt.Coy.,
RCASC.

Second Witness for Prosecution.

Capt. D.C.Shaw, 41st Cdn.Gen.Tpt.Coy., RCASC, having been duly sworn states:-

I am Capt. D.C.Shaw, 41st Cdn.Gen.Tpt.Coy., RCASC. At approximately 2345 hours Saturday evening 24 Oct 42 I returned to the Officers' Mess. I was sitting in Ante Room when Lieut. Daniels put his head in doorway and I noticed that he had a cut over his eye. He disappeared at once and I followed in a few moments to see what the trouble was. I did not find him and after a few moments hesitation I decided that I would make a thorough search for him. I went out to the front lawn and found two officers lying beside fence. They were locked together but neither could do any fighting. I immediately ordered them to get up. This was done and I then ordered Lieut. Daniels to go to bed. Capt. Cummings, the other officer involved, I questioned as to the circumstances. He informed me that he had had trouble with Lieut. Daniels. I then ordered Capt. Cummings to go to bed with the intention of getting full information in the morning. Lieut. Daniels had obeyed my order and Capt. Cummings was proceeding up the stairs to his room when Lieut. Daniels came out of his room again, and stood at railing. He shouted at Capt. Cummings "Come on and fight, you old bastard. Put up your hands like a man. I'll kill you." Capt. Cummings told him "Go to bed, Bill, and keep quiet". and continued to mount the stairs. I was at the bottom of the xxx stairs and ordered Lieut. Daniels, once again to keep quiet and go to bed. Before I could however get up the stairs Lieut. Daniels from the head of the stairs made an attack on Capt. Cummings. Capt. Cummings grabbed his legs and pulled him down. Capt. Kitchen and Lieut. Cooke who were with me at this time assisted me to get the two men separated. I then took Lieut. Daniels to bed myself and to make sure he did not cause any further disturbance I locked his door and kept the key until the return of his roommate, Lieut. Grigsby. I found Lieut. Daniels at this time to be almost beyond control although he obeyed me without question when I was with him. The minute I left him however he seemed to be without any control whatsoever. Capt. Cummings then proceeded to go to bed. There was no further trouble. At no time up to the time I put Lieut. Daniels to bed did I think that either of these two officers were under the influence of drink. After getting Lieut. Daniels finally to bed I found that he very definitely was drunk although he had walked and acted before his attack on Capt. Cummings in an excited but normal manner. I base my opinion as to this drunkeness on the following facts: a very strong smell of liquor, the fact that once Lieut. Daniels had let himself go and forget his fighting mood he was almost childish in his actions. He acted in a manner similar to a man who is commonly considered drunk. Capt. Cummings was excited and upset over the affair when I first spoke to him but he was not in any way intoxicated. I spent some considerable time with Lieut. Daniels after getting him to bed in an endeavour to find out what the trouble was. He had no idea at the time except that he was in a dangerous, in fact, a murderous mood. He was irrational and after some time broke down completely in a hysteria. He was not in any

Continued on Page 3

Second witness for the prosecution continued from Page 2.

condition to be responsible for his actions and it was with some effort that I calmed him somewhat and got him to sleep.

The accused declines to cross-examine the witness. (R.P. 4 'd')

(D.C.Shaw)Capt.
41 Cdn.Gen.Tpt.Coy.,
RCASC.

Third Witness
for Prosecution

Lieut. T.P.Reed, 41st Cdn.Gen.Tpt.Coy., RCASC, having been duly sworn states:-

I am Lieut. T.P.Reed, 41st Cdn.Gen.Tpt.Coy., RCASC. I saw Lieut Daniels at the Drill Hall dance at approximately 2215 hrs. 24 Oct 42 at which time I would say he had been drinking but was behaving rationally. I also saw Capt. Cummings who was watching the dance and behaving in a very sober manner. Atapproximately 2300 hours I was in the Ante-room when Lieut. Daniels walked in. He said nothing and retired. At approximately 0020 hours as I was leaving the Mess I heard noises and some swearing at the top of the stairs, but noticing that Capt. Shaw, Capt. Kitchen and Lieut. Cooke were investigating I proceeded on my way.

The accused declines to cross-examine the witness. (R.P.4'd')

(T.P.Reed)Lieut.
41 Cdn.Gen.Tpt.Coy.,
RCASC.

Fourth Witness
for Prosecution.

Lieut. M.G.Grigsby, 41st Cdn.Gen.Tpt.Coy., RCASC, having been duly sworn states:-

I am Lieut. M.G.Grigsby, 41st Cdn.Gen.Tpt.Coy.,RCASC. At approximately 2330 hours I was sitting in the Ante-room of 41 Cdn.Gen. Tpt.Coy's. Officers' Mess when Lieut. Daniels opened the door, looked in and immediately retired closing the door behind him. I noticed that there was blood on his face and that he was wearing his serge uniform. I then heard him go upstairs. About2350 hours as I left the mess to go to the drill hall to get my overcoat, I saw Capt. Shaw trying to separate Capt. Cummings and Lieut. Daniels who were endeavouring to fight but being prevented from doing so by Capt. Shaw, who stood between them. They were on the front lawn. I got Lieut. Daniels into the mess and then Capt. Shaw ordered me to leave.

The accused declines to cross-examine the witness. (R.P.4'd')

(M.G.Grigsby)Lieut.
41 Cdn.Gen.Tpt.Coy.,
RCASC.

Fifth Witness
for Prosecution

Lieut. M.R.Cooke, 41st Cdn.Gen.Tpt.Coy., RCASC, having been duly sworn states:-

I am Lieut. M.R.Cooke, 41st Cdn.Gen.Tpt.Coy., RCASC. At approximately 2245 hours I was in the Ante-room when Lieut. Daniels wearing serge, walked in, said hello to those present and withdrew. Again at approximately 2300 hours Lieut. Daniels opened the door looked in and withdrew closing the door behind him. I noticed he was wearing battle dress. About 2315 hours I heard voices in the hall and went to see what the trouble was. I saw Lieut. Daniels and Capt. Shaw. I noticed that Lieut. Daniels was very excited and that he had a cut over one of his eyes. I heard

Continued on Page 4.

Fifth witness for the prosecution continued from Page 3.

Capt. Shaw order him to go to bed. About 2330 hours Capt. Cummings came in and started to go quietly upstairs. Capt. Shaw having told him that he had better do so. I then heard a lot of cursing and swearing at the head of the stairs by someone who was out of sight. Capt. Shaw and I went to see what was taking place. I saw Lieut. Daniels standing about 2 or 3 steps from the top of the stairs and Capt. Cummings facing him about 3 steps lower down at about the turn in the stairs. There was an argument going on between them which ended in Lieut. Daniels giving Capt. Cummings a shove with his hand. Capt. Cummings swung round to face Lieut. Daniels. Lieut. Daniels then bunted Capt. Cummings with his knee, the latter falling back in the corner of the stairs. Capt. Cummings then started to go forward and Lieut. Daniels kicked him, where I am not quite sure. Capt. Cummings then lunged at Daniels and grabbed him around the legs, the latter loosing his balance, fell forward and landed on his right side in the corner of the stairs. Cummings retaining his hold fell with him, landing on top. Capt. Shaw, Capt. Kitchen and I then went upstairs to separate them. Capt. Shaw then ordered Lieut. Daniels to his room, Capt. Cummings xxxxx coming downstairs with Capt. Kitchen and myself. I noticed Capt. Cummings was bleeding from a cut between and slightly above his eyebrows which was not there prior to his going upstairs.

The accused declines to cross-examine the witness. (R.P.4'd').

(W.R.Cooke)Lieut.
41 Cdn.Gen.Tpt.Coy.
RCASC.

Sixth Witness
for Prosecution.

Capt. G.S.Kitchen, 41st Cdn.Gen.Tpt.Coy., RCASC, having been duly sworn states:-

I am Capt. G.S.Kitchen, 41st Cdn.Gen.Tpt.Coy., RCASC. At approximately 2359 hours I was sitting in the Ante-room when I heard noises on the stairs and went to investigate. I saw Capt. Cummings on top of Lieut. Daniels and Capt. Shaw trying to separate them. I pulled Capt. Cummings off assisted by Lieut. Cooke.

The accused declines to cross-examine the witness. (R.P.4 'd')

(G.S.Kitchen)Capt.
41 Cdn.Gen.Tpt.Coy.,
RCASC.

Seventh Witness
for Prosecution.

Mr. J.Andrews, 12 Sandlands Road, Walton-on-the-Hill, Surrey.
Occupation - Civil Defence Worker.

I certify that in my opinion the attendance of this witness is, owing to this man being employed on special duty, not readily procurable, and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "A".

Capt.
(Officer detailed for Summary)

I do not require the attendance of this witness for the purpose of Cross-examination.

(W.F.Daniels)Lieut.
(Accused)

Eighth Witness
for Prosecution.

C-32423, L/Cpl. Lee, H.J., 41st Cdn.Gen.Tpt.Coy., RCASC, having been duly sworn states:-

Continued on page 5

Eighth witness for prosecution continued from page 4.

I am C32423, L/Cpl. Lee, H.J., 41st Cdn.Gen.Tpt.Coy., RCASC. On the night of Oct 24th, 1942, I was present at a dance in the Drill Hall. While there I witnessed a fight between Capt. Cummings and Lieut. Daniels . I saw Lieut Daniels dancing on the floor and there were four Ptes., Hawkes, Bulbuck, Thompson and Urrutia. The case being I saw Lieut. Daniels had told her to go back or had pushed her back and kicked Pte. Thompson on the hip. Pte. Thompson turned around not knowing who it was, with his fist raised and seeing it was an officer said to him "Sir, you had better be careful what you are doing. The next thing I saw was Lieut. Daniels crowding around the Ptes. and started pushing with his forearms. At that time Capt. Cummings came on to the scene, had a conversation with Lieut. Daniels. The two of them proceeded outside to the little hall. I did not exactly follow them right away but did very shortly afterwards and they got into another argument but I did not exactly see any blows struck against one another but saw them grab one another. Then seeing two of our own officers, Pte. Thompson and myself, fighting so we took a hold of them and pulled them apart but they were holding onto on another and to get them parted we had to pull them hard. Apparently it made him fall on the floor and in the tussle Capt. Cummings and Pte. Thompson were on the floor also. Pte. Thompson immediately lifted Capt. Cummings up and Capt. Cummings told me to release Mr. Daniels at once, which I immediately did. Then they proceeded outside. I followed out with Ptes. Hawkes and Bulbuck. When we got there Lieut. Daniels was on the ground and Capt. Cummings was holding him down with his knees on his arms and his hands on his head. There was a conversation carried out by the two officers andthen L/Cpl Packebusch appeared on the scene. There was a number of people starting to gather around there and I said lets break this crowd up and I xxxxxxx assisted him in doing so. Then L/Cpl Packebusch parted the two officers and the last I saw was Capt. Cummings going toward the dance hall and L/Cpl Packebusch taking Lieut. Daniels down the road toward the officers mess and that is all I saw of that. I went back into the drill hall and had one or two dances and I was coming outside with my lady friend for some fresh air and I met Lieut. Daniels in the doorway. I asked him not to go in the hall and he told me to stay out of it, as it was none of my business. Which I did. I returned a few minutes later and in the sandwich bar, which leads off the small entrance, I heard a noisy conversation and I looked in. I noticed the two officers scuffling. L/Cpl Packebusch again appeared on the scene and I told him what was going on in the sandwich bar and I said to him"You know them better than I do. Why don't you go in and part them and take him home. Which he did and that is all I know of the case.

The witness is cross-examined by the accused. (H.P. 4'd')

Q. I actually kicked Pte. Thompson, did I?
A. Yes, sir. As close as I could see and I was as close as five feet. You were all coming around the one way dancing and you were pretty much all in a line in the Pali Glideand I was paying particular attention to the four Ptes. doing the Pali Glide and the next thing I saw you were right beside them. You had told your lady friend to go away or pushed her away and you turned around and kicked Pte. Thompson.
Q. I did deliberately kick him then?
A. Yes, sir.

H.J. Lee

(C32423,L/Cpl H.J.Lee).

Ninth Witness for Prosecution

HB7365, Pte. Thompson, C.J., 41st Cdn.Gen.Tpt.Coy., RCASC, having been duly sworn states:-

I am HB7365, Pte. Thompson, C.J., 41st Cdn.Gen.Tpt.Coy., RCASC. I was attending the dance on October 24th at Walton-on-the-Hill Ptes. Hawkes, Bulbuck and Urrutia and myself were dancing the

Continued on Page 6.

Ninth witness for Prosecution continued from Page 5.

Pali Glide when I received a severe kick on the right hip. I immediately turned around with my fist up and I saw it was Lieut. Daniels. When I saw who it was then I immediately relaxed and I put my hand out and I asked why did he kick me. He said "Don't shove me around" and he put his hand out and pushed me. I put my hand out and I pushed him slightly back. He then saw Pte. Hawkes and he pushed me out of the way, and Pte. Bulbuck also, and he said "Hawkes, you are the man I want". He put his hands on Hawkes and tried pushing Hawkes around. Hawkes told him to take his hands off him or he would hit him. Then Capt. Cummings came up and he persuaded Lieut. Daniels to go outside into the lobby. They went out and a few minutes later Pte. Hawkes and myself and L/Cpl ~~Packebusch~~ LEE went out. Capt. Cummings and Lieut. Daniels were arguing. Presently they started to fight. It was getting pretty rough so L/Cpl ~~Packebusch~~ LEE grabbed Lieut. Daniels and I took hold of Capt. Cummings. Lieut. Daniels and L/Cpl ~~Packebusch~~ LEE fell onto the floor and Capt. Cummings and myself were pulled on top of them. I immediately released Capt. Cummings He got up and he told L/Cpl ~~Packebusch~~ LEE to release Lieut. Daniels. He did so. They had a few more words and I went back into the hall and that is all I saw.

Questioned by Capt. MacDonald, officer taking summary.

Q. Did Lieut. Daniels use any foul or abusive language while on the dance floor?
A. No, sir.

H-87365 Cpl Thompson Pte.

After being duly cautioned
the accused does not wish to make any statement or to give evidence on oath. R.P. 4 (E).

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of six pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

(R.R.MacDonald)Capt.
HQ, 1 Cdn Army Transport Col.
RCASC.

In the Field
29 Oct 42.

Statement by

J. Andrews.

60.

Canadian Farces

Walton-on-Hill

EXHIBIT "A".

STATEMENT BY J.ANDREWS, 12 SANDLANDS RD., WALTON-ON-HILL.

Re incident which occurred at Dance 24 Oct 1942.

Sir/

Before beginning this statement I should like to say I am very sorry indeed it happened and my action of interferring was to stop what I thought would be a serious crime.

I saw Lieut. ---- enter Drill Hall about 11.15 and leave his hat, coat and torch on table at entrance. I must say that he was the worse for drink. He commenced dancing. When the dance finished he went toward refreshment bar and stood talking to two young ladies.

The next dance was a Pali Glide which you may know, the dancers kick their legs to the rear during the steps.

4 of your men were dancing together and I may say quite enjoying themselves and on their best behaviour. When they came opposite Lieut.---- he kicked one of the soldiers on the shin and from what I saw seemed to me to be a deliberate kick.

The four soldiers stopped dancing at once and turned facing officer and asked him what he had done it for.

The officer then folded his arms level with his shoulders and proceeded to push soldiers off floor, by putting his elbows in soldiers' chests.

The soldiers of course resented this and I thought one of them would strike officer. This I knew would be a very serious crime for the soldier although the officer was asking for trouble.

I turned and saw Capt.---- standing a little way away talking to 2 young ladies. I went to him and asked him if he would come with me and get the Lieut. away before any harm was done.

As soon as the Lieut. saw Capt. he immediately became very offensive and went with Capt. out to the lobby. They were followed by several soldiers.

On reaching the lobby that Capt. tried his best by tactful means to get the Lieut. to go home, but the Lieut. sparred up to Capt. and struck at Capt. and told the Capt. to take off his glasses and he would give him a good hiding.

The Capt. refused to take off his glasses and tried again to get Lieut. to go home.

The Lieut. then closed with Capt. and during the struggle his glasses came off and one of the soldiers picked them up. In the meanwhile the soldiers did their best to part officers and both officers went outside hall to fight it out. I followed outside and both officers were struggling. Then the Lieut. slipped and Capt. was on top of him. He was pressing Lieut. shoulders to the ground telling him not to be a fool but to go home.

Then a Serg. who had been watching helped to part officers and eventually the Lieut. went away escorted with a soldier and I thought went home.

I went back in hall with Capt. and asked him if he would like a drink. He said he would so I took him into the refreshment bar and gave him a light ale and I must say that during the whole affair the Capt. behaved as a gentleman and did all he could to stop disturbance.

As we were talking the door of bar opened and in walked the Lieut. again and commenced striking Capt. again and using bad language. A struggle commenced in which a basket of cups and saucers was knocked over and several broken.

Finally a soldier and a Serg. walked in and parted officers and got the Lieut. to go away.

That is all and as I have said I am very sorry but the Lieut. was most aggressive all the time but I am sure if he had been sober I am sure nothing would have happened and he could have joined in the fun. Your gentlemen are a long way from home and things don't always go right and one tries to forget their troubles and have a drink. I was in the last war from '14 to '19 and I know what striking an officer meant.

This I write is a true statement.

CERTIFIED TRUE COPY.

(J. Andrews).

Capt.

H-22.
l. Danis. A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-63135 Cpl ARMAND DANIS 3 BN RCE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	NOT GUILTY	
2nd	NOT GUILTY	GUILTY.	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be Reduced to the Ranks and to undergo Detention for 60 Days.

(Sgd) W. A. Thompson, Capt — 17 Nov 44 — (Sgd) G. H. Drennan, Major

Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I hereby direct that the sentence of dismissal with ignominy be commuted to forfeiture of seniority and detention for [illegible] days.~~ (1. AA 57A. Delete if not used.)

(Sgd) ..... Officer in Canadian Section, G.H.Q. 1 Echn.

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 63135 Gnr ARMAND DANIS	24 Nov 44	[signature] Capt, Offr. 3 Bn RCE

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I hereby direct that the sentence of dismissal with ignominy be commuted to forfeiture of seniority and detention for [illegible] days.

D.A.G. Can. Corps

RECORDED AT CMHQ IN AD 100 411-22

RECEIVED 10 DEC 1944 JAG BRANCH CMHQ

CPA801 (1st Rev) of AFA81 40/P&R 8/1608 (40/10) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened at BRIGADE Comd GHQ 1 ECH 21 AGp dated 16 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-63135	Gnr	ARMAND	DANIS	3 Bn RCE

PROCEEDINGS REVIEWED
Hon Rivières Limit
11 Dec 44
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS REVIEWED Date 24 Nov 44 D.J.A. Cdn. Sec. GHQ 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 17 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, ~~and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn NOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A85, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to LIEUT/E CONTOIS RCE as interpreter? Ans NO SIR.

The Interpreter is sworn.(1) ~~(To you object to as shorthand writer? Ans ..... The shorthand writer is sworn.(1))~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, ~~and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	E J DURNIN	3 Bn RCE
Member	CAPT	D H KELLY	1 Con Loc Sy Sec
Member	LIEUT	F E BARR	2 Bn RCE
Judge-Advocate	CAPT	W M THOMPSON	Con Sec GHQ 1 Echn 21 AGp
Prosecutor	LIEUT	A E DOWDEN	3 Bn RCE
Defending Offr	LIEUT	J R ROCHON	3 Bn RCE

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused D 63135 Cpl ARMAND DANIS before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. D/E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

✓ 4th S.A. p 25

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea.(4) However, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(5)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 25(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(E). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence may be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1) Waived
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 355. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on ~~the~~ the two charge(s).(2) The Court agrees is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the two charge(s), ~~and allowed on the charge(s),~~ and that, accordingly, the trial will proceed ~~as to the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans To give evidence myself Do you intend to call witnesses on your behalf ?
Ans yes . Are they witnesses as to character only ? Ans both
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. A6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the Second charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes - As to CHARACTER
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 2 and Ex 3 respectively.(3) - see Ros 2 & 2.
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No Sir
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). Give sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, in its awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D-63135, Cpl DANIS, Armand, "B" Coy, 3 Bn RCE, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA 18(4)

WHEN ON ACTIVE SERVICE, STEALING PUBLIC PROPERTY,

in that he

in the Field, on 23 Oct 44, stole two jerricans of petrol, public property.

SECOND CHARGE
AA 40
(Alternative)

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

in the Field, on 23 Oct 44, was in improper possession of two jerricans of petrol, public property

In the Field
16 Nov 44.

(Geo W. Smith) Lt-col
Officer Commanding
3 Bn RCE

Approved for
JAG Cdn Army
Overseas

Capt
ADJA, Cdn Sec
GHQ 1 Ech -
21 A Gp

To be tried by Field General Court-Martial

In the Field
17 Nov 44

(A.W. Beament) Brig
OIC
Cdn Sec GHQ 1 Ech 21 A Gp

GD

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-63135	Cpl		Armand	DANIS	3 Bn RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet~~s~~ attached and on (date) 16 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Name	Unit.
Major	E.J. Durnin	2 Bn RCE

(Must be named. RP 106.)

MEMBERS.

Rank.	Name	Unit.
Capt	D.H. Kelly	1 Cdn L of C Sigs
Lieut	F.E. Barr	2 Bn RCE

(Named or detailed. RP 106.)

WAITING MEMBER.

Rank.	Name	Unit.
Capt or Lieut	To be detailed by OC 3 Bn RCE	

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

Rank.	Name	Unit.
Capt	W.M. Thompson	Cdn Sec GHQ 1 Ech 21A Gp

(Must be named, if any. RP 106.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 16 Nov 44

[signature] (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(A.W. Beament)

Commanding Cdn Sec GHQ 1 Ech - 21 A Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6143)

Approved: W.M. Thompson Capt.

ADJA

CFD

13 Nov. 44.

This is to certify that
D-63135 Capt. Davis A. is physically
fit to undergo trial by
Court Martial.

G. Salmon capt, RCAMC
M.O. 3 Bn R.C.E.

GD

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-63135	Cpl		Armand	DANIS	3 Bn RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, (who is) subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on 16 Nov 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (A) three Offrs to form the Court, (B) a Fd Offr as President, for the reason I have bracketed here~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(F). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.J. Durnin	2 Bn RCE

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D.H. Kelly	1 Cdn L of C Sigs
Lieut	F.E. Barr	2 Bn RCE

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	To be detailed by OC 3 Bn RCE	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W.M. Thompson	Cdn Sec GHQ 1 Ech 21A Gp

On Active Service in the Fd

in BELGIUM (Country.)

Dat 16 Nov 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(A.W. Beament)

Commanding Cdn Sec GHQ 1 Ech - 21 A Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/18A CFA 96 (In Dept of AFA 3) 40-7 A 6/1697 (8148)

Approved:
ADJA 6th

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

† I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jun 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 18)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule to p 4 after minute of sentence awarded. (*AA 52(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

CJD

12 Nov. 42.

This is to certify that D-63135 Cpl. Davis A. is physically fit to undergo trial by Court Martial.

J. Sabourin capt, RCAMC
M.O. 3 Bn R.C.E.

DJ. Lours JA 1

First Witness for Pros.

Miss Lucy Puyppe 54 Loppen Place, Loppen Common, Occidental, Flanders, having been duly sworn:
(through interpreter)

I know Corporal Danis, indicates accused. I had a conversation with him one night a few days before some petrol was brought to our place. He had been at our place before and one night he would hardly come in because clothes too dirty. Had clothes unsuccessfully cleaned before. I told him it would go off if completely washed in petrol. Acc'd asked would she wash his clothes if he brot petrol. He seemed to be joking when he said that. That was all the conversation. Lours

~~On 23 Oct 44 I returned home~~

No Cross Xn.

By JA.

This conversation was a few days before 23 Oct 44, which date I remember because of a visit by the gendarmes. When Cpl Danis asked me if I would wash his clothes if he brot petrol I said yes, jokingly.

RP 83(B) complied with

Second Witness for Prosecution

Miss Germaine Puyppe, 54 Loppen Place, Loppen Common, Occidental, Flanders having been sworn:
(through interpreter)

I know the accused - indicates - On 23 Oct 44 in morning he came in the store we own and asked me to open the door to back yard. I do so and he brought in two cans of petrol. I didn't understand him well, but ~~from~~ gathered that he wanted ~~him~~ me to put cans aside and that he would come back. Then he went away. He left the cans inside the back yard. Later in the day - in the afternoon - two gendarmes, an officer and a soldier came to my place. As a result of a conversation the two gendarmes took the two cans of petrol away with them - the same cans as accused had left.

Cross Xn.

Our store is fruit and vegetables shop.

By JA.

The gendarmes took the cans from an air raid shelter where I placed them after Cpl Danis had left. I did not look in the cans. The acc'd did not tell me what was in them.

On widener being read back - witness states that she thinks accused told her the cans contained petrol, but is not sure.

RP 83(B) complied with

Third Witness for Prosecution

Crison, Andre, Gendarme, ~~Zedelgem~~ "Zedelgem" Belgium Lours
(through interpreter)

Pros. Offr produces notice served under RP 76. Def. Offr admits service. Notice attached to proceedings

TO: D63136 Cpl DAHIS, Armand
'B'COY, 3 Bn RCE

Arm 7
QA

1a

As PROSECUTOR in the forthcoming FGCM convened on your behalf, I intend to call the following additional witnesses:

(1) MARECHAL DE LOGIS CHEF LOMMES
(2) MARECHAL DE LOGIS GRISON
(3) CAPT F.X. CHABALLE
(4) E24819 Cpl COTE, J.P.

1. Marechal de Logis Chef LOMMES, of LOPPEM will state that he accompanied Lt L.E.LAUIGNE to a civilian house at LOPPEM, on 23 Oct 44 questioned the occupants and saw two jerrycans taken from a trench on the property.

2. Marechal de Logis GRISON of LOPPEM will state that he accompanied Lt L.E. LAUIGNE on 23 Oct 44 to a civilian house at LOPPEM, questioned the occupants and saw two jerrycans taken from a trench on the property.

3. Capt F.X. CHABALLE will state that he signed Coy Daily Orders No.84 dated 18 Oct 44.

4. E24819 Cpl COTE,J.P. will state that he was present at a civilian farm at LOPPEM on 23 Oct 44, and saw two jerricans removed from a trench, and recognized the contents for Army petrol.

A E Dowden Lt

(A.E. DOWDEN) LT.RCE
3 Bn RCE

On 23 Oct 44 while on duty met as Cdn Officer, at whose request went to a house in Loppem. - the home of Puyper after conversation. Germaine went in an air raid shelter and brought out two jerricans of petrol. I gave them to the Canadian Officer, who spilled out some of the contents from one of the cans - it was petrol. I smelt it

Cross Xn - Nil

RP 83(B) complied with.

Fourth Witness for Prosecution

E 47441 Spr Durette R, 3 Bn RCE, having been sworn. (through interpreter)

On 23 Oct 44 left in morning with Cpl Danis, Spr Desjardins and two other soldiers. Went to 2 Drilling Coy with lorry. The two soldiers were left there. Cpl told me we would go to Loppem. He made me stop in front of ~~the~~ a house. He left the truck and asked Spr Desjardins to go for two cans. I saw through mirror the two cans and by the way Cpl Danis was carrying them they looked full. I turned lorry around when got back to same spot. Cpl Danis got in the lorry. He had nothing with him. Returned to 2nd Drilling Coy - the three of us. In the afternoon I took Lt Lavigne, Cpl Cote to the house where Cpl Danis left the jerricans in the morning. Later took two gendarmes with others. Few minutes later saw Cpl Cote coming out of the ~~house~~ back-yard with two cans. Cpl Danis is the accused (points) when he took the cans from truck went into back yard door of house mentioned. Do not know who lives there.

No Cross Xn.

By J A.

The cans were jerricans - the same as we use in the Coy for petrol. The same containers are used for water. crude oil ~~and~~ also. The cans Danis ~~had~~ were green. Brown cans are for water. Green ones are for petrol and crude oil. Green not used for water to my knowledge.

R.P 83(B) complied with.

Fifth Witness for Prosecution

C 12497 - Spr Desjardins RAF, 3 Bn RCE, having been sworn.

On 23 Oct 44 was working on pipe lines. Went to 2 Dry Coy with Cpl Danis & two plumbers. Then Cpl Danis & I went to Loppem, stopped at a ~~restaurant~~ fruit store. Cpl Danis went inside then, returned to truck, went to back of store. Came & asked me for two jerricans in truck while I handed him

WMJA 3.

~~he~~ walked in the yard of same house or store. There was something in the cans. Cpl Davis came back without cans. Cpl Davis is the accused (points)

Cross Xn. I was not surprised when acid asked for two jerricans. Ten or eleven days before the section was out working on pipe line & Cpl Davis found the two jerricans. Quite often I have known jerricans to be found on the road. We turned them into the Company & sometimes took them to huts to make fires. WMJ

By JA. Petrol was in the cans. I think they were the same cans Cpl Davis found. He loaded them in truck at the time and we found none since.

RP 83(B) complied with

Sixth Witness for Prosecution

Lt L.E. Levigne 3 Bn RCA. having been sworn.

On 23 Oct 44 as a result of information received went with Spr. Durette and Cpl Cote JP to Roppem and to ~~gate~~ "house" that Durette took me to then got Gendarmes Grison and Depuidd returned to same house. ~~Grison to~~ The woman of the house went into a dugout and brought out two jerricans. I opened both and out of each came red petrol. I took the petrol to the Camp. The jerricans were Army jerricans. The Army is using red petrol. WMJ WMJ

Cross Xn. Have known of petrol being found on road before. Usual procedure is to bring it to Camp. As Transport Officer never myself gave gasoline to anyone to clean dirty uniforms. Know of it being done in small quantities. Have given my corporal permission to allow small quantities of petrol to be used for cleaning dirty uniforms

Re-Exam ~~If offr put Cpl Davis in charge he could~~ WMJ. Cpl Davis has not come to me for petrol for any particular reason since beginning of October

By Court. My orders are that only Cpl Cote or myself can issue petrol ~~[illegible]~~ except to vehicles. RP 83(B) complied with. WMJ WMJ

4 Wm J
J A.

D.4.

Defending Offr motion

Pros has failed to prove charges and ask Court to adjourn. Have no case to defend. Nobody proved stealing or improper possession. This my opinion I leave it to Court.

Prosecutor replies

Evidence that acc'd in possession of army petrol in jerricans & brot to place where not supposed. No reason for accused to have petrol. He not in Transport dec. Witnesses show how he got petrol and how he dealt with it

J A

Advises court as to prima facie case, outlining ingredients of each charge

D6

5.
WWJ
JA

First witness for the defence.

The accused D63135 Cpl. Armand Danis, Sworn states:

On the morning of 23 Oct I was sent with three men, Spr Desgardins and two others to do some work on the pipe line. We checked the pipe line and I found we had to go to a Drilling Coy to get what I need. I left two of my men at the job and told the driver to take me into the village of Luppem and I asked him to stop in the front of a fruit store and I went in and ~~[illegible]~~ talked to Germaine ~~[illegible]~~ Puype. She said her sister wasn't there and I asked her to open the backyard door and I went back to the truck and asked Desgardins to give me the cans of petrol and I took them into the yard. I told Germaine Puype that I would come back but she didn't understand what I said very well. I said "This is very dangerous" pointing at the petrol cans and went back to the trucks and went back to a Drilling Coy. After dinner the Offices came and told the Sergt. Major to put me under close arrest.

I took the cans to the house because I wanted my uniform clean and I had tried to get it done by a soldier to whom I paid

fifty francs but it was very
messy. Then I gave a civilian woman
30 francs to clean it. It was still
dirty with tar and diesel oil after
she was done. A few days after
I went to the fruit store with my
uniform on and Lucy Puppe
saw it and said it is very dirty
and should be washed with petrol.
I laughed and asked her if
she would wash it if I gave her
some petrol and she said yes.
After I left I remembered we
had found some ferricans of petrol
on the road a few days before and if
they were still on the truck I didn't
see anything wrong in using it for
cleaning my uniform. The next
day I looked in the truck I had
put them in after picking them up
and the two cans were still there.
I didn't have any trucks for my
work so I stopped a truck
driven by Spr. Durette. I asked
permission of the Corporal to
use that truck and he said it
was allright and I transferred
the ferricans to the truck driven by
Spr Durette. I said to ~~Spr Durette~~
the driver of the truck from which I
removed the petrol cans "Are these the
petrol cans we found on the road"
and the driver (Spr Robbins) said
"if theres petrol cans there they are
ones found on the road".
I did not think it was
wrong to use the petrol for my own
purpose because I had found it on the

road. We used to find plenty
in France which we used for fires was
and cleaning. One day I was with 9A.
my Sergeant and he picked them up
~~on the~~ and put them on the truck.
When petrol is found if we don't
use it for cleaning ~~on the~~ the tools
and equipment on the job we leave
them in the truck.

In my work I need petrol
for cleaning the machinery and
for clearing a pump on the job when
it becomes choked.

I have been issued petrol from
the transport corporal (Cote') at
least on one occasion for cleaning
machinery.

Cross examined.

~~Yes I said before I had~~
~~used~~ I have used petrol for cleaning
my clothes by taking spots off myself
but I have never washed the uniform
in petrol. I didnt give any
consideration to how much petrol
it would take for Mme Pujte
to wash my uniform.

I found the petrol cans on the
side road on the Suite street between
Ghent and Ostende about 11 days
before I was put under close arrest
I put it into the truck as I always
did I did it consider it my
responsibility to turn it in.

I do was 11 days before
I took the petrol for cleaning
because in the meantime I
had the idea it could be cleaned
at a place the Sergeant got his uniform

I know that it is ~~is~~ not permitted to give petrol to civilians ~~for~~ but in this case I didnt give the petrol to the civilians. It was for my own use. ~~purpose~~. I know that there had been a battalion order prohibiting the giving of petrol to civilians.

The prosecutor produces copy of pt. 1 Coy. D.O. 84 of 18 Oct 44. Accused says he has seen same. It is a Coy. Order. He doesnt know about a similar Bn. Order. (Marked Exhibit 1).

Questioned by the Court:

I went ~~from~~ to Loppem for the purpose of leaving the petrol tins as I had a spare hour. I didnt have the uniform that needed cleaning with me. It is about a half mile from the 2 Drilling Coy to Luppem. The conversation with Lucy Puyper about cleaning my uniform was two or three days before I took the petrol to her place.

R.P. 83 (B) complied.

Second Witness for Defence

D121039-COMS Gingras C.E. 3rd Bn. RCE.
having been sworn:-

In France and Belgium only had contact with one mobile laundry for a couple of days & the men had to do own washing. Could not have washing done through Army. Private families have been doing washing picked by men wherever they could find them. ~~[illegible]~~ On different workings we have done uniforms have been soiled with tar and cannot be cleaned with soap & water only. Most of the men use gas to clean up after such a job. When we left Eng every one had denim or coveralls but since then lost some

with Mobile Laundry which moved before could get down back. In Bn. had shortage of trousers denim. Many of the men had to work in their uniforms. WWS JP

Cross Xn. - Nil.

By JA. - Don't know where men got gas for cleaning. ~~Remain~~ Don't know about Davis denim but asked NCOs to let men have it. WWS

Third Witness for Defence: E 19008 Sgt. Marcoux G., 3 Bn RCE, having been sworn: (through interpreter)

Cpl Davis is one of my corporals since July 42. He was required to have petrol in his possn. because in France when working on road had many machines which we were working & running with petrol. Used petrol to clean tools. Between 4 & 23 Oct Cpl Davis had reason to have petrol because using petrol & oil to soak gaskets. That was Davis' job. I have found petrol myself on road Caen to Lisieux. I took it back to WWS MT. When petrol is found my men report to me use it for trucks or machinery or take it to MT. Cpl. Davis in charge of a group of men who were working on Rd. with tar machinery. The tar pump blocked and Cpl Davis covered with tar & several other men also. This was about in August (middle). Did not use tar machinery since leaving La Boissière. We have been here about 1½ mos. Used tar just before coming here.

Cross Xn.

No petrol found since coming here to Belgium. I never saw men cleaning battle dress with petrol. One day found Jerrican MT said use it for cleaning battle dress, boots & tools. This was around Lisieux.

RP 83(B) complied with

Fourth Witness for Defence E 24819 Cpl Cote JP. 3 Bn. RCE, having been sworn:

Am Transport Cpl B Coy under Mr. Levigne. Have given petrol to men to clean dirty and greasy uniforms. Any petrol found brot to me & distributed with other petrol. Had complaints about water in petrol. - not petrol found. Have given petrol to Cpl Davis - has no right to have petrol in possession except for work

Cross Xn. - When give petrol to clean clothes small amounts in small bottle in Nasfi cig cans. No one ever asked for a gallon. Danis had petrol issued near Lisieux when working on tar for cleaning machinery, hands etc. - This was about 6 wks ago. WWJ JA 10 WWJ

Re Ex n. - Nil.

RP 83(B) complied with

Fifth Witness for Defence.

M31403 Spr Pelletier W. 3 Bn RCE. having been sworn:-

Am in ~~same~~ Cpl Danis' section. Was with him when Cpl Danis found petrol on rd. We were working on pipe line near roundabout at Loppem. I noticed Cpl. Danis found petrol near Ry Bridge. He put it in one of the trucks. This was 11 or 12 Oct 44. WWJ

Cross Xn. - It was 2 Jerricans - Couldn't say how much in it. Don't know anyone from our unit who found petrol in Belgium.

By JA - No conversation with Danis. Was not far away when he found it. Don't know what truck it was put in. I don't know what colour tins were. I know was petrol because heard Cpl Danis ~~had~~ say so on way home. Just said he'd found some petrol. WWJ

R.P. 83(B) complied with.

Defence

Wary
J.H.

The charges brought against Cpl Banis have not been proved. It is a very difficult thing, in fact, impossible, to prove a thing which has never taken place.

The burden of proof which should rest with the prosecution, as in that case, fell on the shoulder of the defence. The Court having overruled my plea of "not proven", forced me to put forward proofs and facts that the accused is not and cannot possibly be found guilty of the charges brought against him.

In his sworn statement, the accused state that he did not steal any petrol. Never had any intention of stealing petrol. Never gave away any petrol and never had any intention of giving away petrol.

I consider that following the evidence heard, the Court must be satisfied that the accused never stole any petrol, never had any intention of stealing petrol.

Cpl Banis's platoon sgt, Sgt Marcoux stated during the course of his evidence, that the accused had all the reasons in the world to have petrol in his possession.

I refused to bring evidence that might discredit some persons or persons, but I wish to state that as Cpl Banis' platoon commander, I ordered him to obtain some petrol and use it in the course of his duty, and I further state that on the 23rd of October between the hours of 0700 and 1800, Cpl Banis was perfectly justified in having petrol in his pos-

This last statement, if the Court wishes me to, I am ready to make it under oath.

In conclusion I declare Cpl Davis not guilty of these two charges, namely stealing petrol and being in improper possession of petrol.

If it happened that Cpl Davis were found guilty under either one of these two charges, I will appeal the decision of the Court.

I demand that the accused should be honorably acquitted.

Summing up of Prosecution. WWJ 8A

Gentlemen -

You have heard all the evidence in this case. On the first charge of stealing it has been prooved that the jerry cans were ~~the~~ army ones and that they contained ~~petrol~~ army petrol. Whether he found it or not, the fact that he did not turn it in to HT and later proposed to use it for himself constitutes stealing. His disregard of the coy orders, which he admits he knew about, make it very plain that he intended to take it for his own purposes and the conversation with Miss Puype shows that it was premeditated.

On the second charge, the accused was seen and admits himself of bringing the petrol to the house and placing it in the yard. If as the defence claims he required petrol for his work, something which is not substantiated for this amount of petrol, what was he doing with it in the backyard. The defence has not shown that he was ever legitimately issued with petrol for work at that time and if he did need it why had about eleven days elapsed without his using it. He found it and as he did not turn it in he was in possession of it which he had no business to be.

A E Dowden, Lt.
Prosecutor

Summing up by J.A.

Deals with findings on alternative charges.
Refers function Court and J.A.
Defines charges - Refers MML. p 118.
Outlines duty of Prosecution.
Burden of Proof MML p.72.
Reviews evidence considerable length
Advises on Intent - refers MML P73.
Credibility of Witnesses - Weight of Evidence
Outlines Benefit of Doubt
and warns Ct that must decide only on evidence in Ct.

Mr. President, are there any other matters on which you wish me to advise the Court.
No Sir

Mr. Prosecuting Officer
No Sir

Mr. Defending Officer
No Sir

E1. Lt. J.R. Rochon 3 Bn RCE. having been sworn

Know acid Is cpl in my Pl. under my comd for 4 mos. His conduct and behaviour very good. Has carried out my orders. Never dissatisfied with him never received any complaints that was not performing duty. Is married man - 5 children. His conduct has been excellent. I have nothing as his Pl. Off. to reproach him with.

RP 83(B) complied with

ORDRES DU JOUR PARTIE I
P A R
Le major S.W. MILNES, officier commandant de la compagnie "B"
3ième BATAILLON, RCE, ACC.

No. 84 MERCREDI, 18 OCTOBRE, 1944 No. 84

Derniers ordres parus No.83 en date 17 Octobre, 44

1. PROGRAMME COURANT:-

Réveil	.0600	heures
Déjeuner	.0630	"
Parade du matin	.0700	"
Diner	.1200	"
Souper	.1800	"
Tattoo	.2230	"

2. OFFICIER DU JOUR:-

mercredi	18 oct	MAJOR	S.W.	MILNES
jeudi	19 oct	CAPT	F.X.	CHABALLE

3. SERGENT DU JOUR:-

mercredi	18 oct	CPL	G.	HAMEL
jeudi	19 oct	CPL	J.A.	WHITNEY

4. GARDES POUR LE CAMP:- MERCREDI, 18 octobre, 44

		D.129578	L/CPL	FRESNER,	J.S.		
M.106910	SPR	SOUSQUET,	J.	C.100109	SPR	DESJARDINS,	M.
E.29509	SPR	BRESSETTE,	A.J.	E.14778	SPR	DORION,	L.
C.12497	SPR	DESJARDINS,	RAF.	M.50687	SPR	GAUCHIER,	H.J.
		D.125176	SPR	DESORMEAUX,	A.		

5. ESTAFETTE EN DEVOIR AU BUREAU DE LA CIE:-

mercredi	18 oct	D.59161.	SPR	RICHER,	G.
jeudi	19 oct	H.82252	SPR	MALLETTE,	A.

6. INFIRMIERS EN SERVICE AU CAMP LE SOIR:-

mercredi	18 oct	D.56742	L/CPL	VIAU,	P.E.
jeudi	19 oct	D.129612	SPR	MESOUF,	G.

7. CAPORAL EN DEVOIR AU CAMP POUR L'APPEL DU SOIR:-
MERCREDI, 18 OCTOBRE, 44

Peloton	"H4"	D.56742	L/CPL	VIAU	P.E.
"	"4"	E.14342	CPL	LAFOREST,	J.E.
"	"5"	E.14680	CPL	OTIS,	O.
"	"6"	E.47427	CPL	DUQUET,	F.

8. ESSENCE:-

1. Il est interdit de donner de l'essence aux civils ou aux militaires français ou belges, sans l'autorisation du HQ 6 Base Sub Area.

9. CONSIGNE:-

1. Les restaurants suivants situés à OSTENDE sont consignés à tous.

Café BELGA	VELDSTRAAT 56.
Café HILVERSUM	KLEINE WESTRAAT, 13
" COLONIAL	CHRISTINASTRAAT, 66
" BARBARINA	CHRISTINASTRAAT, 23.
" MOOI MOLEN	WITTEMONUENSTRAAT, 11
" PALACE	KLEINE WESTRAAT, 9.
" GORDIA	MARIE-JOSEPHEIN, 9
" APERO	HENTSTRAAT, 18
" COQ-ROUGE	NIEUWPOORTSEWEG, 385
" SATTERSEA	VINDICTIVELAAN, 23.
" NIEUWE ABRI	OOSTSTRAAT, 41.
" KENTUCKY	LANGESTRAAT, 38
" CORNET DE LA POSTE	CHRISTINASTRAAT, 41

(Voir page - 2 -)

9. CONSIGNE:-(Suite)

CAFE MELODY	ST.PAULUSSTRAAT,41.
" AU SENAT	CAPUCIENNENSTRAAT,12
" WESTLAND	LANGESTRAAT, 40.
" ROYAL SOVEREIGN	VIDICTIVELAAN,20
" SHIRLEY TEMPLE	CADZANDSTRAAT
" ST JEAN	THOUROUTCHESTEENWEG
" QUESTION MARK	PAULUSSTRAAT,60
" HOTEL BOARDING	VINDICTIVELAAN,23.
" TEDDY BEAR	CAPUCIENNENSTRAAT,34.
" MARCELLA	THOUROUTCHESTEENWEG,83.
" BAISKE	THOUROUTCHESTEENWEG.
" RHYTHM CLUB	LANGESTRAAT.

10. TATTOO:-

1. A compter d'aujourd'hui l'appel du soir aura lieu à 2245 heures. Tous les officiers, sous-officiers et soldats doivent être de retour au camp pour 2230 heures.

Les officiers, sous-officiers et soldats sont tenus de faire rapport sur ceux qui ne seront pas rentrés au camp pour cette heure-là.

11. CINEMA CIVILS:-

1. Ce n'est pas l'habitude de fumer au cinéma en BELGIQUE. Obstenez-vous de fumer au cinéma et n'attendez pas que quelqu'un vous en fasse la remarque.

/JPD

(S.W. MILNES) MAJOR, RCE
OC "B" COY 3 Bn RCE.

Ex 2. [illegible]

M.F.H. 255
12M—8-40 (6455-6)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D 63135	Cpl	Armand DANIS	

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery ~~Conduct Sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	NIL	times	NIL	times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct NIL

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~ Air Force Act A.F.A. 73 [illegible]

3. The accused is not under sentence at the present time

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of~~ [illegible]

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 23 Oct 44 26 days in military custody, making a total of 26 days in custody, of which NIL days were spent in hospital.

Note Ref Off states and Pres Off agrees that accd in opn arrest during whole period [illegible] JH

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 35 yrs 9 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is [illegible] 3 Aug 40

7. The service which the accused is allowed to reckon towards discharge is n/a

8. The accused is entitled to reckon n/a service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~no air force~~ military decoration, or ~~air force~~ military reward (~~or is in possession of or entitled to~~). State any air force military decoration or reward. CVSM 2 clasp.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of n/a

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

n/a dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

1 Jun 42 Date of promotion.

In the rank of Capl 9/12 years.

In the rank of Capl 1 5/12 years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Air Force

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17th day of November 1942

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Exhibit 2 signed by the president, and annexed to the proceedings.

Exhibit 3
MEM 30.

No D-63135 Name DANIS A. | Sqn, Battery, or Company | Corps R.C.E. | Date of enlistment 3 Aug 40 | GC Badges (One) | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet No 2 destroyed 3 Aug 42 No entry (two years service)					
				Awarded First G.C. Badge wef 3 Aug 42 DO 29/42					
				CERTIFIED TO BE A TRUE AND CORRECT EXTRACT FROM THE REGIMENTAL BOOKS IN MY CUSTODY					
				(F.X. CHABALLE) CAPT RCE 2IC "B" COY, 3 Bn R.C.E.					

(PTO)

"B"

SUMMARY OF EVIDENCE

in the case of

D-63135, Cpl. Armand Danis, B Coy, 3 Bn RCE, C.A., a soldier of the Canadian Army placed on active service.

CHARGES:- 1. ~~Neglecting to obey a Company daily part I Order.~~ Stealing Public property

2. (Alternative) Conduct to the prejudice of good order and military discipline.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS

Lt L.E. Lavigne, B Coy, 3 Bn RCE, C.A., having been duly sworn, states:-

Acting on information I received on the morning of 23 OCT 44, I questioned spr Durette concerning some petrol. Spr Durette told me he had seen Cpl Danis and spr Desjardins unload two Jerry cans from his truck at a civilian house. The cans appeared to be full and were taken through the entrance of a backyard. I asked spr Durette to show me the place. Having located the house, but having no power to investigate in a private house I called upon the local civilian police for assistance. The police came with me, we entered the ~~place~~ backyard and the gendarme questioned the woman who was there. The gendarme then translated back to me that it was true that a Canadian soldier had brought some petrol there.

She indicated a small trench covered with brush and earth and upon investigation pulled out of it two Jerry cans . I opened them and assured myself that they were full of army petrol. I brought this petrol back to camp and had the C.O.M. place Cpl Danis under arrest.

The accused declined to cross-examine.

Louis Lavigne
.....
L.E. LAVIGNE, Lt.

SECOND WITNESS

D-47441 Spr Durette, R., B Coy, 3 Bn RCE, C.A., having been duly sworn, states:-

On the morning of 23 OCT 44, I drove my truck to 2 Drilling Coy RCE along with me were Cpl Danis and Spr Desjardins and two other soldiers. The two others got off at 2 Drilling Coy RCE and Cpl Danis told me to drive on to LOPPEM. He had me stop in front of a house. There, he got off and went at the back of the truck. I then heard him say to Spr Desjardins to hand him two cans. I looked through my mirror and saw Spr Desjardins hand to Cpl Danis two Jerry cans. I was surprised because I was sure that the night before, those cans were not there, since I check my truck every night after work. I did not make any remarks to Cpl Danis. I then saw him carry the two cans through a gate leading to a backyard. The cans appeared to be full, judging from the way the Cpl was carrying them.

I then drove down the road, turned my truck around and as came back to the house. Cpl Danis got back on the truck and we returned to 2 Drilling Coy RCE. During the trip Cpl Danis who was sitting next to me, did not mention the Jerry cans.

During the afternoon, I reported what I had seen to Cpl Cote, our MT Cpl.

Lt Lavigne later questioned me. I repeated my story and he asked me to show him the house where the petrol had been unloaded. We went in his jeep along with Cpl Cote. After I had pointed out the house to Lt Lavigne, we drove to a neighboring village, picked up two gendarmes and returned to the house.

(continued on next page)

SECOND WITNESS (continued from previous page)
I remained in the jeep whole they went in the backyard. When they returned Cpl Cote was carrying two Jerry cans.

The accused declined to cross-examine.

E-47441. Spr Durette, R.
E-47441 Spr DURETTE, R.

THIRD WITNESS C-12497 Spr Desjardins, R.A.F., B Coy, 3 Bn ROE, C.A., having been duly sworn, states:-
On Monday 23 OCT 44 I was in a truck driven by Spr Durette. Cpl Danis who was in charge of our party was sitting in the front. The truck went to 2 Drilling Coy ROE and where two men got off. The truck then moved off and we came to the village of LOPPEM and stopped in front of a house. Cpl Danis came at the back of the truck and told me to hand him two Jerry cans and passed them to him. I did not get off truck and did not have the faintest idea of what he intended to do with them. I saw him go to the house, [illegible]. He then went in the courtyard, carrying the two Jerry cans. He returned without them and got back in the truck ans we drove off.

The accused declined to cross-examine.

R.A.F. Desjardins
C-12497 Spr DESJARDINS RAF

FOURTH WITNESS Miss Lucie Puype, 54 Loppem Place, Loppen Common, Occidental Flanders, having been duly sworn, states:-
One day I told this man here present and whom I recognise that it would be necessary to have petrol to clean his uniform of the grease spots.
He brought the petrol one day when I was not there. The petrol was received by my sister who did not know for what purpose this petrol was needed.
A few days later, Monday the 23 OCT 44, I returned home and learned that the soldier whom I now recognise had brought the petrol and that later the police had come with soldiers and had taken the petrol with them.

The accused declined to cross-examine.

Lucie Puype
Miss Lucie Puype.

FIFTH WITNESS Miss Germaine Puype, 54 Loppem Place, Loppem Common, Occidental Flanders, having been duly sworn, states:-
On Monday 23 OCT 44 in the morning the cpl, whom I recognise, came at the door and asked me to open the garden gate, because he wanted to put some Jerry cans in the garden. I did not question him but he understood that those were for another person who was supposed to come and fetch them later. I do not understand French very well and took it for granted that there was nothing wrong in accepting this petrol. Later in the day I received the visit of two gendarmes and two soldier who asked me if I had received some Petrol Jerry cans. I answered yes and they asked me how many cans and where they were I showed them the place and handed the petrol back to one of the soldiers.

The accused declined to cross examine.

Germaine Puype
Miss Germaine Puype

QUESTION TO THE ACCUSED

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER OF THE ACCUSED

I have nothing to say.

I certify that Rules of Procedure 4(C),(D),(E) and (F) have been complied with.

Taken down by me in the presence of the accused at Field, this 4th day of NOVEMBER, 1944.

.....

~~F.X. CHASALLE) CAPT RCE~~
~~216 "B" Coy 3 Bn R.C.E.~~

Statements of fourth and fifth witnesses given in French. I certify that the statements as shown are exact and complete translations as given, and as read back to the witnesses.

(F.X. CHASALLE) CAPT RCE
216 "B" Coy 3 Bn R.C.E.

SIXTH WITNESS

B-47405 CSM Nadeau R., B Coy, 3 Bn RCE, C.A., having been duly sworn states:-

I, personnaly, read the company daily part I order no 84 dated 18 Oct 44, on the company morning parade at 0700 hrs the 18 Oct 44. I afterwards, inquired if everybody had understood and the answer was in the affirmative. Cpl Danis A. was on parade. This order was immediately posted on the company notice board. I hereby produced company part I order daily No 84 dated 18 OCT 44.

The accused declined to cross-examine.

.....
B-47405 CSM Nadeau, R.

QUESTION TO THE ACCUSED

Do you wish to makeany statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER OF THE ACCUSED

D-63135 Cpl DANIS, A., "B" Coy 3 Bn RCE states:-

First of all I want to tell that when Jerry cans are found on the side of the road, they are picked up and placed in one of our vehicles.

On that day I do not remember the date, I was in charge of a working party. We were working on the pipeline along the Autostrade about one and a half mile ~~frx~~ east of the LOPPEM Clover Leaf Turnabout. I noticed some Jerry cans on the side of the road. Those cans were full of petrol. I had them loaded in one of our trucks, and went about my business.

About eight or ten days later, I had my battle-dress cleaned at a house near our billets. I paid 30 francs for this.

(continued on next page)

ANSWER OF THE ACCUSED (continued from previous page)

When I went out that night, I found that my battle-dress was still covered with grease and oil spots. I went to buy some grapes at a store in LOPPEM. I was asked inside, While talking I excused myself for being so dirty and explained that I just had my suit cleaned but without much success. The lady offered to clean it for me, but said that she would need some petrol to wash it in.

On my way back I suddenly remembered about the petrol found on the road, and figured that I could use it if it was still in the truck.

That same morning I had been detailed along with three plumbers, to connect up two ends of the pipeline. Not having the proper tools to cut the pipe, I had to go to 2 Drilling Coy RCE to have it done. They said they would do it when the work they had on hand would be completed.

I left two of my men there, to wait and went with the truck to hand the petrol to the girl who had promised to clean my battle-dress.

She was not there when I arrived, and I therefore handed the petrol to another girl, older than the one I was to see, saying that I would be back. I was with sapper Desjardins, who handed me the petrol from the truck, It was then about 0930 hrs 23 OCT 44.

Later in the day I was placed under arrest by the C.S.M.

Armand Danis
D-63135 Cpl DANIS, A.

The accused does not wish to call any witnesses.

I certify that the foregoing summary of evidence consisting of four pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C),(D),(E) ~~and~~ (F) ~~and (G)~~ have been complied with, at Field, this 8th day of NOVEMBER, 1944

F.X. Chaballe Capt
(F.X. CHABALLE) CAPT RCE
3 Bn R.C.E.

HH-59
GNR DANIS H

HH-59 A1.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWELFTH day of JUNE, 1943.

Whereas it appears to me, the undersigned, an officer in Command of ROYAL CANADIAN ARTILLERY, FIRST CANADIAN DIVISION, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*[I am unable to appoint:~~

~~*(1) Three Officers to form the Court.~~

~~*(2) A Field Officer as President.~~

~~for the following reasons, namely:—]~~

* Omit if not applicable.

Proceedings Reviewed

For Reviewing Officer (J.A.G.) C.M.H.Q.

3 Jul 43

(33)

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	C.S. McKay	2 Cdn LAA Regt

Members.

Rank.	Name.	Regiment.
Capt.	T.A. Wooton	2 Cdn LAA Regt
Lieut.	R. Jean-Marie	2 Cdn LAA Regt

*Signed (A. Bruce Matthews) Brigadier

Commanding CRA 1 Cdn Div

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D.6616 Gnr. DANIS, Herve 2 Cdn Fd Regt	Sec. 15(1) AA	Guilty	Guilty To undergo detention for a period of forty days. C.S. McKay Major 13 Jun 43	I confirm the findings and sentence of the Court. A B Matthews Brig. CRA 1 Cdn Div. 13 June '43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— A-A

(Signed) A B Matthews (A. Bruce Matthews) Brigadier
Commanding CRA 1 Cdn Div
Convening Officer (e)

(Signed) C.S. McKay Major
2 Can Lt A A Regt RCA
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of June, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(~~4. The officers under instruction~~)

were duly sworn.

C.S.M.

* Omit if not applicable.

Signed this 13th day of June 1943.

C.S. McKay, Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

C.S.M.

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 13 day of June 1943.

A B Matthews Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of D.6616 Gnr. Danis H. 2 Cdn Fd Regt.

(a) (Dated) 13 June 43 (Signed) R Reid Major A/CO.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B7.

CHARGE SHEET

THE ACCUSED NO D-6616 GNR. DANIS, H. 10 CDN FIELD BATTERY , 2 CDN FIELD REGIMENT, R.C.A.
A SOLDIER OF THE CANADIAN ARMY OVERSEAS
WHILE ON ACTIVE SERVICE

IS CHARGED WITH

FIRST CHARGE

Sec 15(1) AA ABSENCE WITHOUT LEAVE

in that he

In the field was absent without leave from 1330 hrs 20 May 43 to 0900hrs 9 June 43. a total absence of 19 days 19 hrs 30 mins.

Dated this 12 day
of June 1943
"In the Field"

(H.M. HAGUE) Lt-Col.
Commanding 2 Canadian Field Regiment

TO BE TRIED BY A FIELD GENERAL COURT -MARTIAL

(A.B. MATTHEWS) BRIGADIER
C.R.A. 1st Cdn Division .

Dated this 12 day
of June 1943 "In the Field"

D.S. McKay Major
Pres. F.G.C.M.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. D6616.... Gnr. Denis H.....

of 2 Can. Fld. Regt.....and in my opinion he is

fit to undergo Trial by Court Martial.

W. J. Logan
.....
Medical Officer.

Station. Field.....

Date. 13 June 43.....

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held ~~at~~ in the Field on the 13th day of June 1943 by order of Brig. A. B. Matthews Commanding 1 Cdn. Div. Artillery dated the 12th day of June 1943.

President.

C. S. McKay, Major
2 Cdn Lt A A Regt R.C.A.

Members.

Capt. T. A. Wootton
2 Cdn Lt A A Regt R.C.A.

R. Jean-Marie, Lieut.
2 Cdn. Lt A A Regt. R.C.A.

Certified that the accused was medically examined before undergoing trial C. S. McKay Major

~~, Judge Advocate.~~ C.S.M.

Trial of* D. 6616 Gnr Davis, ~~Herbe~~ Serve C.S.M.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~ C.S.M.

~~, waiting member takes his place as a member of the Court.~~ C.S.M.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt. E. R. Zavitz, 2 Cdn. Fd. Regt. R.C.A.

~~Counsel~~‡ or defending officer† Lieut. H. W. Hilder 2 Cdn Fd. Regt. R.C.A.

At 1155 o'clock the Trial commences.

The order convening the Court is read, and is marked A1 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused.

No, sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
16M—8-41 (1319)
H.Q. 1772-39-324

B

The President, members and ~~judge-advocate~~ are duly sworn. e.s.m.

~~The following officers under instruction are duly sworn.~~ e.s.m.

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 40 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.* e.s.m.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.* e.s.m.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.* e.s.m.

Answer.

The accused having pleaded Guilty to the first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty

Certified

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused D.6616 Gnr. Davis, Herve is found guilty of the First Charge.

*The summary (or abstract) of evidence is read, marked "C", signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes, sir

Answer. The accused in mitigation of punishment says:—

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

"I received a letter from my wife telling me that our baby was very sick. She was very worried and that's why she asked me to go down there. I went down there. When I came to 11 Clyde Rd. Addiscombe, Surrey where my wife lived I found out that the baby was ill. I don't know exactly what it was - I thought it was only a cold so I told my wife not to worry, she will be all right after three days I went to Dr. Francis and the

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

next morning he came over, examined the baby and told us she had the measles. He examined her throat and said that she might have diphtheria and said that I had better not leave until the report came back. When he came back he said there was no sign of diphtheria. By this time the baby was getting better. The doctor gave me a paper. My wife was not very well or strong. I stayed with her until the baby was better, arranged with a neighbor to look after her and returned to my unit.

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

No, sir. *Answer.*

Evidence as to character.

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~ O.I.M.

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it.~~

Evidence of character, &c.

Capt. E.K. Zavitz, 2 Can. Fd Regt. R.C.A. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* I have no present AFB 296 and MFM 6 of the accused.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E1, signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes, sir.

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes, sir.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

No, sir.

Question to the accused. Do you wish to address the Court? *Answer.* No, sir.

The Court is closed for the consideration of the sentence.

F

Sentence

Sentence.

The Court sentence the accused

See Schedule

O. S. McKay, Major.
Pres. F.G.C.M.

TELEPHONE:
ADDISCOMBE 1427

HOURS:
9 TO 10.30 A.M.
2 TO 3 P.M. | EXCEPT
7 TO 8 P.M. | WEDNESDAY

196, LOWER ADDISCOMBE ROAD,
CROYDON,
SURREY.

31. 5. 1943

I hereby Certify that Julia Eaton aged 11/12 yrs

residing at 11, ~~[illegible]~~ Clyde Road, Croydon

has been suffering ~~has recovered~~ from Measles since 25.5.43

& been very ill with a bad throat also.

~~and is~~ ~~able to follow~~ ~~employment~~.

[illegible]

M.A., M.B., Ch.B.

cc1.

SUMMARY OF EVIDENCE
IN THE CASE OF
NO. D6616 GNR. DANIS H.

By direction of the Commanding Officer, Lt.-Col., H. M. Hague, E.D., the evidence was taken on oath.

FIRST WITNESS:- No. G7075 L/Sgt. Newcombe H.S. 10 Cdn. Fd. Bty., 2 Cdn. Fd. Regt., having been duly sworn, states:-

I am a L/Sgt. of B.H.Q. Troop 10 Cdn. Fd. Bty., 2 Cdn. Fd. Regt. At 1330 hrs on 20 May 1943 I did call the roll of the said B.H.Q. Troop on the regular afternoon parade at Kilmarnock, Scotland , No. D6616 Gnr. Danis H. was absent. He has not been on parade with the troop or Battery since May 20th when he was on the morning parade.

The accused declined to cross-examine the witness.

.....H.S. Newcombe.....
(G7075 L/Sgt. Newcombe H.S.)

SECOND WITNESS:- No. B10059 B.S.M. Gill, J.A., having been duly sworn, states:-

I am the B.S.M. of the 10 Cdn. Fd. Bty., 2 Cdn. Fd. Regt., At 0900 hrs 9 June '43 No. D6616 Gnr. Danis H. reported in to me at the Battery Office at Kilmarnock, Scotland. He was sober and properly dressed. He had not been present with the Battery since May 20th '43.

The accused declined to cross-examine the witness.

.....J.A. Gill.....
(B10059 B.S.M. Gill, J.A.)

Having been duly warned in accordance with R.P. 4 (e) the accused declined to make any statement or to give evidence upon oath.

Certified that R.P. 4 (c), (d), (e) and (f) have been complied with.

Taken down in writing at Kilmarnock, Scotland, this 12th day of June 1943 in the presence and hearing of the accused by me.

.....
(W. W. V. Foster) Capt.,
2 Canadian Field Regiment

O. C. McKay, Major
Pres. F.G.C.M.

No. D6616 Name Danis H. Sqn., Battery, or Company 7 Fd Btyrps CAO Date of enlistment 18/9/39 G.C. Badges Service or Proficiency Pay M.F.M. 6

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. F.F. McCordick Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Banstead	11/8/40	Gnr		WOAS proj etc failed to carry out orders. Sec. 40 A.A. Rewritten in accordance with K.R. Can. 1524 16 Oct. 41.	Capt Burns L/Bdr Zozula	14 dys det	13/8/40	Lt-Col Tremaine	
Addington	15/11/41	Gnr		WOAS AWL from 2300 hrs 14/11/41 to 1045 hrs 15/11/41 Total 11 hrs 45 mins Sec. 15 (I) A.A.	Sgt Marshall L/Sgt Skelly	7 dys C.B.	17/11/41	Major F.F. McCordick	
Field	25/12/41	Gnr		WOAS AWL from 2230 hrs 25/12-41 to 2100 hrs 26/12/41 Total 22 hrs 30 mins Sec. 15 (I) A.A.	Sgt Marshall Sgt Sansom	7 dys C.B.	27/12/41	Maj G.M. Walker	

A. McKay Major
Pres. F.G.C.M.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8/8/42	Gnr.		WOAS AWL from 1700 hrs 8/8/42 to 1330 hrs 18/8/42 (Total 9 dys 20 hrs 30 mins) Sec 15(I)AA	BQMS Wilson L/Sgt Skiller	20 dys F.P. NoI & forf 20 dys pay FR&I149(I)B	21/8/42	T.M. Medland Lt-Col	Auto forf 10 dys pay FR&I 149(I)A.
Field	9/9/42	Gnr.		WOAS AWL from 1200 hrs 9/9/42 to 2020 hrs 14/9/42 (Total 5 dys 8 hrs 20 mins) Sec 15 (I).A.A.	Sgt Dempster L/Sgt Newcombe H.S	27 dys F.P. NoI & forf 27 dys pay FR&I 149 (I)B .	17/9/42	T.M. Medland Lt-Col	Auto forf 6 dys pay FR&I 149 (I)A.

CERTIFIED TRUE AND EXACT COPY AS OF 12 JUNE 43

[signature] Capt.,
J. O. Howitt) Adjt.,
2 Canadian Field Regiment.

E1.

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D6616	Gnr.	Danis, Herve	2 Canadian Field Regiment

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the numbers of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For Sec. 15 (1)	2	times	4	times.
For Sec. 40		times	1	times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ N.A. beginning on the N.A. day of N.A.

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 2 days in military custody, making a total of 2 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~XXXXXXXX~~ attestation paper is 35 years

6. The date of his ~~XXXXXXX~~ attestation specified in his ~~XXXXXXXX~~ attestation paper is 18 /9/39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

8. The accused is entitled to deferred pay or gratuity in respect of Nil service

9. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated and in his regiment (or corps or department) the rank of N.A. dated

[illegible]

C.S. McKay, Major
Pres. F.S.C.M.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D6616 Rank Gnr. Name Danis, Hervis of 2 Cdn Fd Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Nil	Nil	Nil	Nil	Nil

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12 day of June 1943

[signature] Capt.
(J.O. Howitt)Adjt.
2 Canadian Field Regiment

14. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NIL

(Note:—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

REQUEST OF ACCUSED TO BE REPRESENTED BY
AN OFFICER.

I do request that an officer defend me at my trial by Court Martial.

12 June '43

.....
(No. D6616 Gnr. Danis H)

XX-133

PTE DANKS T.

XX-133

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA 40/P & S/1698 (1944))

Convened by Order of Brig. H.O.N. Brownfield Comd C.C.R.A. H.Q. 1 Chn Corps dated 29 Nov. 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-83573	Pte	Proceedings Reviewed 31 Dec 43	Thomas	Danks	1 Chn Corps Def Coy (Lorne Scots)

J. H. Haugh Capt
Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Sicily on (*date(s)*) 1 Dec. 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans ..... The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans ..... The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F.L. Shipp	R.C.A.M.C. H.Q. 1 Chn Corps
Member	Capt	G.C. Jarvis	Black Watch (RHR) H.Q. 1 Chn Corps
Member	Capt	A.B. Laver	R. Wpg. Rif. H.Q. 1 Chn Corps
Judge-Advocate			
Prosecutor	Lieut.	J.R. Newell	1 Chn Corps Def. Coy
Defending Offr	Lieut	W.W. Leach	H.Q. 1 Chn Corps

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DA p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~(as)~~ plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA: 6 (2) (k)	NOT GUILTY	GUILTY	
2nd AA: 19	NOT GUILTY	GUILTY	
3rd A.A. 40	NOT GUILTY	NOT GUILTY	
4th A.A. 40	NOT GUILTY	GUILTY	
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... ~~beginning on (date)~~ ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which Nil. days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for ninety days.

(Sgd) ..... 1 Dec 43 (Sgd) F.L. Shipp

Judge-Advocate, if any. Date awarded. President. (RP 45, 50) RCAMC

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the findings & sentence of the Court.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) 11/3.

(1. AA 57A. Delete if not used.)

Date 4 Dec 43 (Sgd) A.C.M. Brownfield Brig

Commanding 4 Cdn Armd Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B83573 Private Thomson, D.	4 Dec 43	J Beatty, Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

XX-133

FIELD GENERAL COURT-MARTIAL

CFAA86 (To first of AFAA 40/P.M.S./1698 (Mod))

Convened by Order of Brig. H.O.N. Brown, D.S.O. Comd 4 C.A.R.A. H.Q. 1 Can Corps dated 29 Nov. 43.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-83573	Pte.	Proceedings Reviewed 31 Dec 43	Thomas	Dawson	1 Cdn Corps Def Coy (Some Scots)

J.H.N. Waugh Capt Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Sicily on (date(s)) 1 Dec. 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans —

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans —

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	F.L. Shipp	R.C.A.M.C. H.Q. 1 Cdn Corps
Member	Capt.	G.C. Jarvis	Black Watch (R.H.R.) H.Q. 1 Cdn Corps
Member	Capt.	A.B. Lever	R. Nfld. Regt. H.Q. 1 Cdn Corps
Judge-Advocate			
Prosecutor	Lieut.	J.R. Nowell	1 Cdn Corps Def. Coy
Defending Offr	Lieut.	W.N. Leach	H.Q. 1 Cdn Corps

~~Questions by President~~ : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans ~~NO~~ (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea

(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) ~~separately~~ arraigned ~~jointly~~ on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 6(2)(b)	NOT GUILTY	GUILTY	
2nd AA 19	NOT GUILTY	GUILTY	
3rd AA 40	NOT GUILTY	NOT GUILTY	
4th AA 42	NOT GUILTY	GUILTY	
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 751, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ 46 beginning on (date) 46. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for ninety days.

(Sgd) ..... Judge-Advocate, if any. 1 Dec 43 Date awarded. (Sgd) F. L. Shipp President. (RP 45, 50) RCAMC

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised : AA 54(7). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the findings & sentence of the Court.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) 11/3.

(1. AA 57A. Delete if not used.)

Date 11 Dec 43 (Sgd) H. W. Brownfield Brig Commanding 4 Cdn Armd Bde Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B83573 Private Thomas, Sankey & Dec 43		S Beatty, Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

XX-133

FIELD GENERAL COURT-MARTIAL

CFA96 (1st Rev. of AFA96 40/P.R.C. 8/1608 (1st Rev.))

Convened by Order of Brig. H. O. N. Brownfield Comd 4 C.A.R.A. H.Q. 1 Can Corps dated 29 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-83573	Pte	Thomas	Dawson	1 Can Corps Def Coy (Lorne Sco)

Proceedings Reviewed 31 Dec 43 J H Clough Capt

Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Sicily on (date(s)) 1 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereof. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans ~~NIL~~

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans ~~NIL~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 108, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	F. L. Shipp	R.C.A.M.C. H.Q. 1 Can Corps
Member	Capt	G. C. Jarvis Black Watch (RHR)	H.Q. 1 Can Corps
Member	Capt	A. B. Lever R. Wpg. Rif	H.Q. 1 Can Corps
Judge-Advocate			
Prosecutor	Lieut.	J. R. Newell	1 Can Corps Def Coy
Defending Offr	Lieut	W. W. Leach	H.Q. 1 Can Corps

Questions by President : Is the Prosecutor a lawyer ? Ans NO. Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ..... before arraignment make(s) (no) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-83573 Pte. DAINES, T., on the strength of 1 Cdn Corps Def Coy, a soldier of the Cdn Army Overseas is charged with, When on Active Service.

First Charge Section 6,(2),(h). Army Act	WHEN A SOLDIER ACTING AS A SENTINEL LEAVING HIS POST BEFORE BEING REGULARLY RELIEVED, in that he, in the field in Sicily, at approximately 1910 hrs, 10-Nov-43, when on duty as a sentinel at "A" Mess, HQ 1 Cdn Corps, did leave his post without being regularly relieved.
Second Charge Section 19 Army Act	DRUNKENNESS, in that he, in the field in Sicily at approximately 1940 hrs, 10-Nov-43, after having been regularly posted as a sentry at "A" Mess, HQ 1 Cdn Corps, was drunk.
Third Charge Section 40 Army Act (Alternative)	CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, in the field in Sicily, at approximately 1940 hrs, 10-Nov-43, after having been regularly posted as a sentry at "A" Mess HQ 1 Cdn Corps, became unfit for duty by reason of indulgence in alcoholic stimulants.
Fourth Charge Section 40 Army Act	CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, in the field in Sicily, at approximately 1930 hrs, 10-Nov-43, after having been regularly posted as a sentry at "A" Mess HQ 1 Cdn Corps, did improperly leave his rifle in a building known as Casa S Barbara when his duty required him to have his rifle with him.

J. Beatty Capt
(J. Beatty
Officer Commanding
1 Cdn Corps Def Coy

In the Field
In Sicily
13-Nov-43

To be tried by Field General Court Martial.

H.W. Brownfield
(H.W.N. Brownfield) Brigadier
C.C.R.A. 1 Cdn Corps.

In the Field
29 Nov 43.

8LS.

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-83573	Private		Thomas	DANKS	1 Cdn Corps Def Coy (Lorne Scots)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (date) 29 Nov 43 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". HG

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ HG
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ HG
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ HG
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F.L. Shipp	RCAMC. H.Q. 1 Cdn Corps

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	G.C. Jarvis	Black Watch (RHR) H.Q. 1 Cdn Corps.
Captain	A.B. Laver	H.Q. 1 Cdn Corps.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	T.H. Eberlee	H.Q. 1 Cdn Corps.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	-////-------	

On Active Service in the Fd

in Sicily (Country.)

Date 29 Nov 43

H.O.N. Brownfield

(H.O.N. Brownfield) Brigadier (Signed personally. RP 105 fn 2.) (Rank.)

Commanding CCRA 1 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance *not* practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn, or subject to cross-exam by Prosecutor, Court or JA (RP 46 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 537.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 165 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 733.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

1st Cdn corps defence Cy 5.
(Lorne Scots)

I certify that I have this morning examined B-83573 pte Marks T. (Lorne Scots) and in my opinion he is fit to undergo trial by court martial.

In the field
1 Dec 43

John E. Baker Capt.

R.C.A.M.C.

~~1940~~ 1940 [illegible]

825.

Trial of B-83573 Pte T. Danks. - 1 Cdn Corps Def. Coy.

Prosecution

First Witness - Lt. R. G. Hennell, HQ 1 Cdn Corps, having been duly sworn states:-

At approx 1855 hrs 10 Nov I was called by "A" mess steward to investigate a disturbance at entrance to "A" mess. I proceeded to the ~~entrance~~ front gate of "A" mess. Upon reaching ~~no~~ sentry posts, I found no sentries. I went onto the road leading in front of "A" mess to Casa F. Bambara, ~~I~~ ~~as~~ where I found Pte. Nesbitt, one of the guards. Pte. Danks returned shortly to his post, without his rifle. Pte Danks then went to get the cpl. of the guard. He returned with a cpl, who proceeded to ~~supp~~ supply two new men for the guard, and place Pte. Danks & Pte Nesbitt under arrest. I then proceeded to Casa F. Bambara with Cpl Watson, R.C.C.S., where I found Pte. Danks rifle with mag. removed in a room on second floor ~~in~~ in which there were soldiers and several civilian females, and wine was being served. I took the rifle back to "A" mess. I consider Pte Danks unfit for duty when he returned to ~~duty~~ his post, due to indulgence in alcoholic liquor.

Cross Examined

It was the first time I had seen the accused that evening.

By the Court

~~when I~~ I told the accused he was under arrest when the Cpl & Lt. Anderson returned.

2. I considered Pte ~~Bo~~ Danks unfit for duty because his speech ~~of accused~~ was not clear. His Gait was not steady. He was without his rifle. He was away from his post without permission.

3. ~~[illegible]~~ I did not see the accused emerge from Casa F. Bambara

4. Rifle I picked up in Casa F. Bambara bore name tag of Pte T. Danks. ~~+ bore~~ I took down the number of the rifle

EXHIBIT "A" Submitted – rifle No 24L0084 + tag bearing name Danks T + rifle No. 24L0084

Second Witness – Lt J. S. Anderson, HQ. 1 Cdn Corps having been duly sworn states.

At approx 1900 hrs, 10 Nov, I heard a shot outside A'men but did not take any action. Shortly afterwards, upon information received, I went out to sentry post where there was no sign of the accused. I went looking for him + ~~found~~ saw him come out of the bldg known as Casa F. Bambara. When questioned, the accused said he was the sentry. I returned to sentry post with accused. In company with accused I went to find guard commander. I ~~we proceeded~~ contacted ~~obtained~~ an N.C.O. from Mf Cay HQ who put two ~~[illegible]~~ new sentries on duty in place of ~~Pte Danks~~ the accused + Pte Nesbitt. It was approx 1930 hrs when I saw accused leave Casa F. Bambara. I do not believe he was any chance of accused returning to his post between time we started looking for him and I saw him leaving Casa F. Bambara. Accused ~~was able to walk~~ appeared to me to be under the influence of alcohol, as his walk was unsteady at times, + his speech not as clear as I believe should be from a soldier on duty.

~~Defense~~

Cross Examined.

I did not see accused before I saw him coming out of Casa F. Bambara. Mine was being sold at Casa F. Bambara + Villa Paradiso, but I did not see the accused take a drink.

There are no lavatory facilities for the guard of "A" mess.

I did not see the guard commander at any time that night.

By the Court.

The accused attempted to enter the Casa Bambara after being ordered to return to his post. He did not re-enter, he was at that time he was without his rifle.

I heard Lt. Hemmel warn the accused that he was under arrest.

Third Witness - B45388 L/cpl Garnham Jr, HQ 1 cdn corps Def Coy, having been duly sworn states:-

As acting 2 i/c of my section, at 1645 hrs 10 nov + checked the accused upon & posted him as a guard at A mess. He appeared to be normal, ~~and~~ I then brought him down to his post at "A" mess. I posted the accused and one other sentry at "A" mess + told them that one man would remain at the gate + one would patrol the A mess area. I told them they could alternate. I then ~~proceeded to post the remainder~~ accused + the [illegible] They appeared sober when I posted them, but seemed a talkative. The bldg known as Casa F. Bambara is not within the area of the patrol of guard at "A" mess

Cross Examined

~~#~~ On 10 Nov we did not expect to have to ~~have~~ provide a guard for "A" mess, as we ~~were~~ had been detailed as an adv party to our unit. The ~~guard~~ detail came as a surprise, and ~~the accused~~ did not know ~~prior to~~ until approx 1600 hrs that ~~he~~ we had to ~~go on~~ provide guard.

There was wine in the bldgs in which we were working during the day, ~~and we had planned a party for that evening. The accused had~~ I knew that the accused had something to drink during the ~~day~~ morning, but I do not know what quantity.

I was a private at the time, but I had posted sentries before, and consider the ~~man~~ accused fit for duty.

By the Court

The guard was detailed ~~by~~ by 2d Lt Lent.

~~Our Platoon Sgt~~

I had been appointed as a/2 ½ my section by ~~2d Lent~~ my Pl Sgt while we were in Eng.

In the morning I knew, by his actions, that the accused had been drinking. ~~by his~~

(5) (Danks)

825.

Fourth Witness B75359 L/Cpl. LAURIKS, H.C. having been duly sworn states:-

On night of 10 Nov 43 at approx 1900-1930 hrs I was sitting in Casa F. Bambara when the accused rushed in and handed me his rifle, saying that he had wanted to go to the toilet. He then rushed right out again (the same way he had come in) without giving me a chance to answer. About ten minutes later the ADC came in with Cpl Watson, ~~when asked if~~ looking for the rifle of the guard ~~accused~~. I produced the rifle. I had. I did not know the ~~a rifle I had~~ accused was on guard, at the time. ~~He I saw the accused prior to the accused handing me his rifle, I had seen him~~ At 1830 hrs, when I first arrived in the Casa F. Bambara, the accused was in the room. He left about 10 minutes later.

Cross Examined

The accused had been drinking when I first saw him. It could have have been earlier than 1830 hrs when I first saw him in the Casa F. Bambara. I am not sure of the time.

By The Court

I did not see the accused take a drink. He was properly dressed when he handed me his rifle.

Fifth Witness K52346 Cpl Watson, J. A. Sigs, 1 Cdn Corps, having been duly sworn states:-

On 10 Nov 43 at approx 1900 hrs, in vicinity of Paridise Hotel, I was stopped by an officer and asked if I had seen a guard. I replied that I had not seen any guard

At 1930 hrs I was ordered by an officer to go up to a room in the casa F Bambara to get a rifle. ~~[illegible]~~ I went up with the offr and found a rifle in possession of two soldiers sitting at a table. They turned it over to me and I gave it to the offr.

No cross examination.

Sixth Witness B73997 Sgt McKelly, R. HQ 1 Cdn Corps

Ref Coy having been duly sworn states.

~~[illegible]~~ On the night of 10 Nov 43 at approx 2015 hrs, at A" mess, I ~~was~~ placed the accused under arrest. In my opinion he was unfit for duty at this time, as he was under the influence of alcoholic liquor, was not in possession of any arms, and incapable of controlling himself. ~~in a manner~~

Cross examined

I did not see the accused prior to placing them under arrest

By the Court

I had been ordered by Lt Hewell to place the accused under arrest.

Seventh Witness D 73892 Cpl. Thompson ~~B~~W.G. HQ 1 Cdn Corps Def Coy, having been duly sworn states:

At 2015 hrs on the night of 10 Nov 43, ~~I saw~~ I saw the accused and he was unfit for duty due to drink, as I could smell liquor on his breath.

Cross Examined

I had not seen the accused prior to placing him under arrest.

By The Court

~~His~~ speech of accused seemed normal

Eighth Witness Lt. G.R. Lent, HQ 1 Cdn Corps Def Coy, having been duly sworn, states —

I identify exhibit "A" as ~~the~~ a rifle belonging to the accused.

The guard was first mounted on "A" mess ~~[illegible]~~ at 1600 hrs 10 Nov 43. ~~Accused was one of the first two guard to be posted in [illegible]~~ Guard was detailed at 1430 hrs 10 Nov

Cross Examined

I personally warned the accused for the guard duty at approx 1430-1500 hrs 10 Nov and he appeared perfectly sober. The accused could have been ~~drinking~~ under the influence of drink, and it possible I might not have noticed it.

(8) (Danks).

8LS.

By the Court

I saw the accused ~~later~~ as ~~they~~ he were being marched to his duty & he appeared fit for duty. S

ELS.

Defence

First witness: B-83573 Pte T. Danks, 1 Adn Corps Def Coy having been duly sworn states

At 1000 hrs 10 Nov 43 I was part of a working party cleaning St. Georgio Hotel and Pte Nesbitt & I bought three bottles of wine. We started to drink the wine as we were working, until dinner time. After dinner several of our party and myself bought several more bottles of wine and continued to drink the wine as we worked. Sometime around 1500 hrs, Pte Nesbitt & myself were detailed by Lt. Lent for the next shift of guard duty. We washed & got ready for our tour of duty. I was feeling the effects of the liquor then, although I endeavoured not to show. I had supper then and was taken to our post by Cpl. Garnham whatever details he gave us for our duties, do not remember.

I did not know I was to go on guard until afternoon.

I drank over two bottles of wine prior to the I was warned for guard. When I went on guard, my thing was blurred, and my mind was not clear. This was the first guard duty I had done since in Sicily.

I have never been charged with drunkenness, since being in the

I had the odd drink after being warned for & before I was posted to my duty.

I felt drunk when I was warned for guard

(10)

825.

Cross Examination

I have been in Hdq. Coy since July 42 and have done one week's guard per month since that time. At the time I was warned on 15th Nov, I did not realize the importance of a guard due to my condition.

There are six of others had as much to drink as I did.

To my knowledge I had nothing to drink after going on guard.

I did not tell any body I was "feeling high", but tried to cover up. I ~~did~~ made no attempt to try and get excused from guard.

By The Court

I was on the gate at 11 hrs and asked the relief to relieve me while I went to toilet in Casa de Barbara I do not remember what I did in the Bldg, how long I was there, or handing my rifle over to any one. I remember one officer asking me if I was the guard.

When I went on guard I do not feel that I was not in full condition to carry out the guard.

It was when I was on my way to the rear post that everything went blurred.

I had no reason to believe that there was a lavatory in the Casa de Barbara.

(11) 825.

Second Witness B63584 Pte. Templeton, N. 1 Coln Comb Def Coy,

having been duly sworn states:-

I have known the accused for six months. On 10 Nov 43, at 1 oo hrs the accused + myself bought four bottles of wine from a vendor in the street. We the accused + myself drank the four bottles between us by noon. We had no idea that we would be called on for a guard that day. I was at the meeting held by Lt. Lent in the afternoon. The accused was there and I would say that he had been drinking and pretty high, as I was also. I would say that at 16 50 hrs the accused was drunk and unfit for duty.

Cross Examination

I took no steps to keep the accused from going on duty, even though drunk, as I did not it was up to me as a private soldier

(12)

825.

Third Witness B58493 Pte. A. M. Hale, Base 1 Cdn Corps Def Coy, having been duly sworn states:

On 10 Nov 43 at 1130 hrs Pte Nesbitt, the accused & myself drank a bottle of wine. At 1630 Pte Nesbitt, the accused & myself drank another bottle of wine between us. The accused was well under the influence of liquor from which getting ready for guard to approx 1645 hrs. Last drink I had with him was at approx 1645 hrs.

Cross Examination.

~~I noticed the accused was~~
I consider the accused was drunk before going on guard but took no steps to ~~~~ ~~him~~ ~~~~ ~~him~~ ~~~~ ~~him~~

(13) 8LS.

Fifth Witness - Lt. G.R. Lent. 1 Cdn Corps Def Coy
(Character Witness) having been duly sworn states.-

Accused is a member of my platoon. He has been a good soldier. Willing. No crime. Works well. Normally quiet. Popular. No trouble.

Def. Make closing address & refers to ~~AA~~ ~~MC~~ & MML Chap III secs 4 5 & 46. S

Pros. Closing address. Man admits ~~being~~ getting drunk in further after being warned & witnesses state that he was sober enough, when posted, to look sober. Effect of wine is debatable. S

R.P. 83B was complied with in the case of each witness. S.

875

SUMMARY OF EVIDENCE

Summary of evidence in the case of--
B 85573 Pte Danks T
1 Cdn Corps Def Coy, a soldier of the Canadian Army Overseas.

The Commanding Officer has not directed, nor has the accused demanded that the evidence be taken on oath.

FIRST WITNESS Lieut R.G.Hennell, On the strength of HQ 1 Cdn Corps, A.D.C to the Corps Commander states as follows:-

At approx 1855 hrs, 10 Nov 43, I was in my room at A Mess with Lieut J.S.Anderson. The Mess Serjeant came in and complained that one of the sentries had discharged his rifle at one of the batmen. With Lieut Anderson I went to the main gate of the Mess and found no sentries. One sentry was located immediately, the other, whom I now recognise as the accused, arrived some 30 mins later at approx 1940 hrs.

He returned to his post with clothing disheveled, minus his rifle and under the influence of intoxicants.

Without being asked he volunteered the information that he had been to the lawtory. I advised him that he was under arrest, ordered him to stand at ease beside his post and asked him no questions. He was later identified as Pte Danks.

After ordering Cpl Thompson to bring new sentries and personnel to take the old sentries (now in arrest)into custody. I left Lieut Anderson with the sentries while I went in search of the missing rifle. I enlisted the aid of Cpl Watson, R.C.O.C. who was standing near-by and entered a building identified as Casa F Bambara from which the accused had been seen to emerge. This building is outside the A Mess enclosure. On the second floor of this building, in a crowded room in which wine was being served to soldiers and civilian females, I found rifle No 24L0084 and a detached magazine charged with five rounds (Rifle and magazine produced and marked Exhibit A). I removed both from the premises and took them to my room. The rifle bore a name tag with "Danks" written thereon. The building in which the rifle was found turned out to be a brothel.

The accused was taken into custody by Sjt McNally and Cpl Thompson at approx 2050 hrs.

The accused declines to cross-examine the witness.

R.G.Hennell Lieut

SECOND WITNESS Lieut J.S.Anderson, On the strength of HQ 1 Cdn Corps, A.D.C. to the Corps Commander states as follows.

At approx. 1855 hrs, 10 Nov 43, I accompanied Lieut Hennell to the main gate of A Mess to investigate an alleged disturbance by the sentry i.e. The firing of a rifle at a batman.

While Lieut Hennell interrogated one of the sentries, I set out to locate the other. The second sentry, whom I recognize as the accused came out of a building on the street opposite the Paradiso, minus his rifle at approx 1940 hrs. He began talking to one of the soldiers billeted at the Paradiso. I questioned him as to whether he was the second sentry. He said "Yes" I then ordered him to proceed immediately to the main gate of A Mess to see Lieut Hennell. He attempted to go back into the house to get his rifle but Lieut Hennell ordered him to come directly to the gate.

He was thereupon questioned as to the whereabouts of the Cpl of the guard. He said the guard HQ was located at the Hotel Victoria, but he did not know how to get there. In his conversation with me it was evident the accused was under the influence of alcohol and incapable of carrying out his duties as a sentry but had control of his faculties.

I questioned a carabinier who then took both the accused and myself to the Hotel Victoria where Cpl Thompson was found although no guard commander was available.

I returned with Cpl Thompson and the accused at 1950 hrs to the main gate A Mess.

/2...

SECOND WITNESS (Continued from Page 1)
Cpl Thompson was instructed to obtain replacements for the guard and I went to supper leaving the sentries in arrest with Lieut Hennell. When I returned at 2015 hrs the relief had arrived and both sentries were placed under close arrest.

The accused declines to cross-examine the witness.

J.S. Anderson Lt.

THIRD WITNESS B-95388 Pte Garnham J.G., On the strength of 1 Cdn Corps Def Coy, 2 i/c of the section detailed for guard states as follows.

At approx 1700 hrs, 10 Nov 43, I was detailed by Lieut Lent to see if the two sentries, The Accused and Pte Nesbitt, were getting ready to go on guard at A Mess. Both sentries were ready. I was instructed by Sjt Hokes to post the sentries at A Mess. This I did. Both sentries were quite sober and fit for duty. My instructions as to their duties were clearly understood by both and when I left with the two relieved sentries both the accused and Pte Nesbitt were carrying out their duties in the proper manner.

The duties to which the accused and Pte Nesbitt were assigned were to guard A Mess by one sentry patrolling within the enclosure in which the building - A Mess- is situated and the other standing guard at the main entrance gate to the enclosure.

The building, Casa P Dambara, is a building outside the said enclosure and neither the accused or Pte Nesbitt had any right or occasion to enter this building during their tour of duty at A Mess.

The Accused and Pte Nesbitt were posted shortly after 1700 hrs and their tour of duty was from 1700 hrs until 2100 hrs.

The accused declines to cross-examine the witness.

J.G. Garnham Pte

FOURTH WITNESS B-75359 L/Cpl Lauriks, H. On the strength of 1 Cdn Corps Def Coy states as follows;

I was in a Cabaret Club in the Casa P Dambara Building drinking wine when a soldier who I recognize as the accused asked me to look after his rifle while he went to the lavatory. I took the rifle and put it on the floor beside me. Some time after, probably about five or ten minutes Cpl Watson in the company of Lieut Anderson asked if I had the guards rifle. I replied that I had a rifle but do not know if it belongs to the guard. He ordered me to give it to Lieut Anderson which I did.

Question. In your opinion was Pte Danks under the influence of liquor.

Answer. The meeting was so short that I would be unable to tell. There was nothing in his actions to lead me to believe he had been drinking.

The accused declines to cross-examine the witness.

H. Lauriks L/Cpl

FIFTH WITNESS K-82346 Cpl Watson J.A., On the strength of 1 Cdn Corps Sigs states as follows:

At approx 1900 hrs 10 Nov 43, I was looking for the men in my section just outside the Paradiso Cafe when an Officer came up to me and asked if I knew where the sentry was. The signalman with me Sgmn Gaston, had an idea where he might be found.

/S.....

FIFTH WITNESS (Continued from Page 2)

. . About 30 minutes later another Officer ordered me to go with him into the building opposite the Paradiso to look for a rifle. This I did. The rifle was in the posession of a soldier who gave it up when ordered to do so.

The accused declines to cross-examine the witness.

J A Watson Cpl

SIXTH WITNESS B-112156 Sgmn. Gaston, R.H., on the strength of 1 Cdn Corps Sigs states as follows:

I was with Cpl Watson at some time between 1900 hrs and 1930 hrs, 10 Nov 43 when I heard an officer asking if anyone had seen the guard. I told him I had an idea where he might be found.

Question. Had you personally seen the guard.
Answer. No Sir. I had heard some men talking about a guard.
Question. Did you direct the Officer to where the guard was.
Answer. No Sir. He didn't ask me for any more information.

The accused declines to cross-examine the witness.

R Gaston

SEVENTH WITNESS B-73992 Sgt McNally R., on the strength of 1 Cdn Corps Def Coy states as follows:

At approx 2010 hrs on 10-Nov-43, I was informed that two men were required as sentries at A Mess and that the A.D.C. wanted to see me at the gate. I detailed two men and in the company of Cpl Thompson we proceeded to A Mess. The A.D.C. Lieut Hennell ordered me to place the two sentries, one of which I recognize as the accused, under arrest, and to post two new sentries. Both the sentries under arrest were standing to attention. I ordered the accused to surrender his weapon. He had none. The A.D.C. stated that he was in posession of the accused rifle.

In my opinion the accused was unfit for duty owing to being under the influence of liquor. I took both men in arrest back to their billets where they were kept under guard.

The accused declines to cross-examine the witness.

R McNally

EIGHTH WITNESS B-73892 Cpl Thompson, W.G. on the strength of 1 Cdn Corps Def Coy states as follows:

At approx 2010 hrs on 10-Nov-43, I went to A Mess with Sgt McNally and two men to replace two sentries, one of which I recognize as the accused, who had been placed in arrest.

Both the accused and Pte Nesbitt had been drinking and were, in my opinion, unfit to carry on the duties as sentries.

The accused declines to cross-examine the witness.

W G Thompson Cpl.

NINTH WITNESS Lieut. G.R.Lent, on the strength of 1 Cdn Corps Def Coy, Commander of the platoon in which Pte Danks is on strength. states as follows:

The Rifle, No 24L0084 is the rifle on issue to B-83573 Pte Danks, T.

The accused declines to cross-examine the witness.

GR Lent

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE

/4.....

I certify that the foregoing summary of evidence consisting of four (4) pages was taken down by me in the presence of the accused in the field in Sicily, this 13th day of November, 1943 and that Rules of Procedure 4c, d, e, and f, have been complied with.

Lieut
(J.F.Newell)
1 Cdn Corps Def Coy
Officer detailed to take the summary of evidence.

In the Field,
Sicily,
13-Nov-43

No. B-85573 Name Danks T | Sqn., Battery, or Company | Corps Cdn Infantry | Date of enlistment 5/2/42 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 2 | Signature O.C. Company, etc. S.Beatty | Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remark
				CERTIFIED TRUE COPY					
				Previous sheet destroyed after 6 months Service 5/8/42					

(P.T.O.)

"B"

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 83573	Pto	Danks, T.	1 Can Corps Def Coy.

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery or Company~~ ~~Conduct sheets~~ (Field) Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for ..... beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~#~~ Nil days in civil custody, and ~~Nil~~ 21 Nil days in Air Force military custody, making a total of ~~#~~ 21 Nil days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 29

6. The date of his commission specified in his record of service is attestation attestation paper N.A.

7. The service which the accused is allowed to reckon towards discharge is N.A.

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc. N.A.

9. The accused is in possession of or entitled to no air force decoration, or air force reward ~~for is in possession of or entitled to). State any air force decoration or reward.~~ military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the Air Force regimental rank of N.A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated..... N.A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of ..... years.

In the rank of ..... years. N.A.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

N.A.

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~14th~~ 1st day of December 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

RECORDED AT CMHQ IN AB 1604

5E-124

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A.B7025 Pte DANLUCK S. 4 VRD 1 CCOD

	Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 24(2)	NOT GUILTY	NOT GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ~~days, of which days were spent in hospital.~~ (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by the Court~~ :

The accused was Released

(Sgd) ..... 16 Apr/45 ..... President. (RP 45, 50.)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(*)

(*. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA31) 40/P & S/1698 (40701) 4/388

Convened by Order of Brig JE SAGER Comd "E" Gp CRU dated 14 Apr 45

30 APR 1945

PROCEEDINGS REVIEWED 30 Apr 45 Capt. REVIEWING OFFICER, JAG BRANCH CMHQ

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(Number)	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
			Stanley	DANLUCK	4 VRD 1 CCOD

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date) 16 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.30 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(6), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to the interpreter ? Ans .....~~

~~The interpreter is sworn.~~(1) Do you object to SGT RM SINCLAIR as shorthand writer ? Ans No, Sir. The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No, Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(5). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, each Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-col	D.L.	REUMAM	M. CRU
Member	Capt	S.I.	MACDONALD	1 CRU
Member	Lt	F.J.	McINTERE	1 CCRU
~~Judge-Advocate~~				
Prosecutor	Capt	H.R.	HAINES	1 CCOD
Defending Offr	Lt	H.C.	DUDGEON	1 CCOD

Questions by President : Is the Prosecutor a lawyer ? Ans NO. Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AE rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 496 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is moved and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B1 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO SIR.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not ~~establish a prima facie case~~ against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans Give evidence Do you intend to call witnesses on your behalf?
Ans Yes SIR Are they witnesses as to character only? Ans NO SIR
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).) NOTE ATT

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and makes to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)~~
~~Or~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (5), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. MFB 355 or MFB 294. 2. MFH 6. 3. RP 46, KR Can 536. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or add anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas KO 309, 2323, RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas KO 309, 2323, RP 46. As to sentences see AA 41(5), 94(6), p 130. When accused MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), 94(6), p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The accused Elects trial by F.G.C.M.

CHARGE SHEET

The accused, A-87026, Pte. Stanley Danluck, of 4 V.R.D., 1 Cdn C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, is charged with:

While on Active Service

FIRST CHARGE
Sec. 24(2)
Army Act

LOSING BY NEGLECT HIS STEN MACHINE CARBINE

in that he

in the Field, on 8 Dec 44, was deficient Sten Machine Carbine, Reg. No. F.M. 36637, value £3-9-4.

(R.C. Kelly) Lt.-Col.,
O.C. Depot Battalion,
H.Q., 1 Cdn C.O.D., R.C.O.C.

Peper Harrow
Apr 45.

To be tried by Field General Court Martial.

(J.K. [illegible]) Brigadier,
[illegible] Cdn Corps, C.M.U.

BORDON, Hants
14 Apr 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.87026	Pte		Stanley	DANLUCK	4 VRD 1 CCOD RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Apr 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Lt - Col	D.L. Redman, V.D.	Gen List	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Capt	L. MacDonald	RCE	1 CERU
Lieut	F.J. McIntyre	RCASC	1 CASCRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

J.E. Sage
J.E. SAGE
(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Dat 14 Apr 45

Commanding "F" Gp, C.R.U.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 2) 40/P & S/1097 (6143)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(HO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566). As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 115(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Medical Officers' Certificate
KR(Can) para 557

I certify that I have this morning examined No. A-87026
Rank Pte Name Daniuck, S. of 4 V.R.D. 1 CCOD (Unit)
and in my opinion he is ~~unfit~~ fit* to undergo trial by Court Martial.

[signature] (Rank)
Unit
Medical Offr., RCAMC

Station Field
Date 16 Oct 45
(of Court Martial)

* Cross out one N/A and initial

TRANSCRIPT BY: F.88126 SGT AH SINCLAIR

CASE OF

A.87026 Pte DANLUCK S 4 VRD 1 CCOD

PROSECUTION

FIRST WITNESS

Lt KS McARTHUR, 1 CASCRU, having been duly sworn, states:

I am the QM of 1 CASCRU, and here is a MFM 513A showing a Sten Gun, Number FM36637, as having been issued to one A.87026 Pte DANLUCK S, in Sep 44. The signature of this soldier appears in coln 50 opposite his name. The sheet of this MFM 513A, is Sheet No. 1003.

MFM 513 A MARKED EXHIBIT "1"

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH KR 83(B).

SECOND WITNESS

H.2504 Sgt GARSIDE F, 5 VRD 1 CCOD, having been duly sworn, states:

In Sep 44 I was the Pln Sgt of the s/s det from 1 CCOD and the accused whom I now recognize was in my pln. On or about the 19 Sep 44 a rifle inspection was made by Capt Smith at which time the accused reported to me that there was some trouble with his Sten Gun, I believe the Cocking Handle was damaged, and he was told to take it to the Unit Armourer and have it repaired. The following day there was another rifle inspection and the accused didn't have his Sten Gun repaired as he said there wasn't any Unit Armourer available. The pln later left for France and the accused was still in possession of a defective Sten Gun.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH KR 83(B).

THIRD WITNESS

Lt AW COULTER 4 VRD, 1 CCOD, having been duly sworn, states:

I'm now Capt Coulter, but I was Lt Coulter in Dec 44 at No. 2 Staging Camp at Doullons, half way between Amiens and Arras. An order was put out in Nov by the O-D 1 CCOD that a Kit Stores would be set up at each Staging Camp. At No. 2 we set aside a special room which was adjoining the Orderly Room and we put a sign outside it, which sign the men had to pass under on their way to eat the Mess Hall, and the sign read "Kit Stores, kit may be checked in here". It was put up to the Offr IC of the pln of men or the NCO IC as to whether they would check their kit or not. At the time the draft was returning to the UK this Kit Stores was still there and this order had never been recinded. The men however came in under a different arrangement when coming back from draft, but I know of no arrangement made by the OC, Lt-col Townsend, to check their kit in this particular room. As far as the offrs were concerned we never mentioned the Kit Stores at all. We assumed that all the men would see the sign or knew why it was there from experience in the past. They all came in, about 600 of them, but I doubt whether the Kit Stores would have held all their kit, and no order was put out by the Offr IC of the Camp to tell them this, and I don't know whether any orders were given by the offrs IC of the draft either. I don't remember seeing the accused.

CROSS-EXAMINED

Q. In other words the arrangement for convoy personnel was not under your jurisdiction at the time the draft was returning from o/s?
A. No.

Q. If the Kit Stores had been open would it have been possible for the 600 men to store their eqpt there?
A. I doubt it, they would have had to stack it, which would mean mixing them up somewhat. I might add here that all men were CB'd at the time to Camp and it may have been thought not to use the Kit Stores.

Q. What is this document I show you?
A. It's a certified extract from Pt I Orders of O/D 1 CCOD d/14 Oct 44. This is the order that I have been referring to. I would point out now that Convoy personnel differ from draft personnel. Convoy personnel when they leave the Camp take with them only their blankets, as their trip was usually for 6 days. On the other hand the draft personnel had with them all their eqpt. This order refers only to Convoy personnel.

ORDER MARKED EXHIBIT "2".

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH KO 83(3).

FOURTH WITNESS

D.91994 A/CQMS MacINNIS RS, 4 WHD, 1 CCOD, having been duly sworn, states:

I'm the A/CQMS of 4 WHD and I recognize the accused. On 18 Dec 44 I inspected the accused's kit at Borden Camps and I found him to be deficient 1 Sten Gun. I don't now remember the number of it, but the vocabulary price is $3/30, and there is a 10% Administrative charge on top of that.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH KO 83(3)

THE PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS

The accused, having been duly sworn, states:

Sir, I will make the statement here that I made at the Summary, that is, I'm not guilty as charged. On returning at No. 2 Staging Camp for embarkation I understood that eds would be posted in rooms occupied and where the eqpt was left. In accordance with instrs I occupied the room alloted to me and laid out my eqpt. We came to this room, there were 22-23 of us, and were told that the room would be a place where we would spend a day or two or a couple of evenings. I laid my eqpt down, including my Sten Gun, in one of the corners, and went to a picture show and when I came back from the show it was gone. I reported it to my Plh Sgt, Sgt Agnew. I didn't hear anything more about it until Jan when I told my CO I didn't have my Sten Gun and I was taken off the draft. I might also say here that there was also another Sten Gun missing that

same night as mine went missing. At the time my Sten went missing it still was not repaired.

CROSS-EXAMINED

Q. I take it you assumed that there were gds posted?
A. Over the eqpt I took it for granted that there would be gds posted, yes, Sir.

Q. Were there any other people in Camp besides CCOD?
A. Not as far as I know. There was the FFI outside the Camp, Sir.

Q. What was your job before this?
A. Operating a mail truck between 1 Bch at Brussels and Antwerp, Sir, until I joined this draft to report to England.

Q. You were aware that there was Kit Stores?
A. I saw the Kit Stores, Sir, but I never used it because I slept in the mail truck with the mail and always kept my eqpt with me.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

K.73016 Sgt AGNEW RA, 1 CCOD, having been duly sworn, states:

On 7-8 Dec I was IC of the pln in which the accused, whom I now recognize was a member. On arriving at No. 2 Staging Camp we were posted to our billets, and that night there was a picture show on in the Mess and we went there. I recd no instrs about posting gds over kit. There were approx 28 men in the pln, and I stayed in the same quarters with them, and I did just the same as the rest of them, I put my eqpt at the head of my bed - we were all in one room.

Q. Was there a Kit Stores sign?
A. Yes, I had seen it some 3 wks before but there was nothing stating it WAS for OUR kit, Sir.

Q. Did you see it in operation?
A. No.

Q. Was there any attendant or gd in this Kit Store to your knowledge?
A. No, not to my knowledge, Sir.

Q. Approx how many were on the draft?
A. I couldn't say, but it was quite a large draft.

Q. Would it have been practicable for all the men to turn in their eqpt and take it out again each time they went to any place like the picture show, to mess, etc., and then put it back in this Kit Stores place again?
A. Not in my opinion it wouldn't, Sir, the room wouldn't hold it all anyway, in my opinion.

Q. Did you see any FFI men in the Camp?
A. I saw FFIs within our area, Sir, in the Camp, and they were actually within our lines.

Q. Did you see a gd posted at the bottom of the ramp?
A. No.

Q. What action did you take with regard to the loss of this Sten?
A. I marked it down on a piece of paper when the accused reported it to me, Sir, then went to the Orderly Room, but there was nobody there, and then we left for England next morning and the piece of paper became lost in the scuffle.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THIRD WITNESS

It RP RYAN, 1 CCOD, having been duly sworn, states:

I am now the Asst Adjt at H.Q. 1 CCOD and when they were returning from o/s I was Offr IC Records and was Adjt of the draft, and I travelled with the draft from Boullens.

Q. Were there any orders issued by the offr IC of the draft as to the storage of kit?
A. Not to my knowledge.

Q. Would you have known if there had been?
A. I think I would.

Q. Was anyone put IC of the Kit Stores to operate them?
A. I don't believe there was a Kit Stores for the draft, they were only used for the convoys.

Q. About gds?
A. I believe there was a gd on the gate which was the only entrance to the Camp. The draft however was CB'd, and the gd was there to keep all outsiders out of the Camp.

Q. Were any specific orders issued about posting a gd over the eqpt in the rooms?
A. I think that was left to the judgment of the offr IC of the draft. It wasn't an order that gds be posted.

Q. Were you quite satisfied that the eqpt would be safe in the diff rooms?
A. I'd say it would be safe with regard to the eqpt getting out of the area, but I couldn't go so far as to say it would be safe with regard to other soldiers in camp.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(2)

THE DEFENCE IS CLOSED

STATEMENT BY THE DEFENDING OFFICER ON THE FINDING

It has been brought out that these orders issued about Kit Stores did not apply to the draft returning from o/s. They applied only to Convoy Personnel as it distinctly states in Exhibit 1. The draft was travelling with full eqpt, they were CB'd to Camp, gds were posted, and these orders as to Kit Stores didn't apply. It has also been proven that there were no Kit Stores operating and therefore it was a physical impossibility to check rifles, Sten Guns and other eqpt into these Stores. It was also understood by everyone that eqpt would be left in the billets without a gd and that it would be perfectly safe. The accused was assigned a position in the room, and laid out his eqpt as did all the other personnel, including the Sgt if you will remember. As far as taking eqpt or

other stuff with them such as Sten Guns and rifles with them, it was a physical impossibility, to cary such to meals and picture shows, and I think the fact that picture shows were arranged by the Offr IC of the draft would show that he didn't intend the men to carry their eqpt with them. The charge is that the accused lost by neglect this Sten Gun, and the Prosecution must prove the neglect. The accused, as instructed, laid his eqpt out, went to the picture show, and on returning to the room found his Sten Gun gone, and reported it to his Pln NCO. From there on it was the duty of the Pln NCO to report it to someone in authority so that the place could be searched. That this was no done is in way the fault of the accused who has been charged with negligence. Considering the facilities at the Camp and the understanding about gds I maintain that the accused was not in any way negligent and that he by reporting the loss of the gun, done what was required of him.

STATEMENT BY THE PROSECUTOR ON THE FINDING

The accused was issued with a Sten Gun, and was later found to be deficient of this gun. It might be pointed out from the time that the gun was issued to him it was his reponsibility as a soldier to look after it. During the fracas at Doullons, orders in some instances have proven to be vague, however there WAS a Kit Stores for anyone's use, although it was not a definite order that the Kit Stores be used. It was assumed that gds had been posted not only to keep unauthorized personnel from entering the Camp area, but also make certain that the people in the Camp didn't leave with eqpt which didn't belong to them. This was taken for granted, and there was not anything definite to show that gds had been placed. It was a known fact that unauthorized personnel had been seen in the Camp lines. Regardless of orders being passed down from higher authority to the soldier himself, his knowledge of the people about the country and the fast moving circumstances should have caused him to think firstly about the safety of his eqpt rather than the picture show, and for this reason I consider that the accused was at least partially responsible for the loss of his weapon.

THE COURT IS CLOSED TO CONSIDER ITS FINDING

THE COURT IS REOPENED

I acknowledge receipt of Exhibit
1, which I agree to hand to the
Adjt to be held by him subject
~~to~~ for further orders.

Capt.
Prosecutor

PART I ORDERS D.O. No.21 d/14 Oct 44

5. CHECK ROOM STAGING CAMPS

Kit storage or check rooms are being opened at our staging campsso that convoy personnel in future may check their personal belonging, weapons etc. when proceeding away from the Staging camp lines while in transit, in order that same may be properly protected.

In future there should be absolutely no reason for losses of kit or equipment belonging to Convoy Personnel. Unless satisfactory explanation are given for such losses the men concerned will be charged with wilful neglect and disciplined.

EX 2

CERTIFIED TRUE COPY

ADMINISTRATIVE ORDER NO. 3 d/2 Oct 44 O/D 1 CCOD

7. No 1 and 2 STAGING CAMPS, OD 1 CCOD

(a) Staging Camps will provide for OD 1 CCOD convoys,

(i) Accomodation
(ii) Food
(iii) Petrol, oil and water
(iv) Guards for convoy vehicles

(b) The RCEME Detachment operating under the O i/c Staging Camps will be responsible for the recovery and repair of all casualties reported in there by O i/c Convoys. In addition it will do the inspection and repair of all OD 1 CCOD Admin. Vehs passing through the Staging Camp or permanently at the Staging Camp

(c) Os i/c Staging Camps will be responsible for the discipline and control of all OD 1 CCOD personnel while at his respective Staging camp

(d) A ll reports and returns from the Staging Camps will be signed by or for O i/c of the Staging Camp.

(e) All Os i/c Convoys on entering the Staging Camps will report forthwith to the Report Centres, and on leaving will be cleared from the Report Centres.

CERTIFIED TRUE COPY

Certifed that I have received the following:

Copy of Charge Sheet

Copy of Summary of Evidence

List of Witnesses for Prosecution

List of Witnesses for Defence.

(A 87026 Pte Danluck, S.)

(A-87026 Pte. Danluck, S.)

-:-:-:-:-:-:-:-:-:-:-:-:-:-:-

LIST OF EXHIBITS

N I L

-x-x-x

SUMMARY OF EVIDENCE

in the case of

A-87026 Pte. Danluck, S., on strength of 4 V.R.D., 1 C.C.O.D., a soldier of the Canadian Army Overseas

By Direction of the O.C. Depot Bn, 1 CCOD, RCOC, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution.

Lt.- K.S. McArthur, RCASC, on strength of 1 CASCRU, an Officer of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I am Lt.- K.S. McArthur, and am employed as Q.M. at 1 CASCRU. On the 29th Sept 1944, A-87026, Pte. Danluck, S., was issued with a Carbine machine Sten No. FM 36637 on our issue voucher 1003 (513A) for which he signed. According to our records he was S.O.S. this Unit on 20th Sept 44. Authority D.O. Part II, No. 222, at which time he was in possession of this weapon."

The accused declines to cross-examine this witness

SECOND WITNESS For the Prosecution.

H-2504, Sgt. Garside, F., 5 V.R.D., on strength of 1 C.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I, Sgt. Garside, F., was N.C.O. in charge of No. 15 platoon, 1 O.D., 1 C.C.O.D., Pte. Danluck was in my platoon at that time. As the formation of the Overseas Detachment 1 C.C.O.D. personnel from 1 CASCRU transferred to R.C.O.C. under Capt. W.F.R. Smith at Whitley, on 20th September 1944, Capt. Smith called a rifle inspection which was carried out by platoon Officers and N.C.O's, accompanied by Lieut. Parsons W.I., noted that the Sten Gun of Pte. Danluck had a jammed cocking handle, which I pointed out to Lieut. Parsons. He was told to take it to the Armourer for repairs. There being no armourer on duty, he appeared on the final inspection before proceeding Overseas, still in possession of Said Sten Gun.

The accused declines to cross-examine this witness.

THIRD WITNESS for the prosecution.

Lieut. A.W. Coulter, on strength of 4 V.R.D., 1 C.C.O.D., an Officer of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I, Lieut. Coulter, was an Officer stationed at No. 2 Staging Camp, during the period in December 1944, when the Overseas Detachment was returning from France, and was present when the returning advanced party came through. We had been given instructions by Capt. Winters to allocate this draft to suitable sleeping quarters; in the case of the Advance Party it was "G" Block. Heretofore,

THIRD WITNESS for the prosecution. (Cont'd)

all convoys staging at our camp had been warned of the existence of a Kit Stores which had been set up on instructions from H.Q., to protect the men from pilferers. This Kit Stores was still in operation at the time this draft went through and all the former N.C.O's and Officers in charge of Convoys were aware of this fact and were supposed to warn their men that if they had an intention of leaving camp to visit Doullons during the evening, they would be wise for their own protection to check their kit into the stores. Pte. Danluck who had been employed on the mail truck, may not have had full knowledge of this ruling and evidently was notinformed by his N.C.O.

The accused declines to cross-examine this witness

FOURTH WITNESS for the prosecution.

D-91994 A/CQMS MacInnis, R.S., on strength of 4 V.R.D., 1 C.C.O.D. R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

On Kit Inspection performed by me on 18 Dec 44 at 4 V.R.D., Pte. Danluck, S., was found to be deficient one Carbine machine Sten. The price of the Sten as certified by DDOS, C.R.U. is £3-3-0 plus ten per cent administration charges (Six shillings and fourpence making a total of £3-9-4($15.50) in Cdn Funds.

The accused declines to cross-examine this witness

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused elects to make a statement.

The accused, A-87026, Pte. Danluck, S., on strength of 4 V.R.D., 1 C.C.O.D., a soldier of the Canadian Army Overseas, states as follows:-

"I, Pte. Danluck, S., am not guilty as charged. On returning at No. 2 Staging Camp Doullens for embarkation. I understand that guards would be posted in rooms occupied and where equipment was left. In accordance with instructions, I occupied the room alloted to me and laid out my equipment.

FIRST WITNESS for the Defence

K-73016 Sgt. Agnew, R.A., on strength of 1 C.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"At Doullons, on 7 and 8 Dec 44, I, Sgt. Agnew, was in charge of a platoon of which Pte, Danluck was a member. The Platoon was part of a draft returning from France. I and my platoon were at No. 2 Staging Camp, Doullons; the two days and nights of 7 and 8 Dec 44, I remember Pte. Danluck reporting to me the loss of his Sten Gun. I know that he had previously been in possession of it at Doullons, as I saw him place it at the head of his bed. I took his name and number which I lost before morning, it being found out after coming back to the room from the pictures, and before I had opportunity of reporting it to the Orderly Room. On returning to England, Pte. Danluck was posted to one of the Sub-Units of 1 C.C.O.D.. No further action was taken by me on my return to England. It was my understanding that guards were posted by No. 2 Staging Camp and therefore I did not detail any men to guard the equipment. I was not aware that there was such place as Kit Stores where we could leave our equipment, in fact we received no instructions concerning it.

The accused declines to cross-examine this witness.

I certify that the foregoing Summary of Evidence consisting of 3 pages(3) was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

K Blanch Capt

Officer detailed to take Summary of Evidence.

Bordon, Hants,
7 Apr 45

XX-133

PTG DANKS T

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 6.(2)(b)	NOT GUILTY	GUILTY	
2nd AA 19	NOT GUILTY	GUILTY	
3rd A.A. 40	NOT GUILTY	NOT GUILTY	
4th A.A. 40	NOT GUILTY	GUILTY	
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 42.)

Sentence Awarded by the Court :

To undergo detention for ninety days.

(Sgd) [illegible] 1 Dec 43 (Sgd) F. L. Shipp Major RCAMC President (RP 45, 50)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(7). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the findings & sentence of the Court.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~(1) 11/3.

(1. AA 57A. Delete if not used.)

Date 4 Dec 43 (Sgd) A. H. Brownfield Brig Commanding 4 Cdn Armd Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B83573 Private Thomas, Hanks + Dec 43		S. B. Batty, Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

XX-133

FIELD GENERAL COURT-MARTIAL

(AFA86 (in lieu of A.F.B. 41/P & S/160B (Revised))

Convened by Order of Brig. H.O.N. Brown-field Comd 4 Cdn Armd Bde C.R.A. H.Q. 1 Cdn Corps dated 29 Nov. 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-83573	Pte	Proceedings Reviewed 31 Dec 43 [illegible] Reviewing Officer (J.A.G.) C.M.H.Q.	Thomas	Hanks	1 Cdn Corps Reinforcement Unit (Home Establishment)

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Sicily on (date(s)) 1 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or precedent para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(2) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(C). Delete, if not applicable.)

A5. President to accused : Do you object to [illegible] as interpreter ? Ans —

~~The Interpreter is sworn.~~(1) Do you object to [illegible] as shorthand writer ? Ans —

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(2) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	F. L. Shipp	R.C.A.M.C. H.Q. 1 Cdn Corps
Member	Capt.	G. C. Jarvis	Black Watch (R.H.R.) H.Q. 1 Cdn Corps
Member	Capt.	A. B. Lever	R. Wpg. Rif. H.Q. 1 Cdn Corps
Judge-Advocate			
Prosecutor	Lieut.	J. R. Newell	1 Cdn Corps Base Coy
Defending Offr	Lieut	D. W. Leach	H.Q. 1 Cdn Corps

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans ~~Not~~ (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 68 (B) and fn 2 were not followed. See DN p 2.)

A8. The accused ~~stands mute~~ before arraignment makes(s) (no) ~~false~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused ~~does~~ ~~does~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M.M.L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. ~~The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning~~ of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans _____(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by ~~using Record Form E on p 3.~~

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8~~ inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~application~~ (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the _____ charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans Yes I wish to give evidence myself. Do you intend to call witnesses on your behalf ?

Ans Yes. Are they witnesses as to character only ? Ans No.

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st and 2nd of 2 charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or The President announces that the accused is found Not Guilty on all charges and as to the remainder finds~~ and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. ~~President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?~~

Ans —

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No (2)

(1. RP 37(C), 46(2). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 120. Consistency only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-83573 Pte. DANES, T., on the strength of 1 Cdn Corps Def Coy, a soldier of the Cdn Army Overseas is charged with, When on Active Service.

First Charge
Section 6,(2),(h).
Army Act

WHEN A SOLDIER ACTING AS A SENTINEL LEAVING HIS POST BEFORE BEING REGULARLY RELIEVED, in that he, in the field in Sicily, at approximately 1910 hrs, 10-Nov-43, when on duty as a sentinel at "A" Mess, HQ 1 Cdn Corps, did leave his post without being regularly relieved.

Second Charge
Section 19
Army Act

DRUNKENNESS, in that he, in the field in Sicily at approximately 1940 hrs, 10-Nov-43, after having been regularly posted as a sentry at "A" Mess, HQ 1 Cdn Corps, was drunk.

Third Charge
Section 40
Army Act
(Alternative)

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, in the field in Sicily, at approximately 1940 hrs, 10-Nov-43, after having been regularly posted as a sentry at "A" Mess HQ 1 Cdn Corps, became unfit for duty by reason of indulgence in alcoholic stimulants.

Fourth Charge
Section 40
Army Act

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, in the field in Sicily, at approximately 1930 hrs, 10-Nov-43, after having been regularly posted as a sentry at "A" Mess HQ 1 Cdn Corps, did improperly leave his rifle in a building known as Casa Sambara when his duty required him to have his rifle with him.

R. Beatty Capt
(R.Beatty)
Officer Commanding
1 Cdn Corps Def Coy

In the Field
In Sicily
13-Nov-43

To be tried by Field General Court Martial.

H.O.N. Brownfield
(H.O.N. Brownfield) Brigadier
C.C.R.A. 1 Cdn Corps.

In the Field
29 Nov 43.

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 June 63 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 40 fn 10*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(7), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 48(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD (FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of reproduced books see AA 163 (1) (g) (h).*)

(v) Exhibits numbered Ex A, Ex B, etc.

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after remarks of sentence awarded. (*AA 53(9), RP 116(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

485.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8) 40/PAM/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-83573	Private	Thomas	DANKS	1 Cdn Corps Def Coy (Lorne Scots)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (date) 29 Nov 43 endorsed by me, ~~(or by an offr of my staff for me)~~," To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	F.L. Shipp (Must be named. RP 106.)	RCAMC. H.Q. 1 Cdn Corps (Unit.)

MEMBERS.

Captain	G.C. Jarvis	Black Watch (RHR) H.Q. 1 Cdn Corps.
Captain (Rank.)	A.B. Laver (Named or detailed. RP 106.)	H.Q. 1 Cdn Corps. (Unit.)

WAITING MEMBER.

Captain (Rank.)	T.H. Eberlee (Named or detailed, if any. RP 106.)	H.Q. 1 Cdn Corps. (Unit.)

JUDGE-ADVOCATE.

(Rank.)	---------- (Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Sicily (Country.)

Date 29 Nov 43

H.N. Brownfield

(H.N. Brownfield), Brigadier (Rank.)
(Signed personally. RP 105 fn 2.)

Commanding CCRA 1 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(H)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pages in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions where accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).* *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of registered books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

1st Cdn corps defence Cy 815.
(Lorne Scots)

I certify that I have this morning examined B-83573 pte Marks T. (Lorne Scots) and in my opinion he is fit to undergo trial by court martial.

In the field
1 Dec 43

John E. Baker Capt.

R.C.A.M.C.

1940 1940 MS

825.

Trial of B-83573 Pte T. Danks. - 1 Cdn Corps Def. Cay.

Prosecution

First Witness - Lt. R. G. Hennell, HQ 1 Cdn Corps, having been duly sworn states:-

At approx. 1855 hrs 10 Nov I was called by "A" mess steward to investigate a disturbance at entrance to "A" mess. I proceeded to the ~~entrance~~ front gate of "A" mess. Upon reaching ~~no~~ sentry posts, I found no sentries. I went onto the road leading in front of "A" mess to Casa F. Bambara, ~~I~~ ~~as~~ where I found Pte. Nesbitt, one of the guards. Pte. Danks returned shortly to his post, without his rifle. Pte Danks then went to get the Cpl. of the guard. He returned with a Cpl, who proceeded to ~~supp~~ supply two new men for the guard, and place Pte. Danks & Pte Nesbitt under arrest. I then proceeded to Casa F. Bambara with Cpl Watson, R.C.C.S., where I found Pte. Danks rifle with mag. removed in a room on second floor ~~in~~ in which there were soldiers and several civilian females, and wine was being served. I took the rifle back to "A" mess. I consider Pte Danks unfit for duty when he returned to ~~duty~~ his post, due to indulgence in alcoholic liquor.

Cross Examined

It was the first time I had seen the accused that evening.

By the Court

~~when~~ I told the accused he was under arrest when the Cpl & Lt. Anderson returned.

2. I considered Pte ~~Pte~~ Danks unfit for duty because his speech ~~of accused~~ was not clear. His Gait was not steady. He was without his rifle. He was away from his post without permission.

3. ~~[illegible]~~ I did not see the accused emerge from Casa F. Bambara

4. Rifle I picked up in Casa F. Bambara bore name tag of Pte T. Danks. ~~+ [illegible]~~ I took down the number of the rifle

EXHIBIT "A" Submitted – rifle No 24 L 0084 + tag bearing name Danks T + rifle No. 24L0084.

Second Witness – Lt J. S. Anderson, HQ. 1 Cdn Corps having been duly sworn states.

At approx 1900 hrs, 10 Nov I heard a shot outside A mess, but did not take any action. Shortly afterwards, upon information received I went out to sentry post where there was no sign of the accused. I went looking for him + ~~found~~ saw him come out of the bldg known as Casa F. Bambara. When questioned, the accused said he was the sentry. I returned to sentry post with accused. In company with accused I went to find guard commander. I ~~we proceeded~~ contacted ~~obtained~~ an N.C.O. from Hq Cay HQ who put two ~~for~~ new sentries on duty, in place of ~~Pte Danks~~ the accused + Pte Nesbitt. It was approx 1900 hrs when I saw accused leave Casa F. Bambara. I do not believe there was any chance of accused returning to his post between the time we started looking for him and I saw him leaving Casa F. Bambara. Accused ~~was able to walk~~ appeared to me to be under the influence of alcohol, as his walk was unsteady at times, + his speech not as clear as I believe should be from a soldier on duty.

~~Defence~~

Cross Examined

I did not see accused before I saw him coming out of Casa F. Bambara. Wine was being sold at Casa F. Bambara + Villa Paradiso, but I did not see the accused take a drink.

There are no lavatory facilities for the guard of "A" mess.

I did not see the guard commander at any time that night.

2d Court

The accused attempted to enter the Casa Bambara after being ordered to return to his post. He did not re-enter ~~the~~ at that time. He was without his rifle.

I heard Lt Hensel warn the accused that he was under arrest.

Third Witness - B45388 L/cpl Garnhard, HQ 1 Cdn Corps Def Coy, having been duly sworn states:-

As acting 2 i/c of my section, at 1645 hrs 10 Nov + checked the accused, posted him as a guard at A mess. He appeared to be normal, ~~and~~ I then brought ~~him~~ him down to ~~him~~ his post at "A" mess. I posted the accused ~~[illegible]~~ and one other sentry at "A" mess + told them that one man would remain at the gate + one ~~[illegible]~~ would patrol the A mess area. I told them they could alternate. He did not then understand their orders. I then ~~[illegible]~~ left them with the 2 sentries [illegible] + the pistol has relieved. They appeared sober when I posted them, but seemed a talkative. The bldg known as Casa F. Bambara is not within the area of the patrol of guard at "A" mess.

Cross Examined

~~#~~ On 10 Nov we did not expect to have to ~~have~~ provide a guard for "A" mess, as ~~we were~~ had been detailed as an adv party to our unit. The ~~guard~~ detail came as a surprise, and ~~the accused~~ I did not know ~~prior to~~ until approx 1600 hrs that ~~he~~ we had to ~~go on~~ provide guard. S

There was wine in the bldgs in which we were working during the day, ~~and we had planned a party for that evening. The accused had~~ I knew that the accused had something to drink during the ~~day~~ morning, but I do not know what quantity. S

I was a private at the time, but I had posted sentries before, and consider the ~~men~~ accused fit for duty. S

By the Court

The guard was detailed ~~by~~ by Lt. Pl. Lent. S

~~Our Platoon Sgt~~

I had been appointed as a/2 ½ my section by ~~Lt. Lent~~ my Pl. Sgt. while we were in Eng.

In the morning I knew, by his actions, that the accused had been drinking. ~~by his~~

(5) (Danks)

Fourth Witness B75359 L/Cpl LAURIKS, H.C. having been duly sworn states:-

On night of 10 Nov 43 at approx 1900 - 1930 hrs I was sitting in Casa F. Bambara when the accused rushed in and handed me his rifle, saying that he ~~wanted~~ had to go to the toilet. He then rushed right out again (the same way he had come in) without giving me a chance to answer. About ten minutes later the ADC came in with Cpl Watson, ~~when asked if~~ looking for the rifle of the guard ~~accused~~. I produced the rifle, I had. I did not know the ~~a rifle I had~~ accused was on guard, at the time. ~~He I saw the accused prior to the accused handing me his rifle, I had seen him~~ At 1830 hrs, when I first arrived in the Casa F. Bambara, the accused was in the room. He left about 10 minutes later.

Cross Examined

The accused had been drinking when I first saw him. It could ~~hab~~ have been earlier than 1830 hrs when I first saw him in the Casa F. Bambara. I am not sure of the time.

By the Court

I did not see the accused take a drink. He was properly dressed when he handed me his rifle

Seventh Witness D 73892 Cpl. Thompson BWG HQ 1 Cdn Corps Def Coy; having been duly sworn states:

At 2015 hrs on the night of 10 Nov 43, ~~2010~~ I saw the accused and he was unfit for duty due to drink, as I could smell liquor on his breath.

Cross Examined

I had not seen the accused prior to placing him under arrest.

By The Court

~~His~~ speech of accused seemed normal.

Eighth Witness Lt. G R Lent, HQ 1 Cdn Corps Def Coy, having been duly sworn, states:—

I identify exhibit "A" as ~~the~~ a rifle belonging to the accused.

The guard was first mounted on "A" mess ~~[illegible]~~ at 1600 hrs 10 Nov 43. ~~Accused was one of the first two guard to be posted in the new area~~ Guard was detailed at 1430 hrs 10 Nov.

Cross Examined

I personally warned the accused for the guard duty at approx 1430-1500 hrs 10 Nov and he appeared perfectly sober. The accused could have been ~~drinking~~ under the influence of drink, and it possible I might not have noticed it.

(8) (Danks).

By the Court

8LS.

I saw the accused ~~later~~ as ~~they~~ he were being marched to his duty & he appeared fit for duty.

S

CLS.

Defence

First witness: B-83573 Pte. T. Danks, 1 Cdn Corps Def Coy having been duly sworn states

At 1200 hrs 10 Nov 43 I was part of a working party cleaning St. Georgio Hotel and Pte Nesbitt & I bought three bottles of wine. We started to drink the wine as we were working, until dinner time. After dinner several of our party and myself bought several more bottles of wine and continued to drink the wine as we worked. Sometime around 1500 hrs, Pte Nesbitt & myself were detailed by Lt. Tait for the next shift of guard duty. We washed & got ready for our tour of duty. I was feeling the effects of the liquor then, although I endeavoured not to show. I had supper then and was taken to our post by L/Cpl. Barnham. Whatever details he gave us for our duties, I do not remember.

I did not know I was to go on guard until the afternoon.

I drank over two bottles of wine prior to the time I was warned for guard. When I went on guard everything was blurred, and my mind was not clear. This was the first guard duty I had done since being in Sicily.

I have never been charged with drunkenness, since being in the Army.

I had the odd drink after being warned for guard & before I was posted to my duty.

I felt drunk when I was warned for guard

Cross Examination

I have been in Def. Coy since July 42 and have done one week's guard per month since that time. At the time I was warned on 15th Nov, I did not realize the importance of a guard due to my condition.

Five or Six of others had as much to drink as I did.

To my knowledge I had nothing to drink after going on guard.

I did not tell any body I was "feeling high", but tried to cover up. I ~~felt~~ made no attempt to try and get excused from guard.

By The Court

I was on the gate at A mess and asked Pte Nesbitt to relieve me while I went to toilet in Casa F. Bambara. I do not remember what I did in the Bldg, how long I was there, or handing my rifle over to any one. I remember an officer asking me if I was the guard.

When I went on guard I ~~at~~ felt that I was not in fit condition to carry out the guard.

It was when I was on my way to the my post that everything went blurred.

I had no reason to believe that there was a lavatory in the Casa F. Bambara.

Second Witness B63584 Pte. Templeton, 1 Coln Corps Ref Coy,

having been duly sworn states:-

I have known the accused for six months. On 10 Nov 43, at 1000hrs the accused & myself bought four bottles of wine from a vendor in the street. We the accused & myself drank the four bottles between us by noon. We had no idea that we would be called on for a guard that day. I was at the meeting held by Lt. Lent in the afternoon. The accused was there and I would say that he had been drinking and pretty high, as I was also. I would say that at 1650hrs the accused was drunk and unfit for duty.

Cross Examination

I took no steps to keep the accused from going on duty, even though drunk, as I did not it was up to me as a private soldier.

Third Witness B58493 Pte. A. M. Hale, Hav. 1 Cdn Corps Def Coy, having been duly sworn states:

On 10 Nov 43 at 1130 hrs Pte Nesbitt, the accused & myself drank 2 bottles of wine. At 1630 Pte Nesbitt, the accused & myself drank another bottle of wine between us. The accused was well under the influence of liquor ~~prior~~ while getting ready for guard i.e. approx 1645 hrs. Last drink I had with him was at approx 1645 hrs.

Cross Examination.

~~I realized the seriousness of~~

I consider the accused was drunk before going on guard but took no steps to ~~[illegible]~~ ~~have~~ keep the accused S from going on guard as I did not think it my place.

Fourth Witness - B103011 Pte Gow R.R. 1 Cdn Corps Def Coy, having been duly sworn states:

On 10 Nov 43 at ~~[illegible]~~ 1700 hrs, I was S. relieved from guard duty at "A" mess by the accused. When he relieved me he was very talkative, and under the influence of liquor. In my opinion he the accused was drunk.

(13) 8LS.

Fifth Witness - Lt. G.R. Lent. 1 Cdn Corps Def Coy
(Character Witness) having been duly sworn states:-

Accused is a member of my platoon. He has been a good soldier. Willing. No crime. Works well. Normally quiet. Popular. No trouble.

Def Make closing address & refers to ~~AA sec 4~~ MML Chap III secs 4 5 & 46. S

Pros. closing address. Man admits ~~being~~ getting drunk in further after being warned & witnesses state that he was sober enough, when posted, to look sober. Effect of wine is debatable. S

R.P. 83B was complied with in the case of each witness. S.

SUMMARY OF EVIDENCE

825

Summary of evidence in the case of--
B 83573 Pte Danks T
1 Cdn Corps Def Coy, a soldier of the Canadian Army Overseas.

The Commanding Officer has not directed, nor has the accused demanded that the evidence be taken on oath.

FIRST WITNESS Lieut R.G.Hennell, On the strength of HQ 1 Cdn Corps, A.D.C to the Corps Commander states as follows;-

At approx 1855 hrs, 10 Nov 43, I was in my room at A Mess with Lieut J.S.Anderson. The Mess Sergeant came in and complained that one of the sentries had discharged his rifle at one of the batmen. With Lieut Anderson I went to the main gate of the Mess and found no sentries. One sentry was located immediately, the other, whom I now recognise as the accused, arrived some 30 mins later at approx 1940 hrs.

He returned to his post with clothing disheveled, minus his rifle and under the influence of intoxicants.

Without being asked he volunteered the information that he had been to the lavatory. I advised him that he was under arrest, ordered him to stand at ease beside his post and asked him no questions. He was later identified as Pte Danks.

After ordering Cpl Thompson to bring new sentries and personnel to take the old sentries (now in arrest) into custody. I left Lieut Anderson with the sentries while I went in search of the missing rifle. I enlisted the aid of Cpl Watson, R.C.C.S. who was standing near-by and entered a building identified as Casa P Bambara from which the accused had been seen to emerge. This building is outside the A Mess enclosure. On the second floor of this building, in a crowded room in which wine was being served to soldiers and civilian females, I found rifle No 24L0084 and a detached magazine charged with five rounds (Rifle and magazine produced and marked Exhibit A). I removed both from the premises and took them to my room. The rifle bore a name tag with "Danks" written thereon. The building in which the rifle was found turned out to be a brothel.

The accused was taken into custody by S/Lt McNally and Cpl Thompson at approx 2030 hrs.

The accused declines to cross-examine the witness.

R G Hennell Lieut

SECOND WITNESS Lieut J.S.Anderson, On the strength of HQ 1 Cdn Corps, A.D.C. to the Corps Commander states as follows.

At approx. 1855 hrs, 10 Nov 43, I accompanied Lieut Hennell to the main gate of A Mess to investigate an alleged disturbance by the sentry i.e. The firing of a rifle at a batman.

While Lieut Hennell interrogated one of the sentries, I set out to locate the other. The second sentry, whom I recognize as the accused came out of a building on the street opposite the Paradiso, minus his rifle at approx 1940 hrs. He began talking to one of the soldiers billeted at the Paradiso. I questioned him as to whether he was the second sentry. He said "Yes" I then ordered him to proceed immediately to the main gate of A Mess to see Lieut Hennell. He attempted to go back into the house to get his rifle but Lieut Hennell ordered him to come directly to the gate.

He was thereupon questioned as to the whereabouts of the Cpl of the guard. He said the guard HQ was located at the Hotel Victoria, but he did not know how to get there. In his conversation with me it was evident the accused was under the influence of alcohol and incapable of carrying out his duties as a sentry but had control of his faculties.

I questioned a carabinier who then took both the accused and myself to the Hotel Victoria where Cpl Thompson was found although no guard commander was available.

I returned with Cpl Thompson and the accused at 1950 hrs to the main gate A Mess.

/2...

SECOND WITNESS (Continued from Page 1)

Cpl Thompson was instructed to obtain replacements for the guard and I went to supper leaving the sentries in arrest with Lieut Hennell. When I returned at 2015 hrs the relief had arrived and both sentries were placed under close arrest.

The accused declines to cross-examine the witness.

J.S. Anderson, 2/Lt.

THIRD WITNESS B-95388 Pte Garnham J.G., On the strength of 1 Cdn Corps Def Coy, 2 i/c of the section detailed for guard states as follows.

At approx 1700 hrs, 10 Nov 43, I was detailed by Lieut Lent to see if the two sentries, The Accused and Pte Nesbitt, were getting ready to go on guard at A Mess. Both sentries were ready. I was instructed by Sjt Nokes to post the sentries at A Mess. This I did. Both sentries were quite sober and fit for duty. My instructions as to their duties were clearly understood by both and when I left with the two relieved sentries both the accused and Pte Nesbitt were carrying out their duties in the proper manner.

The duties to which the accused and Pte Nesbitt were assigned were to guard A Mess by one sentry patrolling within the enclosure in which the building - A Mess- is situated and the other standing guard at the main entrance gate to the enclosure.

The building, Casa P Bambera, is a building outside the said enclosure and neither the accused or Pte Nesbitt had any right or occasion to enter this building during their tour of duty at A Mess.

The Accused and Pte Nesbitt were posted shortly after 1700 hrs and their tour of duty was from 1700 hrs until 2100 hrs.

The accused declines to cross-examine the witness.

J.G. Garnham Pte

FOURTH WITNESS B-75359 L/Cpl Laupicks, H.C On the strength of 1 Cdn Corps Def Coy states as follows;

I was in a Cabaret Club in the Casa P Bambara building drinking wine when a soldier who I recognize as the accused asked me to look after his rifle while he went to the lavatory. I took the rifle and put it on the floor beside me. Some time after, probably about five or ten minutes Cpl Watson in the company of Lieut Anderson asked if I had the guards rifle. I replied that I had a rifle but do not know if it belongs to the guard. He ordered me to give it to Lieut Anderson which I did.

Question. In your opinion was Pte Banks under the influence of liquor.

Answer. The meeting was so short that I would be unable to tell. There was nothing in his actions to lead me to believe he had been drinking.

The accused declines to cross-examine the witness.

H. Laupicks, L/Cpl

FIFTH WITNESS K-62346 Cpl Watson J.A., On the strength of 1 Cdn Corps Sigs states as follows:

At approx 1900 hrs 10 Nov 43, I was looking for the men in my section just outside the Paradiso Cafe when an Officer came up to me and asked if I knew where the sentry was. The signalman with me Sgmn Coston, had an idea where he might be found.

/S.....

FTH WITNESS (Continued from Page 2)
. . . About 30 minutes later another Officer ordered me to go with him into the building opposite the Paradiso to look for a rifle. This I did. The rifle was in the posession of a soldier who gave it up when ordered to do so.

The accused declines to cross-examine the witness.

J A Watson Cpl

SIXTH WITNESS B-112156 Sgmn. Gaston, R.H., on the strength of 1 Cdn Corps Sigs states as follows:

I was with Cpl Watson at some time between 1900 hrs and 1930 hrs, 10 Nov 43 when I heard an officer asking if anyone had seen the guard. I told him I had an idea where he might be found.

Question. Had you personally seen the guard.
Answer. No Sir. I had heard some men talking about a guard.
Question. Did you direct the Officer to where the guard was.
Answer. No Sir. He didn't ask me for any more information.

The accused declines to cross-examine the witness.

R Gaston

SEVENTH WITNESS B-73992 Sgt McNally R., on the strength of 1 Cdn Corps Def Coy states as follows:

At approx 2010 hrs on 10-Nov-43, I was informed that two men were required as sentries at A Mess and that the A.D.C. wanted to see me at the gate. I detailed two men and in the company of Cpl Thompson we proceeded to A Mess. The A.D.C. Lieut Hennell ordered me to place the two sentries, one of which I recognize as the accused, under arrest, and to post two new sentries. Both the sentries under arrest were standing to attention. I ordered the accused to surrender his weapon. He had none. The A.D.C. stated that he was in posession of the accused rifle.

In my opinion the accused was unfit for duty owing to being under the influence of liquor. I took both men in arrest back to their billets where they were kept under guard.

The accused declines to cross-examine the witness.

R McNally

EIGTH WITNESS B-73892 Cpl Thompson, W.G. on the strength of 1 Cdn Corps Def Coy states as follows:

At approx 2010 hrs on 10-Nov-43, I went to A Mess with Sgt McNally and two men to replace two sentries, one of which I recognize as the accused, who had been placed in arrest.

Both the accused and Pte Nesbitt had been drinking and were, in my opinion, unfit to carry on the duties as sentries.

The accused declines to cross-examine the witness.

W G Thompson Cpl.

NINTH WITNESS Lieut. G.R.Lent, on the strength of 1 Cdn Corps Def Coy, Commander of the platoon in which Pte Danks is on strength. states as follows:

The Rifle, No 24L0084 is the rifle on issue to B-83573 Pte Danks, T.

The accused declines to cross-examine the witness.

GR Lent

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINED TO MAKE A STATEMENT AND RESERVE HIS DEFENCE

/4.....

I certify that the foregoing summary of evidence consisting of four (4) pages was taken down by me in the presence of the accused in the field in Sicily, this 13th day of November, 1943 and that Rules of Procedure 4c, d, e, and f, have been complied with.

Lieut
(J.R.Newell)
1 Cdn Corps Def Coy
Officer detailed to take the summary of evidence.

In the Field,
Sicily,
13-Nov-43

No. B-83573 Name Danks T | Sqn., Battery, or Company | Corps Cdn Infantry | Date of enlistment 5/2/42 | G.C. Badges | Service or Proficiency Pay | Character Good

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 2 | Signature O.C. Company, etc. Capt S.Beatty

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Number of Previous Convictions	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY					
				Previous sheet destroyed after 6 months Service 5/8/42					

(P.T.O.)

"B"

M.F.B. 383
22M—5-41 (373-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 83573	Pte	Danks, T.	1 Can Corps Def Coy.

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery Conduct sheets or Company~~ (Field) Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Nil	times	Nil	times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for ..... beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~#~~ Nil days in civil custody, and ~~Nil~~ 21 Pd. days in Air Force military custody, making a total of ~~#~~ 21 Pd. days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 29

6. The date of his commission specified in his record of service is / attestation / attestation paper N.A.

7. The service which the accused is allowed to reckon towards discharge is N.A.

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc. N.A.

9. The accused is in possession of or entitled to no air force decoration, or air force reward ~~for any~~ / military / military ~~possession of or entitled to). State any air force decoration or reward.~~ / military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the Air Force regimental rank of N.A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated..... N.A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years. N.A.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

N.A.

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~14th~~ 1st December 1943 day of November 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A.87026 Pte DANLUCK S. 4 VRD 1 CCOD

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 24(2)	NOT GUILTY	NOT GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

N At present under sentence for ..... beginning on (date) .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

N Time in confinement awaiting present trial : a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

N Sentence ~~Awarded by the Court~~ :

The accused was Released

(Sgd) ..... 16 Apr 45 ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date .....
Commanding .....
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5E-124

FIELD GENERAL COURT-MARTIAL

(PAGE (In lieu of APAS): 40/F.S.(S)/1608 (4050)) 4/388

Convened by Order of Brig JE SAGER Comd "F" Gp CRU dated 14 Apr 45

30 APR 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
			Stanley	DANLUCK	4 VRD 1 CCOD

PROCEEDINGS REVIEWED
30 Apr 45
A.F.W. Gunter Capt.
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

1 Held in the Fd in (country) ENGLAND on (date) 16 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

N A1. The President, Members, ~~waiting Members, J.A., if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

N A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(4)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-12, 23, 24.)

N A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1030 hours trial commences.

N A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

N A5. ~~President to accused :~~ ~~Do you object to ..... as interpreter ? Ans .....~~
~~The Interpreter is sworn.~~(1) Do you object to CAPTAIN SINCLAIR as shorthand writer ? Ans No, Sir.
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No, Sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

N A7. The President, Members, ~~J.A. if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	D.L. KERMAN	HQ CRU
Member	Capt	S.L. MACDONALD	1 CCRU
Member	Lt	F.J. McINTYRE	1 CCRU
~~Judge Advocate~~			
Prosecutor	Capt	H.R. HAINES	1 CCOD
Defending Offr	Lt	K.C. MIDGROM	1 CCOD

Questions by President : Is the Prosecutor a lawyer ? Ans NO. Is the Defending Offr a lawyer ? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See DI p 3.)

N A8. The accused ..... before arraignment make(s) (no) (a) plea.(1)
(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

N A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

N A10. The Court (~~is sworn and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L* p 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of J A see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO SIR.(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not ~~establish a prima facie case~~ against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Yes I will make a statement. Do you intend to call witnesses on your behalf ? Ans Yes Sir! Are they witnesses as to character only ? Ans No - Sir.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATT
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)~~
~~Or~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 598. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-56, 68, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 109, 1313, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The accused Elects trial by F.G.C.M.

CHARGE SHEET

The accused, A-87026, Pte. Stanley Danluck, of 4 V.R.D., 1 Cdn C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, is charged with:

While on Active Service

FIRST CHARGE
Sec. 24(2)
Army Act

LOSING BY NEGLECT HIS STEN MACHINE CARBINE

in that he

in the Field, on 8 Dec 44, was deficient Sten Machine Carbine, Reg. No. F.M. 36637, value £3-9-4.

(R.C. Kelly) Lt.-Col.,
O.C. Depot Battalion,
H.Q., 1 Cdn C.O.D., R.C.O.C.

Peper Harrow
Apr 45.

To be tried by Field General Court Martial.

BORDON, Hants
14 Apr 45

(J.E. SAGER) Brigadier,
Comd "F" Gp, C.R.U.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.87086		Lte	Stanley	DANLUCK	4 VRD 1 CCOD RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 Apr 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt - Col	D.L. Redman, V.D. Gen List	HQ CBD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	L. MacDonald RCE	1 CBRU
Lieut	F.J. McIntyre RCASC	1 CANTEN

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

J.E. Page (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Dat 14 Apr 45

Commanding "V" Op. C.R.U.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. **PRESIDENT AND MEMBERS.** *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless there-unto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12245 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: None. (*or*, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 93(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (on matters other than re *manipulation of punishments*) by Defending Offr or accused. (*See RP 40 fns 6-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(e).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:
(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admissibility as evidence a certified copy in lieu of original see KR Can 560. As to* Exhibits numbered Ex A, Ex B, etc. (*As to admissibility as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of reprimand books see AA 163 (1) (g) (h).*)
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admissibility as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of reprimand books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.
(vii) Any reports or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

3. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

Medical Officers' Certificate
KR(Can) para 557

I certify that I have this morning examined No. A-87026

Rank Pte. Name Danluck, S. of 4 V.R.D.; 1 CCOD (Unit)

and in my opinion he is fit* ~~unfit~~ to undergo trial by Court Martial.

J. D. Nathan Capt. (Rank)
Unit
Medical Offr., RCAMC

Station Field

Date 16 08 15 A Mar 45
(of Court Martial)

557

* Cross out one N/A and initial

TRANSCRIPT BY: P.28126 SGT AH SINCLAIR

CASE OF

A.87026 Pte DANLUCK S 4 VRD 1 CCOD

PROSECUTION

FIRST WITNESS

Lt KS McARTHUR, 1 CASCRU, having been duly sworn, states:

I am the QM of 1 CASCRU, and here is a MFM 513A showing a Sten Gun, Number FM36637, as having been issued to one A.87026 Pte DANLUCK S, in Sep 44. The signature of this soldier appears in coln 50 opposite his name. The sheet of this MFM 513A, is Sheet No. 1003.

MFM 513 A MARKED EXHIBIT "1"

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

H.2504 Sgt GARSIDE F, 5 VRD 1 CCOD, having been duly sworn, states:

In Sep 44 I was the Pln Sgt of the s/s det from 1 CCOD and the accused whom I now recognize was in my pln. On or about the 19 Sep 44 a rifle inspection was made by Capt Smith at which time the accused reported to me that there was some trouble with his Sten Gun, I believe the Cocking Handle was damaged, and he was told to take it to the Unit Armourer and have it repaired. The following day there was another rifle inspection and the accused didn't have his Sten Gun repaired as he said there wasn't any Unit Armourer available. The pln later left for France and the accused was still in possession of a defective Sten Gun.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS

Lt AW COULTER 4 VRD, 1 CCOD, having been duly sworn, states:

I'm now Capt Coulter, but I was Lt Coulter in Dec 44 at No. 2 Staging Camp at Doullens, half way between Amiens and Arras. An order was put out in Nov by the O-D 1 CCOD that a Kit Stores would be set up at each Staging Camp. At No. 2 we set aside a special room which was adjoining the Orderly Room and we put a sign outside it, which sign the men had to pass under on their way to eat the Mess Hall, and the sign read "Kit Stores, kit may be checked in here". It was put up to the Offr IC of the pln of men or the NCO IC as to whether they would check their kit or not. At the time the draft was returning to the UK this Kit Stores was still there and this order had never been recinded. The men however came in under a different arrangement when coming back from draft, but I know of no arrangement made by the OC, Lt-col Townsend, to check their kit in this particular room. As far as the offrs were concerned we never mentioned the Kit Stores at all. We assumed that all the men would see the sign or knew why it was there from experience in the past. They all came in, about 600 of them, but I doubt whether the Kit Stores would have held all their kit, and no order was put out by the Offr IC of the Camp to tell them this, and I don't know whether any orders were given by the offrs IC of the draft either. I don't remember seeing the accused.

CROSS-EXAMINED

Q. In other words the arrangement for convoy personnel was not under your jurisdiction at the time the draft was returning from o/s?
A. No.

Q. If the Kit Stores had been open would it have been possible for the 600 men to store their eqpt there?
A. I doubt it, they would have had to stack it, which would mean mixing them up somewhat. I might add here that all men were CB'd at the time to Camp and it may have been thought not to use the Kit Stores.

Q. What is this document I show you?
A. It's a certified extract from Pt I Orders of O/D 1 CCOD d/14 Oct 44. This is the order that I have been referring to. I would point out now that Convoy personnel differ from draft personnel. Convoy personnel when they leave the Camp take with them only their blankets, as their trip was usually for 6 days. On the other hand the draft personnel had with them all their eqpt. This order refers only to Convoy personnel.

ORDER MARKED EXHIBIT "2".

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH KR 83(2).

PROSECUTION WITNESS

D.91994 A/CSMS MacINNIS RS, 4 VRD, 1 CCOD, having been duly sworn, states:

I'm the A/CSMS of 4 VRD and I recognize the accused. On 18 Dec 44 I inspected the accused's kit at Borden Depts and I found him to be deficient 1 Sten Gun. I don't now remember the number of it, but the vocabulary price is $3/30, and there is a 10% Administrative charge on top of that.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH KR 83(2)

THE PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS

The accused, having been duly sworn, states:

Sir, I will make the statement here that I made at the Summary, that is, I'm not guilty as charged. On returning at No. 2 Staging Camp for embarkation I understood that eds would be posted in rooms occupied and where the eqpt was left. In accordance with instrs I occupied the room alloted to me and laid out my eqpt. We came to this room, there were 22-23 of us, and were told that the room would be a place where we would spend a day or two or a couple of evenings. I laid my eqpt down, including my Sten Gun, in one of the corners, and went to a picture show and when I came back from the show it was gone. I reported it to my Pln Sgt, Sgt Arnew. I didn't hear anything more about it until Jan when I told my CO I didn't have my Sten Gun and I was taken off the draft. I might also say here that there was also another Sten Gun missing that

same night as mine went missing. At the time my Sten went missing it still was not repaired.

CROSS-EXAMINED

Q. I take it you assumed that there were gds posted?
A. Over the eqpt I took it for granted that there would be gds posted, yes, Sir.

Q. Were there any other people in Camp besides CCOBR
A. Not as far as I know. There was the FFI outside the Camp, Sir.

Q. What was your job before this?
A. Operating a mail truck between 1 Ech at Brussels and Antwerp, Sir, until I joined this draft to report to England.

Q. You were aware that there was Kit Stores?
A. I saw the Kit Stores, Sir, but I never used it because I slept in the mail truck with the mail and always kept my eqpt with me.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 93(B).

SECOND WITNESS

K.73016 Sgt AGNEW RA, 1 CCOD, having been duly sworn, states:

On 7-8 Dec I was IC of the pln in which the accused, whom I now recognize was a member. On arriving at No. 2 Staging Camp we were posted to our billets, and that night there was a picture show on in the Mess and we went there. I recd no instrs about posting gds over kit. There were approx 28 men in the pln, and I stayed in the same quarters with them, and I did just the same as the rest of them, I put my eqpt at the head of my bed - we were all in one room.

Q. Was there a Kit Stores sign?
A. Yes, I had seen it some 3 wks before but there was nothing stating it WAS for OUR kit, Sir.

Q. Did you see it in operation?
A. No.

Q. Was there any attendant or gd in this Kit Store to your knowledge?
A. No, not to my knowledge, Sir.

Q. Approx how many were on the draft?
A. I couldn't say, but it was quite a large draft.

Q. Would it have been practicable for all the men to turn in their eqpt and take it out again each time they went to any place like the picture show, to mess, etc., and then put it back in this Kit Stores place again?
A. Not in my opinion it wouldn't, Sir, the room wouldn't hold it all anyway, in my opinion.

Q. Did you see any FFI men in the Camp?
A. I saw FFIs within our area, Sir, in the Camp, and they were actually within our lines.

Q. Did you see a gd posted at the bottom of the ramp?
A. No.

Q. What action did you take with regard to the loss of this Sten?
A. I marked it down on a piece of paper when the accused reported it to me, Sir, then went to the Orderly Room, but there was nobody there, and then we left for England next morning and the piece of paper became lost in the scuffle.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 93(B)

THIRD WITNESS

It RP RYAN, 1 CCOD, having been duly sworn, states:

I am now the Asst Adjt at HQ 1 CCOD and when they were returning from o/s I was Offr IC Records and was Adjt of the draft, and I travelled with the draft from Doullens.

Q. Were there any orders issued by the offr IC of the draft as to the storage of kit?
A. Not to my knowledge.

Q. Would you have known if there had been?
A. I think I would.

Q. Was anyone put IC of the Kit Stores to operate them?
A. I don't believe there was a Kit Stores for the draft, they were only used for the convoys.

Q. About gds?
A. I believe there was a gd on the gate which was the only entrance to the Camp. The draft however was CB'd, and the gd was there to keep all outsiders out of the Camp.

Q. Were any specific orders issued about posting a gd over the eqpt in the rooms?
A. I think that was left to the judgment of the offr IC of the draft. It wasn't an order that gds be posted.

Q. Were you quite satisfied that the eqpt would be safe in the diff rooms?
A. I'd say it would be safe with regard to the eqpt getting out of the area, but I couldn't go so far as to say it would be safe with regard to other soldiers in camp.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 82(3)

THE DEFENCE IS CLOSED

STATEMENT BY THE DEFENDING OFFICER ON THE FINDING

It has been brought out that these orders issued about Kit Stores did not apply to the draft returning from o/s. They applied only to Convoy Personnel as it distinctly states in Exhibit 1. The draft was travelling with full eqpt, they were CB'd to Camp, gds were posted, and these orders as to Kit Stores didn't apply. It has also been proven that there were no Kit Stores operating and therefore it was a physical impossibility to check rifles, Stem Guns and other eqpt into these Stores. It was also understood by everyone that eqpt would be left in the billets without a gd and that it would be perfectly safe. The accused was assigned a position in the room, and laid out his eqpt as did all the other personnel, including the Sgt if you will remember. As far as taking eqpt or

other stuff with them such as Sten Guns and rifles with them, it was a physical impossibility, to cary such to meals and picture shows, and I think the fact that picture shows were arranged by the Offr IC of the draft would show that he didn't intend the men to carry their eqpt with them. The charge is that the accused lost by neglect this Sten Gun, and the Prosecution must prove the neglect. The accused, as instructed, laid his eqpt out, went to the picture show, and on returning to the room found his Sten Gun gone, and reported it to his Pln NCO. From there on it was the duty of the Pln NCO to report it to someone in authority so that the place could be searched. That this was not done is in way the fault of the accused who has been charged with negligence. Considering the facilities at the Camp and the understanding about gds I maintain that the accused was not in any way negligent and that he by reporting the loss of the gun, done what was required of him.

STATEMENT BY THE PROSECUTOR ON THE FINDING

The accused was issued with a Sten Gun, and was later found to be deficient of this gun. It might be pointed out from the time that the gun was issued to him it was his reponsibility as a soldier to look after it. During the fracas at Doullens, orders in some instances have proven to be vague, however there WAS a Kit Stores for anyone's use, although it was not a definite order that the Kit Stores be used. It was assumed that gds had been posted not only to keep unauthorized personnel from entering the Camp area, but also make certain that the people in the Camp didn't leave with eqpt which didn't belong to them. This was taken for granted, and there was not anything definite to show that gds had been placed. It was a known fact that unauthorized personnel had been seen in the Camp lines. Regardless of orders being passed down from higher authority to the soldier himself, his knowledge of the people about the country and the fast moving circumstances should have caused him to think firstly about the safety of his eqpt rather than the picture show, and for this reason I consider that the accused was at least partially responsible for the loss of his weapon.

THE COURT IS CLOSED TO CONSIDER ITS FINDING

THE COURT IS REOPENED

I acknowledge receipt of Exhibit
1, which I agree to hand to the
Adjt to be held by him subject
~~to~~ to further orders.

Capt.
Prosecutor

PART I ORDERS D.O. No.21 d/14 Oct 44

5. CHECK ROOM STAGING CAMPS

Kit storage or check rooms are being opened at our staging campsso that convoy personnel in future may check their personal belonging, weapons etc. when proceeding away from the Staging camp lines while in transit, in order that same may be properly protected.

In future there should be absolutely no reason for losses of kit or equipment belonging to Convoy Personnel. Unless satisfactory explanation are given for such losses the men concerned will be charged with wilful neglect and disciplined.

Ex 2

CERTIFIED TRUE COPY

ADMINISTRATIVE ORDER NO. 3 d/2 Oct 44 O/D 1 CCOD

7. No 1 and 2 STAGING CAMPS, OD 1 CCOD

(a) Staging Camps will provide for OD 1 CCOD convoys,

(i) Accomodation
(ii) Food
(iii) Petrol, oil and water
(iv) Guards for convoy vehicles

(b) The RCEME Detachment operating under the O i/c Staging Camps will be responsible for the recovery and repair of all casualties reported in there by O i/c Convoys. In addition it will do the inspection and repair of all OD 1 CCOD Admin. Vehs passing through the Staging Camp or permanently at the Staging Camp

(c) Os i/c Staging Camps will be responsible for the discipline and control of all OD 1 CCOD personnel while at his respective Staging camp

(d) A ll reports and returns from the Staging Camps will be signed by or for O i/c of the Staging Camp.

(e) All Os i/c Convoys on entering the Staging Camps will report forthwith to the Report Centres, and on leaving will be cleared from the Report Centres.

CERTIFIED TRUE COPY

Certifed that I have received the following:

Copy of Charge Sheet

Copy of Summary of Evidence

List of Witnesses for Prosecution

List of Witnesses for Defence.

(A 87026 Pte. Danluck, S.)
(A-87026 Pte. Danluck, S.)

-:-:-:-:-:-:-:-:-:-:-:-:-

LIST OF EXHIBITS

N I L

-X-X-X

THIRD WITNESS For the prosecution. (Cont'd)

all convoys staging at our camp had been warned of the existence of a Kit Stores which had been set up on instructions from H.Q., to protect the men from pilferers. This Kit Stores was still in operation at the time this draft went through and all the former N.C.O's and Officers in charge of Convoys were aware of this fact and were supposed to warn their men that if they had an intention of leaving camp to visit Doullons during the evening, they would be wise for their own protection to check their kit into the stores. Pte. Danluck who had been employed on the mail truck, may not have had full knowledge of this ruling and evidently was notinformed by his N.C.O.

The accused declines to cross-examine this witness

FOURTH WITNESS For the prosecution.

D-91994 A/CQMS MacInnis, R.S., on strength of 4 V.R.D., 1 C.C.O.D. R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

On Kit Inspection performed by me on 18 Dec 44 at 4 V.R.D., Pte. Danluck, S., was found to be deficient one Carbine machine Sten. The price of the Sten as certified by DDOS, C.R.U. is £3-3-0 plus ten per cent administration charges (Six shillings and fourpence making a total of £3-9-4($15.50) in Cdn Funds.

The accused declines to cross-examine this witness

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused elects to make a statement.

The accused, A-87026, Pte. Danluck, S., on strength of 4 V.R.D., 1 C.C.O.D., a soldier of the Canadian Army Overseas, states as follows:-

"I, Pte. Danluck, S., am not guilty as charged. On returning at No. 2 Staging Camp Doullens for embarkation. I understand that guards would be posted in rooms occupied and where equipment was left. In accordance with instructions, I occupied the room alloted to me and laid out my equipment.

FIRST WITNESS for the Defence

K-73016 Sgt. Agnew, R.A., on strength of 1 C.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"At Doullons, on 7 and 8 Dec 44, I, Sgt. Agnew, was in charge of a platoon of which Pte, Danluck was a member. The Platoon was part of a draft returning from France. I and my platoon were at No. 2 Staging Camp, Doullons; the two days and nights of 7 and 8 Dec 44, I remember Pte. Danluck reporting to me the loss of his Sten Gun. I know that he had previously been in possession of it at Doullons, as I saw him place it at the head of his bed. I took his name and number which I lost before morning, it being found out after coming back to the room from the pictures, and before I had opportunity of reporting it to the Orderly Room. On returning to England, Pte. Danluck was posted to one of the Sub-Units of 1 C.C.O.D.. No further action was taken by me on my return to England. It was my understanding that guards were posted by No. 2 Staging Camp and therefore I did not detail any men to guard the equipment. I was not aware that there was such place as Kit Stores where we could leave our equipment, in fact we received no instructions concerning it.

The accused declines to cross-examine this witness.

I certify that the foregoing Summary of Evidence consisting of 3 pages(3) was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

H B Garner Capt

Officer detailed to take Summary of Evidence.

Bordon, Hants,
7 Apr 45

SUMMARY OF EVIDENCE

in the case of

A-87026 Pte. Danluck, S., on strength of 4 V.R.D., 1 C.C.O.D., a soldier of the Canadian Army Overseas

By Direction of the O.C. Depot Bn, 1 CCOD, RCOC, the Summary of Evidence is taken on oath.

FIRST WITNESS For the prosecution.

Lt.- K.S. McArthur, RCASC, on strength of 1 CASCRU, an Officer of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I am Lt.- K.S. McArthur, and am employed as Q.M. at 1 CASCRU. On the 29th Sept 1944, A-87026, Pte. Danluck, S., was issued with a Carbine machine Sten No. FM 36637 on our issue voucher 1003 (513A) for which he signed. According to our records he was S.O.S. this Unit on 20th Sept 44. Authority D.O. Part II, No. 222, at which time he was in possession of this weapon."

The accused declines to cross-examine this witness

SECOND WITNESS For the Prosecution.

H-2504, Sgt. Garside, F., 5 V.R.D., on strength of 1 C.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I, Sgt. Garside, F., was N.C.O. in charge of No. 15 platoon, 1 O.D., 1 C.C.O.D., Pte. Danluck was in my platoon at that time. As the formation of the Overseas Detachment 1 C.C.O.D. personnel from 1 CASCRU transferred to R.C.O.C. under Capt. W.F.R. Smith at Whitley, on 20th September 1944, Capt. Smith called a rifle inspection which was carried out by platoon Officers and N.C.O's, accompanied by Lieut. Parsons W.I., noted that the Sten Gun of Pte. Danluck had a jammed cocking handle, which I pointed out to Lieut. Parsons. He was told to take it to the Armourer for repairs. There being no armourer on duty, he appeared on the final inspection before proceeding Overseas, still in possession of Said Sten Gun.

The accused declines to cross-examine this witness.

THIRD WITNESS for the prosecution.

Lieut. A.W. Coulter, on strength of 4 V.R.D., 1 C.C.O.D., an Officer of the Canadian Army Overseas, having been duly sworn, states as follows:-

"I, Lieut. Coulter, was an Officer stationed at No. 2 Staging Camp, during the period in December 1944, when the Overseas Detachment was returning from France, and was present when the returning advanced party came through. We had been given instructions by Capt. Winters to allocate this draft to suitable sleeping quarters; in the case of the Advance Party it was "G" Block. Heretofore,

THIRD WITNESS for the prosecution. (Cont'd)

all convoys staging at our camp had been warned of the existence of a Kit Stores which had been set up on instructions from H.Q., to protect the men from pilferers. This Kit Stores was still in operation at the time this draft went through and all the former N.C.O's and Officers in charge of Convoys were aware of this fact and were supposed to warn their men that if they had an intention of leaving camp to visit Doullons during the evening, they would be wise for their own protection to check their kit into the stores. Pte. Danluck who had been employed on the mail truck, may not have had full knowledge of this ruling and evidently was notinformed by his N.C.O.

The accused declines to cross-examine this witness

FOURTH WITNESS For the prosecution.

D-91994 A/CQMS MacInnis, R.S., on strength of 4 V.R.D., 1 C.C.O.D. R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

On Kit Inspection performed by me on 18 Dec 44 at 4 V.R.D., Pte. Danluck, S., was found to be deficient one Carbine machine Sten. The price of the Sten as certified by DDOS, C.R.U. is £3-3-0 plus ten per cent administration charges (Six shillings and fourpence making a total of £3-9-4($15.50) in Cdn Funds.

The accused declines to cross-examine this witness

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused elects to make a statement.

The accused, A-87026, Pte. Danluck, S., on strength of 4 V.R.D., 1 C.C.O.D., a soldier of the Canadian Army Overseas, states as follows:-

"I, Pte. Danluck, S., am not guilty as charged. On returning at No. 2 Staging Camp Doullens for embarkation. I understand that guards would be posted in rooms occupied and where equipment was left. In accordance with instructions, I occupied the room alloted to me and laid out my equipment.

FIRST WITNESS for the Defence

K-73016 Sgt. Agnew, R.A., on strength of 1 C.C.O.D., R.C.O.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

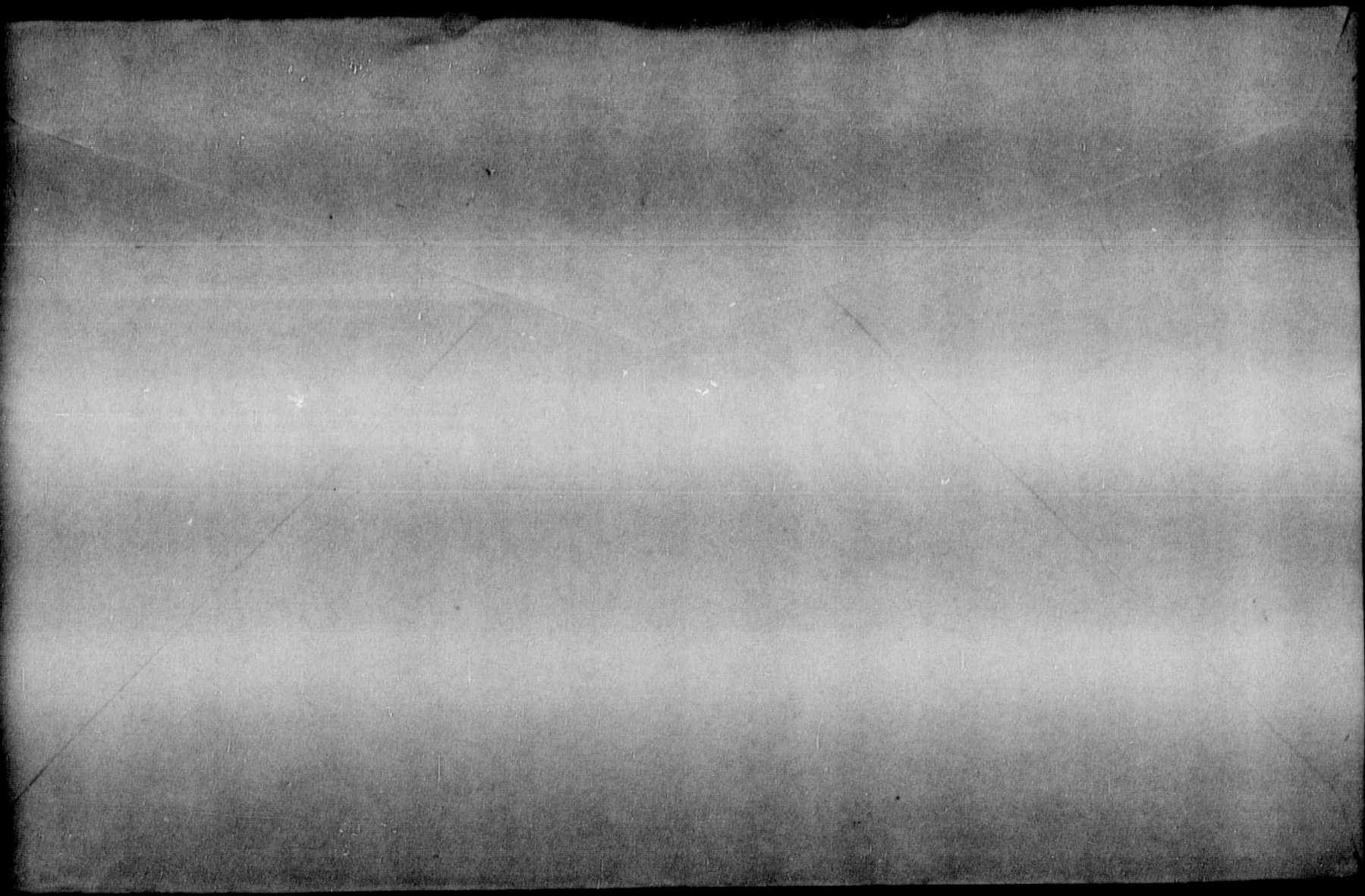
"At Doullons, on 7 and 8 Dec 44, I, Sgt. Agnew, was in charge of a platoon of which Pte, Danluck was a member. The Platoon was part of a draft returning from France. I and my platoon were at No. 2 Staging Camp, Doullons; the two days and nights of 7 and 8 Dec 44, I remember Pte. Danluck reporting to me the loss of his Sten Gun. I know that he had previously been in possession of it at Doullons, as I saw him place it at the head of his bed. I took his name and number which I lost before morning, it being found out after coming back to the room from the pictures, and before I had opportunity of reporting it to the Orderly Room. On returning to England, Pte. Danluck was posted to one of the Sub-Units of 1 C.C.O.D.. No further action was taken by me on my return to England. It was my understanding that guards were posted by No. 2 Staging Camp and therefore I did not detail any men to guard the equipment. I was not aware that there was such place as Kit Stores where we could leave our equipment, in fact we received no instructions concerning it.

The accused declines to cross-examine this witness.

I certify that the foregoing Summary of Evidence consisting of 3 pages(3) was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

K Blanch Capt
Officer detailed to take Summary of Evidence.

Bordon, Hants,
7 Apr 45



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GNR DANN A·W

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-35393 Gnr Arthur Wilfred DANN, 12 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.W.L. 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn b.)

~~As present under sentence for~~ ~~Beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 90 Days Detention.

(Sgd) E E Pearlman Capt 6 June 44 (Sgd) [illegible] Lieutenant
Judge-Advocate, ~~if any~~. Date awarded. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm finding & sentence but remit [illegible] days detention

I direct that the accused be not committed to prison or detention barracks until further order. (1)

(1. AA 57A. Delete if not used.)

Date 8 Jun 44 (Sgd) G Francoeur
Commanding (G. Francoeur) Brig
Comd 2 CBR Base Sub Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H 35393 Gnr Arthur Wilfred Dann	9 Jun 44	[signature] Capt

O.C., 12 Bn., 2 C.B.R. Group

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 15 JUN 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 [illegible] 008-20

2 CBRG Vol 1 p 35

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40/P.S.& S./1000 (40/1)

9/38B

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 2 JUN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-35393	Gnr	Arthur Wilfred	DANN	12 CBR

PROCEEDINGS REVIEWED

J C Campbell Major 15th June 44

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS REVIEWED Date 13 June 44 D.J.A. Cdn. Sec. OHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 6 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1350 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.~~(1) Do you object to as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F R COURTNEY	S S R,	11 CBR Bn
Member	Capt	G G McKNIGHT	CAC,	12 CBRBn
Member	Capt	F R ROBINSON	ACCS,	13 CBRBn
Judge-Advocate	Capt	E E PEARLMAN,	ADJA,	HQ 2 CBRG
Prosecutor	MAJOR	W E FLEURY	RCA	12 CBRBn
Defending Offr	MAJOR	F W K BINGHAM	CAC	12 CBRBn

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused H 35393 Gnr A W Dann before arraignment make(s) (no) (a) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addressees move in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Yes Sir.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex H, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both of which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. .....
Do you intend to call witnesses on your behalf ? Ans. .....
Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A).* 2. *See Notes in Part I of Schedule.* 2. *RP 44(E).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex O and Ex E respectively.(3)
(1. *MFB 351 or AFB 256.* 2. *MFM 6.* 2. *RP 46, KR Con 559. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes Sir.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-52, 69, 118, 119(A), KR Con 308, 330, 360-366, Overseas RO 309, 2323, MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 364.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 547. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Plea in Mitigation

The defending Officer pointed out date of enlistment of accused 2 June 1940 - his age 23 Years of age - the fact that he didnt remain with his Regiment seemed to affect him - he is anxious to fight and has been impatient at the delay

asks Court to consider the above & that he be allowed to go on draft as soon as possible.

CHARGE SHEET

The accused B-35393 Gunner Arthur Wilfred DANN, 12 Battalion, No 2 Canadian Base Reinforcement Unit, a soldier of the Canadian Active Army, is charged with WHEN ON ACTIVE SERVICE:-

ABSENTING HIMSELF WITHOUT LEAVE

in that he

FIRST CHARGE Army Act Sec 15(4)

in the field, did absent himself without leave from 0700 hrs 14 May 44 until 1915 hrs 25 May 44.

(Absent 11 days 12 hrs 15 mins)

In the field
29 May 44.

(A.O. HOOD) Lt.-Colonel
Commanding Officer
12 Bn., No. 2 Canadian Base Reinforcement Group
Canadian Army Overseas

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Can Base Rft Gp

In the Field
2 JUN 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-35393	Gnr		Arthur Wilfred	DANN	12 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 JUN 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	F B COURTNEY (Must be named. RP 106.)	S S R,	11 CBR Bn (Unit.)

MEMBERS.

Capt	G G McKNIGHT	CAC	12 CBR Bn
Capt (Rank.)	F R ROBINSON (Named or detailed. RP 106.)	RCCS	13 CBR Bn (Unit.)

WAITING MEMBER.

Capt	J O A LEFEBVRE		11 CBR Bn
Capt (Rank.)	J H CAMPBELL (Named or detailed, if any. RP 106.)		12 CBR Bn (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	E E PEARLMAN (Must be named, if any. RP 106.)	ADJA, HQ,	2 CBHG (Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G Francoeur)

Date 2 JUN 44

Commanding 2 Cdn Base Rft Gp

Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAGE (In lieu of AFA1) 40/P & H/1697 (4021))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 2, *46 fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46*(*E*), *KR Can 563*(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 142* (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95*(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53*(*9*), *RP 119*(*C*), *MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

"C" MEDICAL OFFICERS CERTIFICATE (AR(Can)Para 557) (CMHQ CL 173)

I certify that I have this day examined H45395 No.

Gunner DANN A.J. and in my opinion he
(Rank) (Name)

is Fit to undergo trial by Court-Martial.

Station In the Field

Date 6 June 44

(D.S.Noble)
Medical Officer 12 Bn. 2 CBR Gp

Summary of Evidence in the Case of

H-35393 Gnr Dann A.W.

on strength 12 Bn 2 C.B.R.Group

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution

M-10608 L/Cpl Farquharson A. No 7 Cdn L of C Provost Section.

I certify that in my opinion, the attendance of this witness is, owing to his being employed on special duty, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Appendix "A"

.....Lieut RCA
(Meredith Fleming)
Officer Detailed to take Summary

I do not require the attendance of this witness for purpose of Cross-examination.

A. W. Dann

Second Witness For Prosecution

A-55248 L/Cpl Beavis No 7 Cdn L of C Provost Section

I certify that in my opinion, the attendance of this witness is, owing to his being employed on special duty, not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Appendix "A"

.....Lieut RCA
(Meredith Fleming)
Officer Detailed to take Summary

I do not require the attendance of this witnessqfor purpose of Cross-examination.

A. W. Dann.

Third Witness for Prosecution

H-45655 Sjt Soderquist N.B.C. on strength 12 Bn 2 C.B.R.Gp having been duly sworn states:-

I was Coy Orderly Sjt on 14 May 44. I called roll at 0700 hrs, Gnr Dann whom I now recognize did not answer his name on roll call. I then checked his quarters and failed to find Gnr Dann. Gnr Dann is one of the men on strength of my Coy.

.....
H-45655 Sjt Soderquist N.B.C.

L.A. The accused declined to question this witness

The Accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused declined to make any statement or give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

.....Lieut RCA
(Meredith Fleming)
Officer Detailed to take Summary.

Officer Commanding.
59 Coy., 2 C.B.R.G.

59. Coy

File No. M9

Re: H.35393 Gnr Dann A.W.

Forwarded for your information and necessary action, please, and disposal under C.A.R.O. 388 dated 29th Oct 1940.

Field
26 May 44

C.J. Albendorf, Capt.
Officer Commanding
No 2 Cdn L of C Provost Coy

C...
Na... A.W.
Place Field
OFFENCE WOAS:. A.W.L.

Rank Gnr
Date of Offence 25 May 44

Names of Witnesses:—M.10608 L/C Farquharson A.
A.55248 L/C Beavis W.G.

HQ, 2 Cdn L of C Provost Coy.
O.C.

Signature of O.C. Battery, Squadron, Troop or Company
Punishment Awarded
Whom Awarded

Adjutant.

P.T.O.

Statement of **EVIDENCE** In case of

H.35393 Gnr DANN A.W. 59 Coy 2 CBRG.

Sir:

On 25 May 44 at approx 1915 hrs in company with L/Cpl Beavis I was on foot patrol in Farnham. Acting on information received I proceeded to the Police Station where we observed the a/m soldier, he was A.W.L., I placed him under arrest and contacted his unit which sent an escort to take him into custody.

M.106[illegible] L/C Farquharson A.
No 7 Cdn LofC Provost Section

I have read over and corroborate the above statement

A.55[illegible] L/C Beavis W.G.
No 7 Cdn LofC Provost Section

REMARKS

"D"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-35393	Gnr	Dann A.W.	12 Bn 2 C.B.R.Gp

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) 4 times.

For A.A. Sec 40 2 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 16 Apr 41

Date of last entry in Field Conduct Sheet 12 Dec 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for / days in military custody, *i.e.*, ... days in open arrest, // days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 23 years 9 months 29 days

6. The date of his attestation is 2 June 40

7. The service which the accused is allowed to reckon is 4 years 0 months 4 days

8. The accused is in possession of CVSM and Clasp

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.8670/668 100,000 4/42 A. & E. W. Ltd. Gp.698
(22459) Wt.29254/1873 60,000 6/42 - - Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6 day of June

[illegible] Capt & Adj
12 Bn 2 CBR Gp

"E"

No. 435393 Name Dann A.W. | Sqn, Battery, or Company | Corps R.C.A. | Date of enlistment 2 June 40 | Service or Proficiency Pay n/a | MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet n/a | No. and date of last drunk N/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 1 | Corps Badges | Signature OC Company, etc Maj J.H.C.Hewett R.C.A. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
						72 hrs Detn	18 Apr 41	Lt Col F. E.Gounding	Forf 1 days pay
Field	16 Apr 41	Gnr		A.A. Sec 15 (1) WOAS AWL from 1400 hrs 16 Apr 41 till 0625 hrs 17 Apr 41 (Absent 16 hrs 25 mins)	Bdr Sutcliffe				
Field	15 Jan 42	Gnr		A.A. Sec 15(1) WOAS AWL from 2250 hrs till 2315 hrs 15 Jan 42 (Absent 45 mins)	Bdr Brennett	3 days C.B.	17 Jan 42	Lt H.H. Wallace	
Field	17 Oct 42	Gnr		A A Sec 15(1) WOAS AWL from 2350 hrs till 0020 hrs Oct 17 42 (Absent 20 min)	L/Bdr Bresley Sgt MacEllis	5 days C.B.	17 Oct 42	Capt Airey	
Field	12 Jul 43	Gnr		(1) A.A. Sec 40 Conduct to the Predj etc. In that he did improperly use WD vehicle No. Can 4202223 by driving it from Lodge Wood to the WVS Canteen in Salfield without permission	A/Capt GHW McKee	14 Days C.B. Forf 7 days pay under KRaI 149(2)	13 Jul 43	Maj W.D.Kirk	

(F29)

MFM 6
(AFB 122)
40/PAS/130 (3439)

No. H35393 Name Dann A.W. | Sqn, Battery, or Company | Corps R.C.A. | Date of enlistment 2 June 40 | OC Badges | Service or Proficiency Pay n/a

Date of last entry in Company Conduct Sheet n/a | No. and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 1 | Signature OC Company, etc J.R.C.Hewett Maj R.C.A. | Character

"E"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	16 Apr 41	Gnr		A.A. Sec 15 (1) WOAS AWL from 1400 hrs 16 Apr41 till 0625 hrs 17 Apr 41(Absent 16 hrs 25 mins)		72 hrs Detn	18 Apr41	Lt Col F. Z.Gounding	Forf 1 days pay
Field	15 Jan 42	Gnr		A.A. Sec 15(1) WOAS AWL from 2230 hrs till 2315 hrs 15 Jan 42 (Absent 45 mins)	Bdr Sutcliffe 2nd rHe nnett	3 days C.B.	17 Jan 42	Lt W.H. Wallace	
Field	17 Oct 42	Gnr		A A Sec 15(1) WOAS AWL from 2359 hrs till 0020 hrs Oct 17 42 (Absent 20 min)	L/Bdr Presley Sgt McElligott	5 days C.B.	17 Oct 42	Capt Airey	
Field	12 Jul 43	Gnr		(1) A.A. Sec 40 Conduct to the Predj etc. In that he did improperly use WD vehicle No. CM 4202223 by driving it from Lodge Wood to the WVS Canteen in Isfield without permission	A/Capt DW McKee	14 Days C.B. Forf 7 days pay under PRAI 149(2)	13 Jul43	Maj W.D.Kirk	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12	Gnr		(2) A.A. Sec 40 CONDUCT TO THE PREJU etc in that he at or ab out 2200 hrs 12 Jul 43 drove W.D. vehicle No CM 4202223 after b eing cautioned twice to drive properly	A/Capt G.H.M. McHae S/Sgt MacDougall	See charge one	13 Jul 43	Major W.D.Airk	
Field	12 Dec 43	Gnr		A.A. Sec 15 (1) AWL from 2359 hrs 11 Dec 43 until 0925 hrs 12 Dec (Absent 9 hrs 26 min)	Sgt Wallace Sgt Haight	7 days C.B.	13 Dec 43	Major J.RC Hewett	Forf 1dys pay FRMI 149 (1)(a)

CERTIFIED TRUE COPY

.....Capt
(L.B.Skinner)
Adjutant 12 Bn 2 C.B.R.Group
Officer having custody of the original Document

4D.123
SGT. DAOUST A.

RECORDED AT CMHQ IN AB 160 (a) 4D-12-3

FIELD GENERAL COURT-MARTIAL

4/38B

Convened at Orthonville by Lt Col W.T. Colling Comd RCASC dated 27 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prnnt R.	(b) Apptmt, A/R or A/Appt.	Full Christian Names.	Surname.	Unit.
D61201	Sgt.		Alfred	Daunt	Fus M.R.

PROCEEDINGS REVIEWED 20 Nov 44
J.C.S.C. W.C. Finch Capt.

PROCEEDINGS REVIEWED JAG BRANCH C.M.H.Q.

Cdn. Sec. G.H.Q. 2 Echn. 21 Army Gp. J.A.G.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 29 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 1318-

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 753. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 23, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1350 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~Lt Col W.T. Colling~~ as interpreter ? Ans ~~No~~

The Interpreter is sworn.(1) Do you object to ~~Lt Col W.T. Colling~~ as shorthand writer ? Ans ~~No~~

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused (2)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans ~~No~~ (3)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	R.S. Hamilton	3 Mth Regt RCA
Member	Captn	S.F. Hay	Tor Scots (M.G.)
Member	Lt.	H.F. McCullough	3 Mth Regt RCA
Judge-Advocate	Captn	E.K. McDougall	HQ 2 Cdn Inf Div
Prosecutor	Lt.	R.A. Asselin	Fus M.R.
Defending Offr	Captn	J.E. Thibault	Fus M.R.

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when: RP 89 (B) and fn 2 were not followed. See DI 9 p 3.)

A8. The accused D 61201 Sgt. Daunt, A Fus M.R. before arraignment makes(s) (no) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~now~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused ~~does~~ (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 Ref - Vol I Fol 46

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D/61201 Sgt Daunt, A, Fus M.R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	Noted W.C.F.
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial ~~a total of~~ days, of which ~~days were spent in hospital.~~(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) Judge-Advocate, if any. Date awarded. (Sgd) President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd)

Date Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D/61201 Sgt Daunt A Fus M.R.	5 Oct 44	Lt-Col R.S. Hamilton

~~A.B.W.~~

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without nolle from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*); *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 37(*D*) *fn* 1 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 37(*E*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence will be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir.(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record addresses per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court [illegible] and the President announces that the submission is disallowed on the ..... charge(s) and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Evidence on oath. Do you intend to call witnesses on your behalf? Ans. No. Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*B*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), [illegible] Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative procedure is not applicable when there are pleas of Guilty outstanding and must not be used under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No. If evidence has already been given by accused or his witnesses as to his character, delete this para. *RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number(s), name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively. [illegible]
(1. *AFB* 355 *or AFB* 296. 2. *AFW* 6. 3. *MML p* 130 *para* 7.) *AA* 163(3) (*g*) (*h*), *KR Can* 158. *If above documents not produced, see RP* 46 *fn* 1

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried conjointly see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 68, 118, 119(*A*), *KR Can* 308, 130, 542-566. *Overseas NO* 309, 2323. *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3) (*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

D-61201 Sjt Alfred DAOUST (M.M.) Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE WHEN ON ACTIVE SERVICE,
AA Sec 15(1) ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, at about 1400 hrs on the 18th Sep 1944, absented himself without leave until he reported to unit "A" Echelon, at about 1515 hrs on the 26 Sep 1944.

Absent: 8 days, 1 hr, 15 mins.

In the Field
26 Sep 44

(J.A.P. Sauvé) Major
O/Officer Commanding
Les Fusiliers Mont Royal

To be tried by Field General Court Martial

(W.H. Colling) Lt-Col
CRCASC 2 Can Inf Div

In the field
27 Sep 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and, (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 61201	Sgt		Alfred	DAUGET	Les Fusiliers Mont Royal

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[s] named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet[s] attached and on (*date*) 27 Sep 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ([redacted])

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[s], and to consist of the Offrs appointed or detailed hereunder.

4 [redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	R.J. Hamilton (Must be named. RP 106.)	2 A Tk Regt RCA (Unit.)	

MEMBERS.

Capt	G.F. Hoy	Tor Scot (MG)	
Lieut (Rank.)	H.F. McCullough (Named or detailed. RP 106.)	2 A Tk Regt RCA (Unit.)	

WAITING MEMBER.

Capt (Rank.)	J.M.A. Graham (Named or detailed, if any. RP 106.)	2 Div Tps Coy (Unit.)	RCASC

JUDGE-ADVOCATE.

Capt (Rank.)	E.K. McDougall (Must be named, if any. RP 106.)	Hq 2 Cdn Inf Div (Unit.)	

On Active Service in the Fd

in Belgium (Country.)

W.H. Colling (Signed personally. RP 105 fn 2.)

Lt Col (Rank.)

(W.H. Colling)

Date 27 Sep 44

Commanding RCASC 2 Cdn Inf Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (FAGO 11b 1945 OF AFAS) 40 F & R 1945 (4951)

RJHamilton Maj

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RD (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(E)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 80(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(*a*).)

(vii) Summing up by J.A., if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 118(C), *MML* p 759.)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

1st. Pros Witness D139085 L/Sgt. P. E Hanners, Fus M.R. duly sworn deposes:

About 1400 hrs Acc left the post where we had some prisoners. He left to get some food from the nearest village about 5 miles away. He said he'd be back as soon as possible. This was 18 Sep 44. He left with Cpl Leblanc.

Cross X He said he'd get food & cigs for us as we had no food. We hadn't eaten.

Re X Nil

Comt We last ate at breakfast. Village closer than our A Ech. I didn't see the Acc between the dates men turned in the charge. If he had been with the unit I would have seen him — in some pln. Went for food for the whole Pln. No officers there. Sgt. was in charge.

RP 83 (b) complied with.

2nd Pros Wit. C110064 L/Cpl. Lschasseur RJ Fus M.R. duly sworn deposes:

I Identify Acc.

He reported to me on 26 Sep 44 at 1515 hours. He reported at A Ech. Was alone. I reported this I hadn't seen him since 18 Sep.

Cross X - Nil

Comt. - A Ech had moved since he went AWL. He said nothing to me.

83 b complied with

Defence

Acc. duly sworn deposes:

About 1400 18 Sep my men hadn't eaten. Q.M. hadn't arrived with rations. We were detached. I went with Leblanc to try & get rations for them. Pln. didn't need me at the time.

4D-123

SGT. DAOUST A

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 61201 Sgt Daoust, A. Fus M.R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	Noted WHG
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial: a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) [illegible] Judge-Advocate, if any. 29/9/44 Date awarded. (Sgd) [illegible] President. (RP 45, 50 fn 4)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 61201 Sgt Daoust A Fus MR	5 Oct 44	[signature] Capt & Adjt 6 R.R. LANCS

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 40-12-3

AFA98 (To Beg of AFA8) 40/P.A.S./1008 (4910) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Lt Col W.H.G. Colling Coml RCASC dated 27 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 61201	Sgt.	Acted	Daoust	Fus M.R.	

PROCEEDINGS REVIEWED 20 Nov 44
W.C. Finch Capt.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED 20 Nov 44 J.A.G. 21 Army Gp Cdn. Sec. G.H.Q. 2 Echn.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 29 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13/18-

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(A) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans .....(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	R.S. Hamilton	6 M/Tk Regt RCA
Member	Capt.	S.F. Hoy	Tor Scots (M.G.)
Member	Lt.	H.F. McCullough	6 M/Tk Regt RCA
Judge-Advocate	Capt.	E.K. McDougall	HQ 2 Cdn (Inf) Div
Prosecutor	Lt.	R.A. Asselin	Fus M.R.
Defending Offr	Capt	J.E. Thibault	Fus M.R.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DJ p 33.)

A8. The accused D 61201 Sgt. Daoust, A Fus M.R. before arraignment makes(s) (no) (~~objection~~)(1) to the ..... (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused (~~does~~) (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB160 Ref - Pt I Fol 6

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* [illegible] *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 27(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of forms D1 to D8 inclusive of Record Form D on p* 3. *RP* 27(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by applying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (a) (no) opening address.(1) Nil
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court [illegible] and the President announces that the submission is closed, and considers the submission.(3) The Court [illegible] and allowed on the.....charge(s) and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Evidence on oath. Do you intend to call witnesses on your behalf? Ans. Nil. Are they witnesses as to character only? Ans.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E2 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), [illegible] Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No. If evidence has already been given by accused or his witnesses as to his character, delete this para. *RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* [illegible] *Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 52(*f*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 1203, *MML p* 60, 757-758. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

D-61201 Sjt Alfred DAOUST (M.M.) Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE,
AA Sec 15(1) — ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, at about 1400 hrs on the 18th Sep 1944, absented himself without leave until he reported to unit "A" Echelon, at about 1515 hrs on the 26 Sep 1944.

Absent: 8 days, 1 hr, 15 mins.

(J.A.P. Galvo) Major
T/Officer Commanding
Les Fusiliers Mont Royal

In the Field
26 Sep 44

To be tried by Field General Court Martial

(W.H. Colling) Lt-Col
ORCASC 2 Cdn Inf Div

In the field
27 Sep 44

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D 61201	Sgt		Alfred	DAUOST	Les Fusiliers Mont Royal

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 27 Sep 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ([redacted])
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (Rank.)	R.J. Hamilton (*Must be named. RP 106.*)	2 A Tk Regt RCA (Unit.)

MEMBERS.

Capt	G.F. Hoy	Tor Scot (MG)
Lieut (Rank.)	H.F. McCullough (*Named or detailed. RP 106.*)	2 A Tk Regt RCA (Unit.)

WAITING MEMBER.

Capt (Rank.)	J.M.A. Graham (*Named or detailed, if any. RP 106.*)	2 Div Tps Coy (Unit.) RCASC

JUDGE-ADVOCATE.

Capt (Rank.)	E.K. McDougall (*Must be named, if any. RP 106.*)	HQ 2 Cdn Inf Div (Unit.)

On Active Service in the Fd

in Belgium (Country.)

W.H. Colling (*Signed personally. RP 105 fn 2.*) Lt Col (Rank.)

(W.H. Colling)

Date 27 Sep 44

Commanding RCASC 2 Cdn Inf Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

4/38A (CFAES 11b (Mil) OF APAS) 40-7 G.S. 1407 (4601)

R.J. Hamilton Maj

1st. Pros Witness D139085 L/Sgt. P. E Hanners, Fus M.R. duly sworn deposes:

About 1400 hrs Acc left the post where we had some prisoners. He left to get some food from the nearest village about 5 miles away. He said he'd be back as soon as possible. This was 18 Sep 44. He left with Cpl Leblanc.

Cross X He said he'd get food & cigs for us as we had no food. We hadnt eaten.

Re X Nil

Comt We last ate at breakfast. Village closer than our A Ech. I didnt see the Acc between the dates mentioned in the charge. If he had been with the unit I would have seen him — in some pln. Went for food for the whole Pln. No officers there. Sgt. was in charge.

RP83 (b) complied with.

2nd Pros Wit. C110064 L/Cpl. Lechasseur RJ Fus MR duly sworn deposes:

I Identify Acc.

He reported to me on 26 Sep 44 at 1515 hours. He reported at A Ech. Was alone. I reported this I hadnt seen him since 18 Sep.

Cross X - Nil

Comt. - A Ech had moved since he went AWL. He said nothing to me.

83 b complied with

Defence

Acc. duly sworn deposes:

About 1400 18 Sep my men hadnt eaten. QM hadnt arrived with rations. We were detached. I went with Leblanc to try & get rations for them. Pln. didnt need me at the time.

"E"

No H35393 Name Dann A.W. Sqn, Battery, or Company Corps R.C.A. Date of enlistment 2 June 40 Badges Service or Proficiency Pay n/a

Date of last entry in Company Conduct Sheet n/a No and date of last drunk N/a Period not reckoning towards freedom from extra fine n/a Sheet No 1 Signature OC Company, etc J.N.C.Hewett Maj R.C.A Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 Apr 41	Gnr		A.A. Sec 15 (1) WOAS AWL from 1400 hrs 16 Apr41 till 0625 hrs 17 Apr 41(Absent 16 hrs 25 mins)		72 hrs Detn	18 Apr44	Lt Col F. E.Gounding	Forf 1 days pay
Field	15 Jan 42	Gnr		A.A. Sec 15(1) WOAS AWL from 2230 hrs till 2315 hrs 15 Jan 42 (Absent 45 mins)	Bdr Sutcliffe Bd rBe nnett	3 days C.B.	17 Jan 42	Lt R.H. Wallace	
Field	17 Oct 42	Gnr		A A Sec 15(1) WOAS AWL from 2359 hrs till 0020 hrs Oct 17 42 (Absent 20 min)	L/Bdr Bresley Sgt McElligott	5 days C.B.	17 Oct 42	Capt Airey	
Field	12 Jul 43	Gnr		(1) A.A. Sec 40 Conduct to the Predj etc. In that he did improperly use WD vehicle No. CM 4202223 by driving it from Lodge Wood to the WVS Canteen in Isfield without permission	A/Capt GHW McKee	14 Days C.B. Forf 7 days pay under FR&I 149(2)	13 Jul43	Maj W.D.Kirk	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12	Gnr		(2) A.A. Sec 40 CONDUCT TO THE PREJDJ etc in that he at or ab out 2200 hrs 12 Jul 43 drove W.D. vehicle No CM 4202223 after b eing cautioned twice to drive properly	A/Capt G.H.W. McKee S/Sgt MacDougall	See charge one	13 Jul 43	Major W.D.Birk	
Field	12 Dec 43	Gnr		A.A. Sec 15 (1) AWL from 2359 hrs 11 Dec 43 until 0925 hrs 12 Dec (Absent 9 hrs 26 min)	Sgt Wallace Sgt Haight	7 days C.B.	13 Dec 43	Major J.RC Hewett	Forf 1dys pay FR&I 149 (1)(a)

CERTIFIED TRUE COPY

.....Capt
(L.B.Skinner)
Adjutant 12 Bn 2 C.B.R.Group
Officer having custody of the original Document

ARMY FORM B.296 (WAR).

"D"

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
[illegible]35393	Gnr	Dann A.W.	12 Bn 2 C.B.R.Gp

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1)	4 times.
For A.A. Sec 40	2 times.
For	times.
For	times.

Date of first entry in Field Conduct Sheet 16 Apr 41

Date of last entry in Field Conduct Sheet 12 Dec 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~The accused at the present time is under sentence for~~

~~beginning on the~~ ~~day of~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for / days in military custody, i.e., days in open arrest, " days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 23 years 9 month. 29 days.

6. The date of his attestation is 2 June 40

7. The service which the accused is allowed to reckon is 4 years 0 month. 4 days.

8. The accused is in possession of †CVSM and Clasp

†State the military decoration (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[illegible] [illegible] 100,000 4/42 A.& E.W.Ltd. Gp.6/38 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6 day of June

[illegible] Capt & Adj
1 E Bn 2 CBR Bde

Officer Commanding.
59 Coy., 2 C.B.R.G.

59. Coy

File No. MQ

Re: H.35393 Gnr Dann A.W.

Forwarded for your information and necessary action, please, and disposal under C.A.R.O. 388 dated 29th Oct 1940.

Field
26 May 44

C.J. Albendorf, Capt.
Officer Commanding
No 2 Cdn L of C Provost Coy

DANN A.W. Rank Gnr

Place Field

OFFENCE WOAS:. A.W.L. Date of Offence 25 May 44

O.C.
HQ., 2 Cdn L of C Provost Coy.

Names of Witnesses :—M.10608 L/C Farquharson A.
A.55248 L/C Beavis W.G.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Statement of EVIDENCE In case of

H.35393 Gnr DANN A.W. 59 Coy 2 CBRG.

Sir:

On 25 May 44 at approx 1915 hrs in company with L/Cpl Beavis I was on foot patrol in Farnham. Acting on information received I proceeded to the Police Station where we observed the a/m soldier, he was A.W.L., I placed him under arrest and contacted his unit which sent an escort to take him into custody.

M.106[illegible] L/C Farquharson A.
No 7 Cdn LofC Provost Section

I have read over and corroborate the above statement

A.5524[illegible] L/C Beavis W.G.
No 7 Cdn LofC Provost Section

REMARKS

I went to Adinkerke + there was shelling + food there. On returning I met the QM who going towards Furnes. I got off in Furnes. I had asked QM. to pick me up but I must missed him. I was left in Furnes — about 70 kilometres from where I had left the Pln. Left there about 1730. Got to Regt. about 1830-1900. Had to walk. My bags had gone there were just civs. there. Said they'd left at 1730 or so. There was nothing there so I spent the night there. Ate at the farm in the morning + about 0930 started walking to Furnes trying to find anybody. No one knew anything except that they had left. I started to hi Pannes where the Cams had been. No one there to help. I spent day there. Slept there. Next day met 2 Div. Arty truck. Said we were going to Holland. I took Tram to Nieuport. Reported to F.F.I. + slept with them. Next day to ~~the~~ Ostend same thing happened none of our troops. I kept this up for 8 days reporting at Bruges, Brussels + Antwerp where I finally found Cdns. I reported to either the F.F.I. or Town Major everywhere I went. After Antwerp I walked finally to my A Ech.

Coon X At time I was in Furnes I knew the A Ech was about 2-3 kilometres away. Didn't go there as I was then returning to my Pln. I have no vehicle except a bo cart. Kept in the rear. Didn't think of sending anyone else for food. There was no officers there.

No Re X First town Adinkerke. Went to Furnes as I got a ride there. The QM I met had no food. I could have gone to A Ech but I had money + wanted to buy my bags some meat. Had no idea there'd be a move. Reported everywhere to F.F.I. or Town Major. Lieblanc was with me all the time.

I went to Adinkerke & there was shelling & no food there. On returning I met the QM who was going towards Furnes. I got off in Furnes. I had asked QM. to pick me up but I must have missed him. I was left in Furnes — about 7 or 8 kilometres from where I had left the Pln. Left there about 1730. Got to Regt. about 1830-1900. Had to walk. My bags had gone there were just civs. there. Said they'd left at 1730 or so. There was nothing there so I spent the night there. Ate at the farm in the morning & about 0830 started walking to Furnes trying to find any body. No one knew anything except that they had left. I started to Lepanne where the Cams had been. No one there to help. I spent day there. Slept there. Next day met 2 Div. Arty truck. Said we were going to Holland. I took Tram to Nieuport. Reported to F.F.I. & slept with them. Next day to ~~the~~ Ostend same thing happened none of our troops. I kept this up for 8 days reporting at Bruges, Brussels & Antwerp where I finally found Cdns. I reported to either the F.F.I. or Town Major everywhere I went. After Antwerp I walked finally to my A Ech.

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Hamilton "A"
Amy

SUMMARY OF EVIDENCE

In the case of D-61201 Sjt Alfred DAOUST (M.M.) Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs and the accused demands that the evidence be taken on oath.

FIRST WITNESS: for the prosecution: D-139085 L/Sjt P.E.MANNIS, Les Fusiliers Mont Royal, having been duly sworn, makes the following statement:

" At about 1400 hrs on the 18 Sep 44, I was in charge of a few PsOW with Sjt Daoust and L/Cpl Leblanc, J.Y.. Suddenly Sjt DAOUST told me that he was proceeding to the nearest village for the purpose of buying food. He asked L/Cpl LeBlanc to accompany him. That is the last I saw of him.

The accused declines to cross-examine.

Pte Paul Mannis
D-139085 L/Sjt P.E.MANNIS

SECOND WITNESS: for the prosecution: C-110064 L/Cpl R.J.LECHASSEUR, Les Fusiliers Mont Royal, having been duly sworn, makes the following statement:

" At about 1515 hrs on the 26 Sep 44, Sjt DAOUST ~~and L/Cpl Leblanc~~ reported to me at "A" Echelon. He was immediately despatched to the Coy Comd for disciplinary action.

The accused declines to cross-examine.

R.J. Lechasseur
C-110064 L/Cpl R.J.LECHASSEUR

The accused, having been duly cautioned in accordance with R.P. 4(e) says :

" I have nothing to say"

A. Daoust Sgt MM
A.Daoust(M.M.) Sjt

Certified that RP 4 have been complied with.

(C.J.H.Langlois)Capt
Officer detailed to take the Summary

In the Field
27 Sep 44

LIST OF WITNESSES

In the case of D-61201 Sjt Alfred DAOUST, (M.M.) Les Fusiliers Mont Royal, a soldier of the Canadian Army Overseas.

PROSECUTION

D-139085	L/Sjt	HANNIS P.E.	Les Fus M R
C-110064	L/Cpl	LECHASSEUR R.J.	Les Fus M R

DEFENCE

NIL

LIST OF EXHIBITS

NIL

STATEMENT BY ACCUSED

I, D61201 Sjt DAOUST, A (M.M.) certify that I have been given free-of-charge copy of documents, proceedings, etc relating to my trial by Field General Court Martial.

I request the services of an offr to defend me at my trial by Field General Court Martial.

I desire the services of... CAPT... TOUBAULT... A.E.. if he is available.

A. Daoust, M.M. Sgt

A.Daoust,(M.M.) Sjt

Sjt Daoust has been in charge of his bl as comd since Beauvoir Fm, 19 Jan 44. As evidence of his services, he has been proposed for a commission in the Fd.

A H.M of Dieppe 42, Sjt Daoust has been commended for his good work in action.

Witness also has ernie sheet without entries.

It is the opinion of the defending officer that Sjt Daoust did here an action worthy of all good comds, to try to feed his men. Save for the move of the bn, this sjt would have been noted for his adm.

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

V. 20.

SGT DAOUST A.

JAG BRANCH - REVIEW RECORD

Accused

361201 Sgt Daoust A
Fus MR

Remarks	Date
Trial in (Country) Eng	8 Nov 43
Charges Sec 40 etc	
Sentence Confirmation refused	9 Nov 43
Rec'd from CR at JAG Branch	29 Nov 43
To Inch for ~~(pre)~~ ~~(post)~~ post rev	30 Nov 43
Recommendations by JAG Rev 2	
(1) Pass and record.	
(2) ~~Ltr on irregularities~~	
(3) ~~Quash~~ ~~charge(s)~~.	
(4)	
Ret'd to JAG Rev 1 by Rev 2	30 Nov 43
Passed to	
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record & File [illegible]	30 Nov 43
Instrs completed by	

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: No D61201 Sgt Alfred Daoud M.M.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty	Guilty	To be severely reprimanded
2nd	Not guilty	Guilty	
3rd	Not guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court To be severely reprimanded.

(Sgd) ..... 8 Nov 43. (Sgd) W. E. Olen Major

Judge Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 40(A), 51-56, 120, MML pp 759-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 (c).)

My decision on the finding(s) and sentence set forth in Part I is:

I refuse confirmation

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 9 Nov 43 (Sgd) ..... J. N. Gatling Brig

Commanding 6 Cdn Inf Bde

Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
D61201 Sgt Alfred Daoud M.M.	11 Nov 43	A/Deputy Capt adgt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

FIELD GENERAL COURT-MARTIAL

CPAP6 (In lieu of AFA3) 40/P & S/1608 (2864)

Convened by Order of Brig. J. N. Gatling Comd 6 Cdn Inf Bde dated 7 Nov 43

VV—20

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, firs, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D61201	Sgt	[illegible]	Alfred	Daoud	Pao M.R.

Proceedings Reviewed 30 Nov 43

Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 8 Nov 43.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para numbers herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~or~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1025 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W. E. Olen	Cameron Hghlrs
Member	Capt	E. Barnard	Pao M.R.
Member	Lt	J. K. Kemp	S. Sask R.
~~Judge Advocate~~			
Prosecutor	Capt	M. Rousseau ~~J. J. B. Gagnon~~	~~Regina Rif Regt~~ ~~Cameron Hghlrs~~
Defending Offr	Capt	J. J. B. Gagnon	Cameron Hghlrs

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused Sgt Alfred Daoud M.M. before arraignment make(s) (no) ~~the~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or a bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~duly~~ arraigned ~~(representation)~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 4. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement.* Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record. 3

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans Nil .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the all the charges, charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), ~~and allowed on the charge(s),~~ and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Give evidence on oath ..... Do you intend to call witnesses on your behalf ?
Ans Yes ..... Are they witnesses as to character only ! Ans Yes .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.~~(1)
~~Or~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith. And that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 44, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. ~~President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?~~(1)
None
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

~~The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true~~ ~~(copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for~~ ~~examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer~~ ~~to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport~~ ~~to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and~~ ~~marked Ex E1 and Ex E2, respectively.(3)~~
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E2. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E3. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E4. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 47(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 1323, *MML p* 60, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D-61201 Sgt Daoust Alfred(M.M.) Les Fusiliers Mont Royal C.A.(O) a soldier of the Canadian Army Overseas is charged with:-

1st Charge
A.A. Sec 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he,

W.O.A.S. In the field at 0840hrs the 25 Oct 43 at 24 Crafton Rd, Worthing, was found in his bed during parade hours

2nd Charge
A.A. Sec 11

NEGLECTING TO OBEY UNIT STANDING ORDERS.

In that he,

W.O.A.S. At 1120hrs the 25 Oct 43 during parade hours was found without a pass in Hovis restaurant on Crescent Rd , Worthing, contrary to Unit Standing Orders, sheet 2, para 2, sub-para(a).

3rd Charge
A.A. Sec 40

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he,

W.O.A.S. In the field on the 21 Oct 43 after being warned by D-61147 Sgt Beaudette A. to report on the 0400hrs parade to proceed on Exercise "PRODDER" neglect to do so

In the Field
29 Oct 43

(J.G.Gauvreau)Lt-Col
Officer Commanding
Les Fus M R - C A (O).

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G.S.M. Gostling) Brigadier
Commander 6 Cdn Inf Bde

A.4 [illegible] Major

MEDICAL OFFICER'S CERTIFICATE

R.R. (CAN) PARA 2[illegible]

I certify that I have this morning examined

No. D-61201 Sgt. Daoust, A. (MM)

of Fusliers Mont-Royal and in my opinion he

is FIT ~~or UNFIT~~ to undergo Trial by Court-Martial.

Station In the field

Date 8 Nov 43

G. [illegible]

Medical Officer

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.61201	Sjt		Alfred	Daoust	Fus M R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Nov 43 endorsed by me, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~(a) [illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	W.E. Osler (Must be named. RP 106.)	Camerons of C (Unit.)

MEMBERS.

Capt	E. Barnard	Fus M R
Lieut (Rank.)	J.K. Kemp (Named or detailed. RP 106.)	S Sask R (Unit.)

WAITING MEMBER.

Capt (Rank.)	G. Lechasseur (Named or detailed, if any. RP 106.)	Fus M R (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(G.S.N. Gostling) Brigadier
(Signed personally. RP 105 fn 2.) (Rank.)
Commander

Date 7 Nov 43 Commanding 6 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS
(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far* as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 2(i)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 2, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence unless so provided by RP* 46(E), *KR Can* 562(a).)

(vii) *Sur* using up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 556). *As to certified copies of regimental books see AA* 162 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 183(2), *RP* 118(*C*), *MML* p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

D 2

The prosecutor makes an opening address.

In this present case there are two ~~[illegible]~~ charges under Sec 40 and ~~one~~ under Sec 11. The prosecution will try to bring only verbal evidence proving that during the morning of 25 Oct 43 the accused was found on two occasions, in a restaurant and in bed. Secondly that on 21 Oct 43 warning was given to the accused to be on parade at 4 o'clock in the morning and that the accused neglected to be present.

I am first witness for the prosecution.

D 3

Capt M. Rousseau, Regiment de Hyacinthe, having been duly sworn states:

On the 20th Oct 43, I was acting O.C. H.Q. Coy, Pres. M.R. The accused belonged to this coy, and around nine o'clock that night I received an order from Lt. Col. Gauvreau that Sgt Beaudette and Sgt Daoust were to be on parade next morning at four o'clock ready to leave on Exercise "Prodder". I gave this order myself to C.S.M. St Marie. About three o'clock in the morning Sgt Beaudette came in my office ready to leave. The accused was not with him. I took a jeep and went to the accused's billet and found him asleep. I asked him if he was coming on this scheme and if he had received an order to do so. He answered he was not coming because his equipment was not ready.

Cross-examination

Q. What time was it when you went to the accused's quarters.

A. About 03.20.

Q. When you asked the accused about coming on

the exercise, could you repeat what he said to you?

A. He said "I cannot go, my equipment is not ready.

Second Witness for the Prosecution

Major H. N. Langlois, 2 1/c Fus. M. R., having been duly sworn, states.

On 25 Oct I was detailed by the C.O. to visit various billets and to report any irregularities. I visited the billet at 24 Grafton Rd, I visited the unit guard room and then went on to the ground floor where I found D 61201 Sgt Daoust, A, (M.M.) still asleep. It was at that time 08.40 hrs. I woke him up and asked him why he was not on parade. He replied nobody had told him it was time to get up and further that he had no duties to perform. At that time D 63212, C.S.M. Gauthier A, and E 26319, Sgt Copeman, J., were in the room. In accordance with instructions I reported to the C.O. The same afternoon I was a witness when Sgt Daoust was paraded to the C.O.

Q. Is it normal for a sergeant to be in bed at 08.40?

A. No

Q. Are there standing orders in the Fus. M.R.

A Yes.

Q. What is the daily routine

A. I have here an extract of our standing orders showing the routine, which I here produce in evidence (MARKED "F1")

~~Q. When the accused~~

Q. When were these standing orders published?

A. I don't know the date, but it was immediately on our arrival in Worthing. We went to a lot of trouble to make sure every member of the Bn. was familiar with them.

~~Q. Can you tell the accused~~

On the same morning, continuing my visit to billets, I had occasion to visit a restaurant on Crescent Rd. adjacent to the R.M.'s office. I found several members of the unit having tea or lunch. Sgt Daoust, the accused, was one of them. This being contrary to unit standing orders, it being only 11.20 hrs, I took the names of all those present and reported them to the C.O. I here produce an extract of unit standing orders (MARKED "F2.")

Cross examination by defending officer.

Q. You state that the accused said he had no duties to perform. Did you check on the veracity of that statement?

A. I did. Due to our return to an exercise things were pretty mixed up. The accused had not been detailed to any duty.

Q. I suggest the accused has never lived at 24 Grafton Rd. Would it be possible you made a mistake in the address.

A. I could not say yes or no.

Q. What evidence have you that the accused had access to Standing orders? you said you went to a lot of trouble

A Yes. The C.O. has been questioning men on their knowledge of standing orders and has ordered Coy comds to do the same.

Third Witness for the Prosecution

E26319
Sgt J. Copeman, Cdn. Dental Corps, attached to Fus. M. R., having been duly sworn states:

On the morning of 25 Oct 43, Sgt Daoust was still in bed when I got up at about 08.30. Major Langlois came in the room about 08.50. He asked me who was sleeping in the corner. He called Sgt Daoust and asked what he was doing in bed at that time. Sgt Daoust said he had no duties to perform. Major Langlois also called C.S.M. Gauthier who was also asleep in the room. The C.S.M. said he was just finishing his leave and that was why he was asleep. Major Langlois then left the room.

Q. What was the daily Routine on 25 Oct.?
A Reveille was at 06.30, breakfast at 07.00

Q. Where did you find those hours
A. I believe they were in orders, but I have not seen them.

Q. Did you try to see them?
A. No.

Q. Were there any orders posted in your building at that time?
A. I don't know. I didn't see any

No cross examination

Fourth Witness for Prosecution

P 61147, Sgt Beaudette, A., Les Fus. m. R., having been duly sworn, states:

On 25 Oct 43 at 11.20 hrs I was with Sgt Daoust in a restaurant, on Crescent Rd, ~~we were having~~ at that time Major Langlois came in and took our names and the names of some others there. Then he walked out.

Q. What was the reaction when Major Langlois came in.

A. Nothing.

Q. Were you supposed to be there at that time?

A. Well, I had never been told not to go there and as I was not on any duty at the time I considered myself free to go there.

Q. Do you know if there are Standing orders in this regiment?

A. I have heard there are some, but I've never seen them or been given the chance of reading them.

Q. Did you ask to see them?

A. No there were none where I live or in the mess where we eat.

Q. During the night of Oct 20/21 Oct at about 11 o'clock, where was the accused.

A. I could not say about that time because I was in bed

Q. : Where did you see him.

A. At 20.00 hours (Sgt Daoust and) I went to my office and was told there were no orders for me for the scheme. I went to my room, and Sgt Daoust went somewhere else. At about 20.30 Sgt Noiles St Marie came in and told me that Sgt Daoust and I were to go on the scheme and to report to Capt Ransom at I think 03.30 or 04.30 to go on Exercise Prodder.

Q. I went to ship. I got up at about 02.30 and told Sgt Daoust that we were going on the scheme. He said something about not being able to come because his equipment was not ready. There were some things missing.

Cross - Examination

Q. Where did the accused live on 21 Oct 43.

A. I think it was 30 Grafton Rd.

Re - examination

Q. There was the unit Guard Room on the same date. ?

A At the same address.

Case for prosecution closed

B.E. Osler Maj

D4.

Argument by defending officer.

First two charges. It has been admitted by Prosecution witness that accused not detailed for duty.
No evidence that ~~the~~ standing orders were generally known.

Third charge.

No evidence that C.S.M. St Marie carried out his duties in warning the accused.

By Prosecution

Even if everything is not proved, there is a case.
Major Langlois has produced extracts of Standing orders and he says he and the C.O. have checked to see if men familiar with them.

1st charge. Acc. has long enough experience to know duty of good N.C.O. to find and read orders.

2nd charge. I am sure Major Langlois went answered for specific reason

3rd charge. A good N.C.O. must be prepared at any time to go on active service
~~If C.S.M.~~ Even if not warned by C.S.M.
I went myself at 03.20 I think he had time enough to be ready to move.

[signature]
Major

D6.

EVIDENCE in the case of D-6102 Sjt Daoust A (MM)

The accused having been sworn makes the following statement:

After Dieppe I was made Intelligence Corporal. I tried to get posted to the Field Security Branch, but instead was made I" Sjt under Lt Dextrasse Later on we got a new "IO", I didn't get along very well with him so I asked to be transferred anywhere as I was not satisfied with my work.

The CO then recommended me for OCTU, I told the CO, I was more interested in getting transferred than in an OCTU, but he told me since I more a MM I shouldn't leave the FMR's.

I went before the OCTU selection board and wrote my papers, on returning to the Unit and awaiting the results of the Exam, I proceeded on nine days leave. In the meantime a new "I" Sjt was appointed, and I was not posted, I did not pass the selection board. On returning from my leave I reported to my CSM and my Coy Comd who told me there was nothing for me to do as I was not yet posted. During this time I was only asked to do my turn as Coy Ord Sjt, which I did.

On the 20th Oct 43 I was again before the CO, he asked me if I would like to be "I" Sjt again, I told him I preferred to get my transfer, the CO then assured me if I went to a Rifle Coy for three weeks training and did well I'd be given an opportunity to go Overseas, if I did not do well he'd have me up before the General.

At about 2000 hrs the same day Sjt Beaudette and myself reported to Capt Rousseau to get orders regarding Exercise Prodder which was due to start the following morning, Capt Rousseau stated " I have no orders for you." I went out for the evening. At approximately 0230 hrs 21 Oct 43 I was awakened by Sjt Beaudette who informed me that I was supposed to proceed on the Exercise at 0400 hrs, I explained to Sjt Beaudette that having been on the selection board and on leave I did not have sufficient clean laundry to go on an exercise and that whilst I was on leave my clothes and equipment had been moved from one billet to another and I could not find some of my Sten mags, my water bottle, and my large pack containing my ground sheet, gas cape, etc. Furthermore what equipment I did have was not readily available and I therefore could not possibly be ready to proceed on the exercise in an hour and a half. Capt Rousseau woke me at approximately 0330 hrs and I informed him of the same thing. He then placed me under Close Arrest. He shouted so loud that he woke Sjt Gopeman who was sleeping in the same room as myself. I was left alone from then on. On 22nd Oct 43 I paraded myself

before Capt Langlois, there was no charge read to me, he placed me under Open Arrest. From then on I was only called upon to do my turn as Coy Ord Sjt every other day or so, in HQ Coy.

When the Unit returned from Exercise Prodder Capt Thivierge was appointed OC HQ Coy. He did not give me any further duties to perform. On Monday morning after the Exercise 25 Oct 45, no one wakened me until Major Langlois came in our room, at approximately 0840 hrs CSM Gauthier and myself were still in bed and Sjt Copeman had just got up. At approximately 1120 hrs the same morning several of us who were not on duty at the time went to a local restaurant for a cup of coffee, I was not aware that this was contrary to any Unit Standing Order, particularly when I'd often seen our own officers there. Major Langlois came in and took our names. I met Capt Thivierge at Approximately 1400 hrs, he told me to report to him at 1530 hrs, he then told me to do my regular turn as Coy Ord Sjt. On 26th Oct 45 I was paraded before the CO and the charges were read to me, the CO asked me if I'd revert at my own request or be tried by Court Martial, feeling that I had not committed the offences as charged I elected to be tried by Court Martial.

D 6.

~~D 61201, Sgt Alfred Daoust, M.M., having been duly~~

Cross examination

Q. What date did you return from OCTU Selection Board.

A. I don't know the date, but the regiment was moving to Worthing that day.

Q. How long was that before Exercise Prodder?

A. Approximately 15 days.

Q. Then you spent about 15 days in Worthing

A. No sir, I was on leave nine days.

Q. Did you not have time in those four days to get your equipment ready to go any place?

A. I was not ready at the moment, ~~you~~ I found out my equipment had been stolen. I found that out on the day of Exercise Prodder – the day I asked Capt Rousseau about the scheme. I reported this to L/cpl Choquette, Regl police. a ~~pair~~ pair of shoes, my big pack and some of my equipment, had been taken.

Q. Where did you put your things when you went on leave.

A. In my room.

Q. Why didn't you put your things in the Q.M. stores.

A. I didn't think there was a better place than my room. There were guards in the building.

Q. Isn't every man going on leave supposed to take all his things to the Q.M. stores?

A Yes sir.

Q. When you came back from leave did you report to Coy H.Q.

A. Yes sir:

Q. Did you notice that there were orders posted in the hall?

A. Yes

R: did you read them?

A. No - I didn't because I thought they were the same as those in my room and in the mess.

R. Did you read those, thoroughly?

A. Yes sir

R. What was contained in those orders?

A. There was some orders about Exercise Prodder.

R. Did you follow the instructions concerning the exercise?

A. I knew Reveille was at 02.30. I think I remember something about the time of breakfast but I couldn't be sure.

R. Was there anything about rifles, equipment and ammunition?

A. I believe so, sir.

R. What did you do about it?

A. At that time I was all ready.

R. At what time did you notice you had been robbed?

A. About 19.30

R. What did you do

A. I reported to L/cpl Choquette.

R. Did you report it to your orderly room

A. No sir. I had already advised the Regimental police.

R. All those things happened on the day before the exercise, and you spent three days in Worthing here after your leave?

A. Yes sir.

R. What did you do during those three days.

A. Nothing.

R. Did you ask to ~~[illegible]~~ see Standing Orders

A. No sir, I didn't think of it.

Q. Isn't it true that the orders put in your billets contained extracts from Standing Orders?
A. I don't remember reading them
Q. Wasn't the Daily Routine clearly explained in Part I orders?
A. I couldn't say.

Re-examination

Q. Did you know if there were any unit standing orders or not
A. No sir, I did not know.

First Witness for Defence (Character)

Capt C.J.R. Langlois, Fus. M.R., having been duly sworn, states:
I have known Sgt Daoust since Apr 1942, and have known him better since after the Dieppe raid when I was transferred to the Fus. M.R. I was adjutant at that time and Sgt Daoust was I sgt. Later on I was H.Q. coy comd and I had Sgt Daoust in my coy. All the time Sgt Daoust was with us, he has been a good N.C.O. and a well disciplined man. To my knowledge Sgt Daoust has always done his duties, and as adjutant and coy comd, I have nothing to say against the man or against his work.

No cross examination

Second Witness for the Defence

Capt J. A. Dextrage, Fus. M.R. having been sworn, states:

Sgt Daoust has been working under me for approximately eight months, both as a corporal and as a sergeant. I recommended him for his promotion to sgt. I have always been very satisfied with his work. Every time I asked him to do something he would do it. Often Sgt Daoust has told me, when my orders were not clear "well sir, explain and tell me exactly what you want me to do".

I know Sgt Daoust always wanted to make sure of orders so that he could carry them out properly. I left ~~the~~ him in charge of the office for about two weeks. When I came back everything was in perfect condition. I have nothing but praise for the work he did while serving under me.

Third witness for the defence.

~~R.S.M.~~ P48067

R.S.M. X.G.A. Gravel, R.S.M.,

Fus. M. R.

Since I have been with the Fus. M.R. I have had occasion to recommend Sgt Daoust, who was a cpl, about four months ago, for sergeants' stripes. ~~Because~~ The accused was attached to the Intelligence Section and a hard worker and a disciplinarian, so a few months ago I recommended him to proceed on selection board for O.C.T.U. A few days after he came back from the Selection Board, I was ordered to parade Sgt Daoust to the C.O. who told him he had failed to pass the board. Outside he seemed very disappointed at having failed.

The accused asked Col. Gauvreau for his transfer to any other unit or to be sent to Italy. The C.O. said "no" and finally a few days later, I had to parade Sgt Daoust on a charge.

[illegible] major

D Z

Summing up by Defending Officer.

The accused gave evidence on oath. Did not attempt to cover or conceal any actions. What he did he firmly believed in his own mind, was not committing a military offence at any time.

I therefore submit that accused should be found Not Guilty.

—

#

[illegible] major

Address in Mitigation of Punishment. E 3.

By defending officer.

Refer Lemt to K. R. (Can) 563 sub sec(c)

The ~~[illegible]~~ accused elected trial by court martial.
Bearing in mind the character evidence, I appeal to court to consider three points

1. What sentence will do the most good?
2. What sentence will prevent this type of misconduct re-occuring?
3. What effect will sentence have on the service?

Speaking for (1) The fact that a confirmed sgt had to appear as the accused at an F.G.C.M. is punishment in itself. I feel confident it has been a punishment to the accused.

Speaking for (2) I submit that the unit itself could make unit orders possibly clearer, and at any rate, promulgated in a better manner.

On third question, consider an N.C.O. with four and a half years of active service, a man whom the king has seen fit to decorate in his one and only engagement with the enemy, to break a man with this experience would, without a shade of a doubt, penalize the service.

[illegible]
Maj

F1

EXTRACT f rom UNIT STANDING ORDERS
Les Fusiliers Mont-Royal

Para 19. ROUTINE

	week days	Sunday
Reveille	0600	0630
Breakfast	0645	0700
Inspection	0745	
Parade	0800	0900
Trg	0800-1200	
Lunch	1215	1200
Trg	1330-1630	
Supper	1700	1630
Tattoo	2245	2245

Wednesday afternoon - organised sports
Saturday afternoon - half holiday

CERTIFIED TRUE COPY

F2.

EXTRACT from UNIT STANDING ORDERS.
Les Fusiliers Mont-Royal

Para 2. PASSES

(a) Tattoo will be at 2245 hrs daily.

(b) OR's (other than those on duty, warned for duty or draft, or defaulters) will not require passes within 2 Cdn Div Area for the period from 1630 hrs on week days and from 1200 hrs on Sat and all day Sun.

(c) Late passes for the purpose of proceeding outside the 2 Cdn Div area up to 2359 hrs daily may be granted to well conducted soldiers provided such passes are signed personnally by the CO or the adjt. These passes should not exceed 5% of the unit strength at any one time.

(d) Soldiers on pass must at all times observe curfew and police regulations.

(e) 2 Cdn Div area is defined as:

"BRIGHTON AND WORTHING, incl grid line 50, SHEEN STREET HORSHAM incl and grid line 70".

(f) No permanent passes will be issued.

[illegible] Major
CO

.....

EXTRACT from Les Fus M R Unit Standing Orders

Sheet 2
Para 2. PASSES

(a) Passes will be required by all other ranks out of their billet area before 1630 hrs on week days and 1200 hrs on Saturday.

(b) Passes for town area will be issued by coy comds and all others must be approved by BOR.

(c) Coy comds will determine what will be considered as coy billet area.

(d) No permanent passes will be issued.

CERTIFIED TRUE COPY

SUMMARY OF EVIDENCE

In the case of D-61201 Sgt Daoust Alfred (M.M.) Les Fusiliers Mont Royal C.A.(O)

The accused is imformed of his rights.
The Commanding Officer directs and the accused asks that the evidence will not be taken on oath.

FIRST WITNESS
1-st Charge
For the Prosecution

Major H.N.Langlois, Les Fusiliers Mont Royal C.A.(O) Being duly warned States:-

I am Major H.N.Langlois 2i/c of Les Fusiliers Mont Royal C.A.(O) On the 25 Oct 43 at approx 0840hrs I was visiting the various billets occupied by this Unit I had the occasion to visit billets situated at 24 Crafton Rd. Worthing, I visited the Unit guard room which is in that building, and then proceed to visit other parts of same building. In one of the room on the ground floor, I found D-61201 Sgt Daoust A.(M.M.) still asleep I woke him up, and ask him why he was not on parade: His reply was that nobody had told him that it was time to get up, and further more he did not have any duty to perform. I reported the case to the Commanding Officer at that time, D-63212 C.S.M. Gauthier A. was also in the room

(H.N.Langlois) Major
2 i/c
Les Fus M.R. C.A.(O)

The accused declines to Cross-Examine

SECOND WITNESS
1-st Charge
For the prosecution

B-26319 Sgt Copeman J. Canadian Dental Corps Attached to: Les Fusiliers Mont Royal C.A.(O) being duly warned States:-

I am B-26319 Sgt Copeman J. Canadian Dental Corps, attached to: Les Fusiliers Mont Royal C.A.(O) On the 25 Oct 43 at approx 0840hrs, I was in my room when Major H.N.Langlois came in, he ask me who was in bed, I told him that it was D-61201 Sgt DaoustA.(M.M.) he then woke him up and ask him what he was doing in at that hour. The accused told him, that he had no duty to perform. Then Major H.N.Langlois left the room.

B-26319 Sgt Copeman
C.D.C. Attached To:
Les Fus M.R. C.A.(O)

The accused declines t o cross-examine

FIRST WITNESS
For the prosecution
2nd Charge

Major H.N.Langlois 2 i/c Les Fusiliers Mont Royal C.A.(O) being duly warned States:-

I am Major H.N.Langlois 2 i/c Les Fusiliers Mont Royal C.A.(O) On the 25 Oct 43 at approx 1120hrs while visiting various billets of this Unit I had occasion to visit a restaurant situated on Crescent, Rd Worthing, adjacent to Quarter Master's Office, I found several members of this Unit in the restaurant, having some, tea or lunch, contrary to Unit Standing Orders. D-61201 Sgt Daoust A.(M.M.) was one of those present, I took the names of all the personnel found there and reported same to the C.O. D-61147 Sgt Beaudette A. was also in the place.

(H.N.Langlois) Major
2 i/c
Les Fus M.R. C.A.(O)

The accused declines to Cross-Examine

SECOND WITNESS
For the Prosecution
2nd Charge

D-61147 Sgt Beaudette A. Les Fusiliers Mont Royal C.A.(O) Being duly warned States:-

I am D-61147 Sgt Beaudette A. Bn H.Q. Les Fusiliers Mont Royal C.A.(O) On the 25 Oct 43 at approx 1120 hrs I was in a restaurant on Crescent, Rd Worthing, in company of D-61201 Sgt Daoust A.(M.M.) when Major H.N.Langlois walked in, and took our names down, he also took the names of the others who were there He then walked out without saying a word, to the accused, nor myself.

D-61147 Sgt Beaudette
Les Fus M.R. C.A.(O)

The accused declines to Cross-Examine

FIRST WITNESS
For the prosecution
3rd Charge

D-61147 Sgt Beaudette A. Les Fusiliers Mont R Royal C.A.(O) being duly warned States:-

I am D-61147 Sgt Beaudette A. Les Fusiliers Mont Royal C.A.(O) On the day before the Exercise "PRODDER" was due to proceed D-61201 Sgt Daoust A. (M.M.) and myself report to Capt Rousseau M. acting O.C. of H.Q. Coy at about 2000hrs Capt M. Rousseau said that he had no order 's for us. At 2115 hrs the same evening C.S.M. St Marie J. of H.Q. Coy told me that D-61201 Sgt Daoust A.(M.M.) and myself were detailed to go on Exercise "PRODDER" and that we had to report to Capt M. Rousseau at 0400hrs next morning. I then put my equipment together and went to bed. When the accused came in later on, I was asleep, next morning when I woke up around 0230hrs I told him that we were proceeding on scheme. I only remember him saying, something about not being able to go, because

his equipment was not r ady.Then I dressed and report to Capt Rousseau M. as ordered by C.S.M.St Marie J. Capt Rousseau M. asked me where Sgt Daoust A. (M.M.) was: I replied, as far as I know he must be,still at the billets.

A Beaudette

D-61147 Sgt Beaudette A.
Les Fus M.R. C.A.(O)

The accuse declines to Cross-Examine

SECOND WITNESS
For the prosecution
3 rd Charge

Capt M. Rousseau,Le Regt de St-Hyacinthe C.A. Attached to: Les Fusiliers Mont Royal C.A.(O) being duly warned States:-

I am Capt Rousseau M. Le Regt de St-Hyacinthe Canadian Army attached to Les Fusiliers Mont Royal C.A.(O) The evening of 20 Oct 43 I received a message from Lt-Col J.G. Gauvreau ordering me to advise D-61147 Sgt Beaudette A. and D-61201 Sgt Daoust A.(M.M.) to be on parade at 0400hrs the 21 Oct 43. I gave this order to the C.S.M. St Marie J. so that he could advise the accused and Sgt Beaudette A. At about 0300hrs the 21 Oct 43 Sgt Beaudette A. reported to the Coy O.R. with all his equipment,I asked him if Sgt Daoust A.(M.M) were coming,he answered me that he did not know ,so I took a"Jeep" and went to Sgt Daoust A. (M.M.) room's,to see what he was doing ,it was then 0320 hrs and the accused was still in bed.I told him that he was to leave on the exercise at 0400hrs,as he had been advised. He replied that he was not going,as his equipment was not ready ,I than placed him under open arrest,advised C.S.M. St Marie J. and then left on the exercise.

M Rousseau Capt.

(M.Rousseau) Capt
Le Regt de St-Hyacinthe
Att: Les Fus M.R. C.A.(O)

The accused declines to Cross-Examine

In accordance with"rules of procedure" 4 (e) The accused has been asked:" Do you wish to make any statement or to give evidence upon oath:"
You are not obliged to say anything or give evidence unless you wish to do so,but whatever you say or any evidence you give will be taken down in writing,and may be given in evidence.

The accused replied -"I have nothing to say, just now"

I certify that the foregoing "Summary of evidence" consisting of three pages,was taken down by me in the presence of the accused and that "Rules of Procedure" 4 (e) have been complied with.

In the Field
31 Oct 43

(F.Dostie) Lieut
Les Fus M.R. C.A.(O)

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2005)

No. D61201 Name David A. Sqn., Battery, or Company Corps Eus M. R. Date of enlistment 9-9-39 G.C. Badges Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature O.C. Company, etc. J P Thivierge Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	2-7-43			# Sheet destroyed on being confirmed Sergeant R.O. # 218					
E. [illegible]				The King has been graciously pleased to award the Military Medal in Recognition of gallant and distinguished service in Dieppe operation			DO # 52 d/ 10 oct 42		

Certified True Copy J.P. Thivierge Capt

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

El

(Substitute for A.F.B. 296)
or M.F.B. 375

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. D-61201 Rank. Sgt Name DAOUST, A Unit Fds. M.R. CA.(O)

Age 22 Married or Single Single No of Dependants Nil

Date of Attestation 9 of September 1939

No. of Days spent in close Arrest (To date of trial)

Civil Nil Military 12 days close arrest Hospital Nil Total ~~14~~ 12

Date of Promotions, Appointments and Confirmation of Rank, if any

1-6-40	Cpl.	15-11-40 - D.O. II 151
1-8-40	Sgt	D.O. II 196
21-12-42	A/Sgt with pay	D.O. II 48 7-8-42
15-2-43	A/Sgt "	" D.O. II 30 23-4-43
5-8-43	Conf Sgt "	" D.O. II 42 20-7-43

A CERTIFIED T R U E COPY OF M. F. M. 6 MUST ACCOMPANY THIS FORM

Awarded Military Medal (R.O. 2588) 2-10-42

(Officer i/c Records)

...Unit

Dated at:

This 8 day of nov 1943

To be dated and signed as for date of trial)

VV-131 Case #3.

Spr. Dawat. HP.

Case No. 1- 0-49
" 2- 44-139

RECORDED AT CMHQ IN AD 160. V/V-131

RECEIVED 11 OCT 1944 JAG BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

CFAM6 (In lieu of AF63) 40-P-N-B/1608 (28641)

Convening Order of Brig T J Rutherford, Comd "E" Gp, CRU dated 28 SEP 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-76446 Tpr Henry Paul DAOUST, 3 CACRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd AA Sec 24(2)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) ~~(1).~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Detention for a period of Sixty (60) Days and to be put under Stoppages of pay until he has made good $6 in the value of the kit lost by neglect

(Sgd) ..... Judge-Advocate, if any. Date awarded 30 Sep 44 (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 56(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and Sentence confirmed

I direct that the accused be not committed to prison or Detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) ..... Brig

Date 2 Oct 44 Commanding E Gp CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D 76446 TPR. DAOUST, H.P.	3 OCT 44	J. Davies CAPT. ADJUTANT 3 CA C.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PROCEEDINGS REVIEWED J R Caulfield Major 11 Oct 44 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-76446	Tpr	Henry Paul	DAOUST	3 CACRU

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 30 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused objected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. Presence of accused: Do you object to~~ ~~the Interpreter~~ ~~as interpreter?~~ ~~this~~ ~~A.F.~~

~~The Interpreter is sworn.~~(1) Do you object to 128126 Cpl INGLAIS as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO, Sir

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L.	RITMAN	H. CRU
Member	Capt	H.J.	THORNTON	3 CACRU
Member	Lt	C.J.	MAHONEY	1 CACRU
~~Judge-Advocate~~				
Prosecutor	Lt	W.A.	COLE	3 CACRU
Defending Offr	Lt	I.G.	WAINE	3 CACRU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 84 (B) and fn 2 were not followed. See Div p 2.)

A8. The accused ..... before arraignment make(s) (no) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fn to RoP closed. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62. 2. When several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO, SIR. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) an informant, and for that/those charge(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. Of the charge(s) to which the plea(s) of Guilty was (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans I do not wish to give evidence and call that witness NOTE-DI
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 1215 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes - Refer to NOTE ATT (2)
(*1. RP 27(C), 46(D). 2. Witness, if any, recorded per Notes. Court should permit accused or his witnesses to prove or deny anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 46, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 130, 563-566, Overseas RD 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 43 (5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 46(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D76446 Trooper Henry Paul DAOUST No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with

First Charge
A.A. SEC. 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

At No. 3 C.A.C.R.U. absented himself without leave from 2230 hrs 31 Aug 44 until he surrendered himself to No. 3 C.A.C.R.U. Provost at 1430 hrs 23 Sep 44. (Total time absent 22 days 16 hrs).

Second Charge
A.A. SEC. 24 (2)

WHEN ON ACTIVE SERVICE, LOSING BY NEGLECT HIS EQUIPMENTS, CLOTHING, AND REGIMENTAL NECESSARIES

in that he

At No. 3 C.A.C.R.U. on 25 Sep 44 was deficient the following articles:

Article	Qty	Vocab Price	75% Vocab Price
Boots ankle prs	1	$5.46	$4.90
Drawers cell short prs	1	.43	.32
Dressings field	1	.24	.18
Towels, hand	1	.32	.24
Belts waist	1	.67	.50
Frog bayonet	1	.19	.17
		$7.31	$6.31

H.M. Sharp Lt Col.
"H.M. SHARP" Lt.Col.
A/Comd
No. 3 C.A.C.R.U.

In the Field
26 Sep 44

To be tried by Field General Court Martial.

(J. J. RUTHERFORD) Brig
Comd
"E" GP, CRU

In the Field,
28 SEP 44.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA2)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-76446	Tpr		Henry Paul	DAOUST	3 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (date) 28 SEP 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". JM

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ JM
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ JM
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ JM
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Name	Unit.
Lt.-col	D L Redman, VD	3 CRU
	(Must be named. RP 106.)	

MEMBERS.

Rank.	Name	Unit.
Capt	to be detailed by OC 3 CACRU	3 CACRU
Lt	to be detailed by OC 1 CACRU	1 CACRU
	(Named or detailed. RP 106.)	

WAITING MEMBER.

Rank.	Name	Unit.
	(Named or detailed, if any. RP 106.)	

JUDGE-ADVOCATE.

Rank.	Name	Unit.
	(Must be named, if any. RP 106.)	

On Active Service in the Fd

in England *(Country.)*

[signature] *(Signed personally. RP 105 (n 2.)*

Brig *(Rank.)*

Date 28 SEP 44

(T J RUTHERFORD) Brig
Commanding "E" GP, CRU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for maths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (D).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on *new* matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (D). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(E), *KR Can* 563(a).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 145 (1) (g) (h).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(D).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after mention of sentence awarded. (*AA* 53(9), *RP* 118(C), *MML* p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Medical Officers' Certificate
KR(Can) para 557.

I certify that I have this morning examined:-

Regt'l No. D76446 Rank Gnr Name Doust, H.P.

of 3 CAC RU. (unit) and in my opinion he is

~~Unfit~~ Fit to undergo trial by Court Martial.

#(cross out one N/A and initial)

Station: In the field

Date (of Court Martial) 30-9-44.

Sgd. ... (Rank)

Unit

Medical Officer, RCAMC.

CASE OF

D.76446 Tpr DAOUST HP 3 CACRU

CHARACTER WITNESS E-1

M.66547 L/Cpl VANESS, J.P., 3 CACRU, having been duly sworn, states:

The accused in my opinion is a very reliable chap, can be trusted and is a good worker. Ever since he has been in the Gd Room his conduct has been very satisfactory in every way. He has obeyed orders and done everything that was told him.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(8).

STATEMENT BY THE ACCUSED

The accused, D.76446 Tpr DAOUST, H.P., 3 CACRU, having been duly sworn, states:

I joined the Army in Ber 39, Sir, at the age of 20 and came overseas in Dec 39 with the 3 Bde HQ and since that time I have been batman and waiter in the Offrs Mess. I've never had basic or trades trg and I'm Cat "A". I've had regtl courses and I have had good reports on all of them. ABOUT all these AWL charges on my sheet, I guess I've been fairly young and have not realized the seriousness of going AWL and have carried on in the Army much as I would do if I were in civilian life. The middle of last Jul I was stationed with my unit at Seaford and one pay night I felt very depressed and went to London. There I met a woman at a dance who told me on the way home with her that she was a widow, and when I told her I was on 14 days leave I kept on seeing her everyday. I told her I was in love with her and asked her to come to the Registry Office, but unfortunately we couldn't get married as I had not my COs permission. I went back to the house with her and we pretended we were married where I stayed for 3½ months and her father advised the MP. I got 9 months for that which I served and hoped at the end of it and when I got out to be married to her. However the RC Padre did not think it would be advisable and wouldn't work out, so I went AWL again trying to marry her without permission. She was preganant at that time, however when I saw I couldn't marry her without permission I came back and put in an application. One day in Aug Col Patterson told me my request had been turned down and said I would be sent to another unit and hoped I would do better there. I was sent to 3 CACRU here and shortly after that I went AWL again to ss if I could get married as nobody seemed to do much for me. This is for the offence which I'm now being tried. I heard there was a place in Scotland where I could get married without permission and without a license but apparently they have changed their laws there now, so I returned to London last week where a letter was waiting for her and stating that so long as I remained absent this marriage would not be granted, so I returned. The OC 3 CACRU was very kind to me and told me that under the circumstances there was nothing he could do concerning this marriage, but after I had served my sentence he would do everything he possibly could to further this marriage. I promised I would finish my sentence and try to make something of myself and for my wife and future life.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(8).

PLEA IN MITIGATION
(NONE - APT)

Plea in mitigation of punishment

1. Tpr Davist joined the army voluntarily almost immediately after the outbreak of war and shortly afterwards came overseas. He came from a good family in Quebec (his father is a notary and justice of the Peace) and being the youngest in the family, he was accustomed to having what he wanted and getting it easily. Moreover he did not come over with a field unit but with brigade headquarters and practically all of his service has been spent as a waiter in the officer's mess. Accordingly he never received that fundamental training & discipline which is so essential if a man is to become a good soldier. He has never even had any basic or trades training, though he is a category. On the first year of his army life he worked well & his crime sheet was clear. Then his troubles began. He began to find his interest & recreation outside of camp and from that time in his crime sheet is a record, not of anything vicious but of persistent AWLs which punishment & long terms of detention did not prevent. He just did not take army life seriously & acted as though he were still a civilian. Then last year on one of his holidays without pay he met a girl. He saw a

lot of her & they finally decided to get married
They found this to be impossible without the C.O.'s
consent but on their return from the registry office
they led everyone to believe they were married &
from that time lived together as man & wife
Ultimately of course he was taken back to camp.
On the expiration of his term of detention he went
back to this girl. After his return to camp (in July 1945) he
learned that this girl would have a baby.
Then for the first time he had to take life
seriously. He was aware that people might think
he was being "played for a sucker" because the
girl had been married before at 16, and was
now, at 28, a widow with three young children. So
he made enquiries & finally decided that she was
genuine & had been faithful to him. He decided
he loved her and wanted to marry her. He spoke
to the R.C. padre who investigated & made his
report to the C.O. Then for the first time the
Colonel realized that army life was serious.
The other unfavorable factors might have been
overlooked, but his own crime sheet was
such that the C.O. felt he was not responsible
enough to become head of a family & refused
permission to marry. The Colonel for the first
time began to realize that he could not escape

from the consequences of his own actions, and that these consequences could seriously hurt him. He wanted nothing so much as to marry this girl & to have his child bear his name and he was prevented from doing this by the consequences of his own conduct. From that time on his crime sheet is a record of unauthorized trips around the country in an attempt to find some registry office where he could get married - but with no success. Ultimately he was transferred to a new unit - 3 C A C R V. He arrived here, deposited his kit and was off again on his quest for some place to get married without the army's permission. This time his search took him to Gretna Green, only to learn that informal marriages had been outlawed several years ago. He returned to the girl who persuaded him that it was impossible to evade the army regulations & to return to camp & proceed through the regular channels. So he returned to C A C R V & voluntarily surrendered to the Provost. Later when he came before the officer commanding Holding Wing he told his story. He was told that when he had finished his detention if he could prove that his attitude had changed & that he could become a good soldier, his application to marry would be reconsidered. I for

Daoust said he would do anything for that chance. I spoke to the R/C Padre who told me that though he could say nothing in favour of Tpr Daoust from the point of view of military efficiency, nevertheless he was truthful & honest & bore no resentment even though he knew that the padre had opposed his marriage application. The corporal at the guard house told me that Tpr Daoust ~~was~~ is a cheerful & willing worker. These qualities are the basis of good soldiering. What Tpr Daoust has lacked is a proper appreciation of the seriousness & purpose of army life & I think his attitude has changed now after his recent experiences. He realizes that he is at dead-bottom, he has reached the end of his rope. He may be able to climb back up that rope. It will be hard, but O.C. Holding Wing of his new unit is willing to give him that chance after his return from his detention. If he ~~fails~~ lets us down ~~he will surely come~~ then next time he comes up on charge the unit will know how to treat him. Tpr. Daoust ~~[illegible]~~ says that he is eager to take his part in the war. He enlisted in 1939 for that purpose. Since that time he has strayed far from that path. In view of the facts I have

set out I ask the court to give him this last chance, to make his sentence brief so that at the earliest possible moment he can come back to the unit, be trained, take his fair share in the war and redeem himself in the eyes of his family, the girl whom he proposes to marry, the army.

Summary of Evidence in the case of No. D76446 Tpr. Daoust, H.P. on strength of No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for the Prosecution

B4577 S/MS Wardman, H.S. on strength of No. 3 CACRU, a soldier of the Canadian Army Overseas, having been duly sworn states:-

I am B4577 S/MS Wardman, H.S., "C" Sqn No. 3 CACRU. I hereby present as documentary evidence in the case of D76446 Tpr. Daoust, H.P. a copy of No. 3 CACRU regt Order No. 212 dated 13 Sep 44 showing the commencement of AWL of D76446 Tpr. Daoust, H.P. as of 2230 hrs 31 Aug 44. This I submit as exhibit "A".

On 25 Sep 44 I inspected the kit of D76446 Tpr. Daoust, H.P. and checked it against his MBM I Part III. I found him to be deficient the following articles:-

Article	Qty	Vocab Price	75% Vocab Price
Boots ankle prs	1	$5.46	$4.90
Drawers cell short prs	1	.43	.32
Dressings field	1	.24	.18
Towels, hand	1	.32	.24
Belts, waist	1	.67	.50
Frog, bayonet	1	.19	.19
		$7.31	$5.31

The accused declines to cross-examine this witness.

B4577 S/MS Wardman, H.S.

Witness for the Prosecution

M66547 L/Cpl. Vaness, J.P. on strength of No. 3 CACRU, a soldier of the Canadian Army Overseas, having been duly sworn states:-

I am M66547 L/Cpl. Vaness, J.P., Lance Corporal No. 3 CACRU Regt Police. I was on duty at 1430 hrs 25 Sep 44 at No. 3 CACRU Guard Room when D76446 Tpr. Daoust, H.P., whom I now recognize, reported to me. He was sober and properly dressed. I checked the absentee list against the name and number I found in his MBM I Part I and found him to be AWL. I then placed him under close arrest.

M66547 L/Cpl. Vaness, J.P.

Second Witness for The Prosecution (cont'd)

The accused declines to cross-examine this witness.

~~[illegible] L/Cpl. Vaness, [illegible]~~ WO

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidnece on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence on oath or to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e), and (f) have been complied with.

W. A. Ogle Lieut

(Lieut. W.A. Ogle)
Officer detailed to take
The Summary of Evidence

In the Field
25 Sep 44

EXA
MY

Certified true copy taken from the
files held within my custody.

J.T. Davies, Capt rad'l. EXHIBIT "A"
(J.T. Davies) Capt.
Adjt. 3 CACRU

NO. 3 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
PART II ORDERS
BY
Colonel G.W. LITTLE,M.V.O.,O.B.E.,M.C.,E.D.

Last Order No 211
Dated 12 Sep 44

Commanding Officer

This Order No 212
Dated 13 Sep 44

"A"

1. STRENGTH INCREASE:

The u/m Offrs are TOS from X-3 List CAC wef dates shown on disch from hospitals shown and are posted to "A" Sqn Rfts. (Auth: 2nd Ech Circ Ltr 187, d/4 Jan 44)

Lt James Thomas JENKINSON — 7 Sep 44 — No 23 Cdn Gen Hosp
Lt Angus Morine MacKINNON — 19 Aug 44 — Roman Way Convel Hosp

2. ATTACHMENTS:

Major Daniel Col MacDOUGALL ceases att fap to RCAF Base wef 9 Sep 44.

3. COMMAND:

Major Daniel Col MacDOUGALL proc on command to Helmsley wef 2000 hrs 1 Sep 44 and ret from on command to Helmsley wef 1700 hrs 3 Sep 44.

4. LEAVES:

(a) The u/m Offrs proc on PL (9 days) from 11 Sep 44 to 20 Sep 44 with money allce in lieu of rations.

Lt John Oliver HEYWOOD
A/Major Frank Chester McKERGOW
Lt Peter Francis Kerr JARRETT
Lt Harry Francis O'HANLAN
A/Major Leslie Horace TAYLOR
A/Major Alexander Pearcy TILLEY

(b) The u/m Offrs proc on 9 days PL dates shown with money allce in lieu of rations.

(9 Sep 44 to 18 Sep 44)

Lt Harry Clayton EVANS
Lt Charles Francis REIFFENSTEIN

(8 Sep 44 to 17 Sep 44)

Lt James Fraser ARTHUR
Lt John Lyman HOWE
Lt Albert Lawrence KIERAN
Lt Kenneth Richard RAMSDEN
Lt Frederick Victor TAYLOR
Capt Edward William TAUD
Lt Allen Arthur Edward GENDRON
Lt George Milledge KAY
Lt Harvey Cecil MATTHEWS
Lt Jack Murray SCOTT
Lt James Howard TAYLOR

(7 Sep 44 to 16 Sep 44)

Lt Raymond Arthur NICHOLS

(6 Sep 44 to 15 Sep 44)

Lt Elmer John BUTLER

(5 Sep 44 to 14 Sep 44)

Lt Charles SANDERS

(c) The u/m Offrs proc on 7 days PL dates shown with money allce in lieu of rations.

11 Sep 44 to 18 Sep 44

Lt Col Heber McKean SHARP

6 Sep 44 to 13 Sep 44

Capt Ralph Edgar GURRY

4. LEAVES: Cont

(c) Cont

8 Sep 44 to 15 Sep 44

Lt Jeffrey Wilson RAVEN

5. APPOINTMENTS PROMOTIONS & REVERSIONS:

Amd't: Pt II DO 182, d/8 Aug 44 para 1(a) insofar as it pertains to Lt (A/Capt) John Edward McLEAN change Tech Offr to read "TO"(Auth: CAORO 4975, d/1 Sep 44)

6. ESTABLISHMENT & POSTINGS:

(a) Repub: CAORO 4975, d/1 Sep 44.

Lt (A/Capt) John Edward McLEAN to be T.O. and to retain acting rank of Capt whilst so employed , posted from Tech Offr wef 20 Mar 44.

(b) Lt James Fraser ARTHUR is posted from Admin Wing Surplus to Est to cover vacancy of Ass't Records Officer RHQ DWE wef 11 Sep 44.

"B"

7. STRENGTH INCREASE:

(a) The u/m ORs are TOS from K-3 List CAC wef dates shown on disch from hospitals shown and are posted to "A" Sqn Rfts. (Auth: 2nd Ech Circ Ltr 187, d/4 Jan 44)

C-58314 Tpr AGNEW P. (Gnr Op "C") No 23 Cdn Gen Hosp wef 29 Aug 44

F-30431 Gdsm BROWN P.L. No 22 Cdn Gen Hosp wef 4 Sep 44

D-26104 L/C CHAPMAN H.L. (Dvr Mech TK "C") No 3 CMC wef 2 Sep 44

D-26042 Gdsm CHEVRIER B.J. (CAC Op "C") No 23 Cdn Gen Hosp wef 29 Aug 44

B-49410 Tpr CROWE J.J. Roman Way Conval Hosp wef 26 Aug 44

C-31557 Tpr DYER E.J. (Dvr Mech TK "C") No 22 Cdn Gen Hosp wef 24 Aug 44

F-79853 Gdsm ELWOOD P.F. (Gnr Op "C") No 4 Cdn Gen Hosp wef 22 Aug 44

H-10078 Gdsm GOODMAN W.T. (Gnr Op "C") EMMPS Hosp wef 23 Aug 44

K-37874 Tpr GUEST R. (Gnr Op "C") No 13 Cdn Gen Hosp wef 31 Aug 44

A-82089 Tpr IRVIN G.W. No 11 Cdn Gen Hosp wef 31 Aug 44

C-40165 Tpr JOLICOEUR J.L. (Gnr Op "C") Roman Way Conval Hosp wef 19 Aug 44

B-136067 Tpr KEAN A.C.J. No 24 Cdn Gen Hosp wef 6 Sep 44

B-61196 Tpr KENWELL W.J. No 24 Cdn Gen Hosp wef 29 Aug 44

B-133559 Gdsm KORELL R. No 1 CMC wef 5 Sep 44

C-58044 Gdsm LAROMDE [illegible] No 22 Cdn Gen Hosp wef 3 Sep 44

F-66514 Gdsm LONG C.M. (Gnr Op "C") No 22 Cdn Gen Hosp wef 6 Sep 44

C-40138 Gdsm MAYER A.R. No 9 Cdn Gen Hosp wef 6 Sep 44

C-58218 Gdsm McQUE B.A. No 13 Cdn Gen Hosp wef 3 Sep 44

B-143856 Gdsm MacDONELL L.J. (Gnr Op "C") No 23 Cdn Gen Hosp wef 27 Aug 44

K-45303 Tpr OLSON W.A. (Gnr Op "C") No 24 Cdn Gen Hosp wef 1 Sep 44

D-27178 Gdsm RICHER L. (Dvr Mech TK "C") Mil Isol Hosp (Harrow Road) wef 3 Sep 44

A-104966 Tpr STONE G.R. No 1 CMC wef 5 Sep 44

7. STRENGTH INCREASE: Cont

(a) Cont:

D-132342 Gdsm TREMBLAY J.J. (Cmr Op "C") No 22 Cdn Gen Hosp wef 24 Aug 44

D-26581 Gdsm TARRANT J. (CAC Op "C") No 22 Cdn Gen Hosp wef 30 Aug 44

H-102695 Tpr WAISER T.L. (Cmr Op "C") No 23 Cdn Gen Hosp wef 31 Aug 44

D-76215 Gdsm WATSON W.R. (CAC Op "C") No 13 Cdn Gen Hosp wef 31 Aug 44

(b) C-40210 Gdsm LANDRYAULT R. (Dvr Mech WE "C") is TOS from X-3 List CAC wef 26 Aug 44 on disch from Roman Way Conval Hosp and is posted to Admin Wing Rfts (unfit). (Auth: 2nd Bch Circ Ltr 187, d/4 Jan 44)

(c) L-36769 Sgt HERON O.M. is TOS from ATK DC (Water Assault Wing) wef 4 Sep 44 and is posted to "A" Sqn Rfts. (Auth: CMHQ 2/Attach/1/9 (AG2), d/2 Sep 44)

8. ATTACHMENTS:

K-58 Tpr McLEAN J.W.L. ceases abt fnp to No 1 Cdn Dotn Bks wef 30 Aug 44 on release from dstn.

9. LEAVES:

(a) The u/m ORs proc on 7 days PL dates shown with money allce in lieu of rations whilst in hosps shown.

C-58314 Gdsm AGNEL P.L. 20 Aug 44 to 26 Aug 44 Incl No 23 Cdn Gen Hosp

F-30431 Gdsm BROWN P.L. 29 Aug 44 to 4 Sep 44 Incl No 22 Cdn Gen Hosp

D-26104 L/C CHAPMAN M.L. 26 Aug 44 to 1 Sep 44 Incl No 3 CMC

D-26042 Gdsm CHEVRIER J. 22 Aug 44 to 28 Aug 44 Incl No 23 Cdn Gen Hosp

B-49410 Tpr CROWE J.J. 19 Aug 44 to 25 Aug 44 Incl Roman Way Conval Hosp

K-37874 Tpr GUEST R. 24 Aug 44 to 30 Aug 44 Incl No 13 Cdn Gen Hosp

A-82089 Tpr IRVLN G.W. 24 Aug 44 to 30 Aug 44 Incl No 11 Cdn Gen Hosp

B-61196 Tpr KENWELL W.J. 22 Aug 44 to 28 Aug 44 Incl No 24 Cdn Gen Hosp

B-133559 Tpr KORELL R. 31 Aug 44 to 6 Sep 44 Incl No 1 CMC

C-58844 Gdsm LARONDE T. 27 Aug 44 to 2 Sep 44 Incl No 22 Cdn Gen Hosp

F-66514 Gdsm LONG C.M. 30 Aug 44 to 5 Sep 44 Incl No 22 Cdn Gen Hosp

C-58218 Gdsm McQUE R.A. 27 Aug 44 to 2 Sep 44 Incl No 13 Cdn Gen Hosp

B-143856 Gdsm MacDONELL L.J. 19 Aug 44 to 25 Aug 44 Incl No 23 Cdn Gen Hosp

K-45303 Tpr OLSON W.A. 25 Aug 44 to 31 Aug 44 Incl No 24 Cdn Gen Hosp

H-102965 Tpr WAISER T.L. 24 Aug 44 to 30 Aug 44 Incl No 23 Cdn Gen Hosp

D-76215 Gdsm WATSON W.R. 24 Aug 44 to 30 Aug 44 Incl No 13 Cdn Gen Hosp

8. LEAVES: Cont

(b) The u/m ORs proc on 9 days PL dates shown with money allce in lieu of rations.

6 Sep 44 to 15 Sep 44

K-45703 A/Cpl MUNRO D.L. P-95882 Tpr McGILL H.V.
C-31897 Tpr O'REILLY M.A.

7 Sep 44 to 16 Sep 44

D-3253 Sgt ROOSAMRA E.
B-60646 Sgt COSTELLO L.R.
B-62067 A/Cpl GILPIN J.C.
D-26023 SSM GRIST J.W.
H-8103 Tpr KALYNIUK J.
F-30187 A/Cpl MEGENEY A.W.
B-89112 A/SQMS McCULLOUGH G.
K-45326 Tpr PICVESAN P.
B-46280 Tpr SNEAD R.H.
C-58215 Tpr WADDELL J.C.
P-13168 SSM COWBURN T.
L-54634 Tpr FRANZ K.
A-102445 Tpr GOWAN C.G.
B-133099 Sgt HEENAN G.W.
M-101717 Tpr KIPRICK K.
B-61340 Tpr MILLS J.D.
F-31872 Tpr PEARSON B.
F-27523 Pte URQUHART G.D.
L-36866 L/Cpl TREIT A.F.
C-100843 Cpl YOUNG D.A.

8 Sep 44 to 17 Sep 44

H-46309 A/Cpl ALEXANDER W.C.
H-95370 A/L/Cpl BEACH J.P.
B-69638 A/Sgt MISSON P.E.
C-58151 L/Cpl BRANCHAUD L.
L-105931 A/Cpl BROUGHTON A.K.
M-2455 L/Cpl CALEY R.W.
H-63813 Tpr COE T.R.
H-62809 A/Cpl DEAN C.
L-36013 Cpl DIXON T.
D-122930 A/Sgt DUNCAN W.
L-36924 A/L/Cpl GILLIES C.J.
B-63158 Tpr GRANT A.D.
M-37074 Tpr GUEST R.
K-1162 Sgt HOFFMAN M.C.
K-48211 L/Cpl ANDERSON A.
B-48681 Tpr BEATTY G.H.
L-53863 A/Sgt BOGDEN G.G.
B-102511 A/Cpl BRETHOUR S.L.
M-37369 Cpl BRUCE A.J.
M-63897 Tpr CHESNEY L.
G-0169 Tpr DAIGLE L.J.
B-62629 A/Cpl DUVEY W.
F-30201 A/Cpl DOUGLAS A.L.
B-63206 Tpr FRANKOW J.
H-10078 Gdsm GOODMAN W.T.
B-102686 A/Cpl GREIG D.R.
M-36975 Tpr HANSEN M.
L-36182 A/Cpl JACOBS C.B.
K-37816 Tpr JOHNSON B.L.
L-36059 Cpl KASIAN J.
A-86698 Tpr MESZASZ C.
B-132461 A/Sgt MYLES A.
M-8105 Tpr NICHOLLS F.W.
F-78396 Tpr PENNY V.
H-63949 Cpl REDEKOPP M.H.
A-104500 Sgt RICHARDS E.S.
H-10659 Tpr ROONEY W.R.
C-121210 Tpr SHAW M.O.
H-102904 Tpr SMITH J.M.
D-142803 Tpr SMITH W.R.
F-43966 Tpr WARD G.R.
H-9541 Tpr WATSON A.S.
K-74185 Sgt WATTERS W.R.E.
B-102556 Tpr WILLITON C.W.
K-38052 Sgt JOYCE M.G.
B-112221 Tpr LOVELY R.G.
M-105423 Tpr MORGAN G.W.
B-4830 A/Sgt NEILSON J.G.
L-105774 Tpr OGREN R.C.
B-98571 Tpr PURCHASE J.H.
C-100976 Tpr REYNOLDS M.
A-76100 Tpr RICHDAN N.W.
F-31037 Tpr SHUTMER P.G.
K-71725 Tpr SKINNIE O.J.
B-71109 Tpr SMITH L.M.
K-76524 Tpr SWANSON L.N.
L-64823 Tpr WARD W.H.
D-76215 Gdsm WATSON W.R.
H-8749 Tpr WERNER H.H.
A-116063 Tpr WYZINSKI P.

9 Sep 44 to 18 Sep 44

H-26122 Sgt MILLER A.

8. LEAVES: Cont

(b) Cont:

11 Sep 44 to 20 Sep 44

M-9727	Tpr	BOYES L.		P-30439	Tpr	DYRNE J.A.	
B-69882	L/Cpl	GREALIS A.		B-63290	Tpr	GROSBIEN B.	
M-95206	SigMan	HAWKES H.		M-10434	A/Cpl	KELLY W.P.	
A-103030	Tpr	MARTIN J.		B-132530	Gdsm	MILLS R.W.	
M-102928	Tpr	ODDLEIFSON I.R.		C-40225	Gdsm	HOWAN A.	
M-102523	Tpr	SWIDWA,RNH A.B.		M-106735	Tpr	MULDOON J.	
F-78941	A/Sgt	SIMSONITE S.E.		M-101280	A/L/Cpl	WALKEDEN A.T.	
D-76810	Tpr	WIDDINGTON P.					

(c) B-62504 A/L/Cpl KENT W.A. proc on 14 days PL from 11 Sep 44 to 25 Sep 44 with money allce in lieu of rations.

9. QUALIFICATIONS:

D-122879 Tpr CHUBBY S. qualified as a Dvr i/c Wheeled wef 11 Sep 44.

10. NEXT OF KIN:

K-37891 SQMS BROOKE H.J. changes address of N-of-K to Mrs Edythe Mae BROOKE (Wife) 178 West 48th Ave., Vancouver, B.C. Canada.

11. ESTABLISHMENT & POSTINGS:

(a) The u/m ORs are posted from Admin Wing Rfts (unfit) to cover vacancy shown wef dates shown.

B-71175 Tpr POLLARD T.E. Cpl Tpt Duties, Admin Trg Inc wef 12 Sep 44

B-61538 Tpr WILLIAMS A.N. Tpr Storeman TSD Admin Trg Inc wef 11 Sep 44

(b) D-50130 A/Cpl THOMPSON E.D. is posted from Cpl Tpt Duties, Admin Trg Inc to Sgt Tpt Duties Admin BWE wef 12 Sep 44.

(c) B-4793 Sgt CARR D.R. is posted from Sgt Tpt Duties, Admin BWE to SQMS Basic Sqn BWE wef 11 Sep 44.

12. ABSENT WITHOUT LEAVE:

(a) M-37415 Tpr SAVILLE M.L. ret from AWL at 1200 hrs 10 Sep 44.

(b) B-134621 Tpr SPRINGWAY W.L. is AWL from 1900 hrs 28 Aug 44, and is still AWL at 1900 hrs 5 Sep 44. (8th day)

(c) D-76446 Tpr D'Aoust A.P. is AWL from 2230 hrs 31 Aug 44 and is still AWL at 2230 hrs 8 Sep 44. (8th day)

(d) D-131405 Tpr VISCUSI J.A. is AWL from 2230 hrs 7 Sep 44 and ret from AWL at 2359 hrs 8 Sep 44.

(e) B-62384 Tpr REID A. is AWL from 1200 hrs 3 Sep 44 and is still AWL at 1200 hrs 11 Sep 44 (8th day)

13. PUNISHMENTS:

On 5 Sep 44 tried by F.G.C.M.

Charges: (i) A.A. Sec 24(2)
(ii) A.A. Sec 15(1) AWL from 2200 hrs 21 Mar 44 until 1500 hrs 22 Aug 44 (Abs: 153 days 17 hrs)

Finding: Guilty

Sentence: 2 years detention

Confirmation: Finding and sentence confirmed by Commander HQ "B" Gp Brigadier T.J. RUTHERFORD, wef 11 Sep 44.

Close Arrest: Placed under close arrest from 1500 hrs 22 Aug 44 to 2400 hrs 4 Sep 44 (Total Time: 13 days 9 hrs)

Forfeitures: 154 days pay FR&I 149(1)(a)
14 days pay FR&I 149(1)(c)(i)
730 days pay FR&I 149(1)(b)

Total Forf: 898 days pay

G-818 Tpr COLWELL, W.L.

O.T. Davies Capt
(J.T. DAVIES), Capt.,
Adjutant,
NO. 3 C.A.C.R.U.

"Y" LIST

NO. 3 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
PART II ORDERS
BY
Colonel G.W. LITTLE,M.V.O.,O.B.E.,M.C.,E.D.
Officer in Charge

Last Order No 191
Dated 12 Sep 44

This Order No 192
Dated 13 Sep 44

"A"

NIL

"B"

STRENGTH INCREASE:

Amd't: Pt II (Y-List) 187, d/7 Sep 44 para 1(c) insofar as it pertains to D-27068 Tpr JORDAN L.P., delete all reference.

HOSPITALS:

L-58695 Sgt DANIEL, E.A. trans from No 11 Cdn Gen Hosp to St. Dunstans Hosp For The Blind, Aylsbury wef 19 Jul 44.

J.T. Davies Capt
(J.T. DAVIES), Capt.,
For Officer i/c "Y" List,
NO. 3 C.A.C.R.U.

8. LEAVES: Cont

(b) Cont:

11 Sep 44 to 20 Sep 44

H-9727	Tpr	BOYES	L.	B-30439	Tpr	BYRNE	J.A.
B-69882	L/Cpl	GREALIS	A.	B-63290	Tpr	GROSSIEN	B.
M-55206	Sigmn	HAWKES	H.	M-10434	A/Cpl	KELLY	W.P.
A-163030	Tpr	MARTIN	J.	M-132530	Gdsm	MILLS	R.W.
H-102928	Tpr	ODDLEIFSON	I.R.	C-40227	Gdsm	ROWAN	A.
M-108583	Tpr	SWINBURNE	A.B.	M-106735	Tpr	MULDOON	J.
F-78941	A/Sgt	SIMPSON	S.G.	M-101260	A/L/Cpl	WALKEDEN	A.T.
D-76810	Tpr	WIDDINGTON	P.				

(c) B-62504 A/L/Cpl KENT W.A. proc on 14 days PL from 11 Sep 44 to 25 Sep 44 with money allce in lieu of rations.

9. QUALIFICATIONS:

D-122879 Tpr CHUBBY S. qualified as a Dvr i/c Wheeled wef 11 Sep 44.

10. NEXT OF KIN:

K-37891 SQMS BROOKE H.J. changes address of N-of-K to Mrs Edythe Mae BROOKE (Wife) 178 West 48th Ave., Vancouver, B.C. Canada.

11. ESTABLISHMENT A POSTINGS:

(a) The u/m ORs are posted from Admin Wing Rfts (unfit) to cover vacancies shown wef dates shown.

B-71175 Tpr POLLARD T.E. Cpl Tpt Duties, Admin Trg Inc wef 12 Sep 44

B-61538 Tpr WILLIAMS A.R. Tpr Storeman T&D Admin Trg Inc wef 11 Sep 44

(b) B-50130 A/Cpl THOMPSON E.D. is posted from Cpl Tpt Duties, Admin Trg Inc to Sgt Tpt Duties Admin BWE wef 12 Sep 44.

(c) B-4793 Sgt CARR D.R. is posted from Sgt Tpt Duties, Admin BWE to SQMS Basic Sqn BWE wef 11 Sep 44.

12. ABSENT WITHOUT LEAVE:

(a) M-37415 Tpr SAVILLE H.A. ret from AWL at 1200 hrs 10 Sep 44.

(b) B-134621 Tpr SPRINGWAY W.L. is AWL from 1900 hrs 28 Aug 44, and is still AWL at 1900 hrs 5 Sep 44. (8th day)

(c) D-76446 Tpr D'Aoust A.P. is AWL from 2230 hrs 31 Aug 44 and is still AWL at 2230 hrs 8 Sep 44. (8th day)

(d) B-131405 Tpr VISCUSI J.A. is AWL from 2230 hrs 7 Sep 44 and ret from AWL at 2359 hrs 8 Sep 44.

(e) B-62384 Tpr REID A. is AWL from 1200 hrs 3 Sep 44 and is still AWL at 1200 hrs 11 Sep 44 (8th day)

13. PUNISHMENTS:

On 5 Sep 44 tried by F.G.C.M.

Charges: (i) A.A. Sec 24(2)
(ii) A.A. Sec 15(1) AWL from 2200 hrs 21 Mar 44 until 1500 hrs 22 Aug 44 (Abs: 153 days 17 hrs)

Finding: Guilty

Sentence: 2 years detention

Confirmation: Finding and sentence confirmed by Commander HQ "E" Gp Brigadier T.J. RUTHERFORD, wef 11 Sep 44.

Close Arrest: Placed under close arrest from 1500 hrs 22 Aug 44 to 2400 hrs 4 Sep 44 (Total Time: 13 days 9 hrs)

Forfeitures: 154 days pay FR&I 149(1)(a)
14 days pay FR&I 149(1)(c)(i)
730 days pay FI&I 149(1)(b)

Total Forf: 898 days pay

G-818 Tpr COLWELL, W.L.

A.T. Davies Capt

A(J.T. DAVIDS), Capt.,
Adjutant,
NO. 3 C.L.C.R.U.

"Y" LIST

NO. 3 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

PART II ORDERS

BY

Colonel G.M. LITTLE,M.V.O.,O.B.E.,M.C.,E.D.

Last Order No 191 Dated 12 Sep 44 — Officer in Charge — This Order No 192 Dated 13 Sep 44

"A"

NIL

"B"

1. STRENGTH INCREASE:

Amd't: Pt II (Y-List) 187, d/7 Sep 44 para 1(c) insofar as it pertains to D-27068 Tpr JORDAN A.P., delete all reference.

2. HOSPITALS:

L-58695 Sgt DANIEL, E.A. trans from No 11 Cdn Gen Hosp to St. Dunstans Hosp For The Blind, Aylsbury wef 19 Jul 44.

J.T. Davies Capt

(J.T. DAVIDS), Capt.,
For Officer i/c "Y" List,
NO. 3 C.L.C.R.U.

No. D76446 Name Daoust H.P. | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 26-9-39 | G.C. Badges | Service or Proficiency Pay n/a

MFM 6 (A.F. B.122) 40/P & /5136 (2565)

Date of last entry in Company Conduct Sheet n/a | No. and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
England	9-8-40	Pte		A.W.L. 2 days A.A. SEC 15 (1)		Admonished	16-8-40		Forf 2 days pay FR&I 149 (1) a
England	29-8-40	Pte		A.W.L. 1 day A.A. SEC 15 (1)		7 days C.B.	31-8-40		Forf 1 days pay FR&I 149 (1) a
England	28-9-40	Pte		A.W.L. 12 days A.A. SEC 15 (1)		14 days pay	11-10-40		Forf 12 days pay FR&I 149 (1) a
England	21-10-40	Pte		A.W.L. 2 days A.A. SEC 15 (1)		7 days pay	21-10-40		Forf 2 days pay FR&I 149 (1) a
England	21-2-41	Pte		A.W.L. 4 days 13 hrs 1 min A.A. SEC 15 (1)		15 days pay	21-10-41		Forf 5 days pay FR&I 149 (1) a
England	12-5-41	Pte		A.W.L. 4 days 8 hrs 15 min A.A. SEC 15 (1)		14 days detn.	26-5-41		Forf 5 days pay FR&I 149 (1) a
England	1-6-41	Pte		A.W.L. 14 days 30 min A.A. SEC 15 (1)		Admonished	17-6-41		Forf 15 days pay FR&I 149 (1) a

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England	2-2-42	Pte		A.W.L. A.A. SEC. 15 (1)		4 days pay			Forf 1 days pay FR&I 149 (1) a
England	7-8-42	Pte		A.W.L. 33 days 4 hrs 10 min A.A. SEC 15 (1)	Sgt Faubert	6 months detention RELEASED from the DETENTION BARRACKS [illegible] on Jan 15 1943 SENTENCE HAVING EXPIRED Remission earned under RULES for DETENTION BARRACKS and MILITARY PRISONS 60 DAYS COMMANDANTS initials.....	16-9-42	F.C.C.M.	Forf 221 days pay
FIELD	21-3-43	Tpr		A.W.L. A.A. SEC 15 (1) 2230 hrs 21 Mar - 0915 hrs 25 Mar 3 days 10 hrs 45 min	L/Cpl Davidson Sgt Gingras	5 days FP. 5 days pay.	26-3-43	Lt.Col JA.Calder C.O.	A. F. of 4 days pay.

M.F.M. 6
(A.F. B.127)
40/F.S./3136 (2068)

No. D76446 Name Daoust H.P. | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 26-9-39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14-7-43	Tpr		SEC 15 (1) A.A. 2230 hrs 14 Jul - 0800 hrs 26 Oct 43. 103 days 9 hrs 30 min	Documentary	9 Mos Detention Stappage 13/8 Escort expenses			F.G.C.M. convened by Col D.H. Storms CE(wks)1 Cdn Army held 8 nov.Maj.JW Maxwell 23 Cdn Fd Regt (SP)RCA Pres. Close arrest 0800 hrs 26 Oct. to date of trial. Forf 12 days pay FR&I 149(1)c Forf 149 days pay " 149)1)a

RELEASED FROM THE DETENTION BARRACK [illegible] on 6 MAY 1944 SENTENCE HAVING EXPIRED. Remission earned under RULES FOR DETENTION barracks and MILITARY PRISONS 90 days
COMMANDANTS Initials.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	8 May 44	Tpr		A.A.15 (1) AWL From 0800 hrs 8 May 44 until apprehended at 0850 hrs 23 May 44 Time absent 15 days 50 min.	Doc Evid Cpl Wood HT. S/sgtParsons H.J.	28 days F.P. 28 days pay	26 May 44	Col A.T. Paterson	28 days pay under FR&I 16 days forf.of pay FR&I
FIELD	30Jun 44	Tpr		A.A.15(1) AWL from 0700 hrs 30 Jun 44 untill 0855 hrs 6 Jul 44 (absent 6 days 1 hr 55 min)	CplTasker RS.	28 days Detn			RELEASED from the DETENTION BARRACK on 29 Jul 1944 HAVING EXPIRED SENTENCE earned under RULES OF DETN. BARRACKS AND MILITARY PRISONS 4 days REMISSION COMMANDANTS Initials

M.F.M. 6
(A.F. 11.122)
40/P & /8136 (2965)

No. D76446 Name Daoust H.P. | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 26-9-39 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	9 Aug 44	Tpr		1st Charge A.A.12(1)(a)Attempted Desertion Picked up in plain clothes		27 days detn.	28-8-44	Col Paterson Forf 9 days pay FR&I 149	
Field	9 Aug 44	"		2nd Charge A.A.SEC15(1) AWL 1800 hrs 9Aug to 1100 hrs 18 Aug 44 (8 days 17 hrs)	DOC'Y				
Field	30 Aug 44	"		Punishment remitted to 27 days FP.					

Certified true copy from the original.

J.T. Davies Capt & Adjt
(J.T. Davies) Capt.
Adjt. 3 CACRU 27 Sep 44

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
D.76446	Tpr.	DAOUST, H.P.	3 C.A.C.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For A.A. Sec. 15(1) 12 times.

For A.A. Sec. 12(1) 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 9 Aug 1940

Date of last entry in Field Conduct Sheet 30 Aug 1944

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable

*3. ~~[illegible]~~ JTA JTA

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 7 days in military custody, i.e., nil days in open arrest, 7 days in close arrest; Bo of 30 Sep 44 of which Nil days were spent in hospital.

5. The present age of the accused is 25 yrs

6. The date of his attestation is 26 Sep 1939

7. The service which the accused is allowed to reckon is 5 yrs.

8. The accused is in possession of † CVSM & Clasp

†State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or N.C.O.). The accused has served continously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	N / A
In the acting rank of	

Ex B

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/2857 30,000 5/44 51-432 T.Ltd. Forms/B.296/War/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.C.C.M.	16 Sep 42	A.A. Sec. 15(1)	6 mos detn.	60 days remission.
F.C.C.M.	14 Jul 43	A.A. Sec. 15(1)	9 mos detn.	90 days remission.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30 day of Sep 1944

J. T. Davies Capt & Adjt

(J.T. Davies) Capt.
Adjt. 3 CA CMU

STATEMENT BY ACCUSED

It is my desire to have an officer assigned by the Convening Officer to represent me at my trial

R.A. Steele

(R.A.Steele)-E-30431/Pte

UU-139
Tpr Daoust. H.P.

2nd case
1st case O-49

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-76446 Tpr DAOUST, HP 32nd Cdn Recce Regt (C.M.R.)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (*)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Nine months detention
to pay the cost of apprehension 12/8

8 November 1943 (Sgd) J. W. Maxwell President (RP 45, 52 Reg)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of records after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, DSIL p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I concur in the findings and in the sentence of the court

[illegible] (1)

(1. AA 57A. Delete if not used.)

(Sgd)

Date 13 Nov 43. Commanding Col C.E. Works, First Can Army Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
D76446 Tpr DAOUST HP	16 Nov 43	C. Scarf Capt 32 Cdn Recce Regt (RM)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

UU-139

FIELD GENERAL COURT-MARTIAL (CPA80 (In lieu of AFA21) 40/P & R/1656 (2804))

Convened by Order of Col. D. H. Storms Comd CE (Works) dated 4 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R, (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-76446	Tpr.	Henri Paul	DAOUST	32 Cdn Recce Regt (RMR)

Proceedings Reviewed

Reviewing Officer (J.A.G./C.M.H.Q.)

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 8 November 1943

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0905 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major J. W. Maxwell	22nd Fd Regt (S.P.) R.C.A.
Member	Capt. J. W. Monohan	22nd Fd Regt (S.P.) R.C.A.
Member	Lt P.B. Waud.	32nd Con. Recce Regt (RMR)
Judge-Advocate		
Prosecutor	Lt J.R. Fergusson	32nd Con Recce Regt (RMR)
Defending Offr	Lt E.W. Smith	32nd Con Recce Regt (RMR)

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See 2b p 3.)

~~A8. The accused D-76446 Tpr Daoust H.P. 32nd Can Recce Regt (R.M.R.) before arraignment makes(s) (no) (to) plea.~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in 5ss to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, advise and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by von of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *RR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresser, statement, evidence and any summing up by the JA under RP* 42, 103(*H*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)
Ans. No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans. (Address by Counsel - attached)(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 130, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 328, 336, 563-566, *Overseas RO* 309, 2323, *MML p* 66, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1*B*), 98(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COUNTER NUMBER 238148

HOUR 1030

OPERATOR'S INITIALS KD

RELIEVING OPERATOR

CHARGE SHEET

The accused D76446 Tpr. Henri Paul DAOUST - 32 Cdn Recce Regt (MMR) a soldier of the Canadian Army Active Force is charged with while on active service:-

FIRST CHARGE — Absenting himself without leave

AA 15(1)

in that he

in the field, absented himself without leave from 2230 hrs 14 Jul 43 until apprehended at Chadwell by Canadian Military Police at 0800 hrs 26 Oct 43 thereby incurring escort expenses of 13 shillings and eight pence.

(T.C. Lewis) A/Lt. Col.
Comd 32 Cdn Recce Regt (MMR)

In the Field
27 Oct 43.

To be tried by Field General Court Martial.

In the Field
4 Nov 43

(D. [illegible]) Colonel
C.E.(Works)
First Cdn Army

JMM.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-76446	Tpr.		Henri Paul	DAOUST	32 Cdn Recce Regt (RMR)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 14 Nov 43 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	J. W. Maxwell,	23 Cdn Fd Regt (S.P.), RCA
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	J. W. Monahan,	23 Cdn Fd Regt (S.P.), RCA
A Captain or A Lieutenant (Rank.)	(LT. P. B. WAUD) (Named or detailed. RP 106.)	32nd Cdn Recce Regt. (RMR) (Unit.)

WAITING MEMBER.

A Captain or A Lieutenant (Rank.)	~~Mr P B WAUD~~ (To be detailed by) (Named or detailed, if any. RP 106.)	~~32 Cdn Recce Regt (RMR)~~ O.C., 32 Cdn Recce Regt (RMR) (Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England		Colonel
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 14 Nov 43

(D. H. STORMS)
Commanding C.E.(Works), First Cdn Army.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Nov. 8 1943 JMM

This is to certify that I have this morning examined D76456 [illegible] H.P. and find him fit to undergo trail by Court Martial.

[illegible] Capt. R.C.A.M.C.

Think Any reference to shipp[illegible] [illegible] in the daily [illegible]

"A"

Summary of Evidence in the case of
D76446 Tpr D'AOUST HP 32 Cdn Recce Regt (RMR)

By direction of the bond offr this
evidence is taken under oath

First Witness
D76661 L/Cpl Evans E G orderly room clerk
32 Cdn Recce Regt (RMR) having been
duly sworn states

I present as evidence certified true
extract from MB 68 which shows that
the accused, whom I now recognize,
was declared absent without leave
from 2230 hrs 14 Jul 43 (attached
and marked 'A') The accused is a
member of HQ Sqn and I am a
member of Regt HQ and we eat in
the same building I have not
seen the accused at any time since
14 Jul 43 and to the best of
my knowledge he has been absent
without leave since that time.
I also present certificate in
accordance with P.C. 2797 of 10 apr
42 signed by Capt L. S. Grayson
DAPM London area which states
that the accused was apprehended
at 0800 hrs 26 Oct 43. this is att
and marked 'B'
I also present CMHQ Form 1000:55
which gives details of escort expenses
amounting to 13 shillings and
high pence involved in the apprehension

JMM

of the accused att and marked 'C'

The accused declines to cross-examine this witness

E.G. Evans
D76661 L/Cpl Evans E.G.

The accused having been duly cautioned in accordance with RP 4 (E) declines to make a statement.

H. P. D'Aoust.
D76446 Tpr D'AOUST HP

Rules of Procedure 4 (C) (D) (E) (F) have been complied with.
I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in writing in the presence and hearing of the accused this 27th day of October 1943

G. Stacey Capt.
32 Cdn Recce Regt (RMR)

Statement of request for defending officer
I wish to have an offr defend me at my trial and if convenient I would like Lt C. E. Guillet 32 Cdn Recce Regt (RMR). If this is not convenient I am satisfied to have one appointed by my comd offr

H. P. D'Aoust.
D76446 Tpr D'AOUST HP.

List of Witnesses for the Prosecution
D76661 L/Cpl Evans E.G.
List of witnesses for the Defence
Nil

RECORD of the DECLARATION of a COURT OF INQUIRY
ASSEMBLED 6 AUG 43

DECLARATION

The Court declare, D76446 Tpr. Doaust, H.P. absented himself without leave from 2230 hrs 14 Jul 43, while stationed in Seaford, that he was A.W.L. 21 clear days 5 Aug 43, that he is still A.W.L.

NAMES OF PRESIDENT AND MEMBERS

Major G.H. Logie - 32 Cdn Recce Regt (RMR)
Capt. B.W. Stevens - 32 Cdn Recce Regt (RMR)
D76000 RSM (WO I) J.A. Mitchell - 32 Cdn Recce Regt (RMR)

(signed) T.C. Lewis A/Lt. Col.
Comd 32 Cdn Recce Regt (RMR)

A

CERTIFIED TRUE EXTRACT FROM THE REGIMENTAL RECORDS IN MY POSSESSION

(C. Stacey) Capt & Adjt
32 Cdn Recce Regt (RMR)

27 Oct 43

CERTIFICATE IN ACCORDANCE WITH .B.C.2797 of 10 Apr.42.

I Certify that No.D.76446 .Rank . Tpr. .Name . . Daquet, H.P. . . . JMM.

Unit .32 Recce Regt. . . . . .was arrested at Chadwell. . . . (Place)

at 0800. . .(hour) on 26.Oct.43. .(date) and that at the time of his arrest he was wearing (Military Uniform) ~~[illegible]~~. Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
26 Oct. 43.

'B'

L.S. Grayson . . . . . .Capt.,
(L.S. Grayson), D.A.P.M.,
London Area.

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

Reg. No. D76446 Rank Spr. Name Dwist, H.P. Unit 32 Area Regt

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From

Date	Particulars	Amount		
27 Oct 43.	Escorts return fare from LONDON To Seaford.		9	1
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Seaford.		4	7
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		13	8.

'C'

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L. S. Grayson. Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483(1287)

"B"

M.F.B. 355
22M—5-41 (573-8)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D76446	Tpr.	DAOUST, H.P.	32 Cdn Recce Regt (RMR)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AWL A.A. 15 (1)	1 times	AWL A.A. 15 (1)	9 times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 13 days in military custody, making a total of 13 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 24 years 7 months

6. The date of his attestation specified in his record of service is 26 Sep 39

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military possession of or entitled to). State any air force decoration or reward. military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

XXXXXX

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number D76466 Rank Tpr. Unit

Name DAOUST, H.P. of 32 Cdn Recce Regt (RMR) Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	In the Field 7 Aug 42	A.W.L. A.A. 15 (1)	6 Mos Detention	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of November 1943 CAPT. & ADJ.

FOR O.C. 32 CDN. RECCE REGT. (R.M.R.)

The above statement (with the schedule of convictions and dispensations with trial) has been read, marked ..... with) is read, marked ..... signed by the president, and annexed to the proceedings.

Copy from MFM 4

No. 276446 Name DAOUST H.P. Sqn., Battery, or Company Corps CAC Date of enlistment 26 Sep 39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F. B.122) 40/P & /S136 (2965)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Aug 40	Pte		AA 15(1) AWL 2 days	~~[illegible]~~	Admonished	16 Aug 40		AF 2 days pay
Field	29 Aug 40	Pte		AA 15(1) AWL 1 day	~~[illegible]~~	7 days CB	31 Aug 40		AF 1 day pay
Field	28 Sep 40	Pte		AA 15(1) AWL 12 days		14 days loss of pay	11 Oct 40		AF 12 days pay
Field	21 Oct 40	Pte		AA 15(1) AWL 2 days		7 days loss of pay	21 Oct 40		AF 2 days pay
Field	21 Feb 41	Pte		AA 15(1) AWL 4 days 13 hrs		15 days loss of pay	21 Feb 41		AF 5 days pay
Field	12 May 41	Pte		AA 15(1) AWL 4 days 8 hrs 15 min		14 days Detn	26 May 41		AF 5 days pay
Field	1 Jun 41	Pte		~~AWL~~ AA 15(1) AWL 14 days 30 min		Admonished	17 Jun 41		AF 15 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 Feb 42	Pte		AA 15(1)		4 days pay			AF 1 day pay
Field	7 Aug 42	Pte		AA SEC 15(1) AWL 33 days 4 hrs 10 mins	Sgt Faulkner	6 months [illegible]	16 Sep 42	FGCM	Dwf 221 days pay
				~~Release~~		Released 14 Jan 43 60 days remission of sentence			
Field	21 Mar 43	Pte		AA SEC 15(1) AWL 22 30 hrs 21 Mar 43 to 0915 hrs 28 Mar 43 7 days 10 hrs 45 mins	Cpl [illegible] Sgt [illegible]	5 days FP 5 days loss of pay	26 Mar 43	at Col [illegible] CALDER	AF 4 days pay

Certified true extract from the Regt records in my possession
7 Nov 43

C Searley Capt & Adjt
CAPT & ADJ.
FOR O.C. 32 CDN. RECCE REGT. (R.M.R.)

D-76446 Tpr. Daoust, H.P.

Address by Defence Council.

I wish to point out that Tpr. Daoust has been continually mixed up with the wrong type of people during his four years in this country. Hence the long list of Absent without leave.

On his last leave he met a respectable girl whom he now wishes to marry. His one wish is to serve his sentence for this crime and then get his C.O's. permission to marry his girl.

COUNTER NUMBER 5 36162

HOUR 1035

OPERATOR'S INITIALS CR

RELIEVING OPERATOR R.D.

49-0

Pte. DAOUST, HP

O. H. M. S.

Correspondence to be PINNED here.

D-76446 Pte. Daoust, Henry Paul
R.M.R. (MG)
#1 Cdn. M.G. Reinf. Unit.

49-0

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this fifteenth day of September, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army, (Overseas), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*~~I am unable to appoint~~ :—

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely :—~~

*Omit if not applicable.

President.

Rank.	Name.	Regiment.
Major	A.E. Hall.	S.D. & G. Highrs #3 C.D.I.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	from	#1 C.M.G.R.U.
A Lieutenant	from	#1 C.M.G.R.U.
A Lieutenant	WAITING MEMBER from	#3 C.D.I.R.U.

*Signed, Brigadier

Commanding "D" Group, Cdn. Reinf. Units.

Convening Officer.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
	First Charge A.A. Sec. 15 (1)	Guilty	Guilty	Finding and Sentence Confirmed. H. Lefebvre Brigadier
D-76446 Private. DAOUST. Henry Paul R.M.R. (MG) #1 C.M.G.R.U.	See Charge Sheet		To undergo detention for a period of six (6) months 16.9.42	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary) :—

(Signed) H. Lefebvre Brigadier (Signed) [signature]

Commanding "D" Group, C.R.U. President.

Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of Sept 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction) Lieut Graham Macleod NUSH - 3 CDI R.U.

were duly sworn.

* Omit if not applicable.

Signed this 16th day of Sept 1942

[signature]

President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

* See footnote (b) on page 762 M.M.L. 1929.

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 16th day of September 1942.

H. Lefebvre Brigadier Commander "D" Group (Cdn. Reinforcement Units) C.A.

Confirming Officer.

Promulgated and extracts taken in the case of D. 76446 Pte. Daoust, H.P.

(a) (Dated) 16 Sept 42 (Signed) [signature] J. H. CHRISTIE, Lt. Col. O.C. 1 Cdn. M.G. Rein. Unit, C.A.(O)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Medical Officer's Certificate.
K.R. (Can), para 557.

I certify that I have this morning examined No. D 76446
..Pte..DAOUST,.H..... of .Royal.Montreal.Regt. .#1.C.M.G.R.U.
and in my opinion, he is ~~unfit~~ fit to undergo trial by Court Martial.

Station:- .Ewshot,.Hants.....

Date:- .16.Sept..42..... (Sgd) [signature] Capt
(Medical Officer).

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42).

CHARGE SHEET

The accused, No. D 76446 Pte. DACOST, H.P., of the Royal Montreal Regiment (MG), on the strength of the No.1 Canadian Machine Gun Reinforcement Unit, an active unit of the Canadian Army Overseas, is charged with:-

FIRST CHARGE

A.A. SEC 15(1)

WHILE ON ACTIVE SERVICE, Absenting himself without leave
in that he
at Ewshot, Hants., absented himself without leave from 0800 hours, 7 August, 1942, until he was apprehended in Tottenham, London, at 1210 hours, 9 September, 1942.
(Time absent:- 33 days, 4 hours, 10 minutes)

EWSHOT, HANTS.
14 September 1942.

(G.F. Clingan) Major,
A/Officer Commanding,
#1 Canadian (MG) Rein: Unit,
C.A.O.

exc 1

To be tried by Field General Court Martial.

Ewshott. Hants.
15 September 1942

(H. LeFebvre) Brigadier
Commander
"D" Group, Cdn. Reinf. Units.

F. S. C. M.
Sl 76446 Pte Slaoust, Henry Paul.

Court opens at 0945 hrs.
Proceedings read in presence of accused and witnesses.
The Court is sworn after accused makes no objection to the members after being asked accordingly.
The Court satisfies itself according rules of Procedure 105 et seq.

President
Major A E Hall - S.D.&S. Highrs no 3 C.D.I.R.U.

Members
Captain G.P. Rich. For Lieut 1 C.M.S.R.U.
Lieut. F.F. Rejall R.M.R. 1 C.M.S.R.U.

The waiting member Lieut Graham Macleod. N.N.S.H. 3 C.D.I.R.U. not being required as such is sworn as a member under instruction

Prosecuting Officer ~~Lieut~~ Captain A B Weir R.M.R. 1 C.M.S.R.U.

Defending Officer. ~~Lieut~~ Major A.S. Pettapiece Cameron Highlanders of ~~Ottawa~~ (N.S.) 1 C.M.S.R.U.

The accused is arraigned and pleads guilty. He is then warned pursuant to R.P. 385 and still pleads guilty.
The abstract of evidence including written evidence of civil police is read.
The Prosecuting Officer is sworn and produces

Certified copy of M.F.M. 6. [illegible] and
~~[illegible] F.B. 296.~~ M.F.B. 355. ~~[illegible]~~ swears ~~[illegible]~~
that it is signed by proper officers having control of documents.

The Court then adjourns at 1010 hrs at motion of Defending Officer in order to receive further instructions ~~in~~ on plea of mitigation.

~~Major~~ The accused is asked if he wishes to give evidence or make a statement as to character but states that he wishes to do neither but that his defending officer will make a statement.

Major A. S. Pettapiece then address the court in mitigation of punishment the substance of which is reduced to writing signed by the accused and is appended herewith marked exhibit 6.

The accused is then advised that his presence is no longer required and the court adjourns to consider the sentence.

[signature]
Major
President

Statement in Mitigation of Punishment

by D76446 Pte L'Amant, H.R. R.M.R. (MG)

I enlisted on Sept 26th 1939. I came across with 3rd Bde. H.Q. as a batman to the staff capt. since that time I have never been with my unit and from the date of my enlistment until the present (almost 3 years) I have had no real training as how I was to go to the field.

This does not excuse my actions, I know, but as a consequence of being always at a H.Q. as a waiter, batman, or sanitary man, it prevented me from really getting to know an officer who might help me if I was in trouble.

On this particular occasion, I was involved with a woman in London who had some letters of mine which she had refused to return to me. I went to London on 48 hours leave in order to straighten out my difficulties but got so tangled up in the affair that I felt as if I might get into a lot of trouble if I did not get those letters.

It was while there was going on that

Ex 6

Signature

I felt as if I could not carry on, and I stayed there, hoping the mouth would clean up. I have not yet got the letters from her, but since my return I have had some advice from an officer and it doesn't worry me any more.

A. P. Darrest.

Sept. 16th, 1942
F.G.C.M.

ex 6 Page 2

[illegible]
Major
President

Summary of evidence in the case of D-76446, Pte. Daoust, H.P. Royal Montreal Regiment on strength of #1 Canadian Machine Gun Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer evidence is NOT taken under oath.

FIRST WITNESS

For the Prosecution

D-76778 L/Sgt. Faubert, E.N. Royal Montreal Regiment on strength of #1 Canadian Machine Gun Reinforcement Unit states:

"At Liepzig Barracks on the 7 AUG. 42. in my capacity as orderly sergeant of the R.M.R. Coy., I went to the Guard Room at approximately 0800 hrs. to pick up the pass of the accused who had been on 48 hours leaveexpiring at 0800 hours, 7 AUG. 42. I found that the accused had not reported back. Since that time the accused did not answer any roll calls until I handed over my duties as orderly sergeant to Sergeant Mort, W. on the 3 SEP. 42. On the 10 SEP. 42 I again took over as orderly sergeant. I did not see the accused until he was returned to the Unit under escort on the 11 SEP. 42."

E N Faubert.

SECOND WITNESS

For the Prosecution

D-77477, Sgt. Mort, W. Royal Montreal Regiment on strength of the #1 Canadian Machine Gun Reinforcement Unit states:

"I was orderly sergeant of the R.M.R. Coy. from the 3rd SEP. 42 to the 10 SEP. 42. During that time I did not see the accused."

W. Mort

THIRD WITNESS

For the Prosecution

(documentary)

P.C. 371-N Leslie Elton, Metropolitan Police, St. Ann's Road, Tottenham. A written statement of this witness's evidence, purporting to be signed by him has been read to the accused and is included in this summary of evidence, marked as exhibit "A". The statement reads as follows:

"On 9 SEP. 42 at 1210 hours, I went to 18, Salisbury Mansion, St. Ann's Road, N.15 where I saw the prisoner. He was unable to produce his pass and admitted that he was an absentee from his Unit since 7/8/42. I took him to St. Ann's Road Police Station where he was charged and made no reply."

(Signed) Leslie Elton, P.C. 371-N

Having regard to the exigencies of the Service the attendance of this witness cannot, in my opinion, be readily procured.

Andrew R. Wemyss

The accused does not demand the attendance of this witness for cross examination.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on Oath ? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.".

The accused declines to make a statement.

Taken down by me in the presence and hearing of the accused this 12th day of Sep. 1942. Rules of procedure 4 (c)(d)(e)(f) and (g) have been complied with.

Andrew R. Wemyss

Liepzig Barracks Hants
12 SEP. 42

LIST OF WITNESSES

in the case of D 76446, Pte. DeCOUST, H.P., (RMR), 1 Canadian (MG) Reinforcement Unit, C.A.O.

For the Prosecution.

FIRST WITNESS:- D 76778, L/Sgt. Faubert, E.N., 1 Cdn (MG) R.U.
SECOND WITNESS:- D 77477, Sgt. Mort, W., 1 Cdn (MG) R.U.
THIRD WITNESS:- Police Constable 371-N Leslie Elton, Metropolitan Police. (Documentary).

For the Defence.

N I L.

LIST OF EXHIBITS

in the case of D 76446, Pte. Daoust, H.P., (RMR), 1 Canadian (MG) Reinforcement Unit, C.A.O.

Exhibit "A" - Descriptive Return of a Deserter or Absentee without Leave.

Exhibit "B" - Copy of record of declaration of court of inquiry 29 Aug 42.

LIST OF EXHIBITS

in the case of D 76446, Pte. Daoust, H.P., (MMR), 1 Canadian (MG) Reinforcement Unit, C.A.O.

Exhibit "A" - Descriptive Return of a Deserter or Absentee without Leave

Exhibit B - copy of

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I CERTIFY that the following expenses were incurred by the _____

Police in connection with the apprehension of _____

_____ and are

payable to _____

_____ (Superintendent or Officer i/c Police Station at

Date _____ _____

AUTHORITY for the PAYMENT of a REWARD. *(For Army use only.)*

The Command Paymaster _____ is hereby authorised to

pay to _____ being the person recommended by the

Committing Magistrate, a reward of _____ for the apprehension

of _____

Date _____ _____ (O.C. Unit) Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below :—

Ex. 2(a)

"EXHIBIT A"

Army Form O.1618.

IMMEDIATE.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(*17928) Wt.11813/244 50,000 6/62 A.& E.W.Ltd. Gp.478 Forms/O.1618/12

DESCRIPTIVE RETURN OF § No L/76446 Pte Henry Paul DAOUET who apprehended at Tottenham (hour) 12/25pm the 9th day of Sept 4.. and was committed to confinement at Tottenham on the 10th day of September42 as a ~~xxxxxxx~~ Absentee without leave) from the 1st Bn. of the Machine Gun Unit

Regiment of

Age 23 Height 5 feet 9 inches

Complexion Fresh Hair Light Brown Eyes Blue

Marks **** In uniform or plain clothes Uniform.

Probable date and place of attestation	26/9/39. Montreal, Canada.
Probable date of desertion or beginning of absence and from what place	7/8/42 Aldershot
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	P.C. 371"N" Elton. Metropolitan Police St Anns Road Tottenham.
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	* On 9th Sept. 1942, at 12.10pm. I went to 18, Salisbury Mansion, St. Anns Rd. N.15. where I saw the prisoner. He was unable to produce his pass, and admitted that he was an absentee from his unit since 7.8.42. I took him to St. Anns Rd. Police Station where he was charged and made no reply.

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he† is an absentee the before-mentioned Corps.

[signature] Signature
Court House Residence
Tottenham Post Town
of Committing Magistrate.

10/9/42 Date of Signature

Signature of Prisoner

Leslie Elton PR.341N. Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming.

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the ..... day of ..... for the purpose of obtaining such evidence.

Signature
Residence
Post Town
of Magistrate.

Date of Signature

§ Care should be taken to insert Army No. and Rank.
‡ Insert "was apprehended" or "surrendered," as the case may be.
* It is important for the public service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

Army Form O.1618.

PART II.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. ..... of .....

Regiment at ..... on ..... by .....

who was committed as a Deserter (or Absentee without leave) on the .....

RECOMMENDATION FOR REWARD.

I RECOMMEND* .....

Address .....

for a reward of ..... Signature of Committing Magistrate.

..... Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

I, D 76446, Pte. Daoust, H.P., of the Royal Montreal Regiment (MG), on the strength of the No. 1 Canadian (MG) Reinforcement Unit, desire the services of an officer to represent me in my forthcoming trial by Court Martial.

I desire the services of ...Major Pettapiece R.H. Ottawa... if he is available.

Pte. H.P. Daoust.

(D 76446, Pte. Daoust, H.P.),
1 Cdn (MG) Reinforcement Unit,
C.A.C.

:HF

Maj Brandon

COPY FROM MFM 4 No. D-76446 Name Daoust Henry Paul

Sqn., Battery, or Company

Corps RMR (MG)

Date of enlistment 26-9-39 G.C. Badges

Service or Proficiency Pay

M.F.M. 4 (A.F.B. 1.52) 15555—7-41 (1252-30) H.Q. 1775-39-1052

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc. Major J. McAllen

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England	9/8/40	Pte		A.W.L. 2 days A.A. SEC.15(1)		Admonished	16 Aug 40		Forf 2 days pay F&I 149 (1)a
England	29/8/40	Pte		A.W.L. 1 day A.A. SEC 15(1)		7 days C.B.	31 Aug 40		Forf 1 days pay F&I 149 (1) a
England	28/9/40	Pte		A.W.L. 12 days A.A. SEC 15 (1)		14 days pay	11 Oct 40		Forf 12 dayspay F&I 149 (1)a
England	21/10/40	Pte		A.W.L. 2 days A.A. SEC 15 (1)		7 days pay	21 Oct 40		Forf. 2 days pay F&I 149 (1)a
England	21/2/41	Pte		A.W.L. 4 days 13 hrs 1 min A.A. SEC 15 (1)		15 days pay	21 Oct 41		Forf. 5 days pay F&I 149 (1)a
England	12/5/41	Pte		A.W.L. 4 days 8 hours 15 min A.A. SEC 15 (1)		14 days Detn	26 May 41		Forf. 5 days pay F&I 149 (1)a
England	1/6/41	Pte		A.W.L. 14 days 30 min. A.A. SEC 15 (1)		Admonished	17 Jun 41		Forf. 15 Days pay F&I149(1) a

(P.T.O.)

Place	Date of offence	Rank	Cause of drunken ness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England	2/2/42	Pte		A.W.L. A.A. Sec. 15 (1)		4 days pay			Forf. 1 days pay PRA1149 (1)a

Certified true copy
[illegible]
[illegible] Records Officer,
1 Cdn. M.G. Rein. Unit, C.A. (O)
14 Sep 42

ex 5
[illegible]
Major
President

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-76446	Pte	D'Aoust, H.P.	Royal Montreal Regt.(MG) (No.1 C.M.G.R.U.)

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery~~ ~~Conduct sheets~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	A.A. Sec 15 (1) One times	Eight times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.A. 75 are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 2 days in civil custody, and 4 days in military custody, making a total of 6 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 23 years 6 months.

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 26-Sep 39

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no air force decoration, or air force reward ~~(or is in possession of or entitled to). State any air force decoration or reward.~~ military military

10. ~~If the accused is a warrant officer, The accused before he was made a warrant officer last held the regimental rank of~~

ex 4
[signature]
President

11. ~~(In the case of an officer.)~~ ~~The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit ~~dated~~ ....., and in his regiment (or corps), the rank of ~~dated~~ .....

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date~~ ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number D-75446 Rank Pte

Name D'Acust, H.P. of Royal Montreal Regt. (MG) Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16 day of Sep 42 [signature] Records Officer, M.G. Rein. Unit, C.A. (W)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

4H- 141.
Tri. Davis. A.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B-133038 Tpr Albert Hugh DAVIS, 1 CAGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Detention for a period of ninety (90) Days.

(Sgd) ..... Judge-Advocate, if any. 19 Jan/45 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 13.)

My decision on the finding(s) and sentence set forth in Part I is :

Finding and Sentence confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) J Rutherford

Date 22 Jan 45 Commanding E Bde L.R.V. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B133038 Tpr DAVIS AH	23 Jan 45	Confirmed Capt

DO PE No 22 26 Jan 45.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 as 4M-141

RECEIVED 30 JAN 1945 BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA81) 40/P & B/1698 (A14) 4/388

Convened by Order of Brig T J Rutherford Comd "E" Gp, CRU dated 18 JAN 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-133038	Tpr	Albert Hugh	DAVIS	1 CAGRU

FINDING REVIEWED J Rutherford Capt 1 Feb 45 PRESIDING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 19 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by 4inr(AA)~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused :~~ ~~Do you object to~~ ..... as interpreter ? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to FRIZE as shorthand writer ? Ans NO
The shorthand writer is sworn.(1) SGT A H SINCLAIR

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO, SIR

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT-COL	D L	REDMAN	HQ, CRU
Member	CAPT	W M	RICE	1 CE RU
Member	LT	J D	McKICHAN	1 CE RU
~~Judge-Advocate~~				
Prosecutor	LT.	J J	KERR	1 CA RU
Defending Offr	LT	R F	HAMBLEY	1 CA RU

Questions by President : Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See D1 p 2.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 25(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed) and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO STM (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on the charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP* 115. *2. RP* 46(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with on Jer Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - I'M
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. AFB* 255 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. BY DEFN'S NOTE - AIT (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 328, 336, 563-566, *Overseas RO* 309, 2323, *MML p* 160, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 136. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. B 133036 Tpr. Albert Hugh DAVIS, a soldier of the Canadian Army Overseas, on the strength of No 1 CACRU, is charged with:-

"WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE"

1ST CHARGE
ARMY ACT
SECTION 15(1)

in that he,

in the Field, on the 10th day of September 1944, did absent himself without leave from 1600 hours until apprehended by Civil Authorities at 1930 hours 30th November, 1944.

Total time absent: 81 days, 1 hour, 30 minutes.

A. F. Patenson

(A.F.PATENSON) Colonel,
Commanding Officer,
No 1 Cdn Armd Corps
Reinforcement Unit.

To be tried by Field General Court Martial.

W. J. Rutherford

(W J RUTHERFORD) Brig
COMD
"E" GP CRU

In the Fd.,
18 JAN 45.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets se. RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-133038	Tpr		Albert Hugh	DAVIS	1 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 18 JAN 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to or reports (publish offr~~.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate the person the Offr so appointed hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-Col	D L Redman, VD	HQ, CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 1 CERU	1 CERU
Lt	to be detailed by OC 1 CERU	1 CERU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 18 JAN 45

(Signed personally, RP 105 fn 2.)

(T J RUTHERFORD) Brigadier

Commanding "E" GP CRU

Brigadier (Rank.)

Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Para 17a Secs of AFAS) 40/P & S/1867 (40)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can.) Para. 557

I certify that I have this morning examined No. B.133035.....

Name. Tpr. Davis A.H. of #15 ACRU..... and in my opinion he is

fit/~~unfit~~ Pay to undergo trial by Court-Martial.

Station Field

Date 19 Jan. 45

J. L. Johnston Capt.
Medical officer.

My

19 Jan 45

PBEA IN MITIGATION

B-133038 Tpr. Davis A.H.

The accused is 23 years old and category B-3.

MILITARY HISTORY

Enlisted 16 Sept. 42.
Qualified as Driver Op. Gp. "C" in Canada 17 Feb. 43.
Arrived Overseas 11 June 43.
Granted Trades Pay as Op. CAC 23 Aug. 43.
Posted to the 7th Recce Regt. 23 Sept. 43.
Returned to No.1 C.A.C.R.U. for a 2 week gunnery course 18 Oct. 43. Qualified.
Again returned to No.1 C.A.C.R.U. 17 Apr. 44 for an operators refresher course.
Arrived in France with the 7th Recce Regt. 11 June. 44.
To Hospital in France 12 July 44.
Transferred to 22nd General Hos. 17 July 44.
No.1 Neurological Hospital 20 July 44 and discharged to No.1 CpA.C.R.U. 29 July 44.

I will deal with Tpr. Davis conduct sheet in a moment.

The accused served for 31 days in France and was in action the whole time with very little rest. He then collapsed and remembers nothing until he woke up in hospital. The cause was apparently an 88mm shell exploding rather close. He received slight wounds in the leg and arm. His category was A-1 until his discharge from No.1 Neuro. as Category B-3.

Prior to this his career was excellant. He qualified as a driver Operator in Canada and was returned to No.1 C.A.C.R.U. from his Regt on a gunnery course and a refresher in wireless whilst over here.. This would never have happened if his superiors did not think he had the necessary qualifications. On his arrival in France he was able to take an any job in an armoured car if necessary.

His trouble begins after he became a casualty and his discharge from hospital. As is shown there are no entries on his conduct sheet except an entry during his first six months of service.

Four weeks after leaving hospital he was improperly dressed outside barracks for which he received 3 days C.B. Just under 3 weeks later he went absent (and I do not believe the 3 days C.B. was responsible) and remained so until apprehended by the civil authorities.

During his absence he was not alone but with another soldier who was also A.W.L. This other person seems to have exerted some influence over Tpr. Davis as they were together the whole time. The civil authorities come into the picture when robbery was committed.

When I asked Tpr. Davis why he went A.W.L. his reply was that he did not know. Apparently Women, money, or even a fed up attitude was not responsible. He just didn't seem to care and was just drifting. Probably would have continued to drift from place to place(as his wanderings included a hitch hike to Scotland and back ~~to where he was apprehended~~) indefinitely were he not picked up. It may be that if he found himself near No.1 CpA.C.R.U. or any other unit he may have given himself up. He seems to have been a victim of lethargy or absent-mindedness. His conversation is erratic and he seems to find it difficult to concentrate and is also subject to periods of forgetfulness.

In the case of the housebreaking the civil authorities do not

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-133038	Tpr		Albert Hugh	DAVIS	1 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on 18 JAN 45 (*date*) endorsed by me, (~~or by an offr or my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reasons to be appear - published offr~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. (~~I now wish to appoint - (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~)

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. (~~I also appoint an Judge-Advocate to attend the Court at sessions hereunder.~~)

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-Col	D L Redman, VD	HQ, CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 1 CERU	1 CERU
Lt	to be detailed by OC 1 CERU	1 CERU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 18 JAN 45

(Signature personally. RP 105 fn 2.)

(T J HUTCHESON) Brigadier

Commanding "E" GP CRU

Brigadier (Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAM (To take of AFA2) 40-P & R/1807 (40))

(*See overleaf for oaths and notes for use on trial.*)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(H)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 10 Jan 42 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, *87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy or lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

19 Jan 45

PLEA IN MITIGATION

B-133038 Tpr. Davis A.H.

The accused is 23 years old and category B-3.

MILITARY HISTORY

Enlisted 16 Sept. 42.
Qualified as Driver Op. Gp. "C" in Canada 17 Feb. 43.
Arrived Overseas 11 June 43.
Granted Trades Pay as Op. CAC 23 Aug. 43.
Posted to the 7th Recce Regt. 23 Sept. 43.
Returned to No.1 C.A.C.R.U. for a 2 week gunnery course 18 Oct.43. Qualified.
Again returned to No.1 C.A.C.R.U. 17 Apr.44 for an operators refresher course.
Arrived in France with the 7th Recce Regt. 11 June.44.
To Hospital in France 12 July 44.
Transferred to 22nd General Hos. 17 July 44.
No.1 Neurological Hospital 20 July 44 and discharged to No.1 CgA.C.R.U. 29 July 44.

I will deal with Tpr.Davis conduct sheet in a moment.

The accused served for 31 days in France and was in action the whole time with very little rest. He then collapsed and remembers nothing until he woke up in hospital. The cause was apparently an 88mm shell exploding rather close. He received slight wounds in the leg and arm. His category was A-1 until his discharge from No.1 Neuro. as Category B-3.

Prior to this his career was excellant. He qualified as a driver Operator in Canada and was returned to No.1 C.A.C.R.U. from his Regt on a gunnery course and a refresher in wireless whilst over here.. This would never have happened if his superiors did not think he had the necessary qualifications. On his arrival in France he was able to take an any job in an armoured car if necessary.

His trouble begins after he became a casualty and his discharge from hospital. As is shown there are no entries on his conduct sheet except an entry during his first six months of service.

Four weeks after leaving hospital he was improperly dressed outside barracks for which he received 3 days C.B. Just under 3 weeks later he went absent (and I do not believe the 3 days C.B. was responsible) and remained so until apprehended by the civil authorities.

During his absence he was not alone but with another soldier who was also A.W.L. This other person seems to have exerted some influence over Tpr. Davis as they were together the whole time. The civil authorities come into the picture when robbery was committed.

When I asked Tpr. Davis why he went A.W.L. his reply was that he did not know. Apparently Women, money, or even a fed up attitude was not responsible. He just didn't seem to care and was just drifting. Probably would have continued to drift from place to place(as his wanderings included a hitch hike to Scotland and back. ~~to where he was apprehended~~) indefinitely were he not picked up. It may be that if he found himself near No.1 CgA.C.R.U. or any other unit he may have given himself up. He seems to have been a victim of lethargy or absent-mindedness. His conversation is erratic and he seems to find it difficult to concentrate and is also subject to periods of forgetfulness.

In the case of the housebreaking the civil authorities do not

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can.) Para. 557

I certify that I have this morning examined No. B.133038.....

me. Tpr. Davis. A.H. of #1 CALRY..... and in my opinion he is

t/~~unfit~~ fit to undergo trial by Court-Martial.

ation Field

ate 19 Jan 45

J. L. Johnston Capt
Medical officer.

appear to have been as certain of Tpr. Davis being as guilty as the other soldier, who received a gaol term, and the accused a suspended sentence. This argues that he has not turned criminal but was just in bad company, and that it was unfortunate that he became friends with the wrong person.

Tpr. Davis'history prior to his becoming a casualty in France is in direct dontrast to his conduct and attitude after and I believe that it was his period in action and is his becoming a casualty that is responsible for his present plight and that he himself is not responsible for his actions.

This is also borne out by the fact that his category was lowered from A-1 to Stability 3. There are no medical documents pertaining to Tpr. Davis at No.1 C.A.C.R.U. and I must opoligize to the court for not being able to obtain them as they could possibley shed further light on the situation. I did not have time to go to the hospital and obtain them.
Also Tpr. Davis was not in any one Sqn of No.1 C.A.C.R.U. long enough after his hospitalization for anyone to form an opinion of his work.

(If admissable read the report of th P.S.O.).
This is of course and interview he had with the Tpr. Davis and is not backed up by documentary evidence.

Tpr. Davis may in time again become an efficient soldier as he was prior to becoming a casualty in action and the difference in his conduct before and after is so great that I would respectfully ask the court to take an extremly lenient view of this case.

Respectfully submitted,

Lt. Lambley

B-133038 Tpr. DAVIS A.H.

PULHEMS
21 1111113 27 July 44.

Interview of P.S.O. with Tpr. Davis 7 Sept. 44.

Went to France with the 7th Recce as Oper CAC on D plus 5. Was evacuated D plus 36 after collapse. An 88 mm shell landed close by and he sufiered slight shrapnel wounds in leg and arm. He doesn't remember anything until waking up in hospital 7 days later.

3. Since coming to this unit, he has been employed as a batman. So far he has been able to carry out his duties fairly satisfactorily but says he can't stand it much longer.

4. He is very nervous especially at night. He is afraid of "Buzz Bombs" and even the sound of Rifle fire from the range bothers him.

5. Although he has been able to carry out his duties as batman, it is very doubtful if he can be employed on that work much longer. There is no suitable employment for which he can be recommended.

6. It is suggested that he be considered for a further lowering of "S" rating.

No.1 C.A.C.R.U.

(C.H. Hickey) Capt.
S.P.O. (2).,
No.1 C.A.C.R.U.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B 133038 Tpr Albert Hugh DAVIS, a soldier of the Canadian Army Overseas, on the strength of No. 1 Canadian Armoured Corps Reinforcement Unit.

THE COMMANDING OFFICER DIRECTS THAT ALL EVIDENCE BE TAKEN ON OATH.

1st Witness for the prosecution

Lt N S WADHAMS, an Officer of the Canadian Army Overseas, on the strength of No. 1 C.A.C.R.U., having been duly sworn, states:-

"I am Lt N S WADHAMS, and am employed as Acting Adjutant of No 1 C.A.C.R.U. As such I am the keeper of all Regt'l Books and Documents. I produce Certified True Copy of Daily Part II Order No. 251 dated 15 Oct 44, showing B 133038 Tpr DAVIS AH as Absent Without Leave from 1500 hours 10 Sep 44. The accused whom I recognize is the person referred to therein. I also produce Certified True Copy of Daily Part II Order No. 294, dated 7 Dec 44, showing B 133038 Tpr DAVIS AH as being apprehended by Civil Authorities at 1930 hours, 30 Nov 44. The accused whom I recognize is the person referred to therein.

The accused declines to cross-examine this witness.

N.S. Wadhams Lt
(N.S. WADHAMS) Lt
A/Adjt
No 1 C.A.C.R.U.

Documents referred to above, have been produced, read over to the accused, marked respectively Exhibits "A" and "B" and attached hereto.

J.J. Kerr Lt
(J.J. KERR) Lt
Officer detailed to take Summary of Evidence.

(Page two follows)

SUMMARY OF EVIDENCE (Contd)

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given as evidence.

After the above caution, the accused declines to make any statement.

The accused declines to call any witnesses for the defence.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

J.J. Kerr Lt

(J.J. KERR) Lt
Officer detailed to take Summary of Evidence.

In the Field
11 Jan 45

EXHIBIT "A"

NO 1 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
DAILY ORDERS PART II
ISSUED BY
COL A T PATERSON, D S O, O B E
COMMANDING OFFICER

LAST ORDER NO 250 17 OCT 44

THIS ORDER NO 251 (Wed) 18 OCT 44.

"A" OFFRS

1. COURSES

(a) Proceeded on CMHQ Course 720 Ser 519W (FOO's) and att fap to AFV School Bovington wef 16 Oct 44. (2 weeks)
(Auth: E2/CMHQ 7/3 (G), 21 Sep 44.)
Lt A H ZACARUK, (Armd Recce)
Lt F C SHERRIFF, (Armd Recce)

2. ATTACHMENTS

(a) CANCELLATION: Part II Order No 143, para 2(b), 14 Jun 44, insofar as it concerns the u/m, DELETE ENTIRE ENTRY.
(Auth: 10/MOONEY, S G/1 (DAAG(L)), 13 Oct 44.)
Lt S G MOONEY, (Div Recce)

3. STRENGTH DECREASE

(a) SOS to "Q" List wef 14 Jun 44 whilst employed as ALO in the A L Section RAF Stn Biggin Hill, Kent.
(Auth: 10/MOONEY, S G/1 (DAAG(L)), 13 Oct 44.)
Lt S G MOONEY, (Div Recce)

"B" OTHER RANKS

4. STRENGTH INCREASE

(a) TOS from Y-3 List wef 12 Oct 44 on discharge from 22 Cdn Gen Hosp.
B 58980 Sgt BROWN, F E

(b) TOS from Y-3 List wef 12 Oct 44 on discharge from Roman Way Conv Hospital.
B 79906 Tpr GARRAWAY, J S Gnr Op "C" (Rft)

(c) TOS from Y-3 List wef 12 Oct 44 on discharge from Roman Way Conv Hospital.
L 53443 Tpr LISKA, P

(d) TOS from Y-3 List wef 16 Oct 44 on discharge from B'Stoke M &PS Hospital.
D 77926 Tpr MUCHAN, A (Unfit Rft)

(e) TOS from Desertion wef 17 Oct 44 having surrendered from desertion at 2300 hrs 17 Oct 44.
B 133033 Tpr BOWMAN, L W (Rft)

(f) TOS from Desertion wef 12 Oct 44 having been apprehended from desertion at 1430 hrs 12 Oct 44.
D 96666 Tpr MARSHALL, A B K (Rft)

5. PERMANENT ESTABLISHMENT

(a) Posted from PE Trg Inc Instr Wing (Tpr Dvr Mech MV) wef 16 Oct 44 to PE Basic Instr Wing (Cpl Dvr Mech MV) wef 17 Oct 44.
A 66687 L/Cpl ASHEY, E E

(b) Posted from Basic PE Adm Wing (Cpl Mtr Mech) wef 15 Oct 44 to PE Trg Inc Adm Wing (Sgt Fitter MV) wef 16 Oct 44.
H 77024 A/Cpl BYIERS, P Mtr Mech "B"

(c) Posted from Unfit Rft to PE Trg Inc Instr Wing (Tpr Dvr Mech) wef 6 Oct 44.
D 76891 Tpr COOPER, J R Dvr Mech MV "C"

(PAGE TWO FOLLOWS)

5. PERMANENT ESTABLISHMENT (Cont'd)

(d) Posted from PE Trg Inc Instr Wing (Cpl Op CAC) to Rft wef 16 Oct 44.
D 76665 A/Cpl ISAACS, M A Op CAC "B"

(e) Posted from PE Stan Inc Adm Wing (Offrs Mess) to Rft wef 16 Oct 44.
M 63807 Tpr KELLY, A R

(f) Posted from PE Trg Inc Adm Wing (Sgt Fitter MV) wef 15 Oct 44 to PE Trg Inc Adm Wing (Cpl Fitter AFV) wef 16 Oct 44.
M 77565 Cpl MC GRAE, A G Mtr Mech "B"

(g) Posted from Unfit Rft to Basic PE Instr Wing (Cpl Op CAC) wef 16 Oct 44.
B 62901 A/L/Cpl MC LEOD, G S Op CAC "C"

(h) Posted from Basic PE Adm Wing (C Scale Batman) to Unfit Rft wef 17 Oct 44.
L 53821 Tpr PARSONS, H F

(i) Posted from Basic PE Instr Wing (Op CAC "C") wef 15 Oct 44 to PE Trg Inc Instr Wing (Cpl Op CAC "C") wef 16 Oct 44.
K 53005 A/Cpl PRESCOTT, W A Op CAC "C"

(j) Posted from PE Standard Inc Adm Wing (L/Cpl Provost) to Unfit Rft wef 17 Oct 44.
A 106079 A/L/Cpl VINEGARDEN, J A

(k) Posted from PE Standard Inc Adm Wing covering vacancies as shown to Rft shown wef 17 Oct 44.

B 219	A/Cpl	CLINE, F	Cpl Cook	Cook "C"	(Rft)
L 54840	Pte	CURRUTCH, J F	Tpr Cook	Cook "C"	(Rft)
L 53260	A/Cpl	HALL, D M	Tpr Post Off		(Unfit)
A 87090	Pte	HOMKA, C S	Tpr Cook	Cook "B"	(Rft)
H 6614	Tpr	KAMARAUS, K R	Ftr AFV A	Mtr M "B"	(Unfit)
D 61406	Tpr	MAC KENZIE, J	Tpr Clerk	Clerk "C"	(Unfit)
G 1764	Tpr	MANN, W H	Tpr Cook		(Unfit)
B 149698	Tpr	SCARY, E E	Ftr MV A	DM MV "C"	(Rft)
C 70503	Cpl	WILLARD, C E	Tpr Cook		(Unfit)
C 70672	Pte	WILSON, W	Tpr Cook	Cook "B"	(Rft)

6. ATTACHMENTS

(a) Ceases att fap to Methods of Instr Sub Wing CTS wef 14 Oct 44. (Unfit Rft)
H 19451 Tpr DEMPSTER, D D

(b) Ceases att fap except pay to 3 C.A.C.R.U wef 24 Sep 44. (Rft)
A 21274 Tpr TELFORD, R F R

7. COURSES

(a) Returned from CMHQ Course 236 and ceases att fap to School of Military Engineering wef 15 Oct 44. (Rft)
A 34683 SSM LAWSON, C H

(b) Returned from CMHQ Course 707 and ceases att fap to AFV School Bovington wef 16 Oct 44. (Rft)
A 6127 A/L/Cpl BOUGH, L R Op CAC "C" (Unfit Rft)
K 74180 Op 1 JOYCE, W R

(c) Proceeded on CMHQ Course 707 Ser 519H and att fap to AFV School Bovington wef 18 Oct 44. (2 weeks)
(Auth: E2/CMHQ 7/3 (3) dated 6 Oct 44.) (TI Instr)
D 76944 A/Sgt HOTHOT L

(PAGE THREE FOLLOWS)

8. ABSENT WITHOUT LEAVE

(a) AWL from 2230 hrs 24 Sep 44 returned and ceases to be A/L wef 2330 hrs 14 Oct 44. (FIRST ENTRY)
A 21274 Tpr TELFORD, R F R (Rft)

(b) AWL from 0800 hrs 14 Oct 44 returned and ceases to be A/L wef 1845 hrs 16 Oct 44.
D 77411 Tpr MEUNIER, A (Rft)

(c) AWL from 0800 hrs 14 Oct 44 returned and ceases to be A/L wef 1950 hrs 16 Oct 44.
F 31573 Tpr BRINKAUT, J W (Rft)

(d) AWL from 0630 hrs 11 Oct 44 returned and ceases to be A/L wef 1845 hrs 16 Oct 44.
D 77776 Tpr PETERS, E (Rft)

(e) AWL from 2359 hrs 8 Oct 44, is still AWL wef 2359 hrs 16 Oct 44 (8 days)
M 45726 Tpr ROSENAUER, M (Rft)

(f) AWL from 1600 hrs 15 Oct 44.
A 21141 Tpr [illegible], G (Adm)

(g) AWL from 2359 hrs 14 Oct 44.
C 30526 Tpr MURDOCK, S G (Adm)

(h) AMENDMENT: Part II Order No 221, para 9(c), 13 Sep 44 insofar as it concerns the u/m, AMEND to read: "AWL from 1600 hrs 10 Sep 44" Part II Order No 225, para 14(a), 18 Sep 44, insofar as it concerns the u/m, AMEND to read: "AWL from 1600 hrs 10 Sep 44 is still AWL wef 1600 hrs 18 Sep 44 (8 days)" Part II Order No 237 para 15(a), 2 Oct 44, amend to read: "AWL from 1600 hrs 10 Sep 44 is still AWL wef 1600 hrs 18 Sep44 (21 days)"
B 133038 Tpr DAVIS, A H (Unfit Rft)

9. APPOINTMENTS PROMOTIONS AND REVERSIONS

(a) To be W O II and appointed SSM wef 16 Oct 44.
(Auth: Overseas RO 4666, para 24(a)
D 76536 A/SSM (A/W O II) HESKETH, H ("D" Sqn)

(b) To be Opl wef 13 Oct 44.
(Auth: Overseas RO 4666, para 24(a).
H 63724 A/Opl GILMORE, J W (TI Instr)

(c) To be A/Sgt wef 16 Oct 44.
H 77024 A/Opl EYRERS, P Mtr Mech "B" (Adm)

(d) To be A/L/Sgt wef 3 Oct 44.
D 77201 A/L/Opl SCOTT, W T (Unfit Rft)

(e) To be A/Opl wef 17 Oct 44.
A 66087 L/Opl ASHBY, E E (Instr)

(f) To be A/Opl wef 7 Oct 44.
C 1976 A/L/Opl WELCH, R F (TI Instr)

(g) Reverts to Pte wef 17 Oct 44 on posting to Rft.
B 219 Pte (A/Opl) CLINE, F Cook "C" (Rft)

(h) Reverts to Tpr wef 17 Oct 44 on posting to Rft.
L 53260 Tpr (A/Opl) HALL, D M (Unfit Rft)

(PAGE FOUR FOLLOWS)

9. APPOINTMENTS PROMOTIONS AND REVERSIONS (Cont'd)

(i) Reverts to Tpr wef 16 Oct 44 on posting to Rft.
D 76665 Tpr (A/Cpl) ISAACS, M A Op OAC "C" (Rft)

(j) Reverts to Tpr wef 17 Oct 44 on posting to Rft.
A 106079 Tpr (A/L/Cpl) MINEGARDEN, J A (Unfit Rft)

10. PAY AND ALLOWANCES

(a) Entitled to draw Regt Rates of pay of $1.50 per diem wef 16 Oct 44 on reversion.
L 53260 Tpr HALL, D M (Unfit Rft)

(b) Entitled to draw Regt Rates of pay of $1.50 per diem wef 16 Oct 44 on reversion.
A 106079 Tpr MINEGARDEN, J A (Unfit)

(c) Granted increased Regt Rates of pay of $1.50 per diem wef 10 Jun 44 having completed 6 months proficient Service.
A 101096 Tpr ATKINS, E W (Rft)

(d) Granted increased Regt Rates of pay of $1.50 per diem wef 26 Apr 44 having completed 6 months proficient Service.
K 641 Tpr AUSTROM, H A (Rft)

11. PUNISHMENTS

(a) On 16 Oct 44 awarded 28 days detn for an offence under AA S ec 15(1), AWL from 0200 hrs 4 Oct 44 to 1430 hrs 13 Oct 44.
(Absent 9 days 12 hrs 30 mins)
FORF 28 days pay under FRAI 148(1)(b)
FORF 10 days pay under FRAI 149(1)(a).
TOTAL FORF 38 days pay.
A 22141 Tpr SMITH, W J W (Unfit Rft)

(b) On 17 Oct 44 placed under stoppage of pay for a period of four days under AA Sec 46(2), for an offence under AA Sec 15(1), AWL from 0600 14 Oct 44 to 1845 hrs 16 Oct 44.
(Absent 2 days 10 hrs 45 mins)
FORF 4 days pay under FRAI 149(2).
FORF 3 days pay under FRAI 149(1)(a).
TOTAL FORF 7 days pay.
D 77411 Tpr MEUNIER, A (Rft)

(c) On 16 Oct 44 Reverted to Tpr for an offence under AA Sec 15(1) AWL from 0600 hrs 11 Oct 44 to 2000 hrs 13 Oct 44.
(Absent 2 days 12 hrs)
FORF 3 days pay under FRAI 149(1)(a).
B 62901 A/L/Cpl MC LEOD, G B (Instr)

(d) On 17 Oct 44 awarded a forf of 7 days pay under AA Sec 46(2), for an offence under AA Sec 15(1), AWL from 0630 hrs 11 Oct 44 to 1845 hrs 16 Oct 44. (Absent 5 days 12 hrs 15 mins)
FORF 7 days pay under FRAI 149(2).
FORF 6 days pay under FRAI 149(1)(a).
TOTAL FORF 13 days pay.
D 77776 Tpr PERRIN, E (Rft)

(e) On 15 Oct 44 awarded 7 days CB for an offence under AA Sec 15(1), AWL from 0600 hrs 12 Oct 44 to 2000 hrs 14 Oct 44.
Absent 2 days 12 hrs.
FORF 3 days pay under FRAI 149(1)(a).
F 86837 Tpr BRIDGEO, R L (Rft)

(PAGE FIVE FOLLOWS)

11. PUNISHMENTS (Cont'd)

(f) On 13 Oct 44 arraigned and tried before a FGCM Charged as follows:
1st CHARGE: A A Sec 15(1).

FINDINGS: GUILTY

SENTENCE: To undergo Detn for a period of 60 days and to be put under Stoppage of pay in the sum of One pound fourteen shillings and six pence, (£1-14-6) cost of return.

CONFIRMATION: Findings and sentence confirmed on 16 Oct 44 by Col G T Little, A/Comd, "E" Gp CRU.

FORFEITURES: A/L from 2230 hrs 22 Aug 44 to 1218 hrs 5 Oct 44. (Absent 43 days 13 hrs 48 mins)
FORF 44 days pay under FR&I 149(1)(a).

Under Close arrest from 1218 hrs 5 Oct 44 to 2400 hrs 12 Oct 44. (7 days 11 hrs 18 mins)
FORF 8 days pay under FR&I 149(1)(c)(i).

On 13 Oct 44 awarded 60 days detn.
FORF 60 days pay under FR&I 149(1)(b).
TOTAL FORF 112 days pay and the sum of £1-14-6 cost of return.

K 48235 Tpr SILVER, K H (Unfit Rft)

12. TRADESMEN'S RATES OF PAY

(a) Entitled to draw Tradesmen's rates of pay of $1.75 per diem as Cook "C" wef 16 Oct 44 on reversion.
B 219 Pte OLINE, F Cook "C" (Rft)

(b) Entitled to draw tradesmen's rates of pay of $1.75 per diem as Op CAC "C" wef 17 Oct 44 on reversion.
B 62901 Tpr MC LEOD, G S Op CAC "C" (Instr)
D 76665 Tpr ISAACS, M A Op CAC "C" (Rft)

(c) Granted increased tradesmen's rates of pay as Dvr Mech Tx "C" of $1.75 per diem wef 12 Aug 44 having completed 6 months proficient service.
B 132361 Tpr ALLEN, C E (Rft)

(d) Cease tradesmen's rates of pay as Dvr Mech MV "C" wef 17 Oct 44
Granted tradesmen's rates of pay as Ftr MV "B" wef 16 Oct 44. (Rft)
K 104499 Tpr RAYCRAFT, J H

(e) Granted tradesmen's rates of pay as Op CAC "C" wef 12 Oct 44. (Rft)
B 150157 Tpr EGLESTON, G E

(f) Granted tradesmen's rates of pay as Mtr Mech "C" wef 7 Oct 44. (TI Instr)
C 1976 A/Opl WELCH, R F

13. MARRIAGES BIRTHS AND DEATHS

(a) Born a son on 25 Sep 44 at Harpenden Herts, England. (Cert No BC 780996)
GIVEN NAMES: Brian Thompson Gerald.
WIFE: Mrs Dorothy May Patterson. (Instr)
D 3538 A/L/Opl PATTERSON, A A

(b) Born a Daughter on 6 Oct 44 at Epsom, Surrey, England. (Cert No BC 871052)
GIVEN NAMES: Margaret Elizabeth.
WIFE: Mrs Elizabeth Smythe, (Att.)
D 76753 Tpr SMYTHE, P

(PAGE SIX FOLLOWS)

14. HONORS AND AWARDS

(a) Awarded First Good Conduct Chevron wef 22 Se 44.
A 87154 Tpr DESHANE, H J (RHQ)

15. NEXT OF KIN

(a) Change address of Next of Kin, Mrs Violet Irene Murray (Wife) to read: 26, First Avenue, Verdun Quebec, Canada.
D 76973 Tpr MURRAY, J P Rft)

(b) Change address of N of K, Mrs Pearl Irene Admas (Wife) to read: West Summerland, B.C. Canada.
K 38092 Tpr ADAMS, C J (Adm)

16. STRENGTH DECREASE

(a) SOS to Y-3 List wef 17 Oct 44 on adm to 4 Cdn Gen Hosp.
H 195451 Tpr DEMPSTER, D D (Unfit Rft)

(b) SOS to Y-3 List wef 17 Oct 44 on adm to 1 Cdn Spec Hosp.
F 31573 Tpr BRSHAUT, J W Gnr Op "C" (Rft)
D 109280 Tpr ELLIOTT, L R (Rft)

(c) SOS as a deserter wef 10 Oct 44, having been declared by a Ct of Inq to have been illegally AWL from 1600 hrs 10 Sep 44. Deficiencies in Kit to the Value of $28.12. Unexpended Wear $21.14.
H 133038 Tpr DAVIS, A H (Unfit Rft)

(d) SOS as a deserter wef 10 Oct 44 having been declared by a Ct of Inq to have been illegally AWL from 2359 hrs 12 Sep 44. Deficiencies in Kit to the value of $17.82, Unexpended wear: $13.36.
D 76084 Tpr WHITE, E J (Rft)

(e) SOS to Chief Treasury Office wef 16 Oct 44.
(Auth: CMHQ 8/CTO/1 (AG2c), 12 Oct 44.)
D 142460 Tpr DESLAURIERS, H G Tech Store "C" (Unfit Rft)

AB/MJM

A T Paterson
A T PATERSON, Col,
Comd,
1 Cdn Armd Corps Rft Unit.

CERTIFIED TRUE COPY

M.S.Williams Lt
M.S.WADHAMS Lt & A/Adjt

EXHIBIT "B"

NO 1 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
DAILY ORDERS PART II

LAST ORDER NO 293 6 DEC 44

ISSUED BY
COL A T PATERSON, D S O, O B E,
COMMANDING OFFICER

THIS ORDER NO 294 (Thur) 7 DEC 44

"A" OFFRS

1. ATTACHMENTS

(a) Re-attached fap except for pay to 3 CACRU (Basic Trg) wef 17 Sep 44.
Ceases att fap except for pay to 3 CACRU (Basic Trg) wef 14 Oct 44.
(Auth: Rec Obs Off 872, 30 Nov 44).
Lt H J H KERR, (SOS)

(b) Ceases att fap from 1 CARU wef 27 Oct 44 (FOO).
Lt J D MAC DARLANE, (Att)

2. LEAVE OF ABSENCE

(a) Granted 4 days leave with money allce in lieu of rations under FRAI (O/S) 789 (3) &(4), from 5 Dec 44 to 9 Dec 44.
Lt J J O'REILLY, (Div Recce)

(b) Granted 9 days PL with money allce in lieu of rations under FRAI (O/S) 789 (3) &(4), from 5 Dec 44 to 14 Dec 44.
Lt W S JOHNSTON, (Div Recce)
Lt H K ROSS, (Div Recce)
Lt S R CHORE, (Div Recce)

"B" OTHER RANKS

3. STRENGTH INCREASE

(a) TOS from desertion wef 30 Nov 44 on apprehension by Civil Authorities at 1930 hrs 30 Nov 44.
B 133038 Tpr DAVIS, A H (Unfit Rft)

(b) TOS from 1 CGRU wef 7 Dec 44.
(Auth: EE/POST 1/2, 4 Dec 44).
F 66139 Tpr PIERCE, R (Unfit Rft)

(c) TOS from Y-3 List wef 5 Dec 44 on removal from Dundee Royal Infirmary to 4 CMC.
D 76950 Tpr TURNER, W E (Rft)

(d) AMENDMENT: Part II Order No 264, Para 4(b), 2 Nov 44, insofar as it concerns the u/m - AMEND name to read "BLACKMON", and AMEND by adding "Dvr Mech MV "C".
H 102403 Tpr BLACKMAN, M (Rft)

(e) AMENDMENT: Part II Order No 273, Para 5(d), 13 Nov 44, insofar as it concerns the u/m - AMEND "L/Cpl" to read "Tpr".
B 134723 L/Cpl BRADBURY, C (Rft)

(f) AMENDMENT: Part II Order No 266, Para 5(a), 28 Nov 44, insofar as it concerns the u/m - AMEND "Sgt" to read "A/Sgt".
D 76983 Sgt FORSTER, J O (Rft)

(g) AMENDMENT: Part II Order No 206, Para 4(e), 29 Aug 44, insofar as it concerns the u/m - AMEND "X-3 List" to read "Y-3 List".
D 77661 Tpr KEEGAN, H (SOS)

(h) CANCELLATION: Part II Order No 238, Para 7(e), 3 Oct 44, insofar as it concerns the u/m - DELETE IN ITS ENTIRETY.
(Auth: 99/20/27 ARMD R/1 (A5f), 27 Nov 44).
L 104995 Tpr PATTERSON, A K (SOS)

(PAGE TWO FOLLOWS)

4. PERMANENT ESTABLISHMENT

(a) Posted from Basic PE Adm Wing (Dvr 1/c) wef 6 Dec 44 to PE Trg Inc Adm Wing (Cpl Gun Fitter) wef 7 Dec 44.
D 77692 Tpr GILLIGAN, F G

5. ATTACHMENTS

(a) Ceases att fmp from HQ CRU, Sp Sec, wef 29 Nov 44.
(Auth: 444/REMUSTER/1 PTA, 452/1/JEFFS, CE/1, 30 Nov 44).
A 102568 Pte JEFFS, C E Clerk "C" (Att)

(b) Ceases att fmp except Regt Duty from 19 Cdn Educ Coy wef 6 Dec 44.
(Auth: E Gp HQ CRU 0/0900A A1).
A 87109 Cpl MEEGAN, F (Att)

(c) Att fmp from 3 CACRU wef 3 Oct 44.
(Auth: 99/20/27 Armd R/1 (A5f), 27 Nov 44).
L 104998 Tpr PATTERSON, A K Gnr Op "C"

(d) Ceases att fmp from 3 CACRU wef 9 Oct 44 on return to Unit (27 Armd Regt(Sher Fus R)).
(Auth: 99/20/27 Armd R/1 (A5f), 27 Nov 44).
L 104998 Tpr PATTERSON, A K Gnr Op "C"

6. HOSPITAL

(a) Admitted to 4 CMC wef 5 Dec 44.
G 53483 Tpr MC DONALD, J E (Rft)

(b) Admitted to 3 CMC wef 6 Dec 44.
L 36318 Tpr MEGAND, H H Dvr Mech MV "C" (Rft)

7. LEAVE OF ABSENCE

(a) Granted PL as shown with money allce in lieu of rations under FRAI (O/S) 789(3) &(4), wef dates shown.

5 days from 5 Dec 44 to 10 Dec 44
D 131341 Tpr BENNETT, D J (Rft)

7 days from 5 Dec 44 to 12 Dec 44
M 8951 Tpr BOURDON, A J (Rft)
D 77306 Tpr MC LEAN, L J (Rft)
D 77129 Tpr THOW, H F (Rft)

7 days from 6 Dec 44 to 13 Dec 44
C 70659 Tpr OXLEY, R C (Rft)

9 days from 5 Dec 44 to 14 Dec 44
H 17700 Tpr BALCIUNAS, M (Adm)
D 76839 Tpr SHANNON, F (Adm)
C 101452 Tpr WHITE, N H (Rft)

9 days from 6 Dec 44 to 15 Dec 44
A 86689 Tpr BADDER, E A (Rft)
M 10P328 Tpr BLACK, S J (Rft)
A 86697 Pte CHEVALIER, E J (Att)
M 45577 Tpr MISSEY, A (Rft)

14 days from 5 Dec 44 to 19 Dec 44
D 3772 Cpl DAVIES, T F (Rft)

14 days from 6 Dec 44 to 20 Dec 44
K 49025 Tpr EKINS, G F (Rft)
D 3607 Tpr MAC KAY, G A (Rft)

(PAGE THREE FOLLOWS)

8. APPOINTMENTS PROMOTIONS AND REVERSIONS

(a) To be A/Sgt wef 1 Dec 44.
B 131918 A/L/Cpl BERNSTEIN, S Draughtsman Mech "C"(Instr)

(b) To be A/Cpl wef 7 Dec 44.
D 77692 Tpr GILLIGAN, F G (TI Adm)

(c) Reverts to Tpr wef 6 Dec 44, on SOS.
B 139201 A/L/Cpl GUPPY, R E Dvr Mech MV "C" (Rft)
D 76665 A/L/Cpl ISAACS, M A Op CAC "C" (Rft)

(d) Reverts to Tpr wef 6 Dec 44, on SOS.
L 53578 A/Cpl PUTTY, P M Clerk "C" (Rft)

(e) To be L/Cpl from 19 Oct 44 till 17 Jan 45(90 days), and to revolve pay of that rank.
(Auth: FMMI O's 741(CMHQ CIR Letter 115, 21 Nov 44).
B 134723 Tpr MRADBURY, C (Rft)

(f) To be L/Sgt from 2 Sep 44 till 2 Oct 44 (30 days), and to receive pay of that rank.(Auth FRA I O's741(CMHQ Cir Letter 115, 21 Nov 44.)
D 5627 Cpl MC LEOD, C D Op CAC "C" (Unfit Rft)

(g) To be A/L/Sgt from 21 Apr 44 till 8 May 44, and to receive pay of that rank.
(Auth: FMMI O's 741(CMHQ Cir Letter 115, 21 Nov 44).
A 3076 Cpl(Now A/Sgt) WRIGHT, G A (F Sqn)

(h) CANCELLATION: Part II Order No 273, Para 12(c), 13 Nov 44, insofar as it concerns the u/m - DELETE IN ITS ENTIRETY.
B 134723 L/Cpl MR.DBURY, C (Rft)

9. PAY AND ALLOWANCES

(a) Granted increased Rogt Rates of Pay of $1.40 per diem wef 2 Nov 44 having completed 4 months proficient service.
B 149468 Tpr BAIRD, J A (Rft)

(b) Granted increased Rogt Rates of Pay of $1.50 per diem wef 26 Jun 44 having completed 6 months proficient service.
B 148837 Tpr THORNEYCROFT, K S (Rft)

(c) CANCELLATION: Part II Order No 273, Para 13(a), 13 Nov 44, insofar as it concerns the u/m - DELETE IN ITS ENTIRETY.
B 134723 Tpr MR.DBURY, C (Rft)

10. PUNISHMENTS

(a) AMENDMENT: Part II Order No 291, Para 21(c), 4 Dec 44, insofar as it concerns the u/m - AMEND cost of apprehension to read "Four Shillings and Ten Pence($0-4-10)".
L 53412 Tpr MELVILLE, J W (Rft)

11. QUALIFICATIONS

(a) Qualified as Clerk "B" wef 1 Dec 44.
(Auth: MF TTB 1 No 78317, 6 Dec 44).
B 377 A/WS BOND, E G Clerk "C" (RHQ)

(b) Failed to Qualify as Clerk "B" wef 1 Dec 44.
(Auth: MF TTB 1 No 78318, 6 Dec 44.)
D 101016 A/Cpl WILLIAM, B Clerk "C" (RHQ)

(c) Failed to requalify as Op CAC "C" wef 1 Dec 44.
(Auth: MF TTB 1 No 36324).
P 1700 Tpr KOKALIS, A L (Rft)
A 61818 Tpr THOMAS, N A (Rft)

(PAGE FOUR FOLLOWS)

11. QUALIFICATIONS (Cont'd)

(d) Failed to requalify as Gnr Op "C" wef 6 Dec 44. (Auth: MF TTB 1, No 45655).
M 3872 Tpr SHARP, J (Rft)
M 303444 Tpr MARSCH, T L (Rft)

(e) Failed to requalify as Gnr Op "C" wef 30 Nov 44. (Auth: MF TTB 1, No 45694).
B 116791 Tpr CAMPBELL, M H (Rft)
G 7496 Tpr TYRER, A E (Rft)
D 131269 Tpr WALSH, M E (Rft)

12. TRADESMENS' RATES OF PAY

(a) Ceases to draw Tradesmens' Rates of Pay as Clerk "C" wef 28 Nov 44. Granted Tradesmens' Rates of Pay as Clerk "B" wef 29 Nov 44.
D 77609 Sgt ANGERS, G E (Adm)

(b) Granted Tradesmens' Rates of Pay as Op CAC "C" wef dates shown.
A 109049 Tpr AMBROSE, J A 12 Oct 44 (Rft)
B 119613 Tpr JAMES, J A 12 Oct 44 (Rft)
L 105362 Tpr KOVAR, A 22 Sep 44 (Rft)
M 8027 Tpr MASTEL, P R 22 Sep 44 (Rft)

(c) Entitled to draw Tradesmens' Rates of $1.75 per diem as shown wef 7 Dec 44, on reversion.
B 139201 Tpr GUPPY, R E Dvr Mech MV "C" (Rft)
D 76665 Tpr ISAACS, M A Op CAC "C" (Rft)
L 53578 Tpr PETTY, P M Clerk "C" (Rft)

13. NEXT OF KIN

(a) Change address of N of K to read: Mrs Helen White Curry(Wife), 1208 Danforth Ave., Toronto, Ontario, Canada.
B 160282 Tpr CURRY, R J (Rft)

(b) Change N of K to read: Mrs W E FORD(Sister), Vernon, B C, Canada.
K 76097 Tpr SCOTT, D R (Rft)

14. STRENGTH DECREASE

(a) SOS to Y-2 List wef 7 Nov 44 on admission to Cdn Det Brks serving 6 months detn.
B 133033 Tpr BOWMAN, L W (Rft)
H 77708 Tpr ADAMSON, J D (Unfit Rft)

(b) SOS to Y-3 List wef 5 Dec 44 on admission to B'Stoke MAPS Hosp.
B 66937 Sgt ARMSTRONG, K G (Rft)

(c) SOS to Y-3 List wef 17 Nov 44 on removal from 3 CMC to Roman Way Conv Hosp.
L 51214 Tpr PASCHAL, R J (Rft)

(d) SOS to Y-3 List wef 4 Dec 44 on removal from 3 CMC to 1 Cdn Spec Hosp.
B 142137 Tpr PIONER, S Dvr Mech MV "C" (Rft)

(e) SOS to 2 CACRU Trg Inc wef 6 Dec 44.(Auth E44/S/REMUSTLR 2/A).
A 106079 Tpr WINEGARDEN, J A (Unfit Rft)

(f) CANCELLATION: Part II Order No 243, Para 19(g), 9 Oct 44, insofar as it concerns the a/m - DELETE IN ITS ENTIRETY. (Auth: 99/20/27 ArmD R/1 (A 5f), 27 Nov 44).
L 104998 Tpr PATTERSON, A K (SOS)

CERTIFIED TRUE COPY
N.C.WATKINS Lt & A/Adjt

A T PATTERSON, Col,
Comd,
1 Cdn Armd Corps R U

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 133038	Tpr	DAVIS AH	No 1 CACRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA40 — 1 times.

For _____ times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 22 Aug 44

Date of last entry in Field Conduct Sheet 22 Aug 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for 39 days in civil custody; and for 11 days in military custody, *i.e.*, nil days in open arrest, ~~[illegible]~~ days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 23

6. The date of his attestation is 16 Sep 42

7. The service which the accused is allowed to reckon is 2yrs 3mos 25 days.

8. The accused is in possession of: C V S M & Clasp

‡State the military decorations (if any) held by accused.

~~[illegible]~~

~~[illegible]~~

Date of Promotion.

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

Ex B
MY

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.30721/2701 [illegible] A.& E.W.Ltd. Gp.695

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Chester	Chester 8 Jan 45	Breaking, entering, larceny	Bound over for 12 months good behaviour	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 19 day of Jan 45.

J.J. Kerr Lt Adjt

No. B133035 Name Davis, A.H. Sqn, Battery, or Company — Corps C.A.C. Date of enlistment 16 Sep 1942 GC Badges N.A. Service or Proficiency Pay N.A. 3/17 MFM 6 (AFB 122) 40/F&S/136 (5418)

Date of last entry in Company Conduct Sheet N.A. No. and date of last drunk Nil Period not reckoning towards freedom from extra fine NA Sheet No 1 Signature OC Company, etc W.M.LeBlanc Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of or order directing trial	By whom awarded	Remarks
Previous	sheet	destroyed		after 6 mos service w.e.f. 16 March 43: Last entry - 4 March 43. Cases of drunkenness -					
Field	22Aug 44	Tpr		AABC Conduct to the prej. etc. Improperly dressed in Town i.e. Had no belt, no MRM 1 Part 1 and No Identity discs.	Doc'y	3 days C.B.	24 Aug 44	Major DH Campbell	
Chester	2 Mar	Tpr		Breaking + entering + larceny.		Bound over for 12 months good behaviour		Chester County Court	

CERTIFIED TRUE COPY

(N.S. WADHAMS) Lt & A/Adjt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

LIST OF WITNESSES

1st WITNESS — Lt. N. S. WADHAMS, Acting Adjutant, an Officer of the Cdn Army Overseas, on the strength of No. 1 C.A.C.R.U.

LIST OF EXHIBITS

EXHIBIT "A"	Certified true copy of Part II order No. 251 (Wed) d/18 Oct 44.
EXHIBIT "B"	Certified true copy of Part II order No. 294 (Thur) d/7 Dec 44.

SOLDIER'S FRIEND

I, B 133035 Tpr. DAVIS, A.H. on the strength of No. 1 C.A.C.R.U. do desire the services of an Officer to defend me at my trial by Field General Court Martial.

A H. Davis

(B 133035 Tpr DAVIS AH)
No. 1 C.A.C.R.U.

COUNTER NUMBER 538215

HOUR 10 40

OPERATOR'S INITIALS R.D.

RELIEVING OPERATOR O.A.

JCtC

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighteenth day of November, 1941.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

*[~~if an unable to appoint~~
~~(i.) Three Officers to form the Court.~~
~~(ii.) A Field Officer as President.~~
~~(iii.) Three Officers having more than one year's service.~~
~~(iv.) the following reasons, namely:~~]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

PROCEEDINGS REVIEWED

9/12/41

Recommending Officer (Jas) Brigadier

President.

Rank.	Name.	Regiment.
Major	J.C.A. Campbell	1 Cdn A.Tk Regt

Members.

Rank.	Name.	Regiment.
Captain	H.L. Thorne	3 Cdn Fd Regt
Lieut.	Y. Desloges	1 Cdn Fd Regt.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding R.C.A. 1 Cdn Div

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K.5064 Gnr. Daoust, J.V.V. 2 Cdn Fd Regt.	First Charge Sec. 6 (2) (h) A.A. See annexed Charge Sheet.	Not guilty	Guilty JCC 6 months JCC detention	JCC Sign fiding the finding of the Court but reduce the sentence to 3 months detention JCC Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— no

(Signed) JCC Brigadier (Signed) JCC Campbell Major
Commanding RCA 1 Cdn Division
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

JCC

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of November 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~

* Omit if not applicable.

were duly sworn.

Signed this 21st day of November 1941.

JCC Campbell Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have~~ been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 24th day of November 1941

JCC Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of K5064 GNR DAOUST, J.V.V. 2 CDN FD REGT. R.C.A.

(a) (Dated) 25 Nov. 1941 (Signed) C. Gaetano Lt. Col. OC. 2nd Field Regt. R.C.A. C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

JCHC - B2 * JCH Campbell wagon

CHARGE SHEET

The accused, No k-5064, Gnr. DAOUST, J.V.V. 8th Field Bty., 2nd Field Regiment R.C.A., a soldier of the Canadian Army (Overseas) is charged with:-

FIRST CHARGE A

When on Active Service, BEING A SOLDIER ACTING AS A SENTINEL, LEAVING HIS POST BEFORE HE IS REGULARLY RELIEVED,

in that he

SEC 6(2)(h) A.A.

In the Field, at about 0150 hrs. 17 November, 1941 having been posted as a sentry in the 8th Bty Wagon Lines, left his post and proceeded to his billet.

C.E. de Pencier Lt-Col.
(C.E. de Pencier) C.O.
2nd Field Regiment R.C.A.

/C+C

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a FIELD GENERAL Court-Martial held at

on the 21 day of NOVEMBER 19 41. by order of

C.R.A., 1st CDN DIV.

Commanding

dated the day of 19

President.

MAJOR. J. C. A. Campbell, 1st Cdn A/T Regt. RCA.

Members.

Capt., H. L. Thorne, 3rd Fd. Reg't., R.C.A.

Lieut. Y. Desloges, 1st Fd. Reg't. R.C.A.

, Judge Advocate.

Trial of* K5064 GNR. DAOUST, V.J.J., 8th Fd. Battery, 2nd Field Regiment, R.C.A.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt., F. W. Fullerton, 2nd Fd.Reg't. RCA.

Counsel‡ or defending officer† Lt. W.W.V.Foster, 2nd Fd.Regt.RCA.

At 1530 o'clock the Trial commences.

The order convening the Court is read, and is marked , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16839/78. 25,000 sets. 6/40. K. & H., Ltd. G687/11. Forms A 9/55.

B

The President, and members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

N. A.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

NOT GUILTY. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

N.A. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N.A. *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N.A. *Answer.*

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

gcfc

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No sir.

~~The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. Lieut. T. L. Carter, 8th Fd. Battery, 2nd Fd. Reg't. R.C.A.

being duly sworn, is examined by the prosecutor.

Q-1 You are an Officer of the 8th Fd. Battery, 2nd Fd. Reg't. R.C.A.?
A-1 Yes sir.

Q-2 What were your duties on the night 16/17 Nov 41?
A-2 I was Orderly Officer of the 8th Fd. Battery.

Q-3 Will you tell the Court, in your own words, leaving out hearsay and anything irrevelent to the facts, what transpired during the night 16/17 Nov 41.?
A-3 At about0130 hrs, early in the morning of 17 Nov. I entered the 8th Battery W/Ls to inspect them. I visited, first the "C" Tp Lines and there I was challenged by Gnr. Bell. I next visited the Bty H.Q. lines and was not challenged. I looked around the B.H.Q. lines for a few minutes and went on to the Gardhouse. At the Guardhouse I called out Bdr. Ingram who was A/Guard Comd. and together we went to the "D" Tp Lines where we were challenged by the two sentries. We went across to the "C" Tp Lines where we were challenged by Gnr, Bell. We then went to the Bty HQ lines and conducted a thorough search of the vicinity. We went to the sentry at the main gate to find out if he had seen the Bty HQ sentry. At that time the clock struck two o'clock. We then went back to the Bty HQ lines to make sure that the sentry was not thereand Bdr. Ingram also got his sentries who were to go on duty at 0200 hrs. When we found that the Bty HQ lines sentry was not in the Guardroom Bdr. Ingram woke up Bdr. Trites, the Guard Comd. and we went over to No. 9, Palace Green which was Gnr. Daoust's billet. We found Gnr. Daoust asleep in the front lower room of No. 9 Palace Green. Bdr. Ingram woke him up and I placed Gnr. Daoust under close arrest and the three of us then returned to the Guardhouse.

Q-4 When you first visited Bty HQ Lines did you find the sentry there?
A-4 No sir.

Q-5 What action did you take at that particular moment.?
A-5 I looked around the lines for a short time, then I went to the Guardroom and got hold of the A/Guard Comd.

Q-6 You did not make any noise or call out?
A-6 I neglected to state in giving my evidence before that I got into "K" truck and started up the truck with a view of attempting to drive it out of the W/Ls.

Q-7 And no sentry appeared?
A-7 No sir.

Q-8 You said you then went to the Guardroom. At the Guardroom did you ascertain who the sentry was who was supposed to be on that beat?
A-8 Yes sir.

Q-9 Who was it?
A-9 Gnr. Daoust.

Q-10 Did you ascertain the time that he was posted?
A-10

The Defence Objects to the witness giving evidence to this matter. Unless the witness actually posted the sentry himself that evidence should be given by the person that made the posting.

Objection sustained.

The Prosecution declines to further examine the witness.

The Defence cross-examines the witness.

Q-11 You said, Mr. Carter, when you went to the Guardroom after passing through Bty HQ Lines you called out Bdr. Ingram who was 2-i/c of the Guard. Why did you call him instead of the Guard Commander?
A-11 When I went in the Guardroom Bdr. Ingram was awake and he came forward as I came in.

Q-12 Did you see the Guard Comd. there at the time.?
A-12 No sir.

Q-13 Did you see him later?
A-13 Yes, when Bdr. Ingram woke him up and told him that we were going to Gnr. Daoust's billet.

Q-14 Where was he when you woke him up.
A-14 He was in the 2nd section as you come in the door.

Q-15 What do you mean by the 2nd section?
A-15 The Guardroom is in an air-raid shelter and there are no doors but it is built in sections.
Q-16 What was he sleeping on ?
A-16 One of the bunks.

Q-17 You said that [redacted] you eventually went over to Gnr. Daoust's billet where you found him asleep, what did you do after that?
A-17 Bdr. Ingram woke him up. I told him he was under close arrest and that he would be charged.

Q-18 At what time was this.?
A-18 Approx. 0230 hrs.

Q-19 Did Bdr. Ingram stay with you at this time?
A-19 Yes.

Q-20 When did you leave Bdr. Ingram.?
A-20 I walked back with the two of them to the Guardhouse and then I walked back to the Bty Office.

Q-21 What time did you arrive at Gnr. Daoust's billet?
A-21 At about 0225 hrs,

Q-22 Where did you say you were at approximately 0200 hrs?
A-22 At the main gate to the W/Ls.

Q-23 Did you notice any sentries being changed at that time?
A-23 Bdr. Ingram said it was time to change the sentries and I said that I would prefer to return to the Bty HQ lines and make a further search.

Q-24 You were not actually there then at the time the sentry was changed?
A-24 Yes.

Q-25 Which N.C.O. was i/c changing sentries.?
A-25 Bdr. Ingram.

Q-26 In your presence?
A-26 Yes.

Q-27 Did you go with him when all sentries were changed?
A-27 No. Bdr. Ingram ~~xxiwoke~~ up the new sentries and told them to go to their post and we went back to Bty H.Q. Lines about the same time the new sentry came on Bty HQ Lines and "C" Tp Lines.

Q-28 Have you ever seen in the 8th Bty, Standing Orders for Sentries and Guards?
A-28 Yes.

Q-29 Do you know, if, on the night 16/17 Nov. when this alleged offence was supposed to have happened, if there was a copy of these orders posted in the Guardroom?
A-29 I do not know.

Q-30 You could not say definately one way or the other?
A-30 No.

The Defence declines to further cross-examine the witness.

SECOND WITNESS FOR THE PROSECUTION.) G-7029 Bdr. Ingram, A.G. 8th Fd. Bty, 2nd Fd. Regt. RCA., being duly sworn is examined by the Prosecution.

Q-31 You are G7029 Bdr. Ingram, 8th Fd. Battery?
A-31 Yes.

Q-32 On the night of the 16/17 Nov. were you a member of the Guard.?
A-32 ~~xxxxxxxxxxxxxx~~ Yes.

Q-33 In what capacity?
A-33 2-i/c.

Q-34 Did the Bty O.C. visit you that night?
A-34 Yes sir.

Q-35 At what time?
A-35 0140 hrs.

Q-36 What did he require of you.?
A-36 He asked me to visit "D" Tp lines with him.

Q-37 Did you?
A-37 Yes.

Q-38 Did you find the sentry there?
A-38 Yes sir, we were challenged.

Q-39 What other post did you visit that night?
A-39 "C" Tp lines from "D" Tp Lines.

Q-40 Did you find the sentry there?
A-40 Yes sir.

Q-41 What other posts?
A-41 Bty H.Q. Lines.

Q-42 Did you find the sentry there?
A-42 No sir.

Q-43 What time would this be?
A-43 About 0150 hrs sir.

Q-44 Did you call out for the Guard?
A-44 Yes.

Q-45 Did you get any reply?
A-45 No sir.

Q-46 What did you do after that?
A-46 We searched every vehicle.

Q-47 What then?
A-47 Not finding the guard there where he was supposed to be, we went out to the Gate guard and asked him if he had seen the sentry.

Q-48 Who was supposed to be the sentry of Bty.H.Q. Lines.
A-48 Gnr. Dacust.

Q-49 Did you visit the Guardroom after that?
A-49 Yes.

Q-50 Did you find Dacust there?
A-50 No sir.

Q-51 What then?
A-51 I searched the Guardroom and then I awakened Bdr. Trites, Guard Comd. and told him about it.

Q-52 Then what did you do?
A-52 Bdr. Trites suggest I go to the billets and make a search.

Q-53 Did you?
A-53 The Orderly Officer and myself did sir and we found Dacust in bed.

Q-54 What time would that be?
A-54 I did not look at my watch when we went in but I did when we came out and it was 0230 hrs.

Q-55 Was the accused dressed?
A-55 No sir, undressed and in his bed.

The Prosecution declines to further examine the witness.

The Defence cross-examines the witness.

Q-56 You spoke about posts in the W/L of Bty HQ. Would you tell the Court what sentry posts there are in the Battery W/Ls.?
A-56 It comprises the whole area of which Bty HQ vehicles are standing.

Q-57 The whole area?
A-57 Yes sir.

Q-58 That is what you mean by Bty H.Q. Post?
A-58 Yes sir.

Q-59 Are there any other sentry posts in the 8th Bty W/Ls.?
A-59 Yes sir, there is a post up at "C" Tp lines which comprise the whole of "C" Tp area where their vehicles are. There is also the area where "D" Tp.vehicles are. The men are supposed to patrol these areas.

Q-60 Is there a guard posted at the gate to the W/Ls too?
A-60 Yes sir.

Q-61 In respect to this area. According to orders it is their duty to prowl the area, please explain that?
A-61 The men are posted at certain times and they are supposed to patrol from vehicle to vehicle during their tour of duty?

Q-62 How many tours of duty are there during the night?
A-62 Each man does two hours.

Q-63 You mean in each one of these particular areas there would be a sentry doing two hours duty.?
A-63 Yes.

When you change these guards at two hour intervals, who changes the sentry?
The Bdr. on duty

JC+C

Q-65 You split it up with the 2-i/c and the Bdr. i/c.?
A-65 Yes sir.

Q-66 How are these sentries changed?
A-66 When I change them I take the man out, no formalities, and bring the other fellow in.

Q-67 On that particular night, on each change of sentries, how many men would go out to these various posts.?
A-67 Five sir.

Q-68 You say you took them out and brought in the other sentries?
A-68 Yes sir.

Q-69 Do you take them out together?
A-69 No sir, I take them out to H.Q. lines and tell the men their particular post, one man to HQ Lines, one man to "C"Tp lines one on the Gate. When I get back "D" Tp has usually been changed as when I leave the Guardroom I tell them where to go, "D" tp lines being near the Guardroom

Q-70 You realise that Gnr. Daoust is charged with a serious charge and you also realise the value of an oath. Consider very carefully. Please go over that again?
A-70 Yes sir. Two were taken to Bty H.Q. Lines.

Q-71 Why two?
A-71 You walk from H.Q. Lines to get to "C" Tp Lines. I sent one to "C" Tp lines and leave the other oneand tell them where they are supposed to be and bring back the other two having been relieved. By that time "D" troop is changed, it usually changes itself, and generally I go out and see if "D" Tp lines are O.K.

Q-72 What do you mean ?
A-72 Just to check on "D" Tp lines sir.

Q-73 Are they marched there by any word of command?
A-73 No sir, there is no formality. We just went out there, it is pretty muddy and we have no lights. We just feel our way.

Q-74 Are there any instructions given to the sentries, what to do if a person approaches them etc.
Q-74 Just the fact that this is their beat on their "C" Tp, "D" Tp, or H.Q. or the gate.

Q-75 What are they told.?
A-75 That their area of duty would be either "C", "D" or "HQ" Tps or the gate

Q-76 Is there any more complete description of the area?
A-76 No sir.

Q-77 Are any instructions given as to the actual duties of the sentry?
A-77 They are supposed to be read out every night by the O.C. on duty.

Q-78 Read out when?
A-78 When the Guard is being mounted.

Q-79 Where you present on this particular night when it was read out?
A-79 I was present but it was not read that night.

Q-80 Where is this usually read?
A-80 In front of the Bty Office.

Q-81 May it sometimes be read by the Guardhouse.?
A-81 It could be but I have never heard it.

Q-82 You have never heard it read out at the Guardhouse?
A-82 No sir. Any time I have mounted Guard but this once, it is read in front of the Battery Office. This particular night it was raining very hard when we were mounted.

Q-83 Do you know if, in this particular instance, it might have been read out at the Guardhouse.
A-83 I do not think so sir.

Q-84 In these instructions to Sentries is there anything set out as to the particular areas in which the particular sentries prowl.?
A-84 I cann recall sir.

Q-85 When one sentry takes over a post from another, you say it is done informally, is the drill, as laid down in Pamphlet A for Sentries, carried out. Do you know what I mean?
A-85 No sir.

Q-86 I have here Manual of Drill. I would refer you to page 77 chapter 6 Sec., 80 (Read to the Court) On this particular night, 16/17 Nov was that done.?
A-86 Only the fact that he had "C" or "D" Tp lines to perform. Just a matter of going in the dark and trying to find the other sentry. We generally shout so the another man knows his relief is coming.

The defence declines to further cross-examine the witness

The Prosecution re-examines the witness.

Q-87 Did you post Gnr. Daoust on the night 16/17 Nov?
A-87 No sir.

The Witness is questioned by the Court.

Q-88 Do you know of your own knowled e who posted Gnr. Daoust?
A-88 Yes sir.

Q-89 Who was it.?
A-89 Bdr. Trites, sir.

Q-90 Do you know of your own knowledge if Gnr. Daoust was a member of the Guard that night?
A-90 Yes sir.

Q-91 How long have these "C", "D", "HQ" Wagon Lines been occupied by 8th Fd. Bty.?
A-91 We have been in three W/Ls sir. I do not know exactly but we went there in the summer, when it dried up.

Q-92 That is the present W/Ls, occupied by the Bty.?
A-92 Yes sir.

Q-93 Can you tell me how long Gnr; Daoust has been with the 8th Bty,?
A-93 I cannot tell you sir.

Q-94 How long have you known him?
A-94 About three or four months I would say sir.

Q-95 Where is Palace Green?
A-95 Palace Green is just east of Featherbed Lane sir.

Q-96 How far from the W/Ls.?
A-96 About five minutes walk.

Q-97 Palace Green is not considered as part of the W/L area?
A-97 No sir.

Q-98 Have you a regular Guardroom?
A-98 It is an air-raid shelter in the W/L area where the Guards sleep.

The Defence re-cross-examines the witness.

Q-99 As to your knowing Gnr. Daoust three or four months. Was that when he was with your Battery?
A-99 Yes sir.

Q-100 Was he ever a cook in the 8th Bty?
A-100 Yes sir.

Q-101 In what mess?
A-101 In our own mess, the 8th Fd. Gunners Mess.

jc4c

Q-102 Was He ever a cook in the Officers Mess?
A-102 I do not know sir.

The Defence declines to further question the witness.

THIRD WITNESS FOR THE PROSECUTION.) G-7070 BDR. TRITES, L.C., 8th Fd. Bty, 2nd Fd. Regt. RCA., being duly sworn, is examined by the Prosecution.

Q-103 You are G-7070 Bdr. Trites, L.C. 8th Fd. Bty?
A-103 Yes sir.

Q-104 Were you part of the Guard on the night 16/17 Nov?
A-104 Yes sir, I was the Guard Comd.

Q-105 How many posts have you in the 8th Bty W/Ls.?
A-105 At night there are five and in the day time three.

Q-106 At night, what are the posts?
A-106 The Gatem Bty HQ., "C" Tp., and two for "D" Tp. There are two beats in "D" Tp lines.

Q-107 You post the Guard on Bty HQ W/Ls.?
A-107 Yes.

Q-108 Did you post the Guard on Bty HQ Lines that night?
A-108 Yes sir.

Q-109 What time did you post the Guard at Bty HQ W/Ls.?
A-109 1800 - 2000 - 2200 - 2400 - 0200 - 0400 -0600 hrs sir.

Q-110 Do you remember the Guard you posted on Bty HQ Lines at midnight that night?
A-110 Yes sir, Gnr. Daoust.

Q-111 Did you give him any special instructions or any instructions as to his duties.?
A-111 Not on that beat sire but I did on the first beat, four hours earlier.

Q-112 You did post Gnr. Daoust at that time?
A-112 At 2000 hrs on the 16 Nov.

Q-113 You posted Gnr. Daoust on the same post?
A-113 Yes sir, four hours later 2400 hrs.

Q-114 I want you to be absolutely certain?
A-114 I still have my guard list here.

Q-115 For that night?
A-115 Yes sir, he was posted from 1800 to 2000 hrs and from 2400 to 0200 hrs.

Q-116 You just told the Court that you had posted Gnr. Daoust at 2000 hrs?
A-116 That was wrong, he came off at 2000 hrs sir.

List of Guards is admitted as evidence and marked as Exhibit "B" (Medical Officers Report, already admitted being Exhibit "A").

Q-117 You posted Gnr. Daoust at 1800 hrs and again at midnight.?
A-117 Yes sir.

Q-118 Did you explain to Gnr. Daoust his duties while on the post?
A-118 I gave him a general idea of what to watch, what his beat was and I impressed upon him that I wanted him to be particularly careful to keep his eyes open for anything that might happen. I wanted the lines well kept that particular night. I stressed it very much.

~~The Prosecution declines to further question the witness.~~

~~The Defence cross-examines the witness~~

Q-119 What did you do after mounting Gnr. Daoust on his post after midnight
A-119 I returned to the Guardroom and sat around a little while and then checked on "D" Tp lines and got a look at the gate and then came came back. I was getting slee py as I had been on from mounting the guard so I asked Bdr. Ingram to take over and I slept. I was awakened sometime later and was told that Daoust was missing from his post.

Q-120 What time were you awakened?
A-120 I cannot say sir.

Q-121 What time was Gnr Daousts tour of duty to end on that particular beat?
A-121 At 0200 hrs sir on the 17th.

Q-122 It was reported to you that Gnr. Daoust was missing. What action did you take?
A-122 I asked if they had looked over the vehicle lines. They said yes so I suggested they check his billet and I understand they did.

Q-123 Did you see Gnr. Daoust again that night?
A-123 I saw Gnr. Daoust when he was brought back to the Guard Room?
A
Q-124 At what time?
A-124 I do not know what time he was brought back sir.

Q-125 Who brought him back?
A-1259 He came in with Bdr. Ingram.

Q-126 Did he just walk in with him?
A-126 They came in and I asked Bdr. Ingram if they found him in the Billet
and and he said yes. I took the next section and Gnr. Daoust was getting ready to go to bed.

Q-127 Was he under arrest?
A-127 I did not know that until the next morning sir.

Q-128 I have here Orders for the W/L Guard, 8th Fd. Bty R.C.A. which I would like at this time to enter as evidence.

Entered into evidence as Exhibit "C".

Q-129 This is exhibit "C", Orders to the W/L Guard of the 8t h Fd. Bty. Have you seen it before?
A-129 Yes sir.

Q-130 Where?
A-130 I have read it to the Guards on several occasions when mounting.

The Prosecution declines to further examine the witness.

The Defence cross-examines the witness.

Q-131 How long have you been a Bdr. ?
A-131 Since Sept. 1939.

Q-132 There is some question of Gnr. Daousts guard that night. Please tell me when he went on Guard that night?
A-132 In the vicinity of midnight.

Q-133 He had been out before that?
A-133 Yes sir, on the 1800 hrs shift.

Q-134 In your evidence you have spoken of Guard posts, How many Guard posts are there in the 8th Bty W/Ls.
A-134 There are no actual posts, they are beats. there is one man at the gate, two in D Tp and one at C Tp and Bty H.Q. Lines.

Q-135 Making a total of how many beats?
A-135 Five sir.

Q-136 You said two men at "D" Tp?
A-136 Yes sir, they have one man take half of "D" Tp and the other man the other half.

Q-137 You realise Bdr. That Gnr. Daoust is on a very serious charge?
A-137 Yes sir.

Q-138 You said you particularly warned the guard to be careful that night?
A-138 Yes sir.

Q-139 Why?
A-139 Because our guard had been increased before because of carelessness and we were moving soon and I wanted there to be no mix-up that would cause extra guards to be detailed.

Q-140 In the course of your evidence you referred to posting sentries at such and such a place, Bty H.Q. and "C" Tp etc., What do you meanby Posting the Sentries?
A-140 On that particular guard, I went out part way. It was very dark and they went on to find the guard they were to relieve with instructions as to what they were to do and take over from the other man and he would return convincing me that they were relieved.

Q-141 You did not see one sentry take over from the other.?
A-141 It was so dark and muddy that there is no formalities of changing over

Q-142 But new sentries would go out and relieve the ones coming off?
A-142 Yes sir.

Q-143 When these sentries went out on a shift would they go out together?
A-1439 Not necessarily all together. I woke them from ten to fifteen minutes before they were to go so that the men outside did not have to wait for their relief. They usually left pretty much together. They do not like going out five minutes or so ahead of their time.

Q-144 You spoke about talking with Gnr. Daoust when he was on his first Guard?
A-144 Yes sir.

Q-145 How soon would that be after he had come on that particular tour of duty?
A-145 About half an hour, I had been out to check and happened to meet him together with one of the other guards and I told them I did not want t that and instructed them what I wanted them to do.

Q-146 Was it dark then?
A-146 It was getting dark.

Q-147 At the time you did the midnight posting, what was the name of the Guard who went to "C" Tp Lines?
A-147 Gnr. Bell, sir.

Q-148 The time you had the conversation with Gnr; Daoust, was that the first sentry beat he was on that night or the 2nd?
A-148 the first sir.

Q-149 And it was just getting dark?
A/149 Yes sir.

Q-150 Did you have any conversation with him during his second tour?
A-150 No sir.

The Court questions the Witness;

Q-151 Did you yourself post Daoust for his midnight tour of duty?
A-151 Yes sir.

Q-152 You went with him to "Bty HQ" W/Ls.
A-152 To the border of Bty H.Q. Lines sir.

Q-153 You walked part way withhim?
A-153 Yes sir.

Q-154 How far?
A-154 Not very far sir, from the Guardroom. H.Q. Lines can be seen from it and it was not very far.

Q-155 Did you speak to him while you were walking up?
A-155 I do not believe so sir.

Q-156 Did you ask him if he knew his beat and if he knew his duties?
A-156 I could not say sir.

FOURTH WITNESS FOR THE PROSECUTION. F-77330 GNR. BELL, T.H., 8th Fd. Bty, 2nd Fd. Regt. RCA being duly sworn, is examined by the Prosecution.

Q-157 Were you a member of the Guard on the night 16/17 Nov?
A-157 Yes sir.

Q-158 Were you posted on the midnight shift?
A-158 Yes sir.

Q-159 By whom?
A-159 By Bdr. Trites, sir.

Q-160 Did you have any visitors during your tour of duty?
A-160 Yes sir. Lieut. Carter and later Lieut. Carter came back with Bdr. Ingram.

Q-161 What did he want?
A-161 The first time Mr. Carter was checking on the Guard.

Q-162 At what time?
A-162 About 0130 hrs sir, he was checking the guard. The next time when Bdr. Ingram was with him they were inquiring for Gnr. Daoust.

Q-163 What time was this?
A-163 About ten or fifteen minutes after the first time.

Q-164 Had you seen Gnr. Daoust?
A-164 I saw him before I saw Mr. Carter.

Q-165 What time?
A-165 Between 0100 and 120115 hrs I think.

Q-166 You saw Daoust at that time?
A-166 Yes.

Q-167 What conversation did you have with him?
A-167 We just talked for a minute or two. I asked him if he had seen any lights or anything and he said he had seen nothing.

Q-168 Was Gnr. Deousts beat in close proximity to yours?
A-168 Yes sir.

Q-169 Could you talk and be on your own beats?
A-169 No sir, but if we were at the near end of each beat we would be quite close but if at the far ends we would be quite a distance apart.

Q-170 What time were you relieved from your post?
A-170 Shortly after 0200 hrs.

Q-171 You said in the Summary of Evidence that you heard a truck starting up in the direction of HQ Lines, is that correct.?
A-171 Yes sir.

Q-172 At what time was that?
A-172 Shortly after I saw Lieut. Carter. He had gone in the direction of H.Q. Lines.

Q-173 What action did you take?
A-173 Nothing.

Q-174 Why?
A-174 I figured the Bty HQ guard, Gnr. Daoust would take care of it and that I had better stick to my own post.

Q-175 You did not know that there was nobody on that particular beat?
A-175 No sir.

The Prosecution declines to further examine the witness.

The Defence cross-examines the witness.

Q-176 You went to your particular beat at midnight of that particular night?
A-176 Yes sir.

Q-177 Did any N.C.O. of the Guard go up to "C" Tp lines, which I understand is your beat, with you?
A-177 No sir.

Q-178 Before going on that beat, did you receive any instructions as to the complete area of that beat?
A-178 I was told I was on "C" Tp Lines.

Q-179 Where were you told that?
A-179 In the Guard room and again when we came out of the guardroom by Bdr. Trites, on the road.

Q-180 Did you get any instructions as to sentry duties at that time, what you would do if anyone came in your lines, etc.
A-180 Not at that time sir.

Q-181 It was your understanding that you were to go to "C" Tp lines?
A-181 Yes sir.

Q-182 What I am showing you now is Exhibit "C" Para 4 (e) (Read). You did not hear any mention of H.Q. Lines that night.
A-182 No sir, I just understood that I was to prowl "C" Tp Lines.

Q-183 When you went to "C" Tp lines you remained on duty there how long?
A-183 Until I was relieved at 0200 hrs.

The Court questions the witness.

Q-184 When you went to your post at midnight your tour of duty was from 2400 hrs to 0200 hrs.?
A-184 Yes sir.

Q-185 Bdr. Trites accompanied you part way?
A-185 Yes.

Q-186 Was Daoust with you?
A-186 He and I walked out more or less together.

Q-187 Bdr. Trites told you to take charge of "C" Tp Lines?
A-187 Yes sir.

Q-188 Did you hear Bdr. Trites say anything to Gnr Daoust?
A-188 I do not think so sir, not particularly?

Q-189 As far as you are aware, nothing was said about his post in your hearing?
A-189 I was told to go to "C" Tp and he was told to go to HQ Lines.

Q-190 Be very careful. Gnr. Daoust is on a serious charge and I want you to be very careful what you say. Did Bdr. Trites tell Gnr. Daoust in your hearing where he was to go or what his post consisted of?
A-190 I could not be exactly sure, I think he did but I am not certain.

Q-191 As far as you know were any instructions given to the Guard at any time from the time it was mounted and during the night regarding beats, posts and challenges?
A-191- Yes sir. Bdr. Trites spoke to Gnr. Daoust. I heard him tell him to be careful and keep alert.

Q-192 Did he mention beats at that time?
A-192 He said to stay on your beat.

The case for the Prosecution closes.

JCdC

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No sir.

Question. Do you intend to call any other witness in your defence?

Answer. No sir.

Question. Is he a witness as to character only? *Answer.* N.A.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

JOAC

CLOSING ADDRESS BY THE PROSECUTION

Gentlemen, the evidence which I have endeavoured to bring out today, I hope, has properly impressed the court that Gnr. Dacust is guilty of leaving a post entrusted to him by, shall we say, the Canadian Army. He was a member of a Guard whose duty it was to guard thousands of dollars worth of vehicles and equipment, things we know are very hard to get at this time, almost to the point of an impossibility.

His duties and his post were definitely shown to him. The post was there, perhaps I have not been able to bring it out in actual boundries but I know the Court will use their military knowledge as to whether there was a post there or otherwise.

His duties were explained to him by the Guard Comd.

Between the hours of 0130 and 0200 he was not on that post. The Orderly Officer walked into the lines and started a vehicle. It might have been one of our enemies or a dozen of our enemies driving this vehicle out of that park.

One witness showed that he took no notice when he heard the sound of a motor because he knew there was a guard in that park. Unfortunately there wasn't.

The accused was found in his billet at No. 9 Palace Green at approximately 0230 hrs. undressed and in bed. If all guards did this then we are not required in the duty we are trying to perform.

JCHC

CLOSING ADDRESS FOR THE DEFENCE.

I am aware, sir, that the Court is fully cognizant of the heavy responsibility that rests upon them in this case. You are faced with a man on a very serious charge, punishable under the Army Act by penal servitude, when on active service, and, as I say, the case is one of a very serious nature and the Court should, more fully than ordinarily , bear this in mind and deal solely with the evidence and in accordance with the rules and regulations of the law as laid down in the Army Acts. I know they will do that but I just thought I would say it because of the very serious nature of this case.

I am not happy about the charge to begin with. I do not think the charge is well drawn in law. This may not be the right time to bring this up but I want to draw that to the attention of the Court. It is under Sec., 6 (2h) AA (The charge is read to the Court) I think the charge is to vague. It says "in the 8th Bty W/Las" The alleged posting which the Crown endeavours to make out is in the Bty H.Q. Lines of the 8th Fd. Bty. W/Ls. In that regard I draw the attention of the Court to the footnote on page 430 M.M.L. last paragreph of footnote 2 (read to the Court) The charge states the 8th Bty Wagon Lines. I submit it is too vague and the charge for that reason is bad. However be that as it may, I put that in as additional grounds for the defence.

The main ground for defence is obvious, and as I submit, is well founded. It is that the accused was never posted as a sentry as alleged by the Crown and not having been posted as a sentry he could not be guilty of having left his post.

In the first place, I would submit to the Court that it is essential for the Prosecution to prove that the accused was posted as a sentry. That is essential under the charge and under the law in the footnote 7 sec. 6 page 430 M.M.L. (read to the Court)

It is my submission and it is perfectly clear that the footnote I have just read is one that fits this case. It is always necessary to prove that he was properly posted. If that meaning is not given there can be no meaning to these words in the footnote at all. The second sentance "When he leaves his post and so commits an offence it is necessary to prove that he was regularly posted" exactly fits this case. Now examine the charge itself "Having been posted as a sentry in the 8th Bty, left his post","Having been posted" is a material part of the charge and if it is not proved, as I submit it is not, then the whole charge falls to the ground and quite reasonably and naturally so. In law you cannot have a man charged as a sentry unless properly posted and put on duty.

In this respect I want to refer to the evidence as to why I submit the accused never was properly posted within the meaning of what we call posting in the army. As I recall the evidence, and I do so correctly I think, the N.C.O. apparently went with him and Gnr. Bell to "C" Tp Lines, part way out to a road. Bell was apparently told that he was to go to "C" Tp Lines. Just what Dacust's instructions, I submit, the evidence has not cleared. At the sametime two men from the Guard went out to "D" Tp Lines and apparantly went on duty themselves. In the case of the accused, it is quite clear on the evidence before the Court that the NCO did not accompany him to the alleged place of his post or beat. The man went there himself, the man he relieved there subsequently coming back I believe, but the NCO did not go to the post or beat and I submit that on that fact there is no posting as there should be under the A.A.

Following that there was no proper exchange of sentries. Bell was to go to "C" Tp lines and find from the evidence that this man was to go to the HQ lines. There was no definition as to what HQ lines meant. It may be said the Bty has been in this vicinity for some time and it should be well known what HQ Lines are but that is no proper answer because

----------over

Closing Address for the Defence (Contd)

when posting a sentry, each time it should be designated to him just what his post isto be otherwise you have nothing definite enough to make a post, just a case of going out there to the W/Ls. I submit that that is not sufficient under conditions of service which sentries were at that time carrying on in the 8th Bty W/Ls.

In that respect I might refer the Court to Exhibit "C" para 4 (e) (Read to the Court) It calls for a prowl of two men on the "C" Tp and "HQ" Lines at night. that is the order yet we have evidence saying there was an area in the H.Q. Lines and an area in the "C" Tp Lines also that two men went to "D" Tp Lines and a man at the gate. I submit that the order groups HQ and "C" Tp at night. As to just what consists thi area, where they together or were they separate. From the evidence of the Crown, these two particular places were separated for duty. Para 4(e) certainly groups "C" Tp and Bty H together therefore making it necessary to tell each man just what particular beat he is to cover.

Furthermore I would draw to the attention of the Court that ther were no definite orders to the sentries in respect to these areas. All that that orders says is the HQ and "C" Tp lines and there was no subsequent order defining clear enough ~~kkk~~ to a sentry what part of the lines he should take over. As an element of posting, it is necessary to have definite information and not a definition of "C" Tp or Bty HQ lines and nothing more.

No more orders were given by the NCO . The Crown produced no evidence of further orders in the Guard house or of being read to the Guard that day. in fact the evidence was that it was not read to the Guard that day and one witness did not know if it had been seen in the guardroom that night. The crown must establish that.

I submit that taking these essentials of a posting it cannot be said there was a posting of the accused to that particular area or beat, I submit that, under these conditions, the N.C.O. should go with the sentry to his beat that he should see the two sentries exchange there should be some more definite definition of the beat to be covered and there should be some definite orders to the sentry with reference to covering the beat. I take these as the four essential points of posting. First that he go to the post, secondly exchange of sentries, thirdly that there be definite area for the sentry and fourthly that there be orders as to how he is to patrol that area and deal with anyone coming in. These essentials are necessary and I submit that in the present case not one of them was followed as they ought to be. I realise on Overseas Service that you may post in an informal manner but I do say that even so one has to have the essentials. The crown has failed to prove that these were carried out, hence the charge of the crown fails.

As the Court well knows, one of the fundimentals of the English Law is the doctrine of "Reasonable Doubt based on the presumption of innocence" and the matter of posting in this case as shown in the evidence and just from the evidence as to the point of posting I do submit must raise a doubt in the mind of the court. That doctrine is simply this, that if the Court, looking on the evidence as a whole is of a reasonable dount mr in their minds as to the guilt of the accused then it is their duty under English Law to acquit the accused. The obligation is on the Crown to prios their case to the hilt and if they do not do so and leave a dount then under this law it is the duty of the Court to acquit I would refer the Court to page 58 chapter 5 para 57 (read) also page 647, footnote of R.P. 43 (read) So I say that certainly on this matter of the posting there must be a reasonable doubt in the mind of the Court.

carried to page 2.

Closing address for the Defence (contd)

I do not wish to continue any longer, I know the Court is aware of the obligation upon them and is aware of the arguments presented by both sides. I know that this is a military court, that the man is charged with having left his sentry post, but I want, once again in conclusion to remind the Court that this in not only a case of Gnr. Daoust that is being judged but there is their duty to their principals of English Law under which they are constituted and by which they must decide their case. Whether it is a case of Smith, Jones or Brown, over and above that case is an ideal standing by way of the principals of English law and no matter of the individual judgment in any one case, the principals of law must be safely preserved and kept intact. Bad cases sometimes make good law and brings out the difference between the English and the Nazi law. There is no saving of principals in the Nazi law as they have not the principals as we have. In this case there is a strong principal to be upheld and the Court, being cognizant of this, should bring in a verdict of not guilty.

IN MITIGATION OF SENTENCE

There are some facts which I submit to the Court before the passing of sentence. The accused enlisted on the 13/9/39 with two brothers. He went to Edmonton and broke his leg and was laid up for a while. When he was well again his unit had left so he went to a military Depot in Calgary then to Kingston and Petawawa and came over as a reinforcement in Sept. 40 and about three months later he came to the 2nd Fd. Regt. and since being here as done cooking. He is married and has two children. One of his brothers is overseas in England the other being sent home to Canada because of illness and he has anotherbrother in the Army in Canada. When the Court is passing sentence I submit they should take into consideration something that to me is quite obvious, that the accused did not realise the seriousness of the offence when he walked off that guard and went back to his billet and went to sleep. It is a serious offence and the accused could not, and did not realise the seriousness of it. He was ill at the time. Admitted that is no excuse, he should have reported sick but the fact remains that he was not feeling well at the time. I submit that the Court should take into consideration that he volunteered early in the war, he has other members of his family in the army and he did not realise the gravity of the offence he committed.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt. F.W.Fullerton 2nd Yd. Reg't., Adjt., is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Produces A.F.B.296 and records the accused as the man referred to on the said Army Form.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked Y signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence.

The Court sentence the accused

LIST OF WITNESSES.

FOR THE PROSECUTION

Lieut.	T. L. Carter,		2nd Fd. Regiment, R.C.A.
G-7029	Bdr., Ingram,	A.G.	2nd Fd. Regiment, R.C.A.
G-7070	Bdr., Trites,	L.C.	2nd Fd. Regiment, R.C.A.
F-77330	Gnr., Bell,	T.H.	2nd Fd. Regiment, R.C.A.

LIST OF EXHIBITS

~~XXIL.X~~

COPY OF ORDERS FOR WAGON LINE GUARD AND SPECIAL INSTRUCTIONS FOR SENTRIES.

THE ACCUSED HAS BEEN UNDER CLOSE ARREST FROM 0230 hrs. 17-Nov-41.

STATEMENT OF THE ACCUSED AS TO WHETHER OR NOT HE DESIRES TO HAVE AN OFFICER ASSIGNED BY THE CONVENING OFFICER TO REPRESENT HIM AT THE TRIAL.

TO THE CONVENING OFFICER;

It is my desire to have;

LIEUT. W. W. V. FOSTER, 8th Fd. Battery,

2nd Fd. Regiment, R.C.A.

to represent me at my trial.

L Daoust
.....
(Gnr. Daoust, V. J. J.)

N O T E

Court convened at 1530 hrs as Lieut, Y. Desloges, 1st Canadian Field Regiment, a Member of the Court, was not notified of the sitting to be held until 1435 hrs, 21st November, 1941, therefore the Court had to sit until 1830 hrs.

This is to certify that [illegible]

is fit to undergo trial by Court Martial

[illegible]

[illegible]

Russell
Esty
Boreau
Campbell 15
Kelly 15

(4-6)

[illegible]

(10-12)(4-6)

Piers
Bell
Daley
~~[illegible]~~
Bourque 15
Daust 15

(6-8)(12-2)

Robinson
Oconnor
Sacre
Bonsheur 15
Wickey 15

(8-10)(2-4)

Notice to the Accused

The accused, No. K-5064 Gnr. Daoust, J.V.V. is warned that No. G-7070 Bdr. Trites, L.C., 6th Fd Bty R.C.A. 2 Cdn Fd Regt, will be called to give evidence to the effect that

"The Accused was properly posted, and his duties as a guard were explained".

8th Fd. Battery, R.C.A.

"D"

ORDERS FOR WAGON LINE GUARD.

(1) The Wagon Line guard will consist of 2 N.C.Os and 15 Gnrs.

(2) The Guard will mount at 1745 hrs. daily.

(3) At reveille the N.C.O. of the Guard will dismount 6 Gnrs. who will return to normal duty. From reveille to dismounting the guard will consist of 2 N.C.Os and 9 Gnrs.

(4) The guard will provide;
(a) One sentry on the gate by day and night.
(b) One Sentry on "D" Troop lines by day
(c) A prowl to consist of two men on the "D" Troop lines at night.
(d) One sentry on the H.Q. and "C" Troop lines by day.
(e) A prowl of two men on the H.Q. and "C" Troop lines at night.

(5) The tour of duty for sentries and prowls, will be 2 hours on and 4 hrs off.

(6) Men off duty may sleep but will remain properly dressed, equipment, respirator and helmet only will be removed.

(7) Personnel on guard will be properly dressed at all times when outside the Guardroom. The dress is;
Battle dress.
Anklets.
Skeleton Web.
Steel Helmet
Respirators at alert.
Rifle slung
Great Coats (worn at the discretion of the Guard Comdr.

(8) Rifles will be loaded with five rds in the magazine. There will NOT be a round in the bore. The rifle will NOT be cocked. Safety catch will be on.

(9) The guard will allow no person, civilian or military to enter the wagon lines(other than personnel of this Battery) Unauthorized persons found in the wagon lines, will be placed under arrest and the Battery Duty Offcier informed at once.

(10) The guard will not allow any person civilian or military to loiter in the vicinity of the wagon lines.

(11) No vehicle will be permitted to leave the wagon lines without a work ticket signed by an officer authorizing the vehicle and driver to leave the wagon lines at the time shown.

(12) The Guard will "Turn out" to the Battery Duty Officer once a day and once by night.

(13) Civilian cars will not be allowed into the wagon lines. The Guard will cause them to be halted and if doubts exist as to reason the vehicle tried to enter the wagon lines, the personnel as well as the vehicle will be detained and the Orderly Officer notified.

(14) Any unusual occurences at the wagon lines, or in the vicinity will be reported to the Battery Duty Officer.

CERTIFIED TRUE COPY.

Capt & Adjt

24/5/45

(Sgd) C. D. Jewell, Lieut.
for Major.
Commanding 8 Cdn Fd. Bty.

Y JCHC

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

K-5064 Pte Daoust, V.J.J. of the 2nd Sd. Regt., R.C.A.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See Para. 664, R.R., 1905.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For Drunkenness, Insolent language and resisting arrest.		times	1	times.
For Breaking away and absent from parade		times	1	times.
For A. W. L.	4	times	5	times.
Cond. to proj. etc. possessing rig cutter while in detention.			1	
Improperly dressed.	1		1	
For Unfit for duty, previous indulgence in alcohol	1	times	1	times.
Breaking out of Ck's	1		1	

Number of instances of gallantry or distinguished conduct. Nil

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Description of Court by which trial, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21st day of November 1941

Tu Fuller Con
Capt & adjt,
2nd Sd. Regt, R.C.A.

Y JC&C

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

K-5064 Tur Daoust, U.J.J. of the 2nd Sd. Regt, R.C.A.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.	*Since Enlistment.
For Drunkenness, Insolent language and resisting arrest.	times 1	times.
For Breaking away and absent from parade	times 1	times.
For A.W.L.	4 times	5 times.
Cond. & prej. etc. possessing cigarettes while in detention		1
Improperly dressed.	1 times	1 times.
For unfit for duty, previous indulgence in alcohol	1	1
Breaking out of Ads	1	1

Number of instances of gallantry or distinguished conduct, N.L.

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for Na beginning on the Na day of Na

4. The accused has been in confinement, awaiting trial on the present charges

for Nil days in Civil Custody,

and 5 days in Military Custody.

Total 5 days.

Of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 27 yrs

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 13/9/39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N.a.

8. The accused is entitled to deferred pay or gratuity in respect of N.a. years' service.

9. The accused is entitled to reckon N.a. years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name K-50644 Fire Dsmnt. U.J.J. of the 2nd Ed. Regt. R.C.A.

NOTE.—*A verbatim extract from the regimental books, dating these convictions and dispensations with trial, must be inserted.*

Description of Court by which trial, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

SUMMARY OF EVIDENCE
in the case of

K-5064, GNR. DAOUST , V.J.J., 8th Cdn Fd. Battery,
2nd Field Regiment, Royal Canadian Artillery.

By Order of the Commanding Officer, Lieut-Col., C. E. de Pencier, the evidence is taken under oath.

FIRST WITNESS

Lieut. T. L. Carter, 8th Fd. Battery, 2nd Fd. Reg't., R.C.A., being duly sworn, states;

"" On 17-Nov-41 at approximately 0130 hrs as Bty Orderly Officer I entered the 8th Bty Wagon Lines to inspect them. I entered near the "C" Tp Lines and was soon challenged by the sentry, Gnr. Bell. I went to the Bty H.Q. Lines, got into "K" Truck, and started the motor several times. After looking around I saw no sentry in Bty H.Q. Lines where one should be posted. I then went to the Guard Room and called out Bdr. Ingram, the A/Guard Commander, Together we visited "D" Tp Lines and were challenged by the sentries there. We then visited "C" Tp lines, were challenged by Gnr. Bell, and went on to Bty H.Q. Lines to make a thorough search for the sentry. Bdr. Ingram told me that Gnr. Daoust had been posted as sentry in Bty H.Q. Lines at 2400 hrs. We looked in every vehicle in Bty H.Q. Lines and made a thorough search of the area. About this time the clock at Addington struck two. Bdr. Ingram and I returned to the Guard House and looked there for Gnr. Daoust. Bdr. Ingram woke up the sentries to go on duty at 0200 hrs. After a further visit to Bty H.Q. Lines we returned to the Guard House and Bdr. Ingram woke Bdr. Trites, the Guard Commander. Bdr. Ingram and I then went to the billets, Gnr. Daoust not having been found up to this time. In Gnr. Daoust's billet, No. 9 Palace Green, we found him asleep at approximately 0230 hrs. I placed him under close arrest and returned with Bdr. Ingram and him to the Guard House. ""

The accused declines to cross-examine the witness.

T. L. Carter, Lieut.

SECOND WITNESS

G-7029 BDR. INGRAM, A.G., 8th Fd. Battery, 2nd Fd. Reg't. R.C.A. being duly sworn, states;

"" I was 2-i/c Guard at the 8th Bty W/Ls during the night 16/17-Nov-41. At exactly 0140 hrs on the night 16/17 Nov 41, the Bty Orderly Officer, Lieut. T. L. Carter came to me in the Guardroom and asked me to check "D" Tp Lines with him. We proceeded to "D" Tp lines and were challenged properly and found everything alright. We then proceeded to "C" Tp Lines and were challenged properly there and found everything in order. We walked down from "C" Tp Lines through Bty H.Q. Lines, Not receiving a challenge, we made a search for Gnr. Daoust who was mounted on this post at Midnight, 16/17-Nov-41. We then visited the Guardroom and made a thorough search there. Then I woke Bdr. Trites who was i/c Guard. He said to go up and check the Billets. Lieut. Carter and myself, at approximately 0230 hrs 17-Nov-41 found Gnr. Daoust asleep in his billet at No. 9 Palace Green. Mr. Carter immediately put him under close arrest. We then proceeded to the Guard Room. ""

The accused declines to cross-examine the witness.

Bdr. Ingram

THIRD WITNESS

G-7070, BDR. TRITES, L.C., 8th Fd. Battery, 2nd Fd. Reg't. R.C.A., being duly sworn, states;

"" I was N.C.O. i/c 8th Bty Wagon Line Guard night 16/17 Nov 41. Gnr. Daoust was a member of the Guard and was mounted by me at midnight, 16/17 Nov 41 over Bty H.Q. W/Ls. His tour of duty was from midnight, 16/17 Nov 41 to 0200 hrs 17 Nov 41. After mounting the midnight guard, I returned to the Guardroom. I turned the Guard over to Bdr. Ingram at approximately 0105 hrs 17-Nov-41 to enable me to get some rest. I was awakened sometime later by the Bty Orderly Officer, Lieut. T. L. Carter and Bdr. Ingram and they informed me that Gnr. Daoust was missing from his post. I ~~xxxxxxx~~ asked Bdr. Ingram to check Gnr. Daoust's billets. ""

The accused declines to ~~xxx~~ cross-examine the witness.

Bdr. L.C. Trites

FOURTH WITNESS

F-77330 GNR. BELL, T.H., 8th Fd. Battery, 2nd Fd. Reg't., R.C.A., being duly sworn, states;

"" At midnight 16/17 Nov 41, I was posted at Guard by Bdr. Trites, L.C., the Guard Commander over "C" Tp W/Ls. At approximately 0130 hrs I had occasion to challenge a person in "C" Tps W/Ls. This person was the Battery Orderly Officer, Lieut. T. L. Carter. After his first visit I heard a truck start up in the direction of Bty H.Q. W/Ls. I took no action as I knew there was a Guard mounted in Bty H.Q. W/Ls. Lieut. T.L. Carter and Bdr. Ingram approached me about ten minutes after Lieut. Carters first visit and inquired if I had seen Gnr. Daoust. I replied that I had been talking to him about fifteen minutes previous. I was relieved from my post at 0200 hrs 17-Nov-41.

The witness is questioned by the Presiding Officer:

Q-1 Did Gnr. Daoust say anything to you about going home, or being tired?

A-1 No sir.

Q-2 When you are relieved from ~~xxxxx~~ your post do you go to the Guard room or to your billet.?

A-2 I always go to the guardroom, that is understood.

The accused declines to cross-examine the witness.

J. H. Bell
.....

The accused, having been duly warned in accordance with R.P. 4 (E) states that he does not desire to give any evidence or make a statement on oath.

Certified that Rs. P. 4 (C), (D), (E), (F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 17 day of November 1941 at R.H.Q. 2nd Fd. Reg't.R.C.A., Canadian Army (Overseas)

.....
Capt
2nd Fd Regt, R.C.A.

HHH-116
PTE DAOUST R.

ENTERED IN RECORDS OF C.M. HHH-116

E128

Correspondence to be PINNED here.

CANADIAN [illegible] DIVISION 3 APR 1944 G.H.Q. 2nd ECHELON

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-second day of March, 19 44

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [~~and that it is not practicable to delay the trial for~~ ~~[illegible]~~.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [~~[illegible]~~

~~*[illegible]~~

~~*[illegible]~~

~~[illegible]~~]

PROCEEDINGS REVIEWED
[illegible] Lieut
21 Apr 44 Reid
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	D Mac Archibald	West NSR

Members.

Rank.	Name.	Regiment.
Lieut	G R Reid	West NSR
Captain	J B Jalbert	R 22e R
Waiting Lieut	R Piche	R 22e R

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be signed.

*Signed [signature] Brigadier

Commanding 3 Cdn Inf Bde
Convening Officer.

101

[illegible] no illegalities or irregularities [illegible] with holding confirmation of the findings but the sentences [illegible] Megal 17 Apr 44 [illegible] Lt Col [illegible]

E 2-4

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H106052 Pte Robert DAOUST, Royal 22e Regiment	First Charge Sec 12 (I) (a)	Guilty	Guilty To Be Severely Reprimanded	I reserve confirmation of the finding and sentence pr Superior authority M.H. Gilmour Brig 27 Mar 44
	2nd Charge Sec 15 (I)	Guilty	Guilty	
	3rd Charge Sec 24 (2)	Not Guilty	Not Guilty To undergo imprisonment for 2 years and be dismissed H.M. Service Proceedings declared void	I confirm the findings but commute the sentence to read "To undergo imprisonment for 2 years" I confirm the sentence as so Amended P.J. Montague Maj Gen

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

19 APR 1944

(Signed) [illegible] Brigadier (Signed) [illegible] Major
Commanding 3 Cdn Inf Bde — President.
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25 day of Mar 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 25 day of Mar 19 44

F. Mockford Lt-Col Deputy Judge Advocate
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (3) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19 44

P.J. Montague Maj-Gen
Confirming Officer.

19 APR 1944

Promulgated and extracts taken in the case of H-106052 Pte DAOUST, R
R 22e R

(a) (Dated) 30 Apr 44 (Signed) [illegible] Asst Judge Advocate

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts - Martial.

Proceedings of a Field General Court-Martial held at Field on the 25th day of March 1944 by order of Brig. T. G. Gibson

Commanding 3rd Canadian Infantry Brigade

Dated the 22nd day of March 1944.

President.

Major D. M. G. Archibald West N.S.R.

Members.

Captain J. B. Jalbert R.22e R.
Lieut. J. R. Reid West N.S.R.

Trial of* O 106052 Pte. Robert Vacant R.22e R. ~~Judge Advocate.~~

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that — is not available to serve owing to~~

, waiting member takes his place as a member of Court

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court

Prosecutor, † Lieut Tremblay

Counsel § or defending officer † Lieut Dusseault

At 1330 o'clock the Trial commences.

The order convening the Court is read, and is marked X' signed by the President, and attached to the proceedings.

The names of the President and members of the Court read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B. — If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.

* Here insert No., Rank, full Name, Regiment, and Appointment (if any)
† Here state Rank and Name, and Regiment (if any)
§ Qualification to be stated.

3687 / PMEJ/5-366 - 8-43

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction.
If the accused has elected to be tried under Army Act, sec. 56 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the (first) charge against you, which you have heard read?

Question to the accused

not guilty.

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

guilty.

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

not guilty.

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

16

Answer.

The accused having pleaded Guilty to 2nd charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which where is a plea of Not Guilty, the Court will not proceed upon the record of a plea of Guilty, until after the finding on that other charge.

Instruction.

CHARGE SHEET

The accused D.106052 Private Robert DAOUST, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service is charged with:-

1st Charge
AA Sec 12 (1)(a)

B 2
D Mc Clure [illegible]

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, at or about 1200 hrs on 5 Dec 1943, after having been warned to proceed to the front line with intent to avoid so proceeding absented himself without leave until apprehended by Military police at 1420 hrs on 10 Jan 1944.

2nd Charge
AA Sec 15 (1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at or about 1900 hrs on 16 Jan 1944, absented himself while in custody until apprehended by Military Police at 1700 hrs on 29 Feb 1944.

Total absence: 43 days, 17 hrs.

3rd Charge
AA Sec 24 (2)

WHEN ON ACTIVE SERVICE
LOSING BY NEGLECT HIS REGIMENTAL EQUIPMENT, CLOTHING AND NECESSARIES

in that he

In the Field, on 5 Dec 1943 was deficient of:

		75 %
Cap F.S.	£	0. 2. 9
Vests, woollen		0. 3. 10
Drawers, woollen		0. 2. 5
Socks		0. 1. 3
Blouses B.D.		1. 0. 9
Trousers B.D.		1. 0. 11
Boots, ankle		0.16. 1½
Boot laces		0. 0. 1
Shirts		0. 6. 10
Total	£	3.14. 11½

J G Charlebois
(J.G.CHARLEBOIS) Major,
T/Commanding Royal 22e Regiment.

In the Field
18 Mar 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

[illegible]
(T G [illegible] Brigadier
[illegible] Inf Bde

In the Field
22 Mar 44

Duplicate

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No. E106052

Rank Pte. Name August H. of Royal 22nd Regiment

and in my opinion he is fit/~~unfit~~ to undergo Trial by Court Martial.

Station Inter Field

Date 25 Mars 1944

C B Caswell Capt

Medical Officer.

C

Proceedings on Plea Not Guilty.

*Instruction. (See R. P. 39 (A))

Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

No.

The prosecutor makes an opening address (hands in a written address which is read, marked , signed by the President, and attached to the proceedings.)

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

Statement attached marked "B"

C 2

Lieut. P.A. Tremblay A/Adj. R.22ᵉR. having been duly sworn states:

I now produce certificate of arrest under A.A. 163 (Bd) in the case of the accused to the effects that he was arrested at about 1420 hrs. 10, Jan. 44. This certificate is signed by O.C. 230 L of C prov. coy., & the accused did not request his presence, marked "A"

The ~~prosecution~~ defence A.P.P. accepts this certificate of arrest as produced & does not wish to cross examine.

1st Witness for prosecution.

E 23301 C.S.M. Roy E. Having been duly sworn states:

The 5 December 1943, "D" Coy was in a concentration area. During the morning, at about 0900 hrs, I was warned by my Coy. Cdr. Major Garcean, that the Coy would be "stand to" for a move to be carried out on that same day. I warned the Pl. Sergeants to verify the presences of their personnel and to report it to me at 1000 hrs. When the report came in at 1000 hrs, Pte Daoust was present. At 1200 hrs, Sgt Gagnon of 18 Pl reported that Pte Daoust had absented himself. Sgt Gagnon and I together made a search and we could not find him and he has been absent since.

1. Q. Have you seen the accused at any time after that before he was apprehended?

1. A. No Sir.

Cross-exam. by defense

2. Q. At what time did Sgt Gagnon report the absence of Pte Daoust.

2. A. At 1200 hrs.

By the Court

3. Q. Do you know if your Pl. Sergeants and Sgt Gagnon in particular, warned their men for a move.

3. A. I told them to warn their men about it when making their check, but I can not say that they actually did, to the best of my knowledge.

R.P. 22(b) complied with.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*(The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.)

The accused D10605 x Pte Robert Dawson is found guilty of ~~first and~~ Second charge Amdc.

†The summary (or ~~abstract~~) of evidence is read, marked A3 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— Nil.

(*or* hands in a written statement which is read, marked , signed by the President, and attached to the proceedings.)

Instructions.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer. No.

Evidence as to character.

D

The prosecution is closed

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No.

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. Is he a witness as to character only? *Answer.* No.

INSTRUCTIONS TO THE COURT.

(i) when the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and address which is applicable to the circumstances of the case;

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page *(see overleaf.)*

(Where the accused does not give evidence upon oath)

Question to the accused. Have you anything to say in your defence? yes

Answer. The accused in his defence says †
(hands in written address which is read, marked signed by the President and attached to the proceedings.)

The accused, D106052 Pte Robert Daoust makes the following statement not under oath.
When we were in concentration area, I asked Sgt Gagnon about a rifle that I was supposed to get. He told me that I didn't need any because we were not going in action yet.

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

E

Findings.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty"

The Court is closed for the consideration of the finding.

The Court find that the accused D106052 Pte Robert Daoust

1st Charge Guilty of Absence without Leave.

2nd Charge Guilty.

3rd Charge Not Guilty.

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction before Sentence

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by Witness.* Yes

H. Trembley I produce MFM 6 & MFB 355

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked E' & E2 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Instruction — If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to this fact, and the Court must inquire into the nature and amount of that additional punishment.

Cross-examined by the accused.

N/o.

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence

F

Sentence.

The Court sentence the accused D106052 Sentence.

Pte Robert Davust

To undergo three years

Penal Servitude

[illegible]
Major

COPY. "A"

CERTIFICATE OF ARREST UNDER A.A. 163 (i) (ii).

I, Capt. E. Hunt certify that No. D 106052. Rank PTE.

Name DAOUST, R. Unit ROYAL 22nd. REGT. CANADA.

was arrested at BARI at about 1420 hrs. on the 10th. JAN 4 1944.

He was dressed in Uniform ~~CIVILIAN CLOTHING~~

E. Hunt
Captain.
Officer Commanding.
230 L of C Provost Company.
The Officer into whose custody the above named person was taken on arrest.

Certificate of Arrest under Sect 154 A.A.

I ..... G.E. Grimsey ..... certify that .E. 4346 Pte. Dows. R. 2.2. Royal. Canadian Regt ..... was arrested at 1700 hours on the 29 Feb. 44 at CATANZARO by 1981370 Sjt Fox. 192 Ry.Op.Coy R.E. as an absentee without leave

Signed G.E. Grimsey

Major

O.C. Troops Reggio

2nd March 44

SUMMARY OF EVIDENCE

In the case of D.106052 private Robert DAOUST, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service

By direction of the Commanding Officer this Summary of Evidence was taken ~~under~~ under oath.

1st Witness For Prosecution

E.23301 CSM Roy I., Royal 22e Regiment, having been duly sworn states:-

" I am E.23301 CSM Roy I. of R.22e.R. posted to "D" Coy.

At 1000 hrs on 5 Dec 43, I had all platoons checked as we were in a concentration area and getting ready to move forward. D.106052 pte Daoust R. was present then but at 1200 hrs on the same day Sgt Gagnon R. now evacuated reported to me the absence of D.106052 pte Daoust R. I checked myself, looking around but did not find him. I have not seen him since.

A3 Hd Qrs Can Inf Bde

The accused declined to cross examine the witness.

CSM

2nd Witness For Prosecution

P.48822 pte Duval R. Royal 22e Regiment, having been duly sworn states:-

" I am P.48822 pte Duval R. of R.22e.R. posted to "D" Coy.

On 17 Mar 1944, D.106052 pte Daoust R. declared in my presence that whilst in custody and proceeding to Termoli he escaped after detraining at 1900 hrs on 16 Jan 44 and remained absent until apprehended by Military Police at 1700 hrs on 29 Feb 1944.

The accused declined to cross examine the witness.

pte

3rd Witness For Prosecution

D.51078 CSM Drapeau L.R. Royal 22e Regiment, having been duly sworn states:-

" I am D.51078 CSM Drapeau L.R. of R.22e.R. posted "B" Coy.

On 5 Dec 1943 I was acting as CQMS of "D" Coy. I made an inventory of kit in the case of D.106052 Pte Daoust R. and found that he was deficient of the articles listed below:

	75 %	100 %
Cap F.S.	0. 2. 9	0. 3. 8
Vests, woollen	0. 3. 10	0. 5. 1
Drawers, woollen	0. 2. 5	0. 3. 3
Socks	0. 1. 3	0. 1. 8
Blouses B.D.	1. 0. 9	1. 7. 8
Trousers B.D.	1. 0. 11	1. 7. 11
Boots, ankle	0.16. 1½	1. 1. 6
Boot laces	0. 0. 1	0. 0. 1½
Shirts	0. 6. 10	0. 9. 2
Total	3.14. 11½	5. 0. 0.½

The accused declined to cross examine the witness.

CSM

In the case of D.106052 private Robert DAOUST, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service.

4th Witness for Prosecution — Capt. J.B. Rousseau, Royal 22e Regiment, having been duly sworn states:-

" I, Capt. J.B. Rousseau of R.22e.R. posted as Adjutant, hereby produce certificates of arrest in the case of D.106052 Pte Daoust R. whom I now recognize. These certificates are marked Exhibits "A" and "B" and signed by OC 230 L of C Provost Coy and OC Troops Reggio.

J.B. Rousseau Capt.

In view of the loss of time and expenses involved, it is not necessary in my opinion to have the presence of OC 230 L of C provost Coy and OC Troops Reggio, in the taking of this Summary of Evidence.

P.A. Trumbley Lieut.

The accused does not request the presence of OC 230 L of C provost Coy and OC Troops Reggio.

R.R. Daoust Pte

The accused having been duly cautioned in French in accordance with RO 1424 reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e), (f) and (g) were duly complied with.

P.A. Trumbley. Lieut
Officer taking Summary

In the Field
18 Mar 44

M.F.M. 6
(A.F. B.122)
40/P & /S136 (2965)

No. 106052 Name Dodust, R. Sqn., Battery, or Company Corps R. 22 R. Date of enlistment 09 May 1940 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16-7-42	K		Conduct to the prejudice of good order & military discipline in that he neglected to do his duty after being duly warned to do so.	Cpl. Cornelius	4 days C.B.	17-7-42	Capt Smith	

E1
[illegible]

Certified true copy
[illegible]

(P.T.O.)

EZ
[illegible]

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D.106052	Pte.	Daoust, R.	R. 22 R.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A. A. 40	times	one	times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

or, N/A.

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or, N/A

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. N/A.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for ..... days in civil custody, and 6 March 1944 Air Force / 15 days in military custody, making a total of [illegible] days in custody, of which N/A. days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is

6. The date of his commission specified in his record of service is / attestation / attestation paper 24 May 1940

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward. / military / military / military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of ..... Air Force

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. P. A. Trembley, Lieut

Signed this 20 day of Mar 44.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

HHH 116

CERTIFIED T[illegible]PY

R Cordeau Capt.
(R. CORDEAU) Capt.

Army Form A.3.

...dence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

X1

PROCEEDINGS.

A.

Order convening the Court.

"MacArchibald" On Active Service, this Twenty-second day of March, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ "TGG" 101

Omit where ...vening Officer ...Commanding ...cer or is of ...d Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

Omit if not ...licable.

* ~~[I am unable to appoint:—~~

*~~(1. Three Officers to form the Court.)~~ "TGG"

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~

...—The ...sident must be ...ned. The ...mbers and ...ting members ...any) may be ...ntioned by ...me, or the ...mber and ...ks and the ...s to which ...y belong may ...e be named. ...the latter ...nt, the ratio, ...nes, &c., of the ...mbers of the ...urt, as consti...ed, will be ...ended on the ...ceedings.

...ing ...Must be ...ned personally ...the Officer ...ally in ...ented at the ...e, and all ...ations in ...composition ...the Court to ...ncluded ...him.

President.

Rank.	Name.	Regiment.
Major	D Mac Archibald "TGG"	West NSR

Members.

Rank.	Name.	Regiment.
Lieut.	G R Reid "TGG"	West NSR
Capt.	J B Jalbert	R 22E R
Lieut	R Piche	E 22e R

*Signed "T G Gibson" Brigadier

Commanding 3 Cdn Inf Bde
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D106052 Pte Robert DAOUST, Royal 22e Regiment	First Charge Sec 12 (1) (a)	Not Guilty	Not guilty of desertion. Guilty of absence without leave.	
	2nd Charge Sec 15 (1)	Guilty	Guilty	I reserve confirmation of the finding and sentence for superior authority.
	3rd Charge Sec 24 (2)	Not Guilty	Not Guilty	"T G Gibson" Brig 27 Mar 44
			To undergo 3 years penal servitude.	"D MacArchibald" Major
				I confirm the findings but commute the sentence to read "To undergo imprisonment for 2 years" and I confirm the sentence as so commuted. (sgd) P. G. Montague Maj.-Gen. Major-General i/c Administration Canadian Military Headquarters 19 Apr 44

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) "T G Gibson" Brigadier (Signed) "D Mac Archibald" Major

Commanding 3 Cdn Inf Bde
Convening Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25 day of Mar 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) "D MacA"
*(4. ~~The officers under instruction~~)

were duly sworn.

*Omit if not applicable.

Signed this 25 day of Mar 19 44.

"D Mac Archibald Major"
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (h) on page 765 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further ordered.~~

Signed this 19th day of April 1944.
(sgd) P. G. Montague, Maj. Gen.
Major-General i/c Administration
Canadian Military Headquarters
Confirming Officer.

Promulgated and extracts taken in the case of D-106052 Pte. R. DAOUST, R. 22e R.

(a) (Dated) 30 Apr 44 (Signed) Part pending hearing Dec-Dec 44 R. 22e R.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] A.G.R.O. 30, Ltd. Gp. 688

CHARGE SHEET

The accused D-106052 Private Robert DAOUST, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, on Active Service is charged with:-

1st Charge
AA Sec 12 (1) (a)

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, at or about 1200 hrs on 5 Dec 1943, after having been warned to proceed to the front line with intent to avoid so proceeding absented himself without leave until apprehended by Military Police at 1420 hrs on 10 Jan 1944.

2nd Charge
AA Sec 15 (1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at or about 1900 hrs on 16 Jan 1944, absented himself while in custody until apprehended by Military Police at 1700 hrs on 29 Feb 1944.

Total absence 43 days, 17 hrs.

3rd Charge
AA Sec 24 (2)

WHEN ON ACTIVE SERVICE
LOSING BY NEGLECT HIS REGIMENTAL EQUIPMENT, CLOTHING AND NECESSARIES.

in that he

In the Field, on 5 Dec 1943 was deficient of:-

		75%
Cap F.S.	£	0. 2. 9
Vests, Woollen		0. 3. 10
Drawers Woolen		0. 2. 5
Socks		0. 1. 3
Blouses B.D.		1. 0. 9
Trousers B.D.		1. 0. 11
Boots, ankle		0.16. 1½
Boot Laces		0. 0. 1
Shirts		0. 6. 10
Total	£	3.14.11½

"J. G. Charlebois" Major
(J. G. Charlebois) Major,
T/Commanding Royal 22e Regiment.

In the Field
18 Mar44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
22 Mar 44

"T G Gibson" Brigadier
(T G Gibson) Brigadier
Commanding, 3 Cdn Inf Bde.

MEDICAL OFFICERS CERTIFICATE

I certify that I have this morning examined No. E-106052
Pte. Daoust, A. of Royal 22e Regiment
and in my opinion he is fit to undergo trial by Court Martial.

Station In the Field.

Date 25 Mar 1944

"C. B. Caswell", Capt.
Medical Officer.

A Army Form A 9.

**As printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field

on the 25th day of March 1944 by order of

Brig. T. G. Gibson

Commanding 3rd Canadian Infantry Brigade

dated the 23rd day of March 1944

President.

Major D. M. G. Archibald West N. S. R.

Members.

Captain J. B. Jailbert R 22e R

Lieut. J. R. Reid West NSR

, Judge Advocate

Trial of* D-106052 Pte Robert Dacust R 22e R

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

"DMacA"

~~, waiting member takes his place as a member of the Court~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut. ~~Tremblay~~ Tremblay

Counsel‡ or defending officer† Lieut. Dusseault

At 1330 o'clock the Trial commences.

The order convening the Court is read, and is marked X, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] Form A9a.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. Statement attached marked "E"

being duly sworn, is examined by the prosecutor.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field

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Members.

Captain J. B. Jailbert R 22e R

Lieut. J. R. Reid West NSR

, Judge Advocate

Trial of* D-106052 Pte Robert Daoust R 22e R

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that ~~is not available to serve owing to~~

"DMacA"

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut. ~~Tremblay~~ Tremblay

Counsel‡ or defending officer† Lieut. Dusseault

At 1330 o'clock the Trial commences.

The order convening the Court is read, and is marked X , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] Form [illegible]

B

"D MacA"

The President, members and judge-advocate are duly sworn.

"D.MacA" The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Not guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

N/A

The accused having pleaded Guilty to 2nd charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. Statement attached marked "I"

being duly sworn, is examined by the prosecutor.

C 2

Lieut. P. A. Tremblay, A/Adj. R 22e R, having been duly sworn, states:

"I have produce certificate of arrest under AA 163(1) (A4) in the case of the accused to the effect that he was arrested at about 1420 hrs 10 Jan 44. This certificate is signed by O.C. 230 L of C prov Coy, and the accused did not request his presence, Marked "A".

The defence accepts this certificate of arrest as produced and does not wish to cross-examine.

FIRST WITNESS FOR PROSECUTION

E-23301 CSM May, E., having been duly sownr, states.

The 5 December, 1943, "D" Coy was in a concentration area. During the morning at about 0900 hours, I was warned by my Coy Cdr, Major Garceau, that the Coy would be "Stand to" for a move to be carried out on that same day. I warned the Pl Sergeants to verify the presence of their personnel and to report it to me at 1000 hrs. When the report came in at 1000 hrs, Pte Daoust was present. At 1200 hrs, Sgt. Gagnon of 18 Pl reported that Pte Daoust had absented himself. Sgt Gagnon and I together made a search and we could not find him and he has been absent since.

1.Q. Have you seen the accused at any time after that before he was apprehended.

1.A. No sir.

Cross examined by defense

2. Q. At what time did Sgt. Gagnon report the absence of Pte Daoust.

2.A. At 1300 hrs.

By the Court

3.Q. Do you know if your Pl Sergeants, and Sgt. Gagnon in particular, warned their men for a move.

3.A. I told them to warn their men about it when making their check, but I cannot say that they actually did, to the best of my knowledge.

R.P. 23 (a) complied with).

CC

Proceedings on Plea of Guilty.

* To be struck out in case on plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused D-106052 Pte Robert Daoust
is found guilty of ~~first~~ and second charge
"D MacA"

†The summary ~~or abstract~~ of evidence is read, marked A3 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— No

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

no

Answer.

Evidence as to character.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness ?

Answer. No

Question. Do you intend to call any other witness in your defence ?

Answer. No

Question. Is he a witness as to character only ? *Answer.* No

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

"D MacA" The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page [illegible]

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence ? Yes

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

The accused D-106052 Pte. Robert Daoust, makes the following statement, not under oath:

When we were in concentration area, I asked Sgt. Gagnon about a rifle that I was supposed to get. He told me that I didn't need any because we were not going in action yet.

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused D-106052 Pte Robert Daoust.

1st Charge Guilty of absence without leave.

2nd Charge Guilty

3rd Charge Not guilty

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes Lt. Tremblay, I produce MFM 6 and MFD 355.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E1 & E2 signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

Cross-examined by the accused.

N-A

[Instruction.—If by reason of the nature of the service of the accused in a dependency army or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must separately take the nature and amount of that additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence

The Court sentence the accused D-106052

Pte. Robert Daoust

to undergo Three years

Penal servitude

"D Mac Archibald"
Major.

PPP 16
PTE DARBY D.M.

RECORDED AT CMHQ IN AD 103 PPP 16

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81) 40/P & S/1608 (40/10) 4/38B

Convened by Order of Brig GSN Gostling Comd "A" Gp CRU dated 6 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H42390	Pte	Donald Melford	DARBY	2 CIRU CIC

PROCEEDINGS REVIEWED
27 Jun 44
[illegible] Capt
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

RECEIVED 26 JUN 1944 JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 8th/9th JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter ? Ans~~ ~~The Interpreter is sworn.(1)~~ Do you object to H 36934 Pte CHERNASKI as shorthand writer ? Ans No. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :-

President	MAJOR	T M POWERS	2 CIRU
Member	Capt	C H JARDINE	2 CIRU
Member	Lt	R C HINES	2 CIRU
Waiting Member ~~Additional Member~~	~~Capt~~ Lt	R E HARRIS	2 CIRU
Prosecutor	Lt	P BAPERIA	2 CIRU
Defending Offr	Lt	J BERTRAND	2 CIRU

Questions by President: Is the Prosecutor a lawyer ? Ans N.O. Is the Defending Offr a lawyer ? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused H42390 Pte DARBY, DM. before arraignment make(s) (no) ~~No~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 31), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : H42390 Pte Donald Melford DARBY - 2 CIRU - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 25(2)	NOT GUILTY	NOT GUILTY	
2nd ALTERNATIVE AA Sec 40	NOT GUILTY	NOT GUILTY	
3rd AA Sec 40	NOT GUILTY	NOT GUILTY	
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for..~~ beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial : a total of ..... days, of which ..... days were spent in hospital.~~ (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under CF A73.)

Sentence Awarded by the Court :

Acquitted.

(Sgd) ~~Judge Advocate, if any.~~ 10 Jun 44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35(A) fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2(1).
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. YES .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.) Adjourned for 24 hrs.

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the all charges ~~charge(s)(1)~~. The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission ~~is disallowed on the~~ ..... charge(s), and allowed on ~~the~~ all charges ~~charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (not) found Not Guilty on the latter charge(s)~~.(3)(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and adds thereto the accused that the finding(s) ~~of the Court on the~~ ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. MFB 335 or MFB 296. 2. MFB 6. 3. [illegible] KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-758. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B2

CHARGE SHEET

The accused, H-42390, Private Donald Melford DARBY, Canadian Infantry Corps, on the strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SECTION 25(2)
ARMY ACT

WHEN ON ACTIVE SERVICE, KNOWINGLY AND WITH INTENT TO DEFRAUD ALTERING A DOCUMENT IT WAS HIS DUTY TO PRESERVE,

In that He,

In the Field, between 1 Aug 43 and 31 Dec 43 did alter his MBM I Part II, a document which it was his duty to preserve.

SECOND CHARGE
(Alternative)
SECTION 40
ARMY ACT

WHEN ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that He,

In the Field, between 1 Aug 43 and 31 Dec 43, did neglect to prevent a number alterations, and false entries to his advantage, being made in his MBM I Part II, a document it was his duty to preserve.

THIRD CHARGE
SECTION 40
ARMY ACT

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that He,

In the Field, on or about 27 Dec 43 did lose his MBM I Part II, a document which it was his duty to preserve.

.....
(M.K. Greene) Colonel,
Commanding,
2 C.I.R.U.

In the Field,
4 Jun 44

To be tried by Field General Court Martial.

(G S N Gostling) Brig
Comd
"A" Gp Cdn Rft Units
CA(O)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H42390	Pte		Donald Melford	DARBY	2 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 6 Jun 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4 [redacted]

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

[redacted]

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

MAJOR (Rank.)	T M POWERS (Must be named. RP 106.)	2 CIRU (Unit.)

MEMBERS.

Capt	to be detailed by OC 2 CIRU	
Lt (Rank.)	to be detailed by OC 2 CIRU (Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Capt (Rank.)	to be detailed by CO 2 CIRU (Named or detailed, if any. RP 106.)	(Unit.)
[redacted] (Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 6 Jun 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(G S N Gostling)

Commanding "A" Gp Cdn Eft Units CA(O)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 90(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, *87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, *87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by *JA, if any.* (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any.* RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 537.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 103 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(3), RP 118(C), MML p 759.*)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

M.I.R. 2 C.I.R.U.

This is to certify that I have examined H 42390 Pte Darby Dm

on 8 June 1944 and I find him medically fit to stand

Trial by Court Martial.

[illegible]

Medical Officer
2 C.I.R.U.

M.I.R. 2 C.I.R.U.

This is to certify that I have examined H42390 PTE DARBY D

on 9 JUNE 1944 and I find him medically fit to stand

Trial by Court Martial.

[signature] Capt

Medical Officer
2 C.I.R.U.

M.I.R. 2 C.I.R.U.

This is to certify that I have examined HH2390 PTE DARBY DM on 14 JUNE 1944 and I find him medically FIT to stand Trial by Court Martial.

Medical Officer
2 C.I.R.U.

F.G.C.M. 8/9 JUN '44.

H42390 Pte DARBY, D.M.

At 1000 hrs 8 Jun 44 trial commences.
See proceedings on CFA 96.
Accused wishes adjournment in order to prepare his defence.
Court is adjourned for 24 hrs.

At 1000 hrs 9 Jun '44 trial reopened. No opening address.

TRANSCRIPT OF EVIDENCE.

1ST WITNESS for PROSECUTION.

Capt Robert Morton Smith RCAPC (SWORN):

Q 1. As paymaster (no 1) at 2 CIRU were you in possession of the documents which I am submitting to the court?

Q 2. Yes – I can identify these documents as:

(A) MBM 1 Pte of the accused, whom I recognize, covering the period 28 Mar 43 to 31 Jul 43. (marked Exhibit A initialled by President and entered)

(B) MBM 1 Pte of the accused covering the period 1 Aug 43 to 31 Dec 43. (marked exhibit B, initialled by President and entered)

(C) Form CT5059 – 6th Treasury Paybook Verification (certified true copy) containing observations in connection with the pay account of the accused. (marked Exhibit C, initialled by the President and entered)

(D) Copy of a letter from Asst Fd Cashier 3 Cdn Div to PMCT. (marked Exhibit D, initialled and entered)

Q 2. Have you a copy of the accused's current paybook?

A 2. Yes. (Capt. SMITH) presents accused's current MBM 1 PI II to the court — it is examined and returned.)

Q 3. Was there any large withdrawal of money by the accused after he was issued with a new paybook?

A 3. Yes. He (the accused) was paid the sum of £13-0-0.

Q 4. Why was the accused issued with a new paybook?

A 4. Because the previous one was turned in for audit.

Q 5. If the accused's balance had been entered in the new (current) paybook according to the observations in the Treasury Verification (Ex C) could the accused have made this large withdrawal?

A 5. No. His maximum withdrawal would have been £3-0-0.

Q 6. Isn't £13-0-0 a high withdrawal for a Soldier to make if he is not going on leave?

Defending offr objects.

Objection over-ruled by the Court.

A 6. Yes it is a large withdrawal.

Q 7. Are any of the figures in paybook (Ex B) in your handwriting?

A 7. No. My signature only appears in this paybook once

Q 8. Will you give the Court the figures of the balance in the current paybook.

A 8. The Balance (opening credit Balance) on 1 Jan 44 was

DARBY.

PROSECUTION.

A 8 (Cont'd) $52.49. The credit of JAN pay brought it to $70.59. The withdrawal of £13-0-0 on 5 Jan '44 was made on acquittance roll 88.

Q 9. Are there any questionable entries in the two paybooks (Ex's "A" and "B")?

A 9. Yes. The entries circled in green are questionable as they appear in the observations of the treasury. Also there is a line on page 8 ~~which [illegible]~~ of Paybook 6 (Ex "B") which somebody has erased or attempted to erase. It is still faintly legible and shews "Forfeits 8 days pay" DO 231 of 29 Oct 43". This is referred to in the observations of the Treasury para 1. The forfeiture has been deducted from the balance on the line above leaving a balance of $27.96. I cant say whether or not this balance is correct.

~~[illegible]~~ RP 83 (B) complied with

Cross-examined by Defending offr.

Q 1. With reference to the Treasury observations (para 1) was the Forfeiture of pay $12.00 debitted in the current paybook.

A 1. YES.

Q 2. Doesnt this mean that the accused's account was debitted twice with the same amount.

A 3. In accordance with the Treasury observation

DARBY.

PROSECUTION.

A 3 (cont'd) his (accused's) balance in current paybook has been debitted $12.00 (shows court the entry in the current paybook)

Q by PRESIDENT to Defending Officer.
Has this any direct bearing on the charges?

A No - I just wanted to establish that the accused has been debitted for the same forfeiture twice.

Q 4. Have you ever personally paid the accused?

A 4. Yes - I paid him once in each book

Q 5. Do you remember which clerks used to work with Capt Bossa at pay-parades?

A 5. Sgt COSTELLO and SGT REMINGTON.

Q 6. Has Sgt COSTELLO missed any pay-parades between 1 Aug and 31 Dec 43.

A 6. I don't think he missed any.

Q 7. Did the Sgt make any entries in the book on pay parades.

A 7 No. I am sure of this

Q 8. Who can utter entries in pay books?

A 8. Any member of the Staff. I check them and sign the entries.

DAB BY.

PROSECUTION

Q 9. Do you retain paybooks at a pay parade?

A 9. Occasionally I do to enter the current months pay or possibly a clothing charge.

Q 10. Is there any chance of error being repeatedly committed by Clerks in the pay-office

Prosecutor objects.

Objection over-ruled by court.

A 10 No.

Q 11. What is your procedure in the case of a lost MBM 1 Pt II.

A 11. At the request of the mans CO we issue a temporary one and pay him restricted payments only, until his balance is obtained.

Q 12. Where is the temporary paybook issued on 28 Dec '43?

A 12. I dont know anything about this.

R.P.83(6) complied with

Court is adjourned in order to refer case to ADJA – HQ CRU (Adv)

DARBY. 6.

Proceedings having been returned from HQ CRU on 14 JUN 44, the court is re-convened to hear the remainder of the evidence (contents of HQ CRU letter 629/CM "D"/1 (ADJA) noted.) At 1430 hrs trial re-opens)

PROSECUTION (cont'd)

2nd WITNESS

B 76402 Sgt. J.H. COSTELLO having been duly sworn is questioned by prosecuting officer.

Q 1. Do you recognize the accused and the paybooks (Exs A and B) before the court?

A 1. Yes I recognize the accused and those are his paybooks.

Q 2. Have you anything to say about the condition of paybook "C" (Ex "3")?

A 2. On page 8 line 3 of this paybook there is a very faint entry which I can recognize as my own handwriting. I can read what was formerly there and it is "Forfeits 8 days' pay" DO 23?; the fee balance shewn on page 9 line 3 is NOT in my own handwriting.

Part II Daily Orders (extract of the original) 23 & 28 OCT '43 introduced as evidence and admitted - marked Ex "E" and initialled.

On page 8 line 13 same paybook the columns

headed date, particulars and local currency are in my own handwriting. The figure "$2.24" in the column headed Cdn. currency is NOT in my handwriting, nor are the figures in the balance column on Page 9. The figure "10/-" in the column local currency is my own handwriting but it is not in my own style of indicating 10 s, in other words there would NOT be the first stroke unless there were and entry of 1's

On page 10 line 3 of the same paybook the figures in the columns headed "date" & "particulars" are in my own handwriting. The figure in the column "Cdn Currency" and the figures in the column headed "Credit balance" are NOT in my handwriting.

Q 3. Is it your procedure to enter the amt in Cdn currency at the same time as you enter the local currency - date - particulars?

A 3 Yes, I always do that and never deviate from that practice.

Q 4 When do you enter the credit balance?

A 4 It is usual to do this at the same time but occasionally it cannot be done on payparade and if so the book is withdrawn and the correct balance

A-4 (cont'd.)

entered. This paybook does not appear to have been withdrawn.

Q.5. Are you prepared to state that there have been alterations in the paybook?

A.5. Yes and the alterations were NOT made by me.

Q6. What are the responsibilities of a soldier in regard to his paybook Pt I?

A 6. A Soldier is responsible for the care of his MBR1 Pt II and should report any false entries on pay parade.

Q7. Is the Soldier responsible to prevent unauthorized persons making entries in his MBR1 I & II?

A 7. Yes, definitely.

R.P. 183 (8) complied with.

Defending Offr declines to cross-examine the WITNESS.

The Prosecution is closed.

Defending Offr submits that there is NO prima facie case. Court is closed to consider the submission.

The Court is unanimous in the opinion that the evidence as recorded does NOT establish a prima facie case on any of the charges, taking into account the sworn statement of the accused

DARBY

as it appears in the Summary of evidence (Page 2) that he did lose his paybook for a time but that it was recovered after 3 days and turned in to the Paymaster. Court adjourned, contacted ADJA who agrees.

The submission is allowed on all charges.

The court re-opens and the accused is acquitted.

C.T. 5859 U.C.397(F)

Exhibit "C"

CANADIAN TREASURY.

PAYBOOK VERIFICATIONS.

Regt. No. H.42390.... Rank & Name ..Rfn. DARBY, Donald.....

Unit. ....Royal Winnipeg Rifles.....

	Gross Balance Dr.	Gross Balance Cr.	Deferred Pay	Free Balance Dr.	Free Balance Cr.
Per Ledger Sheet 31 Dec 43		1.65			1.65
Per Paybook		52.49			52.49

OBSERVATIONS

1. Treasury records show that this soldier forfeits on D.O. 231, 29 Oct 43 8 days @ $1.50 - $12.00. (2 Cdn. Inf. Reinf. Unit). Pay book 6 does not show this forfeiture.
To adjust debit $12.00 Free Balance.

2. Paybook 6, page 6, line 8 shows A.R. 45, Sept 43 £1.0.0. $4.47. However, Treasury records show that this soldier signed for £5.0.0 - $22.35 on A.R. 45, 15 Sept 43. (Royal Winnipeg Rifles).
To adjust debit $17.88 Free Balance.

3. Paybook 6, page 6, line 9 shows A.R. 46, Sept 43 £1.0.0. - $4.47. However Treasury records show that this soldier signed for £5.0.0. - $22.35 on A.R. 46, 23 Sept 43. (Royal Winnipeg Rifles).
To adjust debit $17.88 Free Balance.

4. Paybook 6, page 8, line 13 shows A.R. 52 Nov 43, as 10/- - $2.24. However Treasury records show that this soldier signed for £1.10.0 - $6.71 on A.R. 52, 29 Nov 43 (2 Cdn. Inf. Reinf. Unit).
To adjust debit $.4.47 Free Balance.

5. Paybook 6, page 10, line 3 shows A.R. 56, Dec 43 as £1.0.0. - $4.47 However Treasury records show that this soldier signed for £5.0.0. - $22.35 on A.R. 56, 17 Dec 43, (2 Cdn. Inf. Reinf. Unit).
To adjust debit $17.88 Free Balance.

6. Paybook 6, page 8, line 5 shows M.F.M. 513 for Nov 43, $46.60. However Treasury records show this soldier charged with $46.83, M.F.M. 513 Nov 43. (2 Cdn. Inf. Reinf. Unit)
To adjust debit .23¢ Free Balance

7. Paybook 6, page 7, line 10 shows an error in extensions of $6.50 under-credit.
To adjust credit $6.50.Free Balance.

8. Paybook 6, page 9, line 2 shows an error in extensions of $1.00 under-credit.
To adjust credit $1.00 Free Balance.

9. Paybook 6, page 9 line 3 shows an error in extension of $12.00 under-credit.
To adjust credit $12.00 Free Balance.

Certified Adjustment made in paybook.

R M Smith Capt
.....
PAYMASTER

(SIGNED)(S.A. GRAHAM)
for CHIEF TREASURY OFFICER
JAB/IC
22 Mar 1944

NOTE:- Any necessary remarks by Paymaster on this observation should be made on reverse side of this form. One copy to be completed and returned with the attached paybook to: Chief Paymaster.

I certify that the above is a true and exact copy in all material respects.

R M Smith
.....CAPT
(R.M. Smith) Paymaster (1)
CDN.INF.REINF.UNIT

Exhibit "D"

R.M.C.T.

Reference telephone conversation (Major Hambrook - Capt. Smith), please be advised that on close examination of the soldier's pay book (period 1 Aug 43 - 31 Dec 43) it would appear that the original entries on page 6 lines 8 & 9, page 8 line 13, page 10 line 3 have been changed, and, it is the opinion of the unit paymaster that this might have been done by Hfmn. Darby as the new figures substituted are not in the handwriting of either the Unit Paymaster or Pay Sergeant.

9 May 44. (SIGNED) (F.C. HAMBROOK, MAJOR)

Asst. Field Cashier, 3 Can. Div.

I certify that the above is a true and exact copy in all material respects.

(...SMITH) Capt.
Paymaster(1)
2 Can. Inf. Reinf. Unit.

29 May 44.

Exhibit "A" - MBM 1 Part II, Pay Book #5 covering period from 28 Mar 43 to 31 Jul 43.

Exhibit "B" - MBM 1 Part II, Pay Book #6 covering period from 1 Aug 43 to 31 Dec 43.

each in name 27 attached

Certified true description
of original Exhibits "A" and "B"
forwarded this date to CRU for
release.

(E E Wasson) Capt
JAG Rev 2

4 Oct 44

2 CANADIAN INFANTRY REINFORCEMENT UNIT

Last Order No: 230 d/28 Oct 43.

PART II DAILY ORDERS BY: LT COL H T KEMPTON, A/COMMANDER

This Order No: 231 d/29 Oct 43.

Exhibit 5

SHEET FOUR

11. PUNISHMENTS

(c) H-42390 PTE DARBY D M (RWR) CHARGE: A.A. Sec.15(1) A.W.L. from 1730 hrs 27 Oct 43 until 0630 hrs 28 Oct 43 whilst undergoing C.B.(absent 13 hrs)

AWARDED: 7 days F.P.

FORFEITS: 1 days pay FR&I 149 (1) (a)
7 days pay FR&I 149 (1) (b)

(P/B) TOTAL FORFEITURE: 8 days pay

29 Oct 43.

I CERTIFY that I have personally compared this Extract with the Original entry as published on Part II Order No. 231 and find that it is a true and exact copy in all material respects.

.....Captain,
(R.M. Smith) Paymaster (1),
2 Cdn. Inf. Reinf. Unit, C.A.(O).

RMS/b

RECEIPT OF SUMMARY OF EVIDENCE

I, H.42390 Pte Donald Melford DARBY, C.I.C. on strength of 2 Cdn. Inf. Reinf. Unit hereby acknowledge receipt of a true copy of the Charge Sheet in connection with the charge pending against me. I also acknowlege receipt of one true copy of the Summary of Evidence.

Cannon Hall Camp
31 May 44

D.M. Darby
(D.M. Darby) Pte.

REQUEST FOR DEFENDING OFFICER

I, H.42390 Pte Donald Melford DARBY hereby request that the Convening Officer appoint ~~any available officer~~ to represent me at my forthcoming Court Martial.

Cannon Hall Camp
31 May 44

D.M. Darby
(D.M. Darby) Pte.

LIST OF WITNESSES

In the case of H.42390 Pte Donald Melford DARBY, C.I.C., on the strength of 2 Cdn. Inf. Reinf. Unit.

(for the Prosecution)

1. Capt R.M. Smith — Paymaster #1 of 2 Cdn. Inf. Reinf. Unit
2. B.76502 Sgt J.M. Costello — Pay Office 2 Cdn. Inf. Reinf. Unit

(for the Defence)

1. H.42390 Pte D.M. Darby.

LIST OF EXHIBITS

In the case of H.42390 Pte Donald Melford DARBY, C.I.C. on the strength of 2 Cdn. Inf. Reinf. Unit.

(for the Prosecution)

(a) M.B.M. 1 Part II being Pay Book #5 covering period from 26 Mar 43 to 31 Jul 43.

(b) M.B.M. 1 Part II being Pay Book #6 covering period from 1 Aug 43 to 31 Dec 43.

(c) Certified true copy of form C.T. 5059 Canadian Treasury Pay Book. Verifications C.O. 397 (f) dated 22 Mar 44.

(d) Certified true copy of minute from Field Cashier 3 Cdn Div. to Paymaster Canadian Troops dated 9 May 44.

(e) Certified true copy 2 Cdn. Inf. Reinf. Unit Part II DO 231 dated 29 Oct 43.

(for the Defence)

None.

SUMMARY OF EVIDENCE

Summary of Evidence in the Case of H.42390 Pte Donald Melford DARBY, C.I.C., on strength of 2 Cdn. Inf. Reinf. Unit.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

First Witness for the prosecution — Captain Robert Martin SMITH, R.C.A.P.C. Paymaster #1 of 2 Cdn. Inf. Reinf. Unit having been duly sworn states as follows:

"I am Capt. Robert Martin SMITH, Paymaster #1 of 2 Cdn. Inf. Reinf. Unit and I produce the following documents relating to the accused whom I now recognize".

(a) M.B.M. 1 Part II being Pay Book #5 covering period from 28 Mar 43 to 31 Jul 43.

(b) M.B.M. 1 Part II being Pay Book #6 covering period from 1 Aug 43 to 31 Dec 43.

(c) Certified true copy of Form CT5059, Canadian Treasury Pay Book Verifications U.C.397(F) dated 22 Mar 44.

(d) Certified true copy of Minute from Field Cashier 3 Cdn. Div. to Paymaster Canadian Troops dated 9 May 44.

The accused declines to cross examine the witness.

.....
(R.M. SMITH)Capt.

Second Witness for the prosecution — B.76402 Sgt James Harold COSTELLO, C.I.C., on the strength of 2 Cdn. Inf. Reinf. Unit having been duly sworn states as follows:

"I B.76402 Sgt James Harold COSTELLO, of the Pay Office 2 Cdn. Inf. Reinf. Unt recognize the accused'.

'I have examined Pay Book 6 and on page 8 line 3 which appears blank there are faint markings which I recognize as my own handwriting in the columns headed, date and particulars which read:

"Forf.8 days pay $0 23 " and a third figure which is indistinguishable.

And in the column headed Canadian Currency the figure representing $12.00 is faintly visible.'

'I produce as Exhibit "E" for the prosecution a certified true copy of 2 Cdn Inf Rein Unit Part II DO 231 dated 29 Oct 43 showing the accused to have been placed under stoppage of pay in the amount of $12.00.'

'Also Pay Book 6 Page 8 Line13 shows entries under the headings of date and Acquittance Roll which are in my handwriting. The Canadian equivalent of the amount received and the credit balance are not in my handwriting. Also the amount in local currency is not recorded in my style of registering sterling amounts.'

'Further Pay Book 6 page 10 line 3 shows a payment of £1 to the accused. The date and Acquittance Roll 56 are in my handwriting. The Canadian equivalent and the credit balance are not in my handwriting.'

'It is always my procedure in entering payments in Pay Books to enter the amount in Canadian currency at the same time as I enter the date, the Acquittance Roll number and amount in local currency. I never deviate from this rule and except in unusual circumstances also enter the credit balance at the same time."

The accused declines to cross examine the witness.

J.H. Costello
(J.H. COSTELLO)Sgt.

Statement of Accused.

H.42390 Pte Donald Melford DARBY, C.I.C., having been duly cautioned as follows:

"Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused makes the following statement on oath.

"I H.42390 Pte Donald Melford DARBY, declare that on or about 27 Dec 43 I left my Battle Dress Blouse containing my Pay Book Part II in a washroom at 2 Can. Inf. Reinf. Unit. On returning about one half hour later I recovered my blouse but did not discover until later in the day that my Pay Book Part II was missing. I immediately informed my Company Commander and later was issued with a temporary Pay Book.'

'On the morning of 30 Dec 43 my Pay Book was returned in a wet and soggy condition by a Private soldier whose number and full name I cannot recollect.'

I did not examine the Pay Book closely nor did I make any entries or changes. Later on the day of 30 Dec 43 I returned to my Regiment, the Royal Winnipeg Rifles and asked to see the Paymaster and turned in the 2 pay books explaining the reason for the 2 books.

I did not notice anything questionable about the original nor did I see it again as I was later issued with a new Pay Book Part II.

D.M. Darby
(D.M. DARBY)Pte.

I certify that the foregoing Summary of Evidence was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

.....
(P. SAPERIA) Lieut.
Officer Detailed to take
Summary of Evidence

Cannon Hall Camp
25 May 44.

III-100
RFN - DARBY DM.

RECORD FORM D—PROCEEDINGS ON PLEA(S)

Accused: H.42390 Rfn [illegible]

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for ... special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)
1st AA Sec 15 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44;

At present under sentence for [illegible] beginning on (date)

(I. Insert sentence being served, or delete if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which [illegible] days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under F2.)

Sentence Awarded by the Court:

[illegible]

(Sgd) [illegible] Judge-Advocate, if any.

Date awarded 18 Nov 44

(Sgd) [illegible] President (RP 45, 50.)

(See back of Convening Order re to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 66(A), 51-56, 120, MML pp 758-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be obtained before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed but 5 remit 28 days detention

I direct that the accused be not committed to detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 5th Dec 44 Commanding 4 Corps Tk Tps Coy RASC Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused H42390 Rfn Arnold Mulford Darby

Date 8 Dec 44

Signature of Offr. [illegible] Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMAC IN AB 160 III-100

CF A96 (To Beg of AB 160) (Amd 10/44)

FIELD GENERAL COURT-MARTIAL

Comd 1 C SU dated 16 Nov 44

Unit. 4 Corps Tk Tps Coy RASC

ACCUSED. (As to reasons for showing (a) permanent or confirmed ... see RP 16, 71, 109; AA 82, 183, fns, KR Con 308, 326, 330.)

Surname. Darby Full Christian Names. Arnold Mulford

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (also) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is brought before the Court. At 1032 hours trial commences.

A4. The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1) The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

(1. KR Con 557. 2. AA 46(8), RP 50 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to [illegible] as interpreter? Ans

The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 52. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans [illegible](2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	C E Knighton	4 Corps Tk Tps Coy RASC
Member	Capt	C E Smith	4 Corps Tk Tps Coy RASC
Member	Lt	[illegible]	4 Corps Tk Tps Coy RASC
Judge-Advocate			
Prosecutor	Lt	R E Chatham	4 Corps Tk Tps Coy RASC
Defending Offr	Lt	W G Hyde	4 Corps Tk Tps Coy RASC

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

Q. If from a lawyer and Def Offr not, accused is entitled to an adjournment when RP 29 (B) and fn 2 were not followed. See Def p 8.)

AR. The accused [illegible] before arraignment make(s) (no) (a) plea.(1)

(1. If a special plea is made for whatever kind, or one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court by one of several accused charged jointly to be tried separately (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or insanity, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AR name and name of the accused making the plea.)

A9. The accused is duly arraigned (separately) on all charges in the charge sheet.(1) The accused shows cause/does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The accused throws down/enters pleas in Part I of the Schedule. The President records the pleas.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. RP 32. RP 33. If otherwise, delete and make appropriate record per Notes. 3. When more than one Charge Sheet see RP 62; when severed accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORDED AT CMHQ IN VOL 160 III-100

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40/P & S/1058 (2864)

Convened by Order of Brigadier Foster Comd 7 C 283 dated 18 March 44

ACCUSED.

(a) Joint trial of two or more charged jointly see RP 16, 71, 109. As to reasons for shewing (a) permanent or confirmed (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
142340	Rfn		Donald Milford	Darby	R Upp Yk

PROCEEDINGS REVIEWED

R. Beaulieu Capt.
ADVOCATE, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 18 March 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) or attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~to be~~ brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the~~ as interpreter ? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer ? Ans

The shorthand writer is sworn.(2)

(1. RP 32. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	C W Wightman	1 C Sqn R
Member	Captain	R G Thompson	1 Regt B
Member	Lt	A E Smith	1 Regt Yk
~~Judge-Advocate~~			
Prosecutor	Lt	R G Armstrong	R Upp Yk
Defending Offr	Lt	W B Spalding	R Upp Yk

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (2) and fn 2 were not followed. See D1 p 3.)

RP. The accused Nil

before arraignment make(s) (no) (a) plea (2)

(1. If a special plea is made for autrefois convict on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 70, RP 57), or by one of several accused charged jointly to be tried separately (RP 74, 77), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H 42340 Rfn Donald Milford Darby, R Upp Yk

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~Nil~~ beginning on ~~(date)~~ (3)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which ~~nor~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

~~Nil~~ Defendant are thirty days detention, plus the cost of apprehension £2-13-7 to be paid out of his pay at the rate of 5/- per day until the whole amount is paid or he has undergone the term of 5 months imprisonment in default of payment.

(Sgd) ~~Nil~~ (Sgd) ~~Nil~~ President. (RP 45, 50)
Judge-Advocate, if any.

18 March 44
Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 4.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed but I remit 28 days detention

I direct that the accused be ~~not committed to detention barracks~~ until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) R.G.S Motion Maj
A/Comd 3 Cdn Inf Bde

Date 5 Apr 44

Commanding A/Comd 3 Cdn Inf Bde
~~Confirming Officer.~~

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
H42340 Rfn Donald Milford Darby.	8 Apr 44	John Wildman Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex F, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p* 3 *and marking an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If yes, see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 536. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans ..... Yes. Dr Simpson, U.S. Rifles RA
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex H respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes sir. The defending officer has [illegible] (2)
(1. *RP* 37(*C*), 44(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) *RP* 71(*D*)
(1. *When several accused tried separately see* [redacted]. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 130, 182, *RP* 46-52, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RD* 209, 1323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*l*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

bW

CHARGE SHEET

FIRST CHARGE SEC 15(1) ARMY ACT.

The accused, H42390 Rifleman DARBY, Donald Melford 1st Battalion, Royal Winnipeg Rifles, a soldier of the Canadian Army, placed on Active Service, in England, is charged with,

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, did absent himself without leave from 1200 hrs, 21 Jan 44 until apprehended at GLASGOW at 1500 hrs, 23 Feb 44.

(TOTAL ABSENCE: 33 days, 3 hours).

COST OF APPREHENSION: £ 2-13-7

In the field
29 Feb 44

John Meldrum
(JOHN MELDRAM) Lt - Col.,
OC THE ROYAL WINNIPEG RIFLES (AF)

To be tried by Field General Court Martial

Date 17 Mar 44

H. Foote Brig
Convening Officer

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AF&3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H42390	Rfn		Donald Melford	DARBY	R Wpg Rif

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 17 Mar 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~ HJF
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~ HJF
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~ HJF
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	C.M. Wightman	1 C Scot R
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	R.G. Shewcross	Regina Rif
~~Lieut~~	~~W.S. Ferguson~~ bw	~~R Wpg Rif~~
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lieut	A.E. Smith	Regina Rif
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND	H Foster Brig	Brigadier
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 17 Mar 44 Commanding 7 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of punishment except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 11 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

I certify that No.....H42390.....

.....Rfn DARBY D.M. R.Wpg.Rif.....is

fit to undergo trial by Court Martial, having been

examined by me this date.

bW

Date 18 Mar 44 A. L. Richardson Capt

Medical Officer

Lt. Ferguson, W.S., P. Wpg. Rif., having her duly sworn, states.

I have known the accused since July 1942. At that time he was on a school that I was in charge of, and, while he didn't qualify as an N.C.O., he worked well and his conduct was good. Later, he was in my company for a period of several months, during which time he was always smart and soldierly in his appearance. He worked well, and carried out any orders he was given cheerfully. He was never up on orders before me, and his general conduct was very good.

C.W.

Statement in mitigation of sentence in the case of
H42390 Rfn Darby, D.M.

Rfn Darby realizes his mistake in going A.W.L. and is genuinely determined that this offence will not occur again. As regards previous entrys ~~on~~ his MFM6, three of them are AWL's of not more than ~~an~~ four hours and the fourth is one relating to a failure to get up in the morning. I plead for mitigation of sentence on the grounds of his general attitude towards training as given by his character witness, his youth, the minor nature of his previous offences and his genuine determination to start soldiering again.

B.W.

W.E. Speechly Lt Colpg Pl
Defending Officer

Exhibit A

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR.42

I certify that No. H-42390. Rank Rfmn. Name Darby, D.M.

Unit "A" Coy. R.W.R. was arrested at Glasgow (place)

at 15.00 hrs (Hour) on 23-Feb-44 (date) and that at the time of his arrest he was wearing (military uniform) or ~~(civilian clothes)~~.

Signature of Provost-Marshal, Assistant Provost-Marshal, or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant- officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

Lieut.
Officer i/c Scottish Detachment,
Canadian Provost Corps.

Glasgow
23-Feb-44.

Exhibit A

Exhibit B

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. H-42590 Rank Rfmn Name Darby, D. M. Unit R Winn Rifles

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Glasgow

Date	Particulars (½ portion)	Amount		
26 Feb 44	Escorts return fare from LONDON To Glasgow	1	10	4
	Prisoners single fare to LONDON From Glasgow	own tickets		
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		8	6
	Total £	1	18	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Exhibit B

W. R. Holmes Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483

Exhibit C

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No H42390 Rank Rfmn. Name Harby, H. M. Unit R.W. Rifles

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
21 Feb 44	Escorts return fare from LONDON To Newport		14	9
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Newport	Given Ticket		
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		14	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Exhibit C

S. W. Holmes Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S. 483

CHARGE

Army Form B 252
(See King's Regulations)

R.W.R. Exhibit D

Regiment

"A" Coy.

Battery
Squadron
Troop or
Company

CHARGE against No. H-42390 Rank Rfmn.

Name Darby, D.M.

Place Glasgow Date of Offence 23-Feb-44.

OFFENCE W.O.A.S. Absent without leave from ? until apprehended by the Cdn. Provost Corps on RENFIELD STREET, GLASGOW, at about 15.00 hrs. on the 23-Feb. (2) was improperly dressed, at the same time, date and place.

[signature]
Lt. BOOTTISH DETACHMENT
CDN. PROVOST CORPS

Names of Witnesses :—

L/Cpl. Hyatt, D.S. Cdn. Provost Corps.

L/Cpl. Thiesson, A. Cdn. Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of

H-42390 Rfmn.Darby,D.M.
"A" Coy. R.W.R.

Sir:

At GLASGOW at about 15.00 hrs on 23-Feb-44, I was on duty on RENFIELD STREET, accompanied by L/Cpl.Thiesson, where I saw the a/m soldier. He was improperly dressed i.e. was wearing his battle dress blouse open at the neck exposing a collar and tie.

I approached him and requested to see his pass. He could not produce one, and admitted that he was A.W.L.

I placed him under arrest and conveyed Him to the Central Police Station where I handed him over to the Officer i/c to be detained, awaiting escort to his unit.

Glasgow
23-Feb-44.

.....L/Cpl.
A-116341 Hyatt,D.S.

Sir:

I have read over and corroborate the above statement.

Glasgow
23-Feb-44.

.....L/Cpl.
H-59192 Thiesson,A.

REMARKS

R E C O R D of the Declaration of a Court of Inquiry assembled in the field on the 17th day of February 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. H42390 Rfn DARBY D.M.

D E C L A R A T I O N

The Court declare that No. H42390 Rfn DARBY D.M., illegally absented himself without leave at R Wpg Rif (AF), on the 21st day of January, 1944, and that on the 17th day of February he was still absent and he was deficient of the following articles: -

ARTICLE	VOCABULARY PRICE	UNEXPENDED VALUE
Anklets, web, 1 pr	£ - 4- 5	£ - 3- 3
Blouse, B.D.	1- 3- 6	-17- 7
Boots, ankle, 1 pr	1- 4- 5	-18- 4
Capts, FS, 1	- 2- 6	- 2- 0
Drawers, cotton, 1 pr	- 4- 0	- 3- 0
Drawers, wool, 1 pr	- 5- 4½	- 3-11
Gloves, wool, 1 pr	- 2- 1	- 1- 7
Greatcoat, 1	2-10- 7	1-17-10
Shirts, flannel, 1	- 9- 1	- 6-10
Trousers, B.D., 2 prs	2- 8- 3	1-16- 2
Shirts, wool, 1	- 5- 4½	- 4- 0
Badges, cap, 1	- - 5	- - 4
Braces, 1 pr	- 1- 3	- -11
Brush, clothes, 1	- 2- 2	- 1- 7
Brush, hair, 1	- 1- 6	- 1- 1
Brush, shaving, 1	- 1- 8	- 1- 3
Brush, tooth	- - 6	- - 4
Comb, 1	- - 2	- - 1½
Discs, identity, 1 set	- - 1	- - ½
Dressing, F.F., 1	- 1- 1	- - 9
Housewife, 1	- - 9	- - 6
Holdall, 1	- -10	- - 7
Razor, 1 set	- - 3	- - 2
Vest Gym, P.T., 1	- 1- 7½	- 1- 1
Pack, 1	- 8- 3	- 6- 0
Straps, shoulder, haversack	- 2-10½	- 2- 1
Straps, supporting	- 1- 2	- -10
Respirator, A/G, 1	1- 0-10	-15- 8
Ointment A/G	- - 8	- - 6
TOTALS	£11- 5- 8	£ 8- 8- 4

(G.F. HENDERSON) Capt PRESIDENT

Signed in the field

(S.H.B. KETCHEN) Lt MEMBER

this 21st day of Feb 1944.

(W.G. SPEECHLY) Lt MEMBER

Signature of Commanding Officer (JOHN MELDRAM) Lt-Col

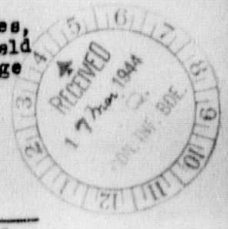
CERTIFIED TRUE COPY OF ORIGINAL

K F Oxenham

(K.F. OXENHAM) Capt,
Officer having custody of
Regimental Documents

I, H42390 Rfn Darby, D.M., Royal Winnipeg Rifles, request an officer to conduct my defence at Field General Court Martial, in connection with Charge Sheet dated 29 Feb 44.

If possible, I should like this officer to be Lt W.G. Speechly, Royal Winnipeg Rifles.



Signed D M Darby

Witnessed K.F. Oxenham Capt

Witnesses for the Prosecution:

Capt K.F. Oxenham, Adjt			Royal Winnipeg Rifles
H26560 Cpl Minaker,	R.G.		Royal Winnipeg Rifles
H40878 CSM Brown,	J.C.		Royal Winnipeg Rifles
A116341 L/Cpl Hyatt,	D.S.	)	Scottish Detachment,
H59192 L/Cpl Thiesson,	A.	)	Cdn Pro Corps,
			(Documentary Evidence 'EXHIBIT 'D' Army Form B 252)

Witnesses for the Defence:

The accused declines to summon witnesses in his defence.

LIST OF EXHIBITS

EXHIBIT 'A'	Certificate in accordance with PC2797 of 10 Apr 42.
EXHIBIT 'B'	Certificate of Cost of Return GLASGOW to LONDON
EXHIBIT 'C'	Certificate of Cost of Return LONDON to field.
EXHIBIT 'D'	Army Form B 252
EXHIBIT 'E'	Copy of Record of Declaration of Court of Inquiry.

Certified true copy of Record of Declaration
of Court of Inquiry (attached as EXHIBIT E)

K.F. Oxenham Capt. & Cdr.

Exhibit F bbb.

Summary of Evidence in the case of No. H42390 Rfn DARBY, D.M., The Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas.

The accused is informed of his rights.

The CO directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution

Capt K.F. Oxenham, Adjt, The Royal Winnipeg Rifles, having been duly sworn sworn states:

"I present,

Certificate of Apprehension purporting to be signed by R.J. Stinson, Lt, Officer IC Scottish Detachment, Canadian Pro Corps (attached as EXHIBIT 'A'),

Certificates of Cost of Return purporting to be signed by R.N. Holmes, Capt., Officer issuing rly warrants and expense monies, No.6 Pro Coy Canadian Pro Corps, LONDON. (attached as EXHIBITS 'B' and 'C'),

both of which relate to the accused, whom I recognize.

The accused declines to cross-examine the Witness.

K F Oxenham Capt
Signature

SECOND WITNESS for the Prosecution

H26560 Cpl Minaker, R.G., The Royal Winnipeg Rifles, having been duly sworn states:

"On 21 Jan 44, I was coy orderly corporal. At 1200 hrs I checked the pass list and found Rfn Darby whom I recognize, was not present. I marked him absent. On 21 Jan 44, at 2130 hrs I checked the roll call and found Rfn Darby was still absent".

The accused declines to cross-examine the Witness.

R G Minaker Cpl
Signature

THIRD WITNESS for the Prosecution

H40878 CSM Brown, J.C., The Royal Winnipeg Rifles, having been duly sworn states:

"I am CSM of 'A' coy, the accused, whom I recognize was absent from 1200 hrs 21 Jan 44 till apprehended on 23 Feb 44".

The accused declines to cross-examine the Witness.

J C Brown CSM
Signature

FOURTH WITNESS for the Prosecution

A116341 L/Cpl Hyatt, D.S., Scottish Detachment, Canadian Pro Corps,

H59192 L/Cpl Thiesson, A., Scottish Detachment, Canadian Pro Corps.

A written statement of these witnesses evidence purporting to be signed by them, has been read to the accused and is included in this Summary (attached as EXHIBIT 'D') having regard to his arrest.

The attendance of these witnesses cannot, in my opinion, be readily procured.

The accused does not demand the attendance of these witnesses for cross-examination.

R. E. Christmas Lt
(R.E. CHRISTMAS) Lt.,
Offr detailed to take the Summary.

The accused having been duly cautioned in accordance with Rules of Procedure (4)E reserves his defence.

Certified that Rules of Procedure 4(C)(D)(E)(F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 1st of March 1944 in the field.

R. E. Christmas Lt
(R.E. CHRISTMAS) Lt.,
Offrs detailed to take the Summary.

Exhibit H

MFM 6
AFB 122
P&S/136 (3438)

H42390 No | DARBY, Donald Melford Name | Sqn. Battery or Company | INFANTRY Corps | bW | Date of enlistment 11 Aug 42 | GC Badges | Service or Proficiency Pay

Company Conduct Sheet Date of last entry in nil | No and date of last drunk nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc F.O.MYLES, Lt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				PREVIOUS SHEET DESTROYED 11 Feb 43					
field	26-5-43	Rfn	nil	AA Sec 15(1) AWL absent 50 mins	Cpl Gartner, M.		27 May 43	Lt-Col WJ Bingham	Forf 1 day's pay.
field	19-8-43	Rfn	nil	AA Sec 15(1) AWL absent 4 hrs	Sgt Ehinger	10 days FP	21 Aug 43	Lt-Col WJ Bingham	
field	27-10-43	Rfn	nil	AA Sec 40 Conduct to the prej	Cpl McBurney, LV	5 days CB	27 Oct 43	Maj LL Dickin	
field	27-10-43	Rfn	nil	AA Sec 15(1) Absent 13 hrs	Cpl Schleicher, VF Cpl McBurney, LV	7 days FP 7 days pay forf FR&I 149(1)(b)	29 Oct 43	Lt - Col HT Kempton	forf 1 days' pay FR&I 199 (1)(a)

CERTIFIED TRUE COPY OF THE ORIGINAL

K F Oxenham

(K.F. OXENHAM) Capt.,

OFFICER HAVING CUSTODY OF REGIMENTAL DOCUMENTS

OPTO

Exhibit G.

bw

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H42390	Rfn	DARBY, D.M.	R Wpg Rif

1. The following is a fair and true summary of the entries in the K.F.O. ~~Service and General Regimental and Formation Daily~~ Field Conduct sheets K.F.O. ~~Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ K.F.O. Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A A Sec 15(1)	3 times	A A Sec 15(1)	3 times
For	A A Sec 40	1 times	A A Sec 40	1 times
For		times		times
For		times		times

Number of instances of gallantry or distinguished ~~conduct~~ K.F.O.

or,

There are no ~~entries in~~ the conduct sheets of the accused.

~~NOTE~~ K.F.O.:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously ~~convicted~~

or,

Previous ~~convictions~~ K.F.O. of the accused by a court-martial or a civil court, of summary awards under ~~Section 47 of the~~ ~~Air Force Act~~ Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule ~~annexed~~ to this statement.

3. The accused is not under sentence at the present ~~time.~~

or,

~~The accused at the present time is under sentence for~~ K.F.O. beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and 19 days in military custody, making a total of 19 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ K.F.O. attestation paper is 20 years six months K.F.O.

6. The date of his ~~[illegible]~~ K.F.O. attestation specified in his ~~[illegible]~~ K.F.O. attestation paper 11 Aug 42

7. The service which the accused is allowed to reckon towards discharge is 1 yr, 7 mos

8. The accused is entitled to reckon 19 Months service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~[illegible]~~ K.F.O. military decoration, or ~~[illegible]~~ K.F.O. military reward ~~[illegible]~~ K.F.O. ~~[illegible]~~ K.F.O. ~~[illegible]~~ K.F.O. ~~[illegible]~~

10. (If the accused is a warrant officer.) ~~The accused before he was made a warrant officer last held the regimental rank of~~ K.F.O.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13 day of March, 1944

K F Oxenham Capt & Adjt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

4K89.
Gns. Darbyson W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AASec 15(1)	Guilty	Guilty	
2nd	AASec 15(1)	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~Imprisonment or detention for ..... (beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of 120 days.

(Sgd) ..... Judge-Advocate, if any. 11 Dec 44. Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 18 Dec 44 (Sgd) C.R. Pederson Lt-Col

Commanding HQ 1 Cdn Corps. RCASC

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-132382 Gnr DARBYSON, W. 7 Cdn Arm Regt, RCA	19 Dec 44	[illegible] Lt Col. 7 Cdn Arm Regt, RCA

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160 / 4K-89.

RECEIVED JAN 1945 JUDGE ADVOCATE GENERAL

CPA86 (To Dep of AFA21) 40/P&S/1000 12-43 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col E W Whelpton Comd 1 Cdn Corps Adm Area dated 8 Dec 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183 fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-132382	Gunner	William	DARBYSON	7 Cdn A/Tk Regt RCA

PROCEEDINGS REVIEWED FOR ACTING OFFICER COMMANDING CMHQ BRANCH 10 Jan 45

PROCEEDINGS OF TRIAL.

Held in NW Europe in (country) ITALY on (date(s)) 11 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-117

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court and at request of the DF and personally by Sec O1A.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ----- as interpreter ? Ans ---

The Interpreter is sworn.(1) Do you object to L-22058 Cpl DF McLeod as shorthand writer ? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	W S Hunt	HQ 1 Cdn Corps
Member	Captain	M J Pratt	1 Cdn C Tps Wkshop RCEME
Member	Lieutenant	C W Seale	205 Cdn Armd Crd Sub Pk RCOC
Judge-Advocate		-----	
Prosecutor	Lieutenant	J W Birmie	7 Cdn A/Tk Regt RCA
Defending Offr	Lieutenant	G C Harris,	7 Cdn A/Tk Regt RCA

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (1)

(1. RP 26, 27, 105, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See Dir p 2.)

A8. The accused D-132382 Gnr W Darbyson before arraignment make(s) ~~no~~ plea(s). (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~considers~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (E); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No, sir.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement(s).~~ The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty, on the charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ~~the charge(s)~~ Part I of the Schedule is amended accordingly.

~~If a Court may be advised to change any plea(s) of Guilty to Not Guilty, the proceedings are concluded by using Record Form E on p 3.~~

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A" initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

~~D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, KR Con 555.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character, or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans.....

Do you intend to call witnesses on your behalf ?

Ans.....

Are they witnesses as to character only ? Ans.....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2 & 3.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AF5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court as (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(F).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)

(1. *AA 54(3) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~If the accused is found Not Guilty on one or more of the charges, the proceedings are concluded by using~~ Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No, sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(~~s~~)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)

(1. *MFB 255 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(~~s~~), and in mitigation of punishment ?(1) Ans Yes, through my defending offr. (Statement ~~not~~ ~~made~~)

(1. *RP 37(C), 46(2).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 326, 330, 563-566, Overseas KO 309, 1323, RP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused MML p 60, 757-758. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(3)(b), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see Orders on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D.132382 Gnr William DARBYSON, 7 Canadian Anti-Tank Regiment, a soldier of the Canadian Army Overseas, is charged with:

First Charge
AA 15(1)

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, when on Active Service, absented himself without leave, from 1330 hrs 7 Sept 44 till 1200 hrs 2 Oct 44 (Time absent 25 days 22 hrs 30 minutes).

Second Charge
AA 15(1)

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, when on Active Service, absented himself without leave, from 1600 hrs 24 Oct 44 till 1630 hrs 12 Nov 44 (Time absent 19 days 30 minutes).

Signed (J.A.Gillies) Lt.-Col
Commanding
7 Cdn A.Tk.Regt.

In the Field
5 Dec 44

To be tried by Field General Court Martial.

(E W Whelpton) Lt-Col.
Comd 1 Cdn Corps Adm Area.

In the Field
8 Dec 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-132382	Gunner	William	DARBYSON	7 Cdn A/Tk Regt RCA.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 8 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W S Hunt	HQ 1 Cdn Corps

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 1 Cdn Corps Tps Wkshop RCOC	
Capt or Lieut	To be detailed by ADOS 1 Cdn Corps Tps	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	To be detailed by Comd 1 Cdn Corps Adm Area.	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY
(*Country.*)

Date 8 Dec 44

(E W Whelpton) Lt-Col.
(*Signed personally. RP 105 fn 2.*) (*Rank.*)

Commanding 1 Cdn Corps Adm Area.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAGS (In lieu of AFAS) AG 7 A & R/1807 (M01))

(*See overleaf for notes and notes for use on trial.*)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. *(RP 60(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 66(C).)*

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. *(See RP 40 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).)*

(vii) Summing up by J.A. if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A. if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 53(9), RP 118(C), MML p 759.)*

4. The President or J.A. if acting will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL CERTIFICATE (K.R. (Can) 557)

I certify that I have this morning examined No. D132382 GNR.

DARBYSON, W of 7 A TK Regt Rca and, in my opinion

he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station Field

Date 11 Dec 44

R. G. Rice Capt.

(~~M. Bruster~~) R.C.A.M.C.

PLEA FOR MITIGATION OF PUNISHMENT

I wish to have my plea for mitigation of punishmmnt mainly on two points namely:

The youth of the accused, and

His previous excellent record.

The accused is now 22 years of age, and has been in the army just over two years. Two years without a single entry is surely worthy of considerations.

I would also like to point out that it was from "A" Ech that the accused absented himself, I mention this in order to bring out that, according to the accused's statement to me, his reason for absenting himself was simply the fact that he was "fed up" with the inactivity of life in "A" Ech. As he said "I didn't even get a chance to take up ammunition."

The accused has asked me whether, after he has completed his sentence, it will be possible for him to transfer to the Infantry.

Reference the second charge. I would like to point out that while to my knowledge the prosecution has no evidence of the circumstances of the accused absenting himself, I suggest that, as it was not a case of breaking arrest, the temptation, to an ignorant man (The accused has fouryears of schooling) must have been great, that is, with weak reasoning, he took the attitude "I might as well go whole hog, I'll not "get anymore" than I'm sure of now anyway.

(O.C.Harris) Lieut R.C.A.
Defending Officer

In my opinion the accused should be examined by a psychiatrist. I make this statement having regard to my conversations with the accused. On the other hand I am not suggesting that the accused is not sane as regards responsibility for the offence.

O.C. Harris Lieut

Appx. "A"

Summary of Evidence

Summary of Evidence – the case of D-132382 Gnr Darbyson W. 15 (SP) A/T Bty, 7 Cdn ATK. Regt, R.C.A., a soldier of the Cdn Army. ~~[illegible]~~ Overseas.

1 Witness 618326 Gnr Brisbon H.B. 15 Bty 7 A/T Regt RCA having been duly sworn states:

On Sept 7, 1944 I was orderly N.C.O. at A Echelon 15 A/T Bty at 13.30 hrs. I called the roll and D132382 Gnr Darbyson W. was not present. I reported Gnr Darbyson to Capt T.W. Bryant I/C A Echelon as being AWOL from Parade. He ordered me to take a party to search the area. Gnr Darbyson was not located. Capt Bryant ordered me to place this man under close arrest when he returned. I again called the roll at 2300 hrs. Gnr Darbyson was still absent.

signed
H.B. Brisbon

The accused declines to cross examine this witness.

2 Witness Capt T.W. Bryant 15 A/TK Battery 7 Cdn A/TK Regt RCA an officer of the Canadian army having been duly sworn states:

On 5 Sept 44 B.Q.M.S. DAVIS B.D. reported to me that complaints were being made to him by personal at A Echelon that D132382 Gnr Darbyson W. was spending much time during the day and nite with local Italians. On 6 Sept 44 I had Gnr Darbyson before me and warned him I had received complaints but no specific charges concerning him. I cautioned him as to Security Regulations and informed him he was not to leave Echelon area. He asked permission to [illegible]

personnel of the field Security Section stationed at San Giovanni several hundred yards away from "A" Echelon.

On 7 Sept Bdr Brisbin (now a Gunner) orderly N.C.O. of "A" Echelon reported to me about 1400 hrs that Gnr. Darbyson had not been seen since breakfast and was not present when he called the roll at 1330 hrs. I ordered Bdr Brisbin to take a party and search the area for this man. He was not located, for this more instructed he was to be placed under "Close Arrest" when he returned.

I personally visited the field Security section at San Giovanni and on inquiry found that no personnel of the section had any knowledge, heard of or seen Gnr. Darbyson.

I contacted C.M.P. station also at San Giovanni but they had no knowledge of this man.

At the end of 72 hrs. I instructed the Battery Orderly room Clerk to report D-132382 Gnr Darbyson W. to Regt'l. H.Q. as being A.W.O.L.

Signed

T.W. Bryant Capt

The accused declines to cross examine this witness.

Third Witness

Capt L.T. Stead Adjt., 7th Dr A/T Regt, RCA an officer of the Cdn Army Verseas, having been duly sworn statutes follows.

I am Capt L.T. Stead, Adjt. 7th Dr A/T Regt RCA. I produce an enclosure of apprehension in so far as it refers to D132382 Gnr. Darbyson W. in 7th Dr A/T Regt. Part II orders no 57, dated 10 Oct 44 which Reads

"AWL from 1700 hrs 7 Sept 44. Apprehended by C Prov. Coy 1200 hrs 2 Oct 44 D132382 Gnr Darbyson W. (Exhibit "A")

also ✗ List Royal Cdn Artillery (Sec "B") Part 11 order issued by GHQ 2nd Echelon AA1 No 120 dated 3 Nov 44. as evidence that D132382 Gnr Darbyson W. was A.W.L. from 1600 hrs 24 Oct 44.
(Exhibit "B")

Also certificate of appr. of D132382 Gnr Darbyson W received from Prov Staff 71 Sub Area showing that D132382 Gnr Darbyson W. was appr. at Riccio at 1630 hrs 12 Nov 44.
(Exhibit "C")

The Accused declines to Cross Examine this Witness

The Exhibits referred to by this Witness produced, read over to the accused, marked Exhibits A, B, & C signed by me and attached hereto

J W Birnie Lt.

The accused was warned as follows. Do you wish to make any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement at this time, or to call witnesses on his own behalf. W Darbyson.

I am to find that the foregoing Summary of Evidence [illegible] three pages was taken down by me in the presence [illegible] and hearing of the accused and that R.P. 4(C)(D) (E)(F) & (G) have been complied with
[illegible] 45.

J W Birnie Lt.

Certified True Copy
Stead Capt & Adj.
Officer having Cdn Ctr Regt.
Custody of Regimental Books

Last Order
No. 56
6 Oct 44.

7 [illegible] R.C.A.
Part II Orders Issued by
[illegible] 10 Oct 44.

This Order
No. 57
10 Oct 44.

[illegible]

1. [illegible]
(a) [illegible] From [illegible] List [illegible] 4 Sep 4 Oct 44. [illegible] Demand. 1 [illegible]
[illegible] Sep 44.
[illegible]

2. [illegible]
(a) Relinquishes the [illegible] Capt 5 Oct 44 [illegible]
AFC 3010 [illegible] Oct 44.
Lieut(a/Capt) [illegible] Holland.

[illegible]

3. [illegible]
(a) [illegible] From [illegible] List [illegible] 4 Sep 4 Oct 44. [illegible] Demand 1 [illegible]
[illegible] Sep 44.
[illegible] Merrill, [illegible]
[illegible] Siddall, [illegible]
[illegible] Stone, [illegible]
[illegible] Tone, [illegible]

4. [illegible]
(a) [illegible] to [illegible] List [illegible] Oct [illegible] 10 [illegible] Sep 44.
[illegible] Gnr [illegible]

(b) [illegible] to [illegible] List [illegible] Sep 44.
[illegible] Gnr [illegible] 4 Oct 44.
[illegible] Gnr [illegible] 4 Oct 44.
[illegible] Gnr [illegible] 4 Oct 44.
[illegible] Gnr [illegible] 4 Oct 44.
[illegible] Gnr Roach, L.A.

5. [illegible]
(a) [illegible] From [illegible] 7 Sep [illegible] 7 Prov [illegible] Oct 44.
[illegible] Gnr [illegible]

6. [illegible]
(a) [illegible] L/Cr 25 Sep 44.
[illegible] Gnr [illegible], G.R.
[illegible] Gnr [illegible]
[illegible] Gnr [illegible], L.
[illegible] Gnr [illegible], [illegible]
L465 Gnr

(b) To be L/Cr 20 Sep 44. [illegible] 4/5 Oct 44.
[illegible] Gnr [illegible]
[illegible] Gnr [illegible], G.R.

(c) To be L/Cr 20 Sep 44. [illegible] 4/5 Oct 44.
[illegible] Gnr [illegible], G.R.

EXHIBIT "A"

[illegible]

Last Order
No. 33
30 Sep 44.

67 LIGHT [illegible] DEF [illegible], R.C.[illegible]
(Att 7 [illegible].Tk.,Regt.,RC)
Part II Orders Issued by
CANADIAN SECTION [illegible] . 2ND [illegible] [illegible].I.

This Order
No. 34
10 Oct 44.

[illegible] OFFICERS

1. [illegible]
(a) [illegible] to 5 [illegible] W/E [illegible] 22 Sep 44. [illegible] No.[illegible]
Lieut(A/Capt) [illegible].J. Maley.

[illegible] OTHER RANKS.

2. [illegible] INCREASE [illegible]
(a) T.O.S. from 1 Cdn Corps W/E/Trg Inc 3 Oct 44. [illegible] Cdn/[illegible]
3146 d/1 Oct 44.

M65623	Cfn	Fitzgerald, L.D.	Elect [illegible]
B97043	Cfn	Garrity, C.[illegible]	Ftr MV [illegible]
A103993	Cfn	Mackurdo, A.R.	Ftr MV [illegible]

3. TRADESMEN'S RATES OF PAY
(a) Granted tradesmen's rates of pay Welder [illegible] 22 Jul 44.

D128721	Cfn	Uline, D.[illegible]

4. NEXT-OF-KIN
(a) Next-of-Kin verified as shown:
[illegible]9377 Cfn Kirkham, R. Mrs Lillian Kirkham (Wife)
18 Maple Grove
Toronto Ont (Can)

[signature]
([illegible]) Lieut
for Officer i/c
Canadian Section G.[illegible] . 2nd Echelon [illegible].I.

AR/-

[illegible]

Certified True Copy
Dead Capt & Adj.
Office hereby [illegible] Regt.
[illegible] of Segmented Books

Last Order
No. 56
6 Oct 44.

7 [illegible] Part II Orders Issued by [illegible]

This Order
No. 57
10 Oct 44.

[illegible]

1. [illegible]
(a) [illegible] 4 Oct 44. [illegible] Demand. 1 [illegible]
[illegible] Sep 44.
[illegible]

2. [illegible]
(a) Relinquishes [illegible] Capt 5 Oct 44 ([illegible]) [illegible]
[illegible] 3010 [illegible] Oct 44.
Lieut([illegible] Capt) [illegible] Folland.

[illegible]

3. [illegible]
(a) [illegible] 4 Oct 44. [illegible] Demand 1 [illegible]
[illegible] Sep 44.
[illegible] Merrill, [illegible]
[illegible] Sidrell, [illegible]
[illegible]
[illegible]

4. [illegible]
(a) [illegible] 4 Oct 44.
[illegible]

(b) [illegible] 4 Oct 44.
[illegible] 4 Oct 44.
[illegible] 4 Oct 44.
[illegible] 4 Oct 44.
[illegible] Roach, L.[illegible]

5. [illegible] Oct 44.
(a) [illegible]
[illegible]

6. [illegible]
(a) [illegible]
[illegible] Rebinson, [illegible]
[illegible] Russell, L.
[illegible] Stewart, [illegible]
L465 [illegible]

(b) To be L/Sgt 20 Sep 44. [illegible] Oct 44.
[illegible] Stewart, [illegible]
[illegible]

(c) To be L/Sgt 20 Sep 44. [illegible] Oct 44.
[illegible] Tait, [illegible]

EXHIBIT "A"

J.W. Borman Pt.

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7. PROMOTIONS
(a) To be A/Bdr 25 Sep 44.
344263 L/Bdr Hanson, G.W.
L10488 L/Bdr Hanson, M.C.

8. CONFIRMATIONS
(a) Confirmed in the rank of Sgt 25 Sep 44.
A59356 Sdr(A/Sgt) Crow, C.S.

9. REVERSIONS
(a) Reverts to the rank of Gnr and to draw a daily Regt'l rate of pay of $1.50 per diem 5Oct 44.
D7141 Gnr(A/Bdr) Brind'Amour, Y.

(b) Reverts to the rank of Gnr at own request date shown: To draw a daily Regt'l rate of pay of $1.50 per diem.
L18326 Bdr Brisbin, H.B. 26 Sep 44.
H59659 Bdr Eiler, O.W. 25 Sep 44.

(c) Reverts to the rank of Gnr at own request and to draw tradesmen's rates of pay of $1.75 per diem 25 Sep 44.
D96174 Sdr Millette, J.A.R. Dr Mech IV [illegible]

10. TRADESMEN'S QUALIFICATIONS
(a) Qual Fitter IV [illegible] 19 Aug 44. Auth TTS Report d/1 Oct 44.
G3235 Gnr Urquhart, J.W.
G5036 Gnr Haines, A.E.

11. TRADESMEN'S RATES OF PAY
(a) Reverts to a daily Regt'l rate of pay of $1.50 per diem 4 Jul 44.
D102136 Gnr Huddleston, F. Dr Mech IV [illegible]

(b) Granted tradesmen's rates of pay Fitter IV [illegible] 19 Jul 44.
G5036 Gnr Haines, A.E. Not Mech

C. TRAINING INSTRUMENT

12. STRENGTH INSTRUMENT
(a) T.O.E. from [illegible] List [illegible] (F) 4 Mn 3 Oct 44. Auth: Cdn/OZE/ARB/3166 d/2 Oct 44.
Lieut J.B. Skinner.

[signature]
(A.J.MacRae) Lieut.
For Officer i/c
Canadian Section GHQ 2nd Echelon [illegible]

[illegible]

Last Order
No. 33
30 Sep 44.

67 [illegible] DEVELOPMENT, [illegible]
(Att 7 [illegible] Tk., Regt., RC)
Part II Orders Issued by
CANADIAN SECTION G.H.Q. 2nd ECHELON A.A.I.

This Order
No. 34
10 Oct 44.

[illegible] OFFICERS:

1. [illegible]
(a) [illegible] to 5 Cdn [illegible] 22 Sep 44. [illegible] No. 20
Lieut(A/Capt) [illegible] Maley.

[illegible]

2. [illegible] INCREASE
(a) [illegible] from 1 Cdn Corps [illegible] Inc 3 Oct 44. [illegible] Cdn/[illegible]
3146 d/1 Oct 44.

M65623	Cfn	Fitzgerald, L.D.	Elect [illegible]
B97043	Cfn	Garrity, G.H.	Ftr [illegible]
A105993	Cfn	MacMurdo, [illegible]	Ftr [illegible]

3. TRADESMEN'S RATES OF PAY
(a) Granted tradesman's rates of pay Welder [illegible] 22 Jul 44.
D128721 Cfn Gline, R.S.

4. [illegible]
(a) Next-of-Kin verified as shown:
[illegible] Cfn Kirkham, [illegible]

Mrs Lillian Kirkham (Wife)
12 Maple Grove
Toronto Ont (Can)

[signature]
([illegible] MacRae) Lieut
for Officer i/c
Canadian Section G.H.Q. 2nd Echelon A.A.I.

[illegible]/-

[illegible]

CERTIFIED TRUE COPY

[signature] Capt

Officer i/c
Custody of Regimental Documents

Last Order	X-LIST ROYAL CANADIAN ARTILLERY (SEC"B")	This Order
No 119	Part II Orders Issued By	No 120
31 Oct 44	CANADIAN SECTION GHQ 2nd ECHELON - AAI	3 Nov 44

"A" OFFICERS

N I L

"B" OTHER RANKS

1. STRENGTH INCREASE

(a) TOS X-3 List from 1 A/Tk Regt dates shown

G4139	Gnr	Stewart, C.H.	30 Oct 44
M105832	Gnr	Grierson, H.A.	1 Nov 44

(b) TOS X-3 List from 4 A/Tk Regt dates shown

E35098	Gnr (A/Bdr)	Jacobson, N.	26 Oct 44
B43997	Gnr	Croft, G.J.	28 Oct 44
B22116	Gnr	Boyes, L.	27 Oct 44
B113631	Gnr	Thomas, F.J.	29 Oct 44
F76087	Gnr	Curtis, J.A.	29 Oct 44
L18337	Sgt	Dowling, H.J.	29 Oct 44
B22123	Gnr	Robb, W.	29 Oct 44
A47131	Gnr	Hyde, H.J.	30 Oct 44

(c) TOS X-3 List from 7 A/Tk Regt dates shown

D7143	Bdr	Leblanc, M.H.	Fitter(MV)"A"	28 Oct 44
B43644	Gnr	Clymer, A.E.	Arty Sig "B"	29 Oct 44
C48627	Gnr	Calbery, C.W.		27 Oct 44
M341	Gnr	Sales, B.R.		27 Oct 44
K17067	Gnr	Willoughby, R.		29 Oct 44
K104809	Gnr	Wurst, M.		29 Oct 44

(d) TOS X-3 List from X-10List General List"B" 26 Oct 44

B18058	Gnr	Phillips, F.A.

(e) TOS X-4 List(6Bn) from 1 A/Tk Regt 25 Oct 44
Auth: CECH/48/AWL/6(A8) d/30 Oct 44

F16247	Gnr	George, E.F.

2. INTERNAL POSTING

(a) Posted from X-3 List to X-4 List(4Bn) dates shown

G19665	Gnr	Cormier, J.S.		28 Oct 44
G52748	Gnr	Leavitt, F.J.		28 Oct 44
L6017	Gnr	Stagg, W.E.T.	Dvr Op "C"	28 Oct 44
G5084	Sgt	Bell, W.H.	Fitter(MV)"B"	29 Oct 44

(b) Posted from X-3 List to X-4 List(6Bn) 31 Oct 44

A28310	Sgt (A/BQMS)	Lovelock, G.F.C.	
B16500	Gnr	Patterson, S.G.	DM(MV)"C"
D105722	Gnr	Walker, A.	Fitter(MV)"A"

(c) Posted from X-4 List(4Bn) to X-3 List 28 Oct 44

D72223	Gnr	Leveille, P.	
K17088	Gnr	Thompson, L.R.	DM(MV)"C"

EXHIBIT "B"

X-LIST ROYAL CANADIAN ARTILLERY (SEC"B") Order 120
- Page 2 - 3 Nov 44

3. ABSENT WITHOUT LEAVE
(a) AWL from 1600 hrs 24 Oct 44. Still absent 1600 hrs 25 Oct 44
D132382 Gnr Darbyson, W. (X-3 List) (1st day)

J.W. Birnie Lt.

4. PUNISHMENTS
(a) On 24 Oct 44 awarded a forf of 28 days pay for (1)An offence under AA 15(1) - AWL from 2200 hrs 19 Oct 44 until 2330 hrs 19 Oct 44(absent 1 hr 30 mins). (2)An offence under AA 40, and (3)An offence under AA 15(2). Forfeits 28 days pay under FR&I 149(2).
E66074 Gnr White, J. (X-3 List)

5. NEXT OF KIN
(a) Next of Kin verified as shown
M36998 Gnr Seaman, R.L. Mrs Daphne Seaman (Wife)
X-4 List(6Bn) Box 384, Amherst,
Nova Scotia, Canada.

(b) Next of Kin verified as shown
L10306 Gnr Witt, S.G. Mr Earl Stephenson Witt (Father)
X-4 List(6Bn) Kossock, Sask., Canada

6. STRENGTH DECREASE
(a) SOS X-3 List to 4 A/Tk Regt 26 Oct 44
E0145 Bdr Suddard, L.M.

(b) SOS X-3 List to 2 Cdn NETD(B) 29 Oct 44
Auth: CECH/AG/1259 d/27 Jul 44
H35405 Gnr Morrison, C.A. DN(NY)"C"

(c) SOS X-3 List to 18 Spec Empl Coy 23 Oct 44
Auth: Psychiatrist
G4032 Gnr Ferris, G.L.

(d) AMENDMENT - Part II Order No 5A d/20 Jan 44 Para 11(g) insofar as it concerns "A104228 Gnr Cosens, N.L." delete "Motor Mech"B" and substitute Mot Mech"C".

(e) AMENDMENT - Part II Order No 1 d/6 Dec 43 para 2(c) insofar as it concerns "A104228 Gnr Cosens, N.L." delete Motor Mech"B" and substitute Motor Mech "C"

F.F. Knight
(F.F. Knight)Lieut.,
for Officer i/c
Cdn Sec GHQ 2nd Ech AAI

/FEJ

CERTIFICATE IN ACCORDANCE WITH ARMY ACT, SECTION 162(1) (ii)

I certify that No D 132382 Rank Gnr Name DARBYSON.W.

of 15 Bty. Royal Canadian Artillery.

was arrested at MESSINO at 1630 hours on 12.11.44 [illegible]

PROVOST STAFF LIEUT
41 SUB-AREA.

(Sgd) [illegible] LIEUT Capt.

~~Ov[illegible] Provost Company [illegible]~~
Signature of Provost Marshal, A.P.M. or
other officer into whose custody the above
named person was taken on arrest.

EXHIBIT "C"

J.W. Binnie

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D132382	GNR	DARBYSON, W	7 CDN ATK REG'T

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

†See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the numbers in column (a) of the conduct sheets, permission being given to the court (unless otherwise ordered) to check entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
(a) For	times	times.
(b) For	times	times.
(c) For	times	times.
(d) For	times	times.
(e) For	times	times.

(f) ~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, ~~or~~

(a) ~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement~~.

(b) 3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Not No days in civil custody, and 28 days in military custody, making a total of 28 days, of which 28 days were spent in hospital.

5. The present age of the accused according to his ~~record of service attestation paper~~ is 2 Years

(c) 6. The date of his ~~enlistment~~ attestation specified in his ~~record of service attestation paper~~ is 16 Nov 42

(d) 7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 1 Month

(e) 8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 10 months service.

(f) 9. ~~The accused is entitled to reckon service for the purpose of determining his pension~~, etc.

(g) 10. The accused is in possession of, ~~or entitled to, no military decoration or military award or is in possession of~~ or entitled to (*state any military decoration or reward*)). CVSM & C.

(h) 11. (*If the accused is a warrant officer.*) ~~The accused before he was made a warrant officer was held the regimental rank of~~

(i) 12. (*In the case of an officer.*) ~~The accused holds in the army the rank of dated~~, and in his regiment (or corps or department) the rank of dated

(Publication No. 11,002/144) [illegible] A.F.W. 3121 Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11th day of Dec. 1944

[signature] Capt & Adj.
7 Cow Arm Regt.

19. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

N/A.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(Inconsistent.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No. D.132382 Name Darbyson W. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 16/11/42 G.C. Badges Service or Proficiency Pay N/A

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1299-20) H.Q. 1772-30-1832

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 27/7/43. Date of last entry NIL. Date of last drunk NIL					
				Certified true copy of Original.					
				(L.T.Stead) Capt & Adjt					

(P.T.O.)

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 3rd day of November, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

*[~~I am unable to appoint~~
~~*[xx Three Officers to form the Court]~~
~~*[xx A Field Officer as President]~~
~~*[xx Three Officers having more than one year's service]~~
~~[for the following reasons, namely:-]~~

PROCEEDINGS REVIEWED.

21/11/41
G. R. Pearkes Lieut.
Reserving Officer (Pol.) Cont. Sig.

President.

Rank.	Name.	Regiment.
Major	E.H. Dean,	1 Tp Carrying Coy., RCASC

Members.

Rank.	Name.	Regiment.
Capt.	H.H. Darling,	RCOC, att 1 Cdn Div Sigs.
Lieut.	S.M.A. Roberts,	1 M.L. & F.D. Unit, RCOC
(waiting) Lieut.	L.J. Henderson,	1 Res M.T. Coy., RCASC

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.R. Pearkes
(G.R.Pearkes) Major-Gener
Commanding 1st Canadian Division.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F.29631 Tpr. D'ARCY, W.S., 4 Recce Bn(PLDG)	1st Charge A.A. Sec 15(I)	Guilty	Guilty	I confirm the finding of the Court but mitigate ~~commute~~ the sentence to 90 days detention. G.R. Pearkes MS
	2nd Charge A.A. Sec 40	Guilty	Guilty	
	3rd Charge A.A. Sec 40	Guilty	Guilty	
	4th Charge A.A. Sec 40	Not Guilty	Not Guilty	

One hundred and eighty days detention. Forfeits nineteen days pay. F.R.&O. 149. Under close arrest 13th days forfeits pay F.R.&O.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No

(Signed) G.R. Pearkes (G.R.Pearkes) Major-General
Commanding 1st Cdn Div.
Convening Officer (e)

(Signed) [signature] major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Sixth day of November 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
✓1. The members of the Court
✓2. The witnesses
*(~~3. The interpreter~~)
*(~~4. The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this Sixth day of November 1941.

[signature] major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

Signed this 9th day of November 1941.

G.R. Pearkes
Confirming Officer

Promulgated and extracts taken in the case of F29631 Tpr. D'Arcy W.S.

(a) (Dated) 11 Nov 41 (Signed) [signature] Capt. Adjt.

Promulgated and extracts taken in the case of

(Dated) (Signed) 4 CDN. RECCE. BN. (4.P.L.D.G.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

No. F29631 Tpr D'Arcy, W. S., ~~x~~ of the 4 Cdn Recce Bn (4 P.L.D.G.), a soldier of the Canadian Army, is charged with, when on active service:-

1st Charge
N.D.A.Sec.15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he, in the field, absented himself without leave from 2300 hrs 5 Oct 41 until apprehended by the Cdn Provost Corps at Leicester Square, 1415 hrs 24 Oct 41.

2nd Charge
N.D.A.Sec.40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he, at Leicester Square, on 24 Oct 41, made a false statement to a non-commissioned officer of the Cdn Provost Corps.

3rd Charge
N.D.A.Sec.40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he, at London, on 24 Oct 41, ~~xxxx~~ was in possession of a document purporting to be a genuine pass, well knowing that it was not genuine.

4th Charge
N.D.A.Sec.40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he, in the field, on 10 Oct 41, was improperly in possession of the following articles of clothing and equipment:

Containers, A/Gas - 3
Facepieces, A/Gas - 3
Haversacks, A/Gas - 1
Capes, A/Gas - 1
Boots, Ankle, prs - 1

To be tried by Field General Court Martial.

(G.R.Pearkes) Major-General
G.O.C. 1QCdn Div.

(H. W. Foster) Lt.-Col.,
O.C., 4 Cdn Recce Bn (4 P.L.D.G.)

6 November 1941

TRIAL of Regtl.No. F-29631 Tpr. D'ARCY,W.S.
4th. Canadian Recce. Bn. (4 P.L.D.G.)

PROSECUTION: Lieutenant A.H.Claxton - 4 Recce Bn.(P.L.D.G.)

DEFENCE : Lieutenant J.B.Beveridge - 4 Recce Bn.(P.L.D.G.)

No objections to count by accused
R.P. 35 (b) complied with.

Lieutenant A.H.Claxton,having been sworn,states:-

"I wish to submit this pass in evidence to support the third charge against the accused which was forwarded to the accused's C.O.by the Cdn. Provost Corps. This is exhibit "A".

The accused identifies the fraudulent pass as the one in his possession when apprehended by the Provost.

Regtl.No.M-16499,Corporal McMAHON,J.C., Cdn. Provost Corps, having been sworn,states:-

"On the 24th of October in London at 1415 hours,I stopped the accused and asked for his pass,he produced one. I did not like the look of the pass. I escorted him to the HQ. of the 6th Cdn.Provost Corps,and on the way I asked him if it was a good pass and he replied "yes". I also asked him again before telephoning his Unit and he stated "it was the pass he had been issued with". The N.C.O. in charge of the cells telephoned the Unit and information came back that the accused was A.W.L."

Regtl.No. C-21046 Corporal MARTIN,R., Cdn. Provost Corps, having been sworn,states:-

"At London on the 24th October 1941 about 1415 hrs, I was in company with Cpl.McMahon when we saw the accused. We approached him and Cpl.McMahon asked him for his pass. He produced a pass which Cpl. McMahon did not like the look of and Cpl.McMahon told him he would take him to H.Q. 6th.Cdn.Provost Coy. to verify the pass. On the way down Cpl.McMahon asked him if his pass was good and the accused answered "yes". Cpl.McMahon asked him again before telephoning his Unit,the accused replied it was a pass issued by his C.O. His Unit was contacted and the accused was found to be A.W.L. He was turned over to the N.C.O. in charge of the cells to be detained".

The accused wishes to give evidence on oath.

Regtl.No. F-29631 Tpr. D'ARCY,W.S. (The Accused) having been sworn,states:

"On 3rd of October 1941,I received a letter from a girl in Oxfordshire stating she wanted to see me as she was in trouble and I was to blame. I went and applied for a pass to the Orderly Corporal as my leave was due,but he told me it was impossible to get it at that time. I decided the only way I could see her would be to go A.W.L. I went A.W.L. on the 5th of October and approximately 7 or 8 October I saw her. The first evening with her I discovered she was married also that there was another soldier involved. I left her the first evening saying I never wanted to see her again. I went to London with a friend who had accompanied me on the trip and we got drinking,so I decided,with my poor record,I might just as well stay away 15 or 16 days".

The defence addresses the Court in mitigation.

Further on what the accused has said,I might add, the Troop Commander was new to the Troop and when the Orderly Corporal had given his answer to the accused the accused assumed he would receive no special favour from the new Troop Commander,so took the other alternative of A.W.L.

It was at a time when we had just returned from "

"Bumper" and there was a heavy demand for passes.

Captain J.B.Lawson, Adjutant 4 Recce Bn. (4 P.L.D.G.) having been sworn, states:-

"I submit herewith certified true copy of M.F.M.6, Field Conduct Sheet of the accused, F-29631 Tpr. D'Arcy, W.S., it is signed by myself".

E.S.Dean major

Capt. H.H. Darling being unavailable, the waiting member Lieut L.J. Henderson took his place.

E.S.Dean major

APPLICATION FOR F.G.C.M. - 4 CDN RECCE BN (4 P.L.D.G.)

Tpr D'Arcy, W. S.

Short Statement as to Particulars of Service

(a) The accused has been in military custody under close arrest from 1415hrs 24 Oct to 0900 hrs 6 Nov 41 (12 days18.45hrs), no time of which was spent in hospital, awaiting trial on the present charges.

(b) The present age of the accused according to his attestation papers is 21 years.

(c) The date of his attestation is 30 Sep 39.

(d) The accused is not in possession of or entitled to no military decoration or military reward.

I hereby certify that the foregoing particulars are true extracts from unit records:

(F. B. Lawson) Capt. and Adjt.,
4 Cdn Recce Bn (4 P.L.D.G.)

APPLICATION FOR F.G.C.C.M. - F29631 Tpr D'Arcy, W.S.

4 Cdn Recce Bn (4 P.L.D.G.)

LIST OF EXHIBITS

A - Leave pass form made out to the accused, signed in name of C.L.BETHUNE, CAPT. and bearing Orderly Room stamp of 2 Cdn Recce Sqn.

See original

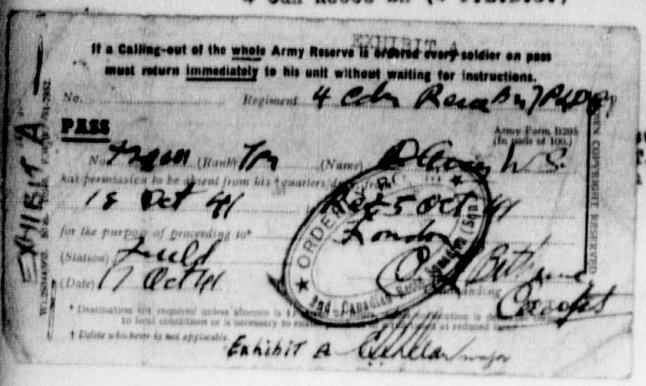
C.L.Bethune major

O R I G I N A L E X H I B I T S

APPLICATION FOR F.G.C.M. - F29631 Tpr D'Arcy, W.S.

4 Cdn Recce Bn (4 P.L.D.G.)

EXHIBIT A



If a Calling-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

No. ..... Regiment 4 Cdn Recce Bn (PLDG)

PASS

Army Form B205 (In pads of 100.)

No. F29631 (Rank) Tpr (Name) D'Arcy W.S.

has permission to be absent from his † quarters/duty from

18 Oct 41 Rec 5 Oct 41

for the purpose of proceeding to* London

(Station) Field

(Date) 17 Oct 41

Commanding

Corporate

* Destination not required unless absence is [illegible] to local conditions or is necessary to [illegible] at reduced [illegible]

† Delete whichever is not applicable.

Exhibit A [illegible] major

EXHIBIT A

WL 2504/973 S.E. 2 [illegible] F.W.P. 51-7862

ORDERED [illegible] and Canadian Rates [illegible] (Sign)

[illegible] COPYRIGHT RESERVED

...used,
...T. and
...Recce

To The President

6 Nov 41

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. F29631 Tpr D'Arcy, W.S. 4 Cdn Recce Bn (4 P.L.D.G. Regiment

is* fit to undergo trial by Court-Martial.

Signature of the Medical Officer [signature]

(a) Here insert name of :—
  (i) Officer who investigated the charges.
  (ii) Company, etc., Commander who made preliminary enquiry into the case.
  (iii) Officer who took down the Summary of Evidence [R.P. 19 (B) (iii)].
(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges ; otherwise to be struck out [R.P. 19 (B) (iii)].
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President ; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.

[signature]

(13362) Wt.23633/316 20,000 8/38 A.& E.W.Ltd. Gp.498
(13428) Wt.45726/761 120,000 1/40 " " Forms/3116/16

I desire to have Lieut MacIntosh of the West N.S.R. assigned to represent me at my trial.

W J D'Arcy
(F29631 Tpr D'Arcy, W. S.)

Lieut. J. B. Benexidge defended.

[illegible] major

No. F29631 Name D'Arcy, W. S. Sqn., Battery, or Company B Sqn Corps 4 Cdn Recce Bn (4 P.L.D.G.) Date of Enlistment 1 Sep 39 G.C. Badges nil Service or Proficiency Pay N.A. M.F.M. 6 (A.F.B. 122) 5001M—8-39 (783) H.Q. 1771-45-18

Date of last entry in Company Conduct Sheet N.A. No. and date of last drunk N.A. Period not reckoning towards freedom from extra fine N.A. Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3 Jul 40	Pte		Absenting himself from guard duty	Cpl Veinot	168 hrs detn	4 Jul 40	LtCol. Gregg	
Field	20 Sep	40 "		W.C.A.S. A.W.L. from 2230 hrs 14 Sep to 2000 hrs 19 Sep 40	L/Cpl Hines	28 days detn	21Sep40	Lt-Col.Gregg	Forf. 5 days pay

On 1 Sep 40 this soldier completed 12 months service and in accordance with K.C.No.71 the above entries were transferred fromprevious sheet which was then destroyed 31 Dec 40 E.CROUSE CAPT

Caterham	17 Jan	41 "		W.C.A.S. A.W.L.from 2230 hrs 17 to 2330 hrs 17 Jan 41 A.A.Sec.15	Jan Cpl Cockle	2 days C.B.	18 Jan41	Maj.Ardagh	
Field	15 Feb	41 "		W.C.A.S. 580.40 A.A. Conduct to the prejudice, etc.	Maj.Ardagh SSM O'Brien	2 days C.B.	17 Feb 41	Maj.Ardagh	
TATSFIELD	22Mar	41 "		W.C.A.S. Sec.40 making improper remark to an NCO	Cpl Rempel	14 days F.P.	24Mar41	Maj.Ardagh	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
[illegible]ield	24Aug 41	Tpr		N.C.A.B. Sec.40 Late on Parade	L/Cpl Morris	3 days C.B.	25Aug41	Maj.Ardagh	
[illegible]ield	26Aug41	Tpr		N.C.A.B. Sec.40 Late on parade - unshaven - slack on parade	Sgt. Moir	14 days C.B.	26Aug41	Maj.Ardagh	

Certified an exact copy of the original in every material particular:

(J. B. Lawson) Capt.,
Maj., 4 Cdn Recce Bn (4 P.A.D.I.)

SUMMARY OF EVIDENCE in the case of

F29631 Tpr D'Arcy, W. S.

of the 4 Cdn Recce Bn (4 P.L.D.G.), Canadian Army Overseas

By direction of the Commanding Officer, the evidence is taken on oath.

1st Witness for the Prosecution

R16431 Sgn S.M.S. Roney, D. J., 4 Cdn Recce Bn (4 P.L.D.G.)

(sworn) states: On 10 Oct 41 the kit of the accused was turned into B Sqn Q.M. stores. I immediately searched the kit and found that there were the following articles which were over the scale of issue as laid down:

Containers A/Gas - 3
Facepieces A/Gas - 3
Haversacks A/Gas - 1
Capes A/Gas - 1
Boots, Ankle, prs - 1

I assumed that he had with him at that time one Respirator A.G. complete and one pair of boots, ankle. I later found this to be true.

D. J. Roney, SQMS

Q. by the accused: Who turned the kit in to you?

A. The kit was turned in by L/Cpl Warner of 8 Tp.

2nd Witness for the Prosecution

No.K85363 Tpr Welton, H. E., 4 Cdn Recce Bn (4 P.L.D.G.)

(sworn) states: I am storeman of B Sqn. On 10 Oct 41 Tpr D'Arcy's kit was turned in. The Sqn QMS asked me to give him a hand to check the equipment and the following articles were found in his kit:

Ankle Boots - 2prs
A/Gas Capes - x 2
1 Respirator complete
2 containers, facepieces, A/Gas

H. E. Welton

The accused declines to cross-examine this witness.

3rd Witness for the Prosecution

No. C70666 Tpr Reid, S. D., 4 Cdn Recce Bn (4 P.L.D.G.)

(sworn) states: I was Troop Orderly Cpl on 5 Oct 41 and when I checked the roll at Reveille Tpr D'Arcy was missing. I reported this to the Tp Sgt.

S. D. Reid Cpl

The accused declines to cross-examine this witness.

4th Witness for the Prosecution

Major A. P. Ardagh, 4 Cdn Recce Bn (4 P.L.D.G.) (sworn) states:- I am C.O. Sqn 4 Cdn Recce Bn (4 P.L.D.G.). With regard to the ~~xxxxxx~~ third charge I would state that between the 5th and 24th Oct 41 no pass was issued by me or through my orderly room to Tpr D'Arcy. The pass which was submitted by the Cdn Provost Corps made out to Tpr D'Arcy is not signed by me or by any one in authority in my Sqn. The Orderly Room stamp used has not been in authorized use for at least two months and since that time has been kept under lock and key. It would seem that Tpr D'Arch made use of the stamp to stamp some passes in blank form some time ago when the stamp was in use in the Orderly Room. It will be noticed that the date portion in the centre of the stamp has not been printed and that the writing is superimposed on the stamp.

A. P. Ardagh Major

The accused declines to cross-examine this witness.

~~xxx~~ 5th Witness for the Prosecution

M16499 ~~xx~~ Cpl McMahon, J. C. Cdn Provost Corps a written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in the summary of evidence.

Having regard to the loss of time involved the attendance of this witness cannot in my opinion be readily procured.

(J. B. Beveridge) Lieut.

The accused does not demand the attendance of this witness for cross-examination.

6th Witness for the Prosecution

~~xxxxxxxxxxxx~~ C21046 Cpl. Martin, R., Cdn Provost Corps a written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in the summary of evidence.

Having regard to the loss of time involved the attendance of this witness cannot in my opinion be readily procured.

[redacted]

(J. B. Beveridge) Lieut.

The accused does not demand the attendance of this witness for cross-examination.

The accused having been duly cautioned under R.P. 4 (C)(D)(E) reserves his defence.

Taken down by me in the presence and hearing of the accused this 29th day of October 1941, in the field.

(J. B. Beveridge) Lieut.,
4 Cdn Recce Bn (4 P.L.D.G.)

4Y107
Pte. Darling S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M3640 Pte Sinclair DARLING S. 2C.I.B.R.B

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. (51(1))	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~.....~~ beginning on (date) ~~.....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for six months.

(Sgd) Nil. Judge-Advocate, if any. 6 Mar 45 Date awarded. (Sgd) R.W. Potts President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until the sentence is confirmed. (1. AA 57A. Delete if not used.)

Date 9 Mar 45 (Sgd) [signature] Commanding Comd 1 Cdn Base Sub Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M 3640 DARLING S. 2 Cdn NETD	13 March 45	D/Surgeon Lieut O.C. No 2 Cdn NETD

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 103 47-107

FIELD GENERAL COURT-MARTIAL

CPA06 (To be used in lieu of AFA81) 4/38B

RECEIVED 2 APR 1945 JAG BRANCH C.M.H.Q.

Convened by Order of Col S.A. Learmont Comd 1 CBRB dated 3 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(a) Prmnt R	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M3640	Pte	Sinclair	DARLING	2C1BRB

PROCEEDINGS REVIEWED REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 6 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

25-83

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted;(3) accused is (not) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 2. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1005 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~.....~~

~~The interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans ~~.....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none appointed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj.	R.W. Potts	2C1BRB
Member	Lt	M.R. Lorin	1C1BRB.
Member	Lt.	N.L. Rinfour	2C.I.B.R.B
Judge-Advocate	Nil.		
Prosecutor	Lt.	L.A. Phelan	2C1BRB
Defending Offr	Capt.	S.R. Grainger	2C.1B.R.B

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See RP 89 fn 2.)

A8. The accused M3640 Pte Darling S. before arraignment makes(s) (no) ~~.....~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and findings are recorded per Notes. Forms of record see references in fns to RP cited. Insert on AB rank and name of the accused making the plea.)

A9. The accused is now arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62, when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, deletes and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

1146

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1)~~ The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.(2)
(1. Court may be asked to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 4. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) bearing the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B. and Ex C. respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1, para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes sir by my Defending officer.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 116, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 1223, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to remove from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, M3649 Pte Sinclair DARLING (Lanark & Renfrew Scottish Regiment), 2 Canadian Infantry Base Reinforcement Battalion, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy absented himself without leave from about 2200 hours 23rd October 1944 until apprehended at about 0001 hours 15th February 1945. (Absent - 114 days, 2 hours and 1 minute.)

(R. W. LENT) Lt.-Col.,
Comd, 2 Cdn Inf Base Rft Bn,
Cdn Army, C.M.F.

In the Field,
2nd March 1945.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
3 Mar 45

(S. ~~A.~~ LEE) Colonel
Comd, 1 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M3649		Pte	Sinclair	DARLING	2 Cdn Inf Base Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	R W POTTS	(CIC)	2 Cdn Inf Base Rft Bn

MEMBERS.

Capt or Lieut to be detailed by the OC 1 Cdn Inf Base Rft Bn

Capt or Lieut to be detailed by the OC 2 Cdn Inf Base Rft Bn

(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by the OC 1 Cdn Inf Base Rft Bn

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 3 Mar 45

(Signed personally, see RP 105 fn 2)

(S. W. LEE)

Colonel (Rank.)

Commanding 1 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAAS (In Duplicate) AFAS 40/F & S/1947 (2nd))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 62 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (or, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn* 19)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, *86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).*)

(vii) Summing up by *JA, if any.* (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (g) (h).)

(vi) Summary of Evidence, if not already as exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML* p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

2 CANADIAN INFANTRY BASE REINFORCEMENT BATTALION

RWP

I certify that I have this morning examined

.....73449.....Pte Darling S.....

and he is fit to undergo trial by Court Martial.

.....6 - Mar - 1945

[signature]

.....

M.O., 2 CdnInf Base Rft Bn

Plea for mitigation of sentence

The accused like so many other soldiers in the Canadian army has compelled his finish and only crime. He has gone through Sicily and Italy and apparently has done a good job. He was transferred from the 2nd Lt A.A. regt to the Lanark and Renfrew regt. without any previous infantry experience he was dissatisfied and unhappy + eventually his nerves suffered. His brother was killed in France. In view of his past good record I would ask the court to deal leniently with this case.

AR Granger
Capt.

SUMMARY of EVIDENCE

Summary of Evidence in the case of M3649 Pte DARLING, S. (Lanark & Renfrew Scottish Regiment), 2 Canadian Infantry Base Reinforcement Battalion, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS for the PROSECUTION

M105021 Cpl Pawluk, F. G., 2 Cdn Inf Base Rft Bn, having been duly sworn, states:

"I produce a certified true copy of 1 Cdn L.A.A. Bn Part II Order No. 36 dated 21st November 1944 which shows M3649 Pte Darling, S. absent without leave from 2200 hours 23rd October 1944 (marked Exhibit "A"). I also produce a certified true copy of X-List Lan & Ren Scot R. Part II Order No. 17 dated 27th February 1945 which shows M3649 Pte Darling, S. apprehended 15th February 1945 (marked Exhibit "B".)."

F. G. Pawluk
(M105021 Cpl Pawluk, F. G.)

The accused declines to cross examine this witness.

The accused was cautioned as follows:

"Do you wish to make any stetement or to give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given as evidence."

The accused declines to make any statement or give any evidence on oath.

Certified that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused this 2nd day of March 1945.

J. J. Murphy Lt.
(Officer detailed to take Summary)

In the field,
2nd March 1945.

Ex. A
Pros

CERTIFIED TRUE COPY

(D M Qeen) Capt
Discipline Section
Cdn Sec 2nd Echelon AFHQ
Officer having custody of the original

Exhibit 'A'
JJ Murphy Lt
RWS

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

Last Order 1 CANADIAN LIGHT ANTI-AIRCRAFT BATTALION CIC This Order
No 35 Part II Order Issued by No 36
17 Nov 44 CANADIAN SECTION G.H.Q. 2ND ECHELON AAI 21 Nov 44

"A" OFFICERS

1. COURSES
(a) Proceeded on Rafting Course and att to CMTC f.a.p. 26 Oct 44 to 10 Nov 44
Lieut B.P. Lange

2. QUALIFICATIONS
(a) Having attended Rafting Course at CMTC 26 Oct 44 to 10 Nov 44, Qual "BX"
Lieut B.P. Lange

3. HONOURS AND AWARDS
(a) Awarded the Canadian Volunteer Service Medal and Clasp 10 Feb 44
Lieut A.I. MacDonald

"B" OTHER RANKS

4. STRENGTH INCREASE
(a) TOS from 1 Cdn LAA Bn X-3 List 10 Nov 44
Auth - CECH/A2/1259 d/28 Jul 44

F16190	Sgt	Cormier, R.J.	
M335	Pte	Gruber, W.	Dvr Mech(MV)"C"

(b) TOS from 1 Cdn LAA Bn X-4 List (4 Bn) 15 Nov 44
Auth - 5 CD/508 d/11 Nov 44

B15320	Pte	Barr, M.G.	
B48025	Pte	Beemer, K.	
F56152	Pte	Bezanson, H.H.	
A67842	Pte	Bolen, A.	
L110334	Pte	Brotzel, J.R.	
K25569	Pte	Brown, J.C.	
G49414	Pte	Burnside, H.A.	
B6827	Pte	Campbell, R.B.	
L1803	Sgt	Jantz, H.E.	Storeman T&D"C"
M67608	Pte	Mann, E.J.	
D132710	Pte	Martin, A.F.	
H101528	Pte	Mowat, W.	
C120690	Pte	O'Marra, L.F.	
H60116	Pte	Prost, F.M.	
G50062	Pte	Scott, A.H.	
D132814	Pte	Walker, J.	
M105857	Pte	Zozuk, M.	

(c) TOS from 1 Cdn LAA Bn X-4 List (4 Bn) 18 Nov 44
Auth - 5 CD/508 d/11 Nov 44

K25871	Pte	Desireau, A.A.	
B9725	Pte	Galbraith, D.L.	Clerk "C"
M3116	Pte	Low, D.	Dvr Mech(MV)"C"
G52060	Pte	Taylor, L.J.	
D132501	Pte	Yawney, R.P.	

5. STRENGTH DECREASE
(a) SOS as a des 14 Nov 44, having been dec illegally absent by a Ct of Inq from 0600 hrs 23 Oct 44. Deficiencies in kit to the value of $16.11

C3297	Pte	Clark, S.W.

(P.T.O)

5. STRENGTH DECREASE (CONT'D)

(b) SOS as a des 14 Nov 44, having been dec illegally absent by a Ct of Inq from 2200 hrs 23 Oct 44. Deficiencies in kit to the value of $16.63
M3649 Pte Darling, S.

(c) SOS to 1 Cdn LAA Bn X-3 List dates shown

K6025	Pte	Ackley, J.N.	14 Nov 44
F60723	Pte	Canning, J.P.	13 Nov 44
A31379	Pte	Gauley, K.F.	15 Nov 44
F78438	Pte	MacDonald, P.A.	14 Nov 44
M17026	Pte (A/Cpl)	McIntosh, D.A.	13 Nov 44
K46334	Pte	Moorman, F.V.	15 Nov 44
K16214	Pte	Murray, M.	13 Nov 44
F78443	Pte	Paris, C.H.	13 Nov 44
K66123	Pte	Robertson, J.	12 Nov 44
F77069	Pte	Stewart, M.J.	14 Nov 44
B110797	Pte	Stewart, S.C.	14 Nov 44
A31261	Pte	Woolsey, J.W.	14 Nov 44

6. ABSENT WITHOUT LEAVE

(a) AWL from 0600 hrs 23 Oct 44. Still absent 0600 hrs 14 Nov 44 (22nd day)
C3297 Pte Clark, S.W.

(b) AWL from 2200 hrs 23 Oct 44. Still absent 2200 hrs 14 Nov 44 (22nd day)
M3649 Pte Darling, S.

(c) AWL from 0800 hrs 24 Oct 44. App by CMI 1100 hrs 7 Nov 44
B8252 Pte McInick, J.J.

(d) AMENDMENT: Part II Order No 35 para 7 (d) of 17 Nov 44 insofar as it refers to the u/m is cancelled.
F89205 Pte MacKenzie, J.H.

7. APPOINTMENTS

(a) To be L/Cpl dates shown

B15320	Pte	Barr, M.G.	15 Nov 44
C40790	Pte	Barsley, J.C.	8 Nov 44
B9919	Pte	King, F.R.	8 Nov 44
L103371	Pte	Kuzniar, B.	28 Oct 44
G50670	Pte	MacDonald, K.S.	28 Oct 44
G64826	Pte	Pitre, E.	28 Oct 44
H36575	Pte	Ramage, J.P.	28 Oct 44
L74129	Pte	Lost, C.A.	8 Nov 44

(b) Relinquishes the appt of L/Cpl at own request 10 Nov 44
To draw daily regt'l rate of pay of $1.50
F66411 Pte (L/Cpl) Tenary, M.

(c) Relinquishes the appt of L/Cpl 14 Nov 44
To draw daily regt'l rate of pay of $1.50
F78436 Pte (L/Cpl) MacDonald, P.A.

8. PROMOTIONS
(a) To be A/Cpl 6 Nov 44
D132784 Pte (L/Cpl) Saxe, B.

9. CONFIRMATIONS
(a) To be WO Cl II (CSM) 27 Oct 44
K7104 Sgt (A/WO II) CSM Folz, E.

(b) To be Sgt dates shown
L18199 Cpl (A/Sgt) Edgar, W.J. 16 Nov 44
C30783 Cpl (A/Sgt) Laroche, R. 1 Nov 44
D6139 Cpl (A/Sgt) Wrigley, F. 11 Nov 44

(c) To be Cpl dates shown
C73253 Pte (A/Cpl) Belsey, W.G. 1 Nov 44
B44046 Pte (A/Cpl)(A/Sgt) Kryskow, T. 11 Nov 44
M104076 Pte (A/Cpl) Letawsky, A.M. 1 Nov 44

10. REVERSIONS
(a) Reverts to the permanent rank of Pte at his own request dates shown. To draw daily regt'l rate of pay of $1.50
B6868 Pte (A/Cpl) Carr, E.W. 10 Nov 44
K46717 Cpl (L/Sgt) Mikkelson, H.O. 9 Nov 44

11. TRADESMEN'S QUALIFICATIONS
(a) Qual Cook "B" 3 Nov 44. Auth - TTB Report 6/3 Nov 44
F82083 Cpl (A/Sgt) Forsythe, H.E.

(b) Qual Clerk "B" (Pay Departmental) 8 Nov 44
Auth - TTB Report 6/8 Nov 44
D6139 Cpl (A/Sgt) Wrigley, F.

12. TRADESMEN'S RATES OF PAY
(a) Granted tradesmen's rates of pay Cook "B" 3 Nov 44
F82083 Cpl (A/Sgt) Forsythe, H.E. Cook "C" RCASC

(b) Granted tradesmen's rates of pay Clerk "B" (Pay Departmental) 8 Nov 44
D6139 Cpl (A/Sgt) Wrigley, F.

13. PUNISHMENTS
(a) On 15 Nov 44 reduced to the permanent rank of Pte for an off under AA 15 (1). AWL from 2200 hrs 13 Nov 44 to 0630 hrs 14 Nov 44 (absent 8 hrs 30 min) Forf 1 days pay under FR&I 149 (1)(a).
C953 Pte (L/Cpl) Brooks, R.J.

(b) On 11 Nov 44 reduced to the Acting Rank of Cpl for an off under AA 15(1). AWL from 0630 hrs 9 Nov 44 to 1500 hrs 9 Nov 44 (absent 8 hrs 30 min) Forf 1 days pay under FR&I 149(1)(a)
K52496 Pte (A/Cpl) (A/Sgt) Droger, R.

(c) On 11 Nov 44 fined $5.00 for an off under AA 19 (Drunkenness 2nd off) Fined $5.00 under FR&I 161(2)(b)
F82099 Pte Regan, J.K.

14. NEXT OF KIN

(a) Next of Kin verified as shown

G49414	Pte	Burnside, H.A.	Mrs Lillian Burnside (mother) Nauwigewauk, Kings Co., N.B., Can.
M3399	L/Cpl	Jenkins, R.	Mrs Margaret Jenkins (wife) 2120 Brunswick Street, Vancouver, B.C., Can.
D132814	Pte	Walker, J.	Mrs Jessie Walker(mother) 5250 Saranac Avenue,MDG, Montreal, Que., Can.

15. CHANGE OF NAME

(a) Having dec his true name to be Mirc George Bartko, will in future be known as such. All doc's to be amd accordingly

L154247 Pte Bartko, M.H.

16. HONOURS AND AWARDS

(a) Awarded the Canadian Volunteer Service Medal and Clasp dates shown

H1447	Pte	Balsam, V.	12 Jul 44
B137612	Pte	Bryan, R.H.	26 Jun 44
B139020	Pte	Bugbee, S.F.	18 Jul 44
B129586	Pte	Davis, D.F.	21 Jul 44
D12315	Pte	Dawe, J.	28 Mar 44
D138433	Pte	DesRochos, A.	24 May 44
B143359	Pte(A/Cpl)	Howard, F.J.	1 Sep 44
D66446	Pte	Kelly, F.	28 Mar 44
L67654	Pte	Kopf, P.	16 Aug 44
F66005	Pte	Lewis, E.M.	22 Jul 44
D131309	Pte	Lynch, D.P.	26 Mar 44
B45348	Pte	McCarthy, J.K.	26 Jun 44
L101945	Pte	McDonald, D.D.	14 Feb 44
K49814	Pte	McMillan, H.J.	29 Jul 44
B45100	Pte(A/Cpl)	Murphy, K.C.	20 May 44
H155694	Pte	Samms, G.	12 Jul 44
A106394	Pte	St. Louis, C.J.	22 Sep 44
B144623	Pte	Tokar, F.J.	23 Sep 44
H1925	Pte	Unik, S.	4 Aug 44
H67610	Pte	Wilhelm, T.	11 Mar 44

(b) Awarded 2nd Good Conduct Badge dates shown

K15090	Pte	Jorgenson, L.H.	11 Oct 44
C1012	Pte(L/Cpl)	McKegney, J.R.J.	6 Sep 44

16. HONOURS AND AWARDS (CONT'D)

(b) Awarded One Good Conduct Badge dates shown

D132139	Pte	Andrews, R.J.	2 Jul 44
B8212	Pte	Anscomb, J.G.A.	23 Mar 44
B6888	Pte	Bilton, C.G.	10 Jan 43
D36576	Pte	Bourcier, R.	21 Aug 42
C63595	Pte	Burge, F.J.	24 Jul 42
F60723	Pte	Canning, J.P.	10 Feb 44
B52071	Pte	Crosely, A.B.	9 Jun 43
D14123	Pte	Ditchburn, R.	11 Aug 44
C34903	Pte	Henault, J.J.R.	8 Aug 44
H100689	Pte	Hill, W.H.	4 Apr 44
D86440	Pte	Kelly, F.	28 Sep 44
D132341	Pte	Lacroix, R.	26 Oct 44
D131309	Pte	Lynch, D.P.	28 Sep 44
B44909	Pte	Nevin, R.E.	4 Nov 44
B48216	Pte	Payson, W.J.	20 Jul 44
H35575	Pte(L/Cpl)	Ramage, J.P.	20 Aug 42
C101030	Pte	Roy, A.	12 Aug 44
F66380	Pte	Simpson, L.K.	4 Aug 44
C70422	Pte	Spears, H.W.D.	10 Feb 43
C39010	Pte	Watt, F.R.	27 Jun 43
B101631	Pte	Wheatley, J.H.	14 Oct 44
G32950	Pte	Wilson, L.E.	25 Jan 43

F.F. Knight

(F.F. Knight) Lieut
for Officer i/c
Canadian Section GHQ 2nd Echelon AAI

AR/

P52 (admin file)

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

J.J. Murphy Lt
Offr 11 c [illegible]

Exhibit B
J.J. Murphy Lt

Last Order No 16 22 Feb 45	X-LIST THE LANARK & RENFREW SCOTTISH REGIMENT PART II ORDERS ISSUED BY CANADIAN SECTION - 2ND ECHELON-AFHQ	This Order No 17 27 Feb 45

"A" OFFICERS

NIL

"B" OTHER RANKS

1. STRENGTH INCREASE

(a) T.O.S. X-4 List (2 Inf Bn) on apprehension by C.M.P. 15 Feb 45 from Desertion (Hours unknown)

M3649	Pte	Darling, S.
G3297	Pte	Clark, S.W.

(b) T.O.S. X-4 List (2 Inf Bn) from the Lan & Ren Scot R 23 Feb 45 (Auth: Cech/48/AWL/8(A&) d/ 23 Feb 45)

K15297	Pte	Corbett, A.G.
C5901	Pte	Foster, H.P.

2. INTERNAL POSTINGS

(a) Posted from X-3 List to X-4 List (2 Inf Bn) on dates shown:

B73122	Pte	Brundell, F.	21 Feb 45
L10036	Pte	Brown, E.W.	23 Feb 45
A58140	Pte	Gies, V.G.	21 Feb 45
G8133	Pte	(A/Cpl) Henry, L.J.	23 Feb 45
B6824	Pte	Jones, L.G.	23 Feb 45
M36791	Pte	Lind, J.H.	23 Feb 45
D132814	Pte	Walker, J.	21 Feb 45

(b) Posted from X-5 List to X-3 List 13 Jan 45 and ceases att to CMTC

D11559	Sgt	Davies, J.E.

(c) Posted from X-3 List to X-4 List (2 Inf Bn) 23 Feb 45

D11559	Sgt	Davies, J.E.

(d) Removed from 5 Cdn Armd Div F.P. Camp to 25 Det & F.P. Bks 15 Jan 45

L35221	Pte	Jardine, J.J.

(e) Posted from X-4 List (2 Inf Bn) to X-4 List (4 Bn) 24 Feb 45 (Auth: Rft Demand No 4 Bn/148 X-Base 29 d/12 Feb 45)

L20023	Pte	Brannan, E.P.	
K25565	Pte	Brown, J.C.	
C73327	Pte	Burns, C.P.	
B133547	Pte	Burrows, W.D.	
H35571	Pte	Byers, O.H.	
M34045	Pte	Cassels, D.A.	D.M.(MV)"C"/GD
B116766	Pte	Cooper, V.H.	Clerk "C"/GD
C123054	Pte	Cowan, E.R.	D.M.(MV)"C"/GD

2. INTERNAL POSTINGS (Cont'd)

(T) Posted from X-4 List (2 Inf'Bn) to X-4 List (4 Bn) 24 Feb 45 (Auth: Rft Demand No 4'Bn/ 140 X-Base 29 d/12 Feb 45)

B13068	Pte	Crow, J.	
A32151	Pte	Delmage, J.T.	
B122123	Pte	Dolan, W.	
C52606	Pte	Donnelly, M.C.	
A106638	Pte	Dunlop, J.C.	
C42761	Pte	Dunn, R.A.	
P70426	Sgt	Ehler, C.V.	
C66759	Pte	Esty, E.V.	
B0152	Pte	Felniok, W.J.	
A50140	Pte	Gies, V.J.	Corp "B"/CD
D132814	Pte	Walker, T.	
A1760	Pte	Guthrie, T.	
C116643	Pte	Hendry, E.W.	
D145069	Pte	Horgan, P.C.	
L110017	Pte	(A/Cpl/Sgt) Huculak, M.W.	
E63199	Pte	Fehl, H.J.	
W30770	Pte	Horoliuk, J.	
B161899	Pte	Levesque, E.W.	
B45198	Pte	Lewis, W.E.	
G57611	Pte	Magee, W.E.	
B161663	Pte	Tarpiveene, [illegible]	
B116247	Pte	Manger, A.E.	
B115585	Pte	Marks, [illegible]	
G2716	Pte	Mercer, E.W.	
B160522	Pte	Mills, [illegible]	
B161715	Pte	Mortley, E.W.	
B161633	Pte	Nesbitt, E.C.	
B120114	Pte	Point, J.H.	
B4741	Pte	Pritchard, J.W.	
L106506	Pte	Rasher, A.W.	
C121675	Pte	Reid, C.J.	
C103525	Pte	Richardson, H.A.	
C34550	Pte	Richardson, W.J.	
C09223	Pte	Rodgers, H.R.	
F4581	Pte	Roop, J.A.	D.M.(MV)"C"/CD
B116312	Pte	Saunders, H.H.	
M37581	Pte	Schiller, A.A.	
A110698	Pte	Shanks, A.	
P67586	Pte	Sharples, R.C.	
B57608	Pte	Spain, F.W.	
B117650	Pte	Spence, F.W.	
L53103	Pte	Terry, G.E.	
L104265	Pte	Terry, W.J.	
B160093	Pte	Tobias, [illegible]	
B122106	Pte	Trescak, [illegible]	
B161260	Pte	Wade, A.E.	
B123506	Pte	White, E.J.	
B147024	Pte	Wildman, F.W.	
D142376	Pte	White, S.J.	
M101754	Pte	(A/Cpl) Wawryk, J.	

2. INTERNAL POSTINGS (Cont'd)

(c) Posted from X-3 List to X-4 List (2 Inf Bn) 25 Feb 45
B144981 Pte Hunt, A.V.
H67610 Pte Wilhelm, T.

3. ABSENT WITHOUT LEAVE

(a) A.W.L. from 1330 hrs 30 Jun 45 Returned from AWL 1630 hrs 18 Feb 45.
C58763 Pte Chapman, A.E. (X-3 List)

4. PUNISHMENTS

(a) On 19 Feb 45 admonished for an off under ... 15 (1) AWL from 2215 hrs 17 Feb 45 to 0915 hrs 18 Feb 45 (Absent 11 hrs) Forfs 1 days pay under FR&I 149 (1)(a)
C9829 Pte Laderoute, W.L. (X-3 List)

5. NEXT OF KIN

(a) Next of kin-verified as shown:
G0133 Pte (A/Cpl) Henry, L.J.
Mrs Edmay Henry (Mother)
12 Summer St, West St.
John, New Brunswick,
Canada.

6. STRENGTH DRAWN

(a) S.O.S. X-3 List to X-8 List 22 Feb 45
(Auth: Svce Certificate)
H101412 Pte Gallagher, G.J.
H93368 Pte Rolfe, W.A.

(b) S.O.S. X-3 List to X-8 List 22 Feb 45
(Auth: AFW 5169 d/ 23 Feb 45)
M239 Cpl (L/Sgt) Burkholder, R.W.
K49486 Pte (A/Cpl) Craig, H.G.
B129506 Pte Davis, D.F.
B8131 Pte Hardy, G.T.
K15090 Pte Jorgensen, L.H.
C94426 Pte Lovesey, J.
F78438 Pte (L/Cpl) MacDonald, P.A.
F51515 Sgt MacLean, L.
L22205 Cpl McIlmoyl, F.H.
K49814 Pte McMillan, H.J.
B44909 Pte Nevin, R.E.
H100019 Pte Robinson, W.R.
M105857 Pte Zonuk, M.

(c) S.O.S. X-3 List to X-9 List 22 Feb 45
(Auth: Pending Re-board)
K16245 Pte McKenzie, D.H.

(d) S.O.S. X-3 List to H.Q. 1 C.B.R.Gp (B) 23 Feb 45
(Auth: Posting Order WIS/5144 d/ 24 Feb 45)
D6062 Pte Mamol, J.M. D.M.(MV) "C"

6. STRENGTH DECREASE (Cont'd)

(e) S.O.S. X-4 List (2 Inf Bn) to X-4 List (1 Inf Bn) 48 Highs of C 25 Feb 45
(Auth: Cech/43/Post CIC/11 (A7) d/ 24 Feb 45)
B73122 Pte Brundell, F.

(f) S.O.S. X-3 List to X-9 List 20 Feb 45
(Auth: Pending Re-board)
F76550 Pte Beach, W.M.

(g) S.O.S. X-3 List to X-8 List 21 Feb 45
(Auth: Evac Certificate)
D36576 L/Cpl Bourcier, R.

(h) S.O.S. X-4 List (2 Inf Bn) to 1 Cdn Spec B.[illegible] Coy 19 Feb 45 (Auth: 1 Ech Admin Order No 13)

B71145	Pte	Cufaro, M.[illegible]	Clerk "C"/GD
B118609	Pte	Curtis, G.E.	
E0160	Pte	Doyle, J.[illegible]	
B58573	Pte	Elliott, J.T.	
L25247	Sgt	French, R.J.H.	Accom Clerk "B"/GD
B158061	Pte	McCaul, W.A.	
B161535	Pte	Morey, C.G.	
B64004	Pte	Morris, D.L.	
B126244	Cpl	Pettit, R.W.C.	
M101671	Pte	Popowich, V.	
F82009	Pte	Rafuse, [illegible].D.	D.M.(MV) "C"
L107303	Pte	Simison, L.O.	
M3300	Pte	Smith, [illegible].V.	
[illegible]109265	Pte	Stewart, J.S.	
K76242	Pte	Storey, P.L.[illegible]	
D96409	Pte	Sutton, M.[illegible]	
K9015	Pte	Walton, E.	
L223	Pte	Wilson, J.H.	
B137842	Pte	Woods, M.M.	
B160342	Pte	Young, K.W.	

W.H. Laughlin Capt
for (A.J. MacRae) Lieut
for Officer i/c
Canadian Section 2nd Echelon-AFHQ.

jhh/

Exhibit B

ARMY FORM B 209.

1 CWT

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
M3649	Pte	Darling, S.	2 Cdn. Inf. Base Rft. Bn.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, premissing being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

JJM ~~Number of instances of gallantry or distinguished conduct~~

or

JJM ~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, or

JJM ~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the~~ JJM ~~Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, JJM ~~or The accused at the present time is under sentence for~~ JJM ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 26 20 days in military custody, making a total of 26 20 days, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 28 yrs. 7 mos.

6. The date of his JJM ~~commission~~ attestation specified in his record of service ~~attestation paper~~ is 6 Jan 41.

JJM ~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

JJM ~~8. The accused is entitled to deferred pay or gratuity in respect of service.~~

JJM ~~9. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

10. The accused is JJM ~~in possession of, or entitled to, no military decoration or military award (or is in possession of or~~ entitled to (*state any military decoration or reward*)) C. & S. M. & Clasp, '34-'43 Star

JJM ~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental~~ JJM ~~rank of~~

JJM ~~12. (In the case of an officer.) The accused holds in the army the rank of dated~~ JJM ~~and in his regiment (or corps or department) the rank of dated~~

(*[illegible]) [illegible] A.A.E.W.[illegible] [illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M3649 Rank Pte Name Darling, S of 2C1BRBn Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which trial, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		JJM		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26 day of Mar 45

J.J. Murphy Lt.

Pt. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(Please write—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Exhibit C

No. M3649 Name DARLING, Sinclair

Sqn, Battery, or Company

Corps CIC

Date of enlistment 6:1:41

GC Badges

Service or Proficiency Pay

3/17 MFM 6 (AFB 122) 40/P&S/136 (54-12)

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No

Signature OC Company, etc "J. S. Cave Major"

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY					
				J. J. Murphy Lt					

(PTO)

LIST of WITNESSES
in the case of
M3649 Pte Darling, S.

For the Prosecution:

(1) M105021 Cpl Pawluk, F. G. 2 Cdn Inf Base Rft Bn

For the Defence:

(1) N i l.

LIST of EXHIBITS
in the case of
M3649 Pte Darling, S.

EXHIBIT "A" - 1 Cdn L.A.A. Bn Part II Order No. 36.

EXHIBIT "B" - X-List Lan & Ren Scot R. Part II Order No. 17.

I, M3649 Pte Darling, S., Lan & Ren Scot R., 2 Cdn Inf Base Rft Bn, request that ..... (~~an~~) an officer be appointed to represent me at my trial by Court Martial.

2nd March 1945. S. Darling
(M3649 Pte Darling, S.)

I certify that I have been given gratis, a copy of the Charge Sheet, a copy of the Summary of Evidence, a copy of the list of Witnesses and a copy of the list of Exhibits pertaining to my trial by Court Martial.

2nd March 1 945. S. Darling
(M3649 Pte Darling, S.)

P.W.P.

J. D. Ph. Darlington, T.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Fourth day of September, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 5 Cdn Inf Bde., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the matter for reference to a superior qualified officer~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint~~
~~(a) Three officers to form the Court~~
~~*(b) A field officer as President~~
~~*(c) Three officers who have more than one year's service~~
~~for the following reasons, namely:~~

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	J.C. Routledge. E.D.	R.H.C.

Members.

Rank.	Name.	Regiment.
Capt.	C.V.B.Corbett.	Calg.Hldrs
Lieut.	G.Bieler.	R.de.Mais.
Lieut. waiting.	G.H.Hall.	R.C.C.S.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.R. Pearkes Brigadier.

Commanding 5 Cdn Inf Bde. Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-81230 Pte. Darlington. 5 Cdn Inf Bde	FIRST CHARGE. A.A.40) See Charge Sheets.	NOT GUILTY	NOT GUILTY	
A soldier of the Cdn Active Forces Overseas.	SECOND CHARGE A.A. sec 40.	NOT GUILTY	NOT GUILTY	
	THIRD CHARGE A.A.Sec 6, (2)E. RP 35(B) has been complied with	GUILTY	GUILTY ~~120 days detention~~	[signature]
	FOURTH CHARGE. A.A.Sec 40.	NOT GUILTY	NOT GUILTY	
	SEE CHARGE SHEETS.			
	Sentence to undergo 120 days detention			[signature]
				Confirmed [signature]

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary): R.P.39(a) - complied with the accused states that he does not wish to apply for an adjournment.

(Signed) [signature] Brigadier. Commanding 5 Cdn Inf Bde. Convening Officer (e)

(Signed) [signature] Major President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

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B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of September, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
3. The officers under instruction)
4. Stenographer
were duly sworn.

* Omit if not applicable.

Signed this 6th day of Sept 1941.

[signature] Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 370 of 1918 have been complied with.~~

~~Signed this~~ day of 19 .

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I ~~direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 13th day of Sept 1941.

[signature] Major-General
Confirming Officer.
Comdg. 2 Cdn. Div.

Promulgated and extracts taken in the case of

(a) (Dated) 17 Sept 1941 (Signed) C. Armstrong Lieut. O.C. 5 Cdn Inf Bde H.Q. Ref. Pl.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Unit 5th Inf. Bde. Hq.

Squadron, battery or company

MORNING SICK REPORT

MEDICAL INSPECTION REPORT*

Army Form B 256.

Station and Date Tonnelstown Sep. 6 1941

Army No.	Rank and Name (Christian name in full Surname first; M under name if married)	Completed Years of Age	Completed Years of Service	Religion	If for duty?	Whether a Defaulter	Lines or Barracks	Room or Mess	Disease	Original Medical Officer's Remarks and Signature
F1230	Pte Darlington F.	36		P		This is to certify that I have this day examined the [illegible] and find him fit to undergo trial by Court Martial. [illegible]				

Ell. Anderson Capt
RCAMC

*Strike out whichever is not applicable.
†State nature of duty for which warned. In the case of men for medical inspection, the reason, such as "For trial by Court Martial," or "joining the station," &c., should be inserted against their names.

Orderly
N.C.O.

To be Discharged from Hospital to-morrow.

Unit	Squadron, battery, or company	Army No.	Rank and Name	

(1).

CHARGE

Army Form B 252
(See King's Regulations)

H.Q. 5 Cdn Inf Bde. Regiment

Defence Platoon. Battery / Squadron / Troop or Company

CHARGE against No. D-81230. Rank Pte.

Name Darlington. F.

Place Aldershot. Hants. Date of Offence 3 Sep 41.

OFFENCE A.A. Sec 40. Conduct to the prejudice of good order and military discipline, in that he WOAS at the Royal Pavilion, Aldershot 3 Sep 41, became unfit for duty by reason of previous indulgence in Alcoholic Stimulants.

Names of Witnesses
Lieut. W.J.C. Stikeman.
M-11156. Cpl. Boychuk. S.M.
B-31201. Sgm'n Bray. J.F.
B-31269. Sgm'n D'Esterre. N.R.
B-31068. Sgm'n Meval. E.J.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded — Remanded for summary of evidence to be taken under oath. [illegible] Major, [illegible] Cdn [illegible]

By whom Awarded — Remanded for Field General Court Martial. [illegible] Major, [illegible] Cdn [illegible]

To be tried by Field General Court Martial

[illegible] Adjutant.

P.T.O.

Aldershot. Hants
5/9/41

Comd 5 Cdn Inf Bde

CHARGE (2) [illegible] Army Form B 252
(See King's Regulations)

H.Q. 5 Cdn Inf Bde — Regiment

Defence Platoon. — Battery / Squadron / Troop or Company

CHARGE against No. D-81230. Rank Pte.

Name Darlington. F.

Place Aldershot, Hants. Date of Offence 3 Sep 41.

OFFENCE WOAS. Neglect to the prejudice of good order and military discipline, in that he when posted as a sentry at the Royal Pavilion, Aldershot at 0158 hrs was improperly dressed, in that the fly of his trousers was open and his penis exposed. (A.A.Sec 40)

Names of Witnesses :— Lieut. W.J.C.Stikeman.
M-11156. Cpl. Boychuk.S.M.
B-31201. Sgm'n Bray. J.E.
B-31269. Sgm'n D'Esterre. N.R.
B-31068. Sgm'n Meval. E.J.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded — Remanded for summary of evidence to be taken under oath. [illegible] Major, B.M. 5 Cdn. Inf. Bde.

By whom Awarded — Remanded for Field General Court Martial. [illegible] Major, B.M. 5 Cdn. Inf. Bde.

Aldershot, Hants 5/9/41 — To be tried by Field General Court Martial. [illegible]

P.T.O.

Cons 5th Cdn Inf Bde

CHARGE

Army Form B 252
(See King's Regulations

H.Q. 5 Cdn Inf Bde — Regiment

Defence Platoon. — Battery / Squadron / Troop or / Company

CHARGE against No. D-81230 Rank Pte.

Name Darlington. F.

Place Aldershot Hants, Date of Offence 3 Sep 41.

OFFENCE A.A.Sec 6 (2)E. When a soldier acting as a Sentinel on Active service, sleeping on his post. In that he at the Royal Pavilion, Aldershot 3 Sep 41 between 0100 hrs and 0200 hrs when posted as a sentry on the main Gate Post was asleep.

Names of Witnesses:— Lieut. W.J.C.Stikeman.
M-11156. Cpl. Boychuk. S.M.
B-31201. Sgm'n Bray. J.F.
B-31269. Sgm'n D'Esterre. N.R.
B-31058. Sgm'n Meval. E.J.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

Aldershot Hants
7/9/41

P.T.O.

CHARGE (4) [illegible] Army Form B 252
(See King's Regulations)

H.Q. 5 Cdn Inf Bde — Regiment

Defence Platoon — Battery / Squadron / Troop or Company

CHARGE against No. D-81230. Rank Pte.

Name Darlington. F.

Place Aldershot. Hants. Date of Offence 3 Sep 41

OFFENCE WOAS. Conduct to the prejudice of good order and military discipline, in that he, when posted as a sentry at the Royal Pavilion Aldershot between 0100 hrs and 0200 hrs 3 Sep 41, did urinate in the sentry box.

(A.A. Sec 40)

Names of Witnesses :— Lieut. W.J.C.Stikeman.
M-11156. Cpl. Boychuk. S.M.
B-31201. Sgm'n Bray. J.F.
B-31269. Sgm'n D'Esterre, N.R.
B-31068. Sgm'n Meval. E.J.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded — Remanded for [illegible] of [illegible] to be taken under oath. [illegible] Remanded for Field General Court Martial.

By whom Awarded — [illegible]

Aldershot Hants 5/9/41 — To be tried by Field General Court Martial

[illegible] Comd 5 Cdn Inf Bde

P.T.O.

PROCEEDINGS OF A FIELD GENERAL
COURT MARTIAL HELD IN THE FIELD,
ON.....6 SEP. 41

TRIAL OF NO: D61230 Pte. DARLINGTON, F., HQ, 5 Cdn.Inf.Bde.

PROSECUTOR: Capt. J.S. Walford, HQ, 5 Cdn. Inf. Bde.

DEFENDING OFFICER: Lieut. C.L. Stuart, R.H.C.

SHORTHAND REPORTER: B36801 S/Sgt. D.A. Shenstone, R.H.L.I.

1. The Order Convening the Court is read to the accused.

2. The accused is asked the following questions:

Q. 1. Do you object to being tried by me as President, or by any of the other Members of the Court ?
A. 1. No, sir.
Q. 2. Do you object to the S/Sgt. taking down the evidence in shorthand?
A. 2. No, sir.

3. The President, Members and Shorthand Writer are duly sworn.

4. The accused answers to his number and is duly arraigned on the charges.

5. The accused pleads "NOT GUILTY" to the 1st, 2nd & 4th charges.

6. R.P. 35(3) is complied with.

7. The accused pleads " GUILTY" to the 3rd charge.

8. R.P. 30(3) is complied with and the accused answers "No."

1st Witness for the Prosecution, Lieut. W.J.C. Stikeman, HQ 5 Cdn. Inf. Bde., having been duly sworn is examined:

Q. 1. Lieut. Stikeman, will you establish before the Court who you are - your name, rank and Regiment and whether or not you identify the accused ?
A. 1. W.J.C. Stikeman, Lieutenant, seconded to H.Q. 5 Cdn. Inf. Bde as Motor Contact Officer. I recognize the accused as Pte. Darlington. He was the sentry whom I found early in the morning of 2 Sep 41 sleeping at his sentry post at the main gate of the Royal Pavilion, Aldershot.
Q. 2. Will you tell the Court what you know about the condition of the accused, which would lead him to be unfit for duty due to previous indulgence in alcoholic stimulants ?
A. 2. On returning from a Brigade scheme at approximately 0150 hrs 3 Sep 41 I entered the gate of the Royal Pavilion and was not challenged by a sentry. I instructed my driver to stop while I went to look for the sentry. I found Pte Darlington, who was acting as sentry, lying down with his head in the front of the sentry box and his feet sticking out. He was fast asleep. Summoning the driver and a signaller who was with me, he was in fact a D.H. we attempted to wake the man up. Finally he woke up after a great deal of shoving and pushing. On sitting up it was revealed that he was improperly dressed, having his penis exposed, and a pool of liquid ....

(Objection by Defending Officer that this evidence is not relevant to the charge. Sustained.)

Witness continues:

When Darlington was finally awake I asked him what he was

doing. He said he had had too much to drink. He informed me of that before three witnesses. That is all.

Q. 3. At that time, was the accused fit or unfit to carry out his duties as a sentry ?

A. 3. He was unfit to carry out the duties of a sentry, in my opinion.

CROSS-EXAMINED BY DEFENDING OFFICER.

Q. 4. You stated in your evidence that the accused said he had had too much to drink. Did he specify what sort of drink ,

A. 4. No, he did not specify or classify the type of drink.

Q. 5. You stated the accused was unfit to carry out his duties ?

A. 5. Yes.

Q. 6. You gave no reason ?

A. 6. His admission that he had had too much to drink,he may be described as suffering from previous alcoholic indulgence and the fact that he was completely at a loss and did not know what was going on. He was improperly dressed, as will come out in another charge, and I considered it my duty as an Officer to place him under arrest, as he was on sentry duty at such an important position, and turn over his duties to another man.

Q. 7. In point of fact, this list of contributing factors might not have arisen from indulgence in alcohol, but might have been the result of a fatigued, tired state of mind. He was asleep and was wakened up in most embarrassing circumstances ?

A. 7. In my opinion, again I feel the circumstances in which he was aroused were caused by indulgence in alcohol.

QUESTIONED BY THE COURT

Q. 8. I would like to know, if you discovered this sentry in this condition, did you just waken him and leave him on duty or did you remove him ?

A. 8. Removed him and placed him under close arrest.

Q. 9. At any time, was he known to have left his post ?

A. 9. He was not known to have left his post.

Q.10. He was posted at what time ?

A.10. I think evidence by the Guard Commander will bring that out. I have nothing to do with the posting of personnel.

2nd Witness for the Prosecution, M11156, Cpl.BOYCHUCK, S.M., H.Q. 5 Cdn.Inf. Bde, having been duly sworn, is examined:

Q. 11. On the night of 2/3 Sep 41, what were your duties at Bde HQ ?

A. 11. I was Guard Commander.

Q. 12. Did the accused, Darlington, form one of the members of the guard ?

A. 12. Yes, sir.

Q. 13. What time was that guard mounted ?

A. 13. Six o'clock at night.

Q. 14. Was he fit or unfit for duty at the time the guard was mounted ?

A. 14. He was fit for duty.

Q. 15. What tours of duty had been assigned Darlington during that evening ?

A. 15. Six to eight and twelve to two in the morning.

Q. 16. At twelve midnight, was Darlington personally posted on his beat as a sentry ?

A. 16. Yes, sir.

Q. 17. Between midnight and two in the morning, what knowledge have you as to the incident which took place involving Darlington ?

A. 17. I posted him at midnight. He was to my knowledge properly dressed and fit for duty. He took up his post in front of the Royal Pavilion. About ten minutes to two I saw Mr. Stikeman. I came out and I asked him what was wrong. I went with him to the gate. I seen Darlington standing there and asked what was wrong. Mr. Stikeman said that Darlington

admitted himself that he was under the influence of alcohol, was asleep on his post and was improperly dressed, and told me to put him in close arrest.

Q. 18. What did Darlington say ?
A. 18. He didn't say anything.
Q. 19. What were his reactions ?
A. 19. None.
Q. 20. What action did you take ?
A. 20. I carried out my orders. I put Darlington in close arrest and put him in the guard room.
Q. 21. Did you change sentries ?
A. 21. Yes, sir.
Q. 22. What did you notice about Darlington's condition ? You say you put him in close arrest and put him in the guard room ?
A. 22. He seemed a bit dazed. He seemed as if he had just come out of a heavy sleep.
Q. 23. Did you notice anything that would indicate to you that he had been drinking ?
A. 23. I smelled liquor on his breath.
Q. 24. Was it a light smell or a heavy smell ?
A. 24. Just a smell, that is all.
Q. 25. Did he walk straight ?
A. 25. He walked straight as far as I know, because I was walking beside him.
Q. 26. From what you saw, what was his speech like ?
A. 26. He had nothing to say.
Q. 27. He did not talk much ?
A. 27. No.
Q. 28. He talked normally ?
A. 28. Yes.
Q. 29. From his speeach you could not tell just whether or not he had been imbibing ?
A. 29. No, sir.

CROSS-EXAMINED BY DEFENDING OFFICER.

Q. 30. You stated that you smelled faint traces of liquor on the breath of the accused at about two in the morning ?
A. 30. Yes, sir.
Q. 31. Have you any idea how long ago that liquor might have been consumed ?
A. 31. No, sir.
Q. 32. But it was definitely faint ?
A. 32. Yes, sir.
Q. 33. From your knowledge of the accused - you are in the same platoon, I believe - would you say he was very prone to sleeping at odd hours of the day ?
A. 33. Yes. Yes, he is.
Q. 34. Very often when he comes in off duty he goes to sleep automatically ?
A. 34. Yes, he lays down most of the time when he is off duty.

QUESTIONED BY THE COURT

Q. 35. When you posted Darlington on duty at 2400 hrs, during the next hour and a half did you see him at all ?
A. 35. No, sir.
Q. 36. You have already said he was fit for duty at 1800 hrs - was he fit for duty at 2400 hrs ?
A. 36. Yes, sir, perfectly fit.

The provisions of R.P. 40 having been complied with, the accused elected to give evidence under oath:

1st Witness for the Defence, D61230 Pte. DARLINGTON, F., H.Q. 5 Cdn. Inf. Bde., having been duly sworn, is examined:

Q. 37. Will you tell the Court what you did or did not drink on the evening of 2 Sep 41 ?

A. 37. I came off guard at 8 o'clock - I was on the 6 to 8 shift - and, I don't know just exactly the time, but somewhere between 8 and 10 I had a cup of tea and did have one small drink which I did not entirely drink. The way it happened was there were four chaps going by the gate house and these four came by. They seemed pretty merry and were French chaps, talking French. They stopped and asked if I would have a drink. I said "No" , I was sorry, I was on guard and they said come on a little won't hurt. I will admit I took a mouthful of wine, but instead of drinking it, I spit it out. It was not wine; it had something hot in it like alcohol or something. As far as drinking it goes I just had a taste and I felt it hot in my throat and spit it out. That is all the drink I had.

Q. 38. How much would you say you swallowed ?

A. 38. Not more than a teaspoon. I could feel it hot in my throat.

Q. 39. When you were wakened up - you heard the evidence that you said you must have had too much to drink ?

A. 39. Yes, sir.

Q. 40. Tell the Court what you meant ?

A. 40. I have had a lot of trouble with urinating, and I do often urinate in bed, and always on my relief. It is very embarrassing. I thought at that time that I was being awakened and it had happened and I was going to Company office. At first I thought I was wetting the bed.

Q. 41. When you said you must have had too much to drink, did you refer to liquor ?

A. 41. No, sir. I did not drink my tea at supper for that reason.

Q. 42. Did you drink tea that night ?

A. 42. Yes, sir. I was thinking of being on guard and not going to sleep.

Q. 43. Are you or are you not in the habit of sleeping a great deal ?

A. 43. Yes, sir. I do not get a normal night's sleep at any time. I am up on the average of every hour and if I sleep longer, I am wet. Naturally my time off duty I lie down and I never get an average night's sleep.

CROSS-EXAMINED BY THE PROSECUTOR.

Q. 44. To what do you attribute this condition that you refer to - that keeps you awake ?

A. 44. I urinate and I imagine it is my mattress.

Q. 45. Have you reported during the last two months on morning sick parade, to the doctor ?

A. 45. Yes, sir.

Q. 46. Approximately when ?

A. 46. Not for quite some time, for the reason that I have other things wrong with me and I am afraid of being boarded.

Q. 47. No having reported on sick parade, your Defence Platoon commander would not be aware of your condition ?

A. 47. He would be aware, but I have not reported at 5th Brigade , but at the Black Watch where I used to be they know I am that way so far as urinating is concerned.

Q. 48. With reference to the drinks that you had had - you said a cup of tea and this small drink of wine with which something was mixed ?
A. 48. Yes, sir.
Q. 49. You say you only had one mouthful ?
A. 49. Yes, sir. I spit it after the first taste.
Q. 50. What time was this ?
A. 50. Between 8 and 10.
Q. 51. You had nothing to drink, then, after you sent on guard at midnight ?
A. 51. No, sir. There is no way of getting it.
Q. 52. Can you tell the Court why your fly was open and your penis exposed ?
A. 52. I have/previous occasions like that, in the afternoon and I wake up and my fly is open like that. I think it is all my nerves. I am always thinking of urinating. That is always passing through my mind.
Q. 53. Do you normally close up your fly when you find it open ?
A. 53. Yes, sir.
Q. 54. Did you on this occasion ?
A. 54. I woke up and I was on my side. I walked up to the guard room. I cannot say whether I did or not.

2nd Witness for the Defence, M11556 Pte. JAQUISH, C.E., H.Q. 5 Cdn. Inf. Bde., having been duly sworn, is examined:

Q. 55. Do you know Pte. Darlington ?
A. 55. Yes, sir.
Q. 56. Do you see him in the Court Room ?
A. 56. Yes, sir.
Q. 57. Did you see Darlington on the night of 2/3 Sep 41 ?
A. 57. Yes, sir, shortly before I went on my trick. Shortly before twelve.
Q. 58. What was his condition ?
A. 58. He seemed quite sober to me.
Q. 59. Did you see him again later in the evening ?
A. 59. Yes, sir. At two in the morning when I relieved him.
Q. 60. What condition was he in then ?
A. 60. He seemed sober.

QUESTIONED BY THE COURT.

Q. 61. You say you relieved Darlington ?
A. 61. Yes, sir.
Q. 62. At 0200 hrs. When Darlington was taken off you relieved him, or was that normal ? Were you specially put on to relieve him ?
A. 62. It was normal. I was due at 2 o'clock.
Q. 63. Were you paraded out by the guard commander or the corporal of the guard ?
A. 63. Not by the corporal, it was in the guard room I saw Darlington.
Q. 64. You did not actually relieve himat his post ?
A. 64. No, sir, I did not take over his post.
Q. 65. Whereabouts did you see Darlington ?
A. 65. In the Guard Room.
Q. 66. After he was taken off his post ?
A. 66. Yes, sir.
Q. 67. He was taken off, but not properly relieved ?
A. 67. Yes, sir.
Q. 68. About two o'clock ?
A. 68. Yes, sir.
Q. 69. You went out by yourself ?
A. 69. Yes, sir. I spoke to Mr. Stikeman.

3rd Witness for the Defence, Capt. E.H. Anderson, RCAMC, attached to R.H.G., having been duly sworn, is examined:

Q. 70. Capt. Anderson, do you know Darlington ?
A. 70. Yes, I do.
Q. 71. Do you see him in Court ?
A. 71. Yes, that is Darlington (pointing to accused).
Q. 72. From the medical viewpoint, what dealings have you had with him ?
A. 72. I have seen him on several occasions for several different complaints.
Q. 73. Could you enlighten us as to these complaints ?
A. 73. The first time I had occasion to see him according to the records was the early part of last Spring, when he came on morning sick parade complaining of difficulty with his kidneys and bladder and passing urine frquently at night. The second occasion was on 14 Apr when he came complaining of very painful feet and inability to stand route marches and guards. He was referred to a specialist at Bramshott and was kept in the hospital on that occasion for four days. The third time he was referred to the A.D.S. at Polgate on 29 Jul. He had been in at that time with complications from varicose veins. Those are the only three occasions that I have had any dealings with him.
Q. 74. In connection with the complaint of bladder and kidneys, was any further action taken on that by you ?
A. 74. No. We had his urine tested and nothing abnormal was found on the first occasion. Since he has been here in detention we have examined his urine again and there are traces of some abnormalities there.
Q. 75. Could this abnormality, this condition of abnormality you have discovered occasion an irresistable urge to pass water ?
A. 75. Yes.
Q. 76. Could the condition of his feet and legs, which you mentioned earlier, on occasion lead to the irresistable desire to sit down ?
A. 76. Yes, it could.
Q. 77. If the accused has to get up as a result of this bladder trouble several times during the course of a night to pass water, would that lead to a chronic state of fatigue and drowsiness ?
A. 77. If repeated night after night, yes.

CROSS-EXAMINED BY THE PROSECUTOR

Q. 78. You stated that last Spring, Darlington spoke to you in your medical capacity in respect to this condition that causes him to pass water frequently. You also state that since he was placed in custody, you have examined him ?
A. 78. Yes.
Q. 79. This man is alleged to have been found asleep on his post to which he was posted at midnight on 2 Sep 41; he was found asleep between 0100 hrs and 0200 hrs on that particular tour of duty. Are you in a position to state from your knowledge of him whether or not his sleeping at that particular time was something he could not be held responsible for ?
A. 79. No, I cannot state definitely that it was something that he was not responsible for.
Q. 80. Is there a reasonable doubt as to whether or not he was responsible for sleeping ?
A. 80. Yes, there is.
Q. 81. The accused is found at 0150 hrs with his fly open and his penis exposed. Could the Court find the accused responsible for that improper dress, on medical grounds ? Was the accused responsible for having his fly open and penis exposed in his condition ?
A. 81. I cannot answer that question.
Q. 82. Neither way - that he was responsible or was not ? Is there a reasonable doubt that he was responsible ?

A. 82. Yes, there is.
Q. 83. That doubt is not based on sufficient knowledge of this man's physical condition, or is it based on adequate medical knowledge of his condition ?
A. 83. The whole situation is that there are very few conclusive, definite statements that could be made medically.
Q. 84. The Court is asking your assistance. If the man is not responsible for being not fit for duty, then the Court cannot find him guilty of these charges. Is there a doubt, from your knowledge of his physical condition, whether it was through any fault of his own that he was unfit to perform his duties as a sentry ?
A. 84. There is a reasonable doubt.
Q. 85. To be asleep at that hour, at his post ?
A. 85. Yes.
Q. 86. You have adequate knowledge of the accused's medical condition to make that statement ? The doubt is not based on the fact that you have not had adequate time to diagnose his condition ?
A. 86. I have only seen him once last Spring and once since he has been in detention here. Examination of his in the first instance revealed nothing abnormal and it was diagnosed as hysterical bladder. The second time definite abnormalities were found in his urine which could be responsible for an uncontrollable desire to pass urine at that particular time and place.
Q. 87. He was not recommended to be boarded out ?
A. 87. In the English army he would have been boarded.
Q. 88. He was well enough to perform his duties ?
A. 88. In the Canadian Army, yes.
Q. 89. How do the standards differ ?
A. 89. It is a long story.
Q. 90. In what way was he fit on that night ?
A. 90. As far as the bladder is concerned, I put it this way. He has a case of hysterical bladder. Assuming that, it is featured by urgency, frequency of urination. It is an awkward situation. Things come and go depending on the situation and imagination; it is a psychological state of mind. They are boarded out in the English army but not in the Canadian Army.
Q. 91. What day did you see the accused, after he was placed in close arrest ?
A. 91. The 4th of this month. The day following the incident.
Q. 92. Are you not in a position to state whether or not he was in a state of fatigue which would make sleep irresistable on the morning of 3 Sep ?
A. 92. I cannot say that.
Q. 93. He may not have been responsible for going to sleep ?
A. 93. I think it is a normal conclusion that he was ~~max~~ in a state of fatigue as he had not been getting sufficient sleep.

QUESTIONED BY THE COURT.

Q. 94. In this condition, would he have to urinate every hour or how often ? Could he go two hours ?
A. 94. Four or five times during the night - that is what he told me; that was his original complaint. I think there are witnesses who can say he does get up frequently.
Q. 95. If he was asleep, could it automatically come on without his know ledge ?
A. 95. Yes, it could very well.

4th Witness for the Defence, E4523 Pte. GREIG, J.D., H.Q. 5 Cdn. Inf. Bde., having been duly sworn, is examined:

THE COURT IS CLOSED FOR DISCUSSION AT 1130 hrs 5 Sep 41.

THE COURT IS RE-OPENED AT 1140 hrs 5 Sep 41.

Q. 96. Do you recognize the accused ?
A. 96. Yes, sir.
Q. 97. What is his name ?
A. 97. Pte. Darlington.
Q. 98. Did you see the accused on the night of 2/3 Sep 41 ?
A. 98. Yes, sir.
Q. 99. Did you see him the next morning ?
A. 99. No, sir.
Q.100. Do you sleep anywhere near the accused ?
A. 100. Right beside him, sir.
Q. 101. Did you notice anything in particular on that morning in your room ?
A. 101. I moved the accused's mattress to Q.M. Stores, and found the mattress was all wet.
Q. 102. What caused that ?
A. 102. He had bladder trouble.
Q. 103. The mattress was wet, due to what ?
A. 103. It was his urine.

QUESTIONED BY THE COURT.

Q. 104. Definitely, do you know how long ago that had happened ?
A. 104. It must have been some time ago. The mattress was getting mouldy.
Q. 105. Have you or have you not seen the accused sleeping at odd hours of the day ?
A. 105. Yes, I have, frequently.

5th Witness for the Defence, D81566 Pte. DICKSON, H.E., H.Q. 5 Cdn. Inf. Bde., having been duly sworn, is examined:

Q. 106. Have you noticed at any time, anything abnormal about the accused habits at night ?
A. 106. I have seen that his bed is wet often in the mornings.
Q. 107. Have you noticed anything about his sleeping habits in the day time ?
A. 107. In the day time he takes to his bed.

CROSS-EXAMINED BY THE PROSECUTOR.

Q. 108. Have you seen Darlington get up at night to relieve himself ?
A. 108. Yes.
Q. 109. Frequently ?
A. 109. On various occasions when I have been up myself.

6th Witness for the Defence, M55276 Pte. VOORTHUISEN, W., H.Q. 5 Cdn. Inf. Bde., having been duly sworn, is examined:

Q. 110. Have you at any time heard the accused complain of bladder trouble ?
A. 110. Yes, sir, I have.
Q. 111. Have you ever seen anything that would bear out his complaints ?
A. 111. Yes, sir. I slept alongside of him, and he urinated in his blankets at night and did not happen to wake up.
Q. 112. Has the accused ever complained to you about his legs ?
A. 112. Yes, he has.
Q. 113. Have you ever seen anything that would tend to bear out this complaint ?
A. 113. Yes. When we were stationed at Albuhera Barracks in Aldershot, and we were on sentry at H.Q., and Darlington had to sit down during the guard.

Q. 114. Have you seen him sleeping during the day time ?
A. 114. Yes. It is quite a comman thing to have to waken him to go on duties.

THE PROSECUTOR.

This procedure may be irregular, but I believe the evidence before the Court covers all three charges as laid, and with the consent of the Defending Officer I would like to move that the evidence before the Court be made to apply on those three charges.

THE DEFENDING OFFICER.

That leaves out charge No. 3 ?

THE PROSECUTOR

Yes.

THE DEFENDING OFFICER

I do not wish to make any address. I think the evidence you have heard is quite conclusive.

THE COURT CLOSES FOR FINDING AT 1200 hrs.

THE COURT RE-OPENS AT 1330 hrs.

On the THIRD CHARGE the Court admits the Summary of Evidence as read. M.F.M.6 and A.F.B. 269 are read by PROSECUTOR and admitted by DEFENCE as correct and relating to the Accused.

THE DEFENDING OFFICER

The accused has pleaded guilty to what is in Military Law a serious offence. He has pleaded guilty to it and you have heard evidence as to the definitely extenuating circumstances. Various functional abnormalities cause him at time to be subject to an almost irresistable desire to sit down - such as varicose veins and a very severe case of bunions. The result of his urinary trouble is to keep him up half the night, resulting in almost chronic fatigue. This, combined with his having to sit down caused him to go to sleep. The fact has been brought out that the accused did not report on sick parade, at any rate not recently, with all these troubles. He has given as his reason that he did not want to be boarded out of the army. I feel that the situation is quite clear to the Court. He realized the difficulties he was under and what must have been a very hard situation for any man to have to live with other men who knew about his unfortunate condition. His Conduct Sheet - M.F.M. 6 - which has just been read out is perhaps not of the best. On the other hand consider the difficulty under which the accused has been labouring during the time he has been in the army. I personally consider it amazing that in view of the facts, his conduct sheet is not worse. Finally I think that the man, although he himself has not reported on sick parade, the fact of his trouble appeared to have been common knowledge with the men with whom he worked. As such, he should have been forced to parade sick. I think quite definitely that his immediate superiors have slipped up. The man should never have been placed in a position to commit this crime. From medical evidence he appears to have been incapable of remaining on sentry over two hours without breaking off to go to the latrine. I should like you to consider these points when finding, and consider whether or not a rider should be added for a medical examination with a view to re-boarding and change of category.

THE COURT CLOSES FOR CONSIDERATION AT 1410 hrs 5 Sep 41.

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING PAGES OF WRITTEN MATERIAL, NUMBERED 1 to 10 INCLUSIVE ARE A TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS HELD AT THE PLACE AND TIME HEREINBEFORE WRITTEN.

D.A. Shenstone 8/29.

(D.A. Shenstone) S/Sgt.
RHLI

Abstract of Evidence
in the case of

D-81230, Pte. Darlington, F.
H.Q. 5 Cdn Inf Bde Def and Employment Pl.

33

FIRST WITNESS: Lieut. W.J.C.Stikeman, H.Q. 5 Cdn Inf Bde,
Having been duly sworn, states;

I am an M.C.O. seconded to H.Q. 5 Cdn Inf Bde.
Upon returning to the Royal Pavillion from a Brigade Scheme at 0150 hrs 3 Sep 41, the signal truck in which I was riding passed unchallenged through the Main Gate. On looking for the sentry, who should have challenged me, I perceived the accused recumbent in his Sentry Box, on the WEST of the Main Gate. I instructed my driver to stop, I got out of the car and found the accused to be asleep. After some minutes I succeeded in awakening him with the help of Sign'n Bray, D'Estaire and Sign'n D.R.Meval all of whom were with me.

The accused appeared dazed and I asked him what he was doing. He said that he had been drinking. I then noticed that his clothes were untidy, his fly was open, his penis was hanging out and there was urine on the floor of the Sentry Box and on the ground about it. I left him in charge of Sign'ns Bray, D'Estaire and Meval and went to summons the Guard Commander, who was Cpl Boyshuk. Cpl. Boyshuk posted a fresh sentry and I placed the accused under close arrest.

I identify the accused as D-81230 Pte. DARLINGTON. F.

(sgd) (W.J.C.Stikeman) Lieut.
M.C.O. 5 Cdn Inf Bde.

Certified true copy of the original.

(W.J.C.Stikeman) Lieut.
M.C.O. 5 Cdn Inf Bde.

SECOND WITNESS: M-11156, Cpl. Boyshuk, S.M.
H.Q. 5 Cdn Inf Bde Def and Empl. Pl. having been duly sworn states;
I am Cpl S.M.Boyshuk, M-11156 a Cpl in the Def Pl of 5 Bde H.Q.
On Sep 2nd I was Guard Comd with Pte Darlington on my guard. Pte Darlington took the first shift from 1800 hrs to 2000 hrs. His next shift was from 0400 to 0800 hrs when I took Pte Darlington out on post at 2400 hrs he was perfectly sober and properly dressed. At approximately ten minutes to two, Lieut W.J.C.Stikeman notified me that my guard on post admitted being under the influence of liquor and sleeping while on post. I posted a new sentry and carried out the orders given by Lieut Stikeman, which were to place the accused in confinement as he was under close arrest.

I recognize the accused as being D-81230 Pte. DARLINGTON F.

(sgd) Cpl. S.M.Boyshuk.
M-11156.
5 Bde H.Q. Def Pl.

Certified true copy of original.

(W.J.C.Stikeman) Lieut.
M.C.O. 5 Cdn Inf Bde.

THIRD WITNESS: B-31201 Sigm'n Bray. J.F.
K. sec Sigs 2 Cdn Div, having been duly sworn states:
I am B-31201 Sigm'n J.F.Bray of K.sec, Sigs 2 Cdn Div, attached to H.Q. 5 Cdn Inf Bde.

While returning from a scheme at approximately 0150 hrs, 3 Sep 41 I was driving my vehicle through the Main Gate of Royal Pavilion Aldershot with Lieut W.J.C.Stikeman who was setting in the front.

We noticed that we were not challenged by the sentry. Lieut. Stikeman ordered me to stop the car while he investigated. He then got out and went over to the Sentry Box and ordered Sigm'n D'Estaire and myself to come over and assist him.

Upon arriving at the Sentry Box I saw the Sentry lying on the ground, his head and shoulders in the Sentry Box asleep. Being awakened he stood up and I noticed he was improperly dressed, in that his fly was open and his penis was hanging out. It appeared that he had urinated on the floor of his Sentry Box and just outside of it.

Lieut. Stikeman asked him what he had to say for himself and the accused replied that he had had too much to drink.

Lieut. Stikeman summoned the Guard Comd and ordered the accused to be placed inconfinement and be replaced by another sentry.

I identify Pte. DARLINGTON as being the man placed under close arrest last night.

sgd) John F.Bray.
Sigm'n B-31201.
No.3 Coy. Sigs 2 Cdn Div.

Certified true copy of the original.

(W.J.C.Ayres) Lieut.
M.C.O. 5 Cdn Inf Bde.

FOURTH WITNESS: B-31269-Sigm'n D'Esterre. N.R. K.Sec, Sigs 2 Cdn Div., having been duly sworn states:

I am B-31269 Sigm'n N.R.D'Esterre, of No.3. Coy K Sec R.C.C.S.

Upon arriving back from a brigade scheme Sep 3 at about 0148 hrs I was riding in back of vehicle.

Lieut. Stikeman asked for assistance and on jumping out I found the guard sleeping in his box. When he got up, I saw that he was improperly dressed. His penis was dangling out and there appeared to be urine on the floor of the box and ground outside. The accused admitted having had too much to drink.

The Cpl of the Guard arrived and posted a new guard. Lieut. Stikeman placed the accused under close arrest and turned him over to the Guard Commander.

I recognize the accused as being D-81230 Pte. DARLINGTON. F.

(sgd) N.R.d'Esterre.
B-31269. 'K' section
#3 Coy 2 Cdn Div Signals

Certified true copy of original.

(W.J.C.Ayres) Lieut.
M.C.O. 5 Cdn Inf Bde.

WITH
WITNESS: B-31068. Sign'n Meval. E.J. K.Section. Sigs 2 Cdn Div. having been duly sworn states:-

I am B-31068. Sign'n E.J.Meval of K.Sec. No.3 Coy R.C.C.S.

On returning from a scheme, Sep 3 at approximately 0150 hrs on entering the gates of the Royal Pavilion, we were unchallenged by the guard.

Lieut. Stikeman ordered the driver of the car to halt and he proceeded to investigate why we had not been challenged. He walked towards the guard box and on his arrival they called for my assistance, when I arrived there, there was a man lying half in the guard box and half out. ~~xxxxxxxxxxx~~ We woke him up and he openly admitted that he had been drinking. He was improperly dressed and his fly was open, his penis was hanging out and from moisture on the ground it appeared to me that he had urinated in and in front of his guard box.

Lieut Stikeman went to the Guard Room and came back with the Cpl in charge of the Guard, had the man replaced and told the Guard Comd to place the accused in confinement.

I recognize the accused as being D-81230 Pte DARLINGTON F.

sgd) B-31068. E.Meval.
K Sec 3 Coy 2 Cdn Div RCCS.

Certified true copy of original.

(F.W.Myers) Lieut.
M.C.O. 5 Cdn Inf Bde.

Lieut. Stikeman questioned by Pte. Darlington.

Q.In your statement did you say that I was drunk.?.

A.No. In my statement I asked the accused what he had been doing. He said that he had been drinking.

The accused declined to question any other witness.

Certified that R.P.O.4(E) has been complied with.

sgd. (J.S.Halford) Capt.
S.C. 5 Cdn Inf Bde.

Certified true copy of original.

(F.W.Myers) Lieut.
M.C.O. 5 Cdn Inf Bde.

"Substitute for original lost 7 March 41
J. Cdi. held 25 Mar 41

CERTIFIED TRUE COPY [signature]

No D/81230 Name Darlington, F. Sub-Section or Company 1st Bn The Black Watch (RHR) of Can. C.A.S.F. Corps "A" Date of enlistment 9/9/39 Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. X1 | Signature O.C. Company, etc. Mai Cantlie | Character

M.F.M. 6 (A.F.B. 122) 500M—8-39 (1763) H.Q. 1760-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Montreal	23-9 39	Pte.	(1)	Drunkenness Sec 19 AA		Admonished	24 Sep 39		
~~Montreal~~	~~3-10 39~~	~~Pte.~~		~~A.W.L. from 0830 hrs 2 Oct 39 to 1300 hrs 3 Oct 39.~~ Sect 15 A.A. (1)		~~2 Dys G.B.~~	~~3 Oct 39~~		
~~Montreal~~	~~5-10 39~~	~~Pte.~~		~~A.W.L. from 2300 hrs 5 Oct 39 to 1200 hrs 6 Oct 39.~~		~~2 Dys G.B.~~	~~7 Oct 39~~		Forfeits 1dya Pay for absence
Montreal	16-11 39	Pte.	(2)	Drunkenness Sec. 19 A A		Fined $5.00.	17 Nov 39		

(P.T.O.)

Place	Date of offence	Rank	Name of offender	OFFENCE	Names of witnesses	Punishment awarded	Date of award or order dispensing with trial	By whom awarded	Remarks
ntreal	17-11-39	Pte.		Neglected to obey standing orders. Sec 11 A.A		4 dys C.B.	17 Nov 39		
ntreal	18-11-39	Pte.		A.W.L. from 0830 hrs 16 Nov 39 1300 hrs 16 Nov 39 Sec 15 A.A.(1) (2) When a defaulter, in that he, on route to Longueuil at 0830 hrs after being warned by the Bn, Orderly Sjt. to proceed thereto on fatigue did jump off the truck at St. Denis and Sherbrooke St. and reported back to Hqs. at 1315 hrs thereby neglecting to perform his duties Sec 15 A.A. (1)		3 Dys C.B. 2 dys C.B.	25 Nov 39		Forfeits 5 dys R&I for absence

rtified True Copy [signature] 1st Bn Black Watch(RHC) of Canada C.A.S.F.

Substituted for original lost 1 Nov 41
at of engaging held 25 Nov 41

No. D/81230 Name Darlington, F. Sqn, Battery or Company "A" Corps Date of enlistment 9/9/39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 18-11-39 No. and date of last drunk 16 Nov 39 Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Maj Cantlie Character

M F M 6 (A F B 122) (MDM-6-39 (1703) H.Q. 1773-45-18)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	16-1 40	Pte.		W.O.A.S. A.W.L. from 0345 hrs 16 Jan 40 to 1810 hrs 16 Jan 40		5 Dys C.B.	17 Jan 40		Forfeits 1 dys absenc
Toronto	26-2 40	Pte.		W.O.A.S. AWL from 2200 hrs 26 Feb 40 to 2300 hrs 26 Feb 40 Sec 15 A.A.(1)		Admonished	27 Feb 40		
Toronto	1-3 40	Pte.		W.O.A.S. AWL from 07 0 hrs 1 Mar 40 to 1430 hrs 1 Mar 40 Sec 15 A.A.(1)		7 Dys C.B.	4 Mar 40		Forfeits 1 dyw pay for abs.

(P.T.O.)

Place	Date of offence	Rank	Order of enrolment	Offence	Names of witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto	16-5 / 40	Pte.	(3)	Drunkenness Sec 19 A.A.		Fined $10.00			
				(2) AWl from 0830 hrs to 0035 hrs 17 May 40Sec 15 A.A.		5dys C.B.	18 May 40		Forfeits 1 dys pay for absence
Toronto	17-5 / 40	Pte.		W.O.A.S.While a Defaulter AWL from 1400 hrs 17 may to 0405 hrs 25 May 40 Sec 15 A.A.(1)		168 hrs Det.	26 May 40		Total Forfiture 17 dys pay
Newfoundland	30-6 / 40	Pte.		1. W.O.A.S. AWL from 1400 hrs to 1910 hrs 2. Absent from post 3. Evading arrest		7dys F.P.			Forfeits 10 dys p
Newfoundland	8-8 / 40	Pte.	(4)	Drunkenness Sec 19 A.A.		Fined $5.00	9Aug 40		

"Substitute for original lost 7 Mar 41 Ct. Inquiry held 25 Mar 41"

1st Bn The Black Watch (RHR) of Canada C.A.S.F.

Certified True Copy [signature]

No. D/81830 Name Darlington, F. Corps Battery or Company "A" Date of enlistment 9/9/39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 8 Aug 40 No. and date of last drunk 4 8 Aug 40 Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Maj Cantlie Character

M.F.M. 6 (A.F.B. 122) SBDM-8-39 (1701) H.Q. 1772-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot Eng.	17-9-40	Pte.		W.O.A.S.AWL from 2 00hrs 17Sep 40 to 2245hrs 17 Sep 40 Sec 15 A.A.		7 dys C.B.	20 Sep 40		
				2. Conduct to the prejudice of good order and military discipline in that he, gave a false statement to his name and coy. Sec 40 A - A					
Aldershot Eng.	15-10-40	Pte.		W.O.A.S.AWL FROM 2359 hrs 15 Oct 40 to 0600 hrs 16 Oct 40 2. AWL from 0800 hrs 16 Oct 40 to 1045 hrs 22 Oct 40 Sec 15 A:A:(1)		14 dys Det			Total For. 22dys Pay

(P.T.O.)

Certified True Copy [signature]

No. D/81230 Name Darlington, F. Corps 1st Bn The Black Watch (RHR) of Canada

Date of enlistment 9/9/39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 15-10 No. and date of last drunk 4 8/8/40 Period not reckoning towards freedom from extra fine

Sheet No. 3 Signature O.C. Company, etc. Maj. Cantlie Character

M.F.M. 6 (A.F.B. 122) 100M—4-39 (1705) H.Q. 1772-45-18

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot Eng.	30-12-40	Pte.		W.O.A.S. AWL from 2359 hrs 30 Dec 40 to 1140 hrs 3 Jan 41 In close arrest from 1140 hrs 3 Jan 41 to 0800 hrs 4 Jan 41 Sec 15 A.A.(1)	D/81506 C.Q.M. Murray, R. D/81464 [illegible] Hersen, R.	10 dys Det.	6-1-41	I.L. Ibbetsen Maj.	For 4 dys [illegible] for Abs [illegible] 149(1) [illegible] 1 Dy Det. 149(1)C 10 Dys pay 149 (1) C Total 15 dys pay
Aldershot Eng.	15-2-41	Pte.		W.O.A.S. failing to appear at place of parade appointed by his C.O., in that he was not present at the guard house when he was required to take over post (guard) Sec 15 A.A. (2)	D/81070 Sjt. Neill E.J. C.O.S.	7 Dys C.B.	18-2-41	Maj Cantlie	

(P.T.O.)

Place	Date of offence	Rank	Class of Offence	Offence	Names of Witnesses	Punishment awarded	Date of sentence of order dispensing with trial	By whom awarded	Remarks
Upper Diper	31-7-41	Pte.		W.O.A.S. AWL from 59 31-7-41 until approx. 1930 hrs on 1-8-41	Cpl Turrel L/C Andrews	C.M.P			
						27 dys F.P. 27 Dys pay	6-8-41	Major D.F. Spankie B.M. 5 Cdn Inf Bde.	
Aldershot Hants	3-9-41	Pte.		W.O.A.S. When a soldier acting as a sentinel on Active Service sleeping on his Post. In that he at the Royal Pavilion, Aldershot 3 Sep 41 between 0100 hrs and 0200 hrs when posted as a sentry on the main Gate Post was asleep. A.A. Sec 6(2)E. (Under close arrest from 0200 hrs 3/3/41 until 0900 hrs 6-3-41)	Lt. W.J.C. Stikeman M11156 Cpl. Boychuk, SM B31201 Sgmn Bray, JF B31269 Sgmn D'Esterre, NR B31068 Sgmn Meval, E.J.	120 Days Detention	6/9/41	F.G.C.M.	Forfiets 4 dys P[illegible] for close arrest F.R. & I 149(1)[illegible] Forfiets 120 [illegible] pay for detention F.R. & I 149([illegible] Total 142 days

A.F.B. 296.

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STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No. D 81230 Name, Pte Darlington Unit, H.Q. 5 Cdn Inf Bde.

Age 37 Yrs. Widower No of dependents None

Date of Attestation 5 Sept 1939

No. of days spent in close arrest (to date of trail)

Civil None Military 4 days Hospital None Total 4 days

DATES OF PROMOTIOS, APPOINTMENTS AND CONFIRM TION OF RANK, IF ANY

NONE

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

Dated at Aldershot, Hants, England.

this 6th.day of Sep 1941

(To be dated and signed as of date of trail

5D-134.

The. Darrack, C.C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused A82234 Pte Colin Campbell DARRACK HLI of C - 13 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Mc ~~At present under sentence for ... beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 65 days, of which nil days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo one years detention

(Sgd) ... Judge-Advocate, if any. 13 Mar 45 Date awarded. (Sgd) " G G MacKenzie " Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 167-177. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 15 Mar 45 (Sgd) " G G N Gostling " (G G N Gostling) Brig Commanding 2 C.B.R.G. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A82234 Pte Colin Campbell DARRACK	16 Mar 45	" R L Harrison " Capt Adjt 13 C.B.R.Bn.

C.R. published on 16 Mar 45
Ser 28, X-4 List HLI of C 13 CBRBn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5D-134

FIELD GENERAL COURT-MARTIAL

CPA86 (To form of AFA8) 40/P & B/1088 (40000)

ED 4/388

Convened by Order of Brigadier G G N Gostling Comd 2 CBRG dated 12 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A82234	Pte	Colin Campbell	DARRACK	HLI of C 13 CBR Bn

CERTIFIED TRUE COPY
Maj
D J A
Can. Sec. HQ 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 13 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 25/138

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) Mc ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ Mc

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ... Mc

~~The interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans ... Mc

Mc ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKenzie, MBE	FGH X-9 List 3 Cdn NETD
Member	Lieut	Y J Ouellette	CIC 10 C.B.R.B.
Member	Lieut	H E Jewett	CIC 11 C.B.R.B.
Judge-Advocate			
Prosecutor	Lieut	N H Chate	CIC 10 C.B.R.B.
Defending Offr	Lieut	R Kirk-Owen	CSR 13 C.B.R.B.

Questions by President: Is the Prosecutor a lawyer? Ans. NO. Is the Defending Offr a lawyer? Ans. NO.

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused A82234 Pte Colin Campbell DARRACK before arraignment makes(s) (no) (~~a~~) plea ... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Nil.(5)

(*1. RP 37(E). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans.....Do you intend to call witnesses on your behalf ?

Ans.....Are they witnesses as to character only ? Ans.....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. Nil.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(*1. MFB 255 or AFB 294. 2. MFM 4. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes. See Ex C.(2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its purpose, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 108, 130, 563-566, Overseas RO 309, 2223, MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see orders on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S CERTIFICATE (KR(Can)Para 5f
(CMHQ CL 173)

I certify that I have this day examined A82234

Pte DARRACK C.C. and in my opinion he is fit/unfit

to undergo trial by Court Martial.

Station Det

Date 13-3-45

" J O fueir Lelletier

Medical Officer Capt

No 13 C.F.R. Bn

Unit

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to *RP* 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 1(b)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 565(a).)

(vii) Summing up by JA, *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 507.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 562. *As to certified copies of regimental books see AA* 163 (1) (*g*) (ii).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of *CF A* 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(C), *MML p* 759.)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A82234	Pte		Colin Campbell	DARRACK	HLI of C 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed GSNG or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G G MacKenzie MBE	FGH X-9 List 3 Cdn NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	to be detailed by OC 10 CBR Bn	10 CBR Bn
Lt	to be detailed by OC 11 CBR Bn	11 CBR Bn

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 12 Mar 45

" G S N Gostling " (Signed personally. RP 105 fn 2.)

(G S N Gostling)

Commanding 2 CBRG

Brigadier (Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused A82234 Pte Colin Campbell DARRACK, (HLI of C) on strength of 46 Rft Coy 13 CBRBn., a soldier of the Canadian Army Overseas, is charged with: -

First Charge
A.A.Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 0900 hrs 28 Oct 44 until arrested at 1200 hrs 8 Jan 45 by the Military Police at ANTWERP. (Absent 72 days 3 hrs)

" V W Hugman "

(V W Hugman, E.D.) Lt-Col
Officer Commanding
13 C.B.R.Bn.
2 C.B.R.G.

In the Field
27 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

" G S N Gostling "

(G S N Gostling) Brigadier
Commander
2 Canadian Base Reinforcement Group

In the Field
12 Mar 45

E-253
1170

PLEA IN MITIGATION OF PUNISHMENT FOR
A82234 Pte Darrack C.C.

Sir:

Pte Darrack join the army July 1942 took basic training and proceeded overseas Feb 1943. On arrival overseas he was sent to the H.L.I. of C as an anti tank gunner.

While on manouvirs in England he broke his shoulder and was sent to hospital, this occured in March 1944.

After discharge from hospital Pte Darrack was sent to the R.W.R. in France arriving there June 14, he remained with them until July 4 when he was wounded and returned to England. On discharge he returned to the R.W.R. on Aug 30. After a few days action he again was sent to the hospital this time because a blast had blown his front plate out of his mouth and he had to have it replaced, returning to his unit on the 28th of Sept where he remaineded until the 8th of October when again he was sent to the hospital this time because of a broken shoulder. He was returned to No 13 Bn on the 26th of Oct.

On arrival at 13 Bn Pte Darrack was paraded to request a transfer to anti tank work, realizing that his training as an infantry line man hadn't been sufficient borne out by the number of times he had been in the field and the short time of each stay, before he was either hurt or wounded. Whereas his training as an anti tank gunner in the Infantry had been extensive. Also he was to be sent to the H.L.I. and not back to the unit he had been fighting with namely the R.W.R.

As both request to be sent back to his unit and to be made an anti tank gunner was refused, fearing that the next time he went to the front might be fatal he went A.W.L.

Pte Darrack pleas for mitigation of punishment as he is anxious to get back to his unit at the earliest possible moment.

" R Kirk-Owen "

EX B
mc

SUMMARY OF EVIDENCE in the case of A82234 Pte DARRACK, C.C. (HLI of C) 46 Rft Coy 13 C.B.R.Bn., a soldier of the Canadian Army Overseas.

Charge - Absence without leave (A.A.Sec 15(1))

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

EXHIBIT "A" - Certified true extract from CR No 28 d/20 Nov 44 and CR No 2 d/28 Jan 45.

EXHIBIT "B" - Certified true copy of the Record of the Declaration of the Court of Inquiry dated 22 Nov 44.

EXHIBIT "C" - Certification of apprehension dated 8 Jan 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RF (c)(d)(e)(f) and (g) have been complied with.

" F L Miller "

(F L Miller) Capt
Officer detailed to take
Summary of Evidence.

In the Field
27 Feb 45

Exhibit "A"
T.L. MILLER

(A-4) List HLI of C 13 CBRBn IN LIEU OF AFW3012A SER NO 28
NO SHTS

ABSENT WITHOUT LEAVE
AWL from 0900 hrs 28 Oct 44 and still absent at 0900 hrs 18 Nov 44
(21st day)

A82234 Pte DARRACK, C.C. HLI of C

46 RFT COY 13 C.B.R.Bn.

20 Nov 44 (W.H. McKelvey) Records Officer

I certify that this is a true copy of C.R.Ser No 28 d/20 Nov 44
CERTIFIED TRUE COPY " W H McKelvery " Lt
Rec Offr 46 Coy 13 C.B.R.Bn.

Exhibit "B"
T. MILLER

(X-4) List HLI of C 13 CBRBn. IN LIEU OF AFW3012A SER NO 2
NO SHTS 1 & Last

STRENGTH INCREASE.
TOS X-4 List HLI of C 13 CBRBn. on app from des wef 1200 hrs 8 Jan 45.

A82234 Pte DARRACK, C.C. HLI of C

I certify that this is a true copy of C.R. Serial No 2
dated 28 Jan 45
" W H McKelvey " Lt 46 RFT COY 13 CBRBn.

28 Jan 45 (W H McKelvey) Records Officer

Exhibit "B" Mc

T. L. MILLER

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 22 Nov day of November 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. A82234 Pte DARRACK C.C. (HLI of C) 46 Rft Coy 13 CBRBn. 2 CBRG. illegally absented himself without leave In the Field at 0900 hrs on the 28th day of October, that he is still so absent, and that on the 22 Nov 44 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
Listed on Appx "A" attached.			

J.L. CAMERON Lieut President
CH of O 13 CBRBn

H.L. FERGUSSON Lieut Member
RCA(LAA) 13 CBRBn

Signed at In the Field

F.W.DOYLE Lieut Member
this 22nd day of Nov 19 44 CH of O 13 CBRBn

Signature of Commanding Officer Lt-Col A.T. Law

Certified true copy " W H McKelvery " Lt
Records Officer 46 Coy 13 CBRB

RECORD of the Declaration of a Court of Inquiry assembled at

on the day of 19 , for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. .....

.....

illegally absented himself without leave .....

at ..... on the ..... day of ..... ,

that he is still so absent, and that on the ..... he was deficient, and

that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE

..... President

..... Member

Signed at .....

..... Member

this ..... day of ..... 19 .....

Signature of Commanding Officer .....

Mil. Bk. 67
[illegible]
H.Q. 1773-[illegible]

APPENDIX "A"

13 CANADIAN BASE REINFORCEMENT BATTATLION

2 C. B. R. GROUP.

F. L. MILLER

SCALE III KIT COMPLETE WITH VOCAB & REDUCED PRICES

	100% FULL VALUE	75% FULL VALUE
Anklets Web prs(1)	.99	.74
Blouses Battle Dress	5.25	3.94
Boots Ankle prs (2)	10.92	8.19
Beret Khaki	1.21	.91
Drawers Cellular Short, prs (2)	.86	.65
Greatcoat Drab	11.55	8.56
Jersey Pullover	1.79	1.34
Shirts Angola Drab (2)	4.04	3.05
Socks prs (4)	1.48	1.11
Trousers Battle Dress prs(1)	5.39	4.04
Braces	.28	.21
Brushes Shaving	.34	.26
Brushes Shoes Polishing	.37	.28
Brush Tooth	.28	.21
Caps Conforter	.11	.08
Combs Hair	.34	.26
Dressing Field	.04	.03
Discs Identity Set	.24	.18
Forks Table	---	---
Holdall	.07	.05
Housewife Complete	.19	.14
Knife Clasp	.17	.13
Knife Table	.86	.65
Razor Safety W/Blade	.15	.11
Spoon Desert	.06	.05
Towels, hand	.07	.05
Belts Waist	.64	.48
Bottles Water	.67	.50
Braces, W.E. Right & Left	.82	.62
Carrier Water Bottle	.60	.45
Haversack	.52	.39
Helmet Steel	1.79	1.34
Net Camouflage Helmet	2.42	1.82
Packs (1)	.15	.11
Straps shoulder Haversack Right & Left	1.84	1.38
Straps Web Supporting (2)	.64	.48
Tins Mess, T.P.	.26	.20
Capes, A/G	.35	.26
Respirators A/G Complete W/Haversack	2.76	2.07
Ointment A/G (2)	4.66	3.50
Eyeshields A/G (Pkg of 6)	.30	.23
Detectors Individual, prs (2)	.45	.34
Blanket	.24	.18
Mugs Drinking	3.07	2.30
Sheets Ground	.13	.10
Rifle #4 Mk 1	2.94	2.21
Bayonet #4 Mk 1	45.48	45.48
Bottles Oil	2.46	2.46
Pouches Basic W.E. PAT 37 MK III (2)	.06	.05
Bayonet Scabbard #4 MK I (1)	2.38	1.79
Brushes Hair	.61	.46
	$123.31	$154.43

Exhibit "C"
T.L. MILLER

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 163(1)(j)

I certify that No. A82234 Rank Pte Name DARRACK C.

of 46 Coy. HLI OF CANADA unit was arested at

ANTWERP (place) at 1200 hrs on 8th Jan 1945

(date). He was dressed in uniform/~~civilian clothes~~.

Date 8th Jan 45 Signature of Provost Marshal, APM, or other officer into whose custody the s/m person was taken on arrest.

Signature & Rank W. L. J. Walland " CMDG

Unit or appointment 244 H.Q. PROVOST COY C.MP.

NOTES

1. This certificate must be signed personally by the officer concerned.
2. In no circumstances may it be signed by one officer 'for' another or by anyone not holding commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

B.A.C.

ARMY FORM B.226 (WAR). Mc

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A82234	Pte	DARRACK C.C.	13 Bn "2." C.B.R.C.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For _____ _____ times.

For _____ _____ times.

For _____ _____ times.

For _____ _____ times.

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet _____

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ V.U.H ~~beginning on the _____ day of _____~~

4. The accused has been awaiting trial on the present charges for ——— days in civil custody; and for 65 days in military custody, *i.e.*, ——— days in open arrest, ——— days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 25 years

6. The date of his ~~attestation~~ calling up for military service is 1 July 42 V.U.H

7. The service which the accused is allowed to reckon is 2 yrs 7 mons

8. ~~The accused is in possession of~~ V.U.H

State the military decorations (if any) held by accused.

9. ~~*If the accused is a warrant officer or N.C.O.*~~ ~~The accused has served continuously without reduction~~ to the present date V.U.H

Date of Promotion.

~~In the substantive rank of~~ _____ _____

~~In the war substantive rank of~~ _____ _____

~~In the acting rank of~~ _____ _____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(20121) W14211/6799 42,000 11/44 A.G.F.W.Ltd. Gp.693 Forms/F.2 0/Wary4

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 3rd day of March 45

(V W Hugmna) Lt Col
Commanding 13 CBRB 2 CBRG

MFM 6 E+B
(AFB 122)
40/PAS/136 (3438) me

TEMPORARY SHEET

No A82234 Name DARRACK C.C. Sqn, Battery, or Company | Corps CIC | Date of enlistment 1 Mar 44 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

(PTO)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 82234 Pte Colin Campbell DARRACK HLI of C - 13 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 65 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo one years detention

(Sgd) Judge-Advocate, if any. 13/Mar/45 Date awarded. (Sgd) President. (See AA 56, 60.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 13 Mar 45 (Sgd) (C S N GOSTLING) BRIG Commanding 2 CBRG Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused. Date. Signature of Offr.

A 82234 Pte Colin Campbell, Darrack 16 Mar 45 K. Harrison Capt. Adjt. 13 C.B. R. Bn.

C.R. published on 16 MAR 45. SER. 28, 1 HLI of C 13 CBRBn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 160 5D-134

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & S/1008 (4948) 4/3BB

Convened by Order of Brigadier G S N Gostling, ED Comd 2 CBRG dated 12 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substantive rank and (b) Appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 82234	Pte		Colin Campbell	DARRACK	HLI of C 13 CBR Bn

PROCEEDINGS REVIEWED 21 Apr 45 K.G. Dick Capt. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED Date 21 Army Gp. Can. Sec. 1 D J A

PROCEEDINGS OF TRIAL.

Held at [illegible] on (date(s)) 13 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 25/138.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, (32).)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP ~~46~~ fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~Nil~~

~~The Interpreter is sworn.~~ ~~Do you object to~~ as shorthand writer? Ans ~~Nil~~ ~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE, MBE	FGH 2-9 Lst 3 Gdn MTD
Member	LIEUT.	Yet OUELLETTE, C.I.C.	10 CBRB
Member	LIEUT.	H.E. SEWELL	C.I.C. 11 CBRB.
Judge-Advocate			
Prosecutor	LIEUT.	N.H. CHATE	C.I.C. 10 CBRB.
Defending Offr	LIEUT	R. KIRK-OWEN	C.S.R. 13 CBRB

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused A 82234 Pte Colin Campbell DARRACK before arraignment make(s) (no) (~~a~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GB), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & G

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vs P1.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea (their pleas) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf?
Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 44, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes G D.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(3), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas NO* 309, 2323, *MML p* 60, 757-759. *As to sentences consigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 58(*7*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused A-82234 Pte Colin Campbell DARRACK, (HLI of C) on strength of 46 Rft Coy 13 CBRBn., a soldier of the Canadian Army Overseas, is charged with:-

First Charge
A.A.Sec 15(1)

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field, absented himself without leave from 0900 hrs 28 Oct 44 until arrested at 1200 hrs 8 Jan 45 by the Military Police at ANTWERP. (absent 72 days 3 hrs)

(V.W. Hugman, E.D.) Lt-Col
Officer Commanding
13 C.B.R.Bn.
2 C.B.R.G.

In the Field
27 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G S N Gostling) Brigadier
Commander
2 Canadian Base Reinforcement Group

In the Field
12 Mar 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 82234	Pte		Colin Campbell	DARRACK	HLI of C 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (date) 12 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	G G MacKENZIE, MBE	FGH X-9 List 3 Cdn NETD
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt or Lt	to be detailed by OC 10 CBR Bn	10 CBR Bn
Lt	to be detailed by OC 11 CBR Bn	11 CBR Bn
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

[signature] (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(G S N Gostling)

Dat 12 Mar 45

Commanding 2 CBRG

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & S/1697 (6148)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 269.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 1234J Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J A (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than to mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath, as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by J A, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 3 of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 769.*)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined A-82234 (No.)

Pte. Darrack C.C. (Rank) (Name) and in my opinion he is

fit / unfit to undergo trial by Court-Martial.

Station Det.

Date 13-3-45

J.O. Lucas Pelletier (Sgd),
Medical Officer capt

(Unit) No 13 C.F.R.Bn

Plea in Mitigation of Punishment for
A 82234 Pte. Darroch C.C.

Sir. Pte. Darroch join the army July 1942 took basic training and proceeded overseas Feb. 1943. On arrival overseas he was sent to the H.L.I. of C. as an anti tank gunner.

While on manoeuvres in England he broke his shoulder and was sent to hospital, this occured in March 1944. After discharge from hospital Pte Darroch was sent to the R.W.R in France arriving there June 14, he remained with them until July 4 when he was wounded and returned to England. On discharged he returned to the R.W.R on Aug. 30. After a few days again he again was sent to the hospital this time because a blood had blown his front plate out of his mouth and he had to have it replaced, returning to his unit on the 28th of Sept. where he remained until the 9th of ~~Aug~~ October when again he was sent to the hospital this time because of a broken shoulder. He was returned to No 13 Bn on the 26th of Oct.

On arrival at 13 Bn. Pte Darroch was granted to request a transfer to anti tank work, realizing that his training as an infantry man had not been sufficient borne out by the number of times he had been in the field and the short time of each stay before he was either hurt or wounded. Therefore his training was an anti tank gunner in the Infantry had been extensive. Also he was to be sent to the H.L.I. and not back to the unit he had been fighting with.

namely the R.W.R.

As both the request to be sent back to his unit and to be made an anti-tank gunner were refused, fearing that the next time he went to the front might be fatal he went A.W.L.

I respectfully plead for mitigation of punishment as he is anxious to get back to his unit at the earliest possible moment.

Lieut-Colonel.

Ex A 16

SUMMARY OF EVIDENCE in the case of A-82234 Pte DARRACK, C.C. (HLI ofC) 46 Rft Coy 13 C.B.R.Bn., a soldier of the Canadian Army Overseas.

Charge - Absence without leave (A.A. Sec 15(1)

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

EXHIBIT "A" - Certified true Extract from CR No 28 d/20 Nov 44 and CR No 2 d/28 Jan 45.

EXHIBIT "B" - Certified true copy of the Record of the Declaration of the Court of Inquiry dated 22 Nov 44.

EXHIBIT "C" - Certification of apprehension dated 8 Jan 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary Of Evidence consisting of one page was taken down by me in the presence of the accused and that RF (c)(d)(e)(f) and (g) have been complied with.

A. Miller

(A.L. MILLER) Capt.
Officer detailed to take
Summary of Evidence.

In the Field
27 Feb 45

Exhibit "A"
Th. Miller

(4-4) List HLI of C 13 CBRBn. IN LIEU OF AFW3012A SER NO 28
NO SHTS

ABSENT WITHOUT LEAVE
AWL from 0900 hrs 28 Oct 44 and still absent at 0900 hrs 18 Nov 44.
(21ST DAY)

A-82234 Pte DARRACK, C.C. HLI of C

46 RFT COY 13 C.B.R.Bn.

20 Nov 44 _____ Lt.
(W.H. McKelvey) Records Officer

I certify that this is a true copy of C.R. Ser. No 28 d 20 Nov 44

CERTIFIED TRUE COPY W H McKelvey Lt.
Rec. Off. 46 Coy 13 CBRBn

Exhibit "A" H. Miller

SER NO 2
NO SHTS 1 & Last

(X-4) List HLI of C 13 CBRBn. IN LIEU OF AFW3012A

STRENGTH INCREASE
TOS X-4 List HLI of C 13 CBRBn. on app from des w of 1200 hrs
8 Jan 45.

A-82234 Pte DARRACK, C.C. HLI of C

I certify that this is a true copy of C.R. Service No 2
Dated 28 Jan 45
W H McKelvey Lt.
(W.H. McKelvey) Records Officer

46 RFT COY 13 C.B.R.Bn.

28 Jan 45

EXHIBIT "B"

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 22 Nov day of November 19 44 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. A-82234 Pte DARRACK, C.C. (HLI of C) 46 Rft Coy 13 CBRBn. 2 CBRG.

illegally absented himself without leave In the Field

at 0900 hrs on the 28 th day of October

that he is still so absent, and that on the 22 Nov 44 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
Listed on Appx "A" attached.			

J.L. CAMERON Lieut CH of O 13 CBRBn. President

H.L. FERGUSSON Lieut RCA(LAA) 13 CBRBn. Member

F.W. DOYLE Lieut CH of O 13 CBRBn. Member

Signed at In the Field

this 22nd day of Nov 19 44

Signature of Commanding Officer Lt-col A.T. Law

Certified true copy [signature]

Records Officer 46 Coy 13 CBRBn

Signature of Officer having custody of original record

M.F.B. 373
A.F.B. 131
ISM—6-45 (750)
H.Q. 1773-19-457

APPENDIX "A"

13 CANADIAN BASE REINFORCEMENT BATTALION

2 C.B.R. GROUP.

SCALE III KIT COMPLETE WITH VOCAB & REDUCED PRICES

	100% FULL VALUE	75% FULL VALUE
Anklets Web prs(1)	.99	.74
Blouses Battle Dress	5.25	3.94
Boots Ankle prs (2)	10.92	8.19
Boret Khaki	1.21	.91
Drawers Cellular Short, prs (2)	.86	.65
Greatcoat Drab	11.55	8.66
Jersey Pullover	1.79	1.34
Shirts Angcla Drab (2)	4.04	3.03
Socks prs (4)	1.48	1.11
Trousers Battle Dress prs (1)	5.39	4.04
Braces	.28	.21
Brushes Hair	.34	.26
Brushes Shaving	.37	.28
Brushes Shoe Polishing	.28	.21
Brush Tooth	.11	.08
Caps Comforter	.34	.26
Combs Hair	.04	.03
Dressing Field	.24	.18
Discs Identity Set	-	-
Forks Table	.07	.05
Holdall	.19	.14
Housewife Complete	.17	.13
Knife Clasp	.06	.05
Knife Table	.15	.11
Razor Safety W/Blade	.06	.05
Spoon Desert	.07	.05
Towels, hand	.64	.48
Belts Waist	.67	.50
Bottles Water	.82	.62
Braces, W.B. Right & Left	.60	.45
Carrier Water Bottle	.52	.39
Haversack	1.79	1.34
Helmet Steel	2.42	1.82
Net Camouflage Helmet	.15	.11
Sacks (1)	1.84	1.38
Straps Shoulder Haversack Right & Left	.64	.48
Straps Web Supporting (2)	.26	.20
Pins Hess, T.P.	.35	.26
Capes A/C	2.76	2.07
Respirators A/C Complete W/Haversack	4.66	3.50
Ointment A/C (2)	.30	.23
Eyeshields, A/C (Pkg of 6)	.46	.34
Detectors Individual, prs (2)	.24	.18
Blanket	3.07	2.30
Mugs Drinking	.13	.10
Sheets Ground	2.94	2.21
Rifle #4 MK I	45.48	45.48
Bayonet #4 MK I	2.46	2.46
Bottles Oil	.06	.05
Pouches Basic W.E. PAT 37 MK III (2)	2.38	1.79
Bayonet Scabbard #4 MK I (1)	.61	.46
	$ 123.31	$ 104.48

Exhibit "C" [illegible]

CERTIFICATE OF ARREST IN ACCORDANCE WITH A.A. SEC.163 (1)(jj)

I certify that No. A/82234 Rank PTE. Name DARRACK C. of (Unit) 46 CDY H.L.I. OF CANADA. was arrested at ANTWERP (place) at 12-00 hrs on 8th JAN 1945 (date). He was dressed in uniform/~~plain clothes~~.

Date 8th JAN. 45.

[illegible signature]

Signature of Provost Marshal, APM or other officer into whose custody the above-named person was taken on arrest.

CMDG
244 M.O. [illegible]
(Rank)
(Unit or Appointment)

Notes:

1. This certificate MUST be signed personally concerned.

2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.

3. In no circumstances should the place of apprehension be described as "in the Field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
A62234	Pte	DARRACK, C.C.	13 Bn. 2 C.O.R.Q.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct.

or

~~These are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~52~~ days in civil custody, and 52nd '65 days in military custody, making a total of 52 65 days, of which NO days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 25 years

6. The date of his ~~attestation~~ ~~commission~~ specified in his ~~attestation paper~~ record of service is 1 July 42.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs, 7 Mons.

8. The accused is entitled to deferred pay or gratuity in respect of ~~service~~

9. The accused is entitled to reckon 2 yrs; 7 Mons service for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, or entitled to, no military decoration or distinction, *or* is in possession of, or entitled to wear, the following military decoration or reward~~.

11. ~~(*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of~~ Ø

12. ~~(*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (or corps) or department the rank of~~ Ø dated

WA.5301/1550 20M. 5/44. P. Ltd. 2761-5.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3rd day of MARCH 45

(W. HUGMAN) LT. COL.
Commanding [illegible]

15. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of _____ from _____

In the rank of _____ from _____

In the rank of _____ from _____

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph inserted amended accordingly.*)

Date of Promotion

TEMPORARY SHEET

No. A82234 Name DARRACK, C.C. Regt. (Battery) or Company Corps CIC Date of enlistment 1 Mar 44 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/136 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks

S.D-8.

Re. Darrah, G.T.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A-54571 Pte Carl Thomas DARRAH 9 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.R. 24(1)(A)	not Guilty	Not Guilty but Guilty of desertion	but Guilty of absence Without Leave
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~(a)~~ At present under sentence for ~~(1)~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 26 days, of which nil days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo 30 Days Detention

(Sgd) A.M. Eccleston Lt 5/Mar/45 (Sgd) [illegible] Lt Col
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(7), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 33, MML p 65. Quashing after promulgation : KR Con 572. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further evidence is~~ (1. AA 57A. Delete if not used.)

(Sgd)

Date 8 Mar 45 (G.S.N. Gostling), Brigadier,
Commanding 2 Cdn Base Rft Gp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A54571 Pte Carl Thomas DARRAH, 9CBR Bn	MAR 12 1945	CAPT & ADJT 9 BN 2 C.B.R. GP.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5D 8

FIELD GENERAL COURT-MARTIAL

CFAP6 (To lieu of AFA61 40/P & R/1698 (4144) 4/388

Convened by Order of Brigadier G.S.N. Gostling, ED Comd 2 CBRG dated 22 Feb 45

16 APR 1945 C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed ~~substantive~~ rank, and ~~(b)~~ Appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number (a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit
A-54571	Pte	Carl Thomas	DARRAH	9 CBR Bn

PROCEEDINGS REVIEWED Capt K.M. Stevens 17 Apr 45.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 5 Mar 45 ~~26 Feb 45~~

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused : Do you object to~~ as interpreter ? Ans ~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer ? Ans ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	G.G. MacKENZIE, MBE	FGH X-9 List 3 Cdn REGT
Member	~~LIEUT~~	N.J. OVELLETTE	C.I.C. 1 CBRBN
Member	LIEUT.	A.T. GAVIN	C.P.C. 1 CBR BN
Judge-Advocate	Lieut	A.M. ECCLESTONE	AASH of C 2 CBRG
Prosecutor	LIEUT.	A.T. MANN.	C.I.C. 11 CDN REGT
Defending Offr	LIEUT.	J.R. FIRTH	C.I.C. 9 CBR BN.

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 1 were not followed. See D1 p 2.)

A8. The accused A-54571 Pte Carl Thomas DARRAH before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), (B)), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D 2 E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol 4 P 128.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 37(D) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a reference sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. Nil .(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (his) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against~~ the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, ~~the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Yes as a witness. Do you intend to call witnesses on your behalf ?
Ans. No Are they witnesses as to character only ? Ans. N/a
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the First charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed by~~
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : ~~Do you wish to give evidence yourself or to call any witnesses as to your character ?~~(1)
Ans. Nil
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes & I do.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 1323, MML p 60, 757-759. As to sentences consigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A.54571 Pte. Darrah, Carl Thomas, of 65 Coy., 9 CBR Bn., 2 CERG., a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec. 12(1)(a)

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTYS SERVICE

in that he

in the field, at 0745 hrs 6 Feb 45, having been warned and confined to barracks for draft, absented himself without leave from 65 Coy., 9 CBR Bn., 2 CERG., from 0745 hrs 6 Feb 45 until apprehended at 2200 hrs 6 Feb 45, with intent to avoid such draft.

Time absent 14 hours 15 mins.

(H.W. Rick) Lt.-Col.,
Commanding,
9 Bn, 2 C.B.R.Gp.

In the Field
19 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G.S.N. Gostling), Brigadier,
Commander
2 Canadian Base Reinforcement Group

In the Field
22 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-54571	Pte		Carl Thomas	DARRAH	9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet attached and on (date) 22 Feb 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.G. MacKENZIE, MBE	FGH X-9 List 3 Cdn NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
~~Capt~~ LT	~~G. LAGASSE~~ W.J. OUELETTE	CIC 10 CBR Bn
~~Lieut~~ LT	~~R.H. HEAD~~ A.T. GAVIN	~~1 Cdn Para Bde CBR Bn~~ CPC 10

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Lieut	A.W. ECCLESTONE	ASSH of C 2 CBR G

On Active Service in the Fd

in BELGIUM (Country.)

(Signature) (C.J.J. Gostling) (Name of Authority. RP 105 (c 2))

Brigadier (Rank.)

Dat 22 Feb 45

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 40 (In lieu of AFA 2; AFA 40 (Para 2) (Sub))

(Seq queried for edits and notes for use on trial.)

On behalf of the JAG, Cdn Army Overseas, and pursuant to para 15 Appx to Overseas RO 4756 I approve the appointment as JA the officer detailed above, such officer possessing legal qualifications.

(H.J. Nasmyth), Capt.
Adjt 2 CBRG

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2493.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 82(*A*) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 16 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, *as* to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 86.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(*E*), *KR Can* 565(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 569). *As to certified copies of regimental books see AA* 163 (1) (*g*) (A).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 113(*C*), *MML p* 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)

I certify that I have this day examined 454571 (No.)

Pte (Rank) Darrah C.T. (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

Station 9 Bn 2 CBRC.

Date. 5.3.45

J.H. Martin Capt (Sgd)
Medical Officer
Unit 9 CBR Bn

Evidence.

6 Mar. 45.
A 54571 Pte Dauah C.T.

Prosecution.

First Witness

P27910 S/Sgt Porto L.J. Duly Sworn.

Recognises accused. On 5 Feb 45 warned Pte Dauah, believes on morning parade. Fell draft altogether as a parade and warned all on that parade that they were warned for draft. Pte Dauah was on that parade. Told them to stay with him (witness) to go through M.O. D.O. + F.M. Told them were C.B.'d until 1800 and must be back in by 2200 hrs. Whole parade would not move on 6th I would not be able to swear that I told Pte Dauah the time draft would leave I did warn accused he would be leaving next morning or within a day or so. On monday 6th I called out in barrack room time draft moving I do not know time I went up. I am sure I went up to barrack room at 2300 hrs. I made two trips that night.

On the 6th reveille was at 0500 hrs. I wake the whole company up. Every body is supposed to turn in one blanket and I check them off. Pte Dauah was not on the F.M. parade.

I went up at 0645 hrs to find Pte Darrah, I found his bed was not slept in. I made a search of the barracks but Pte Darrah the accused could not be found.

At 0700 hrs I moved the draft parade to St Peters, at 0745 hrs I turned the draft over to the Records Officer Pte Darrah was still missing. Took his documents back.

Pte Darrah went through the M.O D.O and I.M. parades.

Cross Examination

Q 1. Can you recall words used and time of Draft.

A 1. I can never tell exact time, I said next day or so, and they must be ready at all times.

Q 2. Had you had a previous encounter with Darrah.

A 2. I do not believe so

Q. 3 Do you remember Pte Darrah coming around asking when he was to go on draft.

A 3. Previous to my calling the draft Pte Darrah asked me when he could be put on draft, he wanted to get out.

Q 4. Did he seem sincere.

A 4. I believe so, most of the men do.

(3)

J.A. 95 Do you know how long Pte Donah was in the Coy before 5 Feb.

A5 I could not say

R.P. 83 (B.) Complied with

Second Witness

C 20725 Cpl. Roberts D.E.A 10 Bn. Duly Sworn

Recognises the accused. Now accused evening 6 Jan. Feb. 45 in a cafe near St Petrus Station, saw him at 1930 hrs. saw him again later at 2200 hrs cafe was closing, Pte Donah was still there. Proprietor was going to put him out of cafe so I took over myself. I took him as a man who needed looking after to 11 Bn. I did not know his circumstances. I was with some friends of mine. Reported to C.O of Coy. He was given a bed for night next morning I found he was 9 Bn and he had been sent to 9 Bn under escort.

On evening of 6th he had been drinking but was not incapable. He did not seem to know where he was going.

Cross Examination

Q1 Did Donah cause any trouble in cafe

A. He caused no trouble, was pretty happy. Was willing to come with me (witness) Had a rifle, full

(4)

wet, large pack, small pack, tin hat

Q2 Do you remember anything he said to you.

A2 Nothing important, never said anything about circumstances he was in

Q3 Was your idea in taking him to say that he was a man who did not know where he was going and you were going to shelter him for the night.

A3 That is right sir.

J.A.

Q4 Accused has his equipment, full marching order?

A4 Not all his equipment. I never knew it was his until we were leaving.

Q5 Did accused give you any explanation as to why he had his equipment with him.

No.

R.P. 83 (B) complied with.

Prosecution is closed.

First Witness of Defence.

Accused Duly Sworn.

On the morning of the 6th when the draft went out at approximately 0600 hrs. I was in the bouach room. Pte Mignault was on the draft to and he said "Hurry up" to me I put on all my equipment, by the time I got down stairs, they had gone. Had gone

About 3 or 4 min. I asked the guard which way they went. Told ~~me~~ they went right at the gate, I tried to find them, I figured they went to St Peters station so I headed that way. I got lost on the way to the station.

I came into C.B.R.C on the Saturday before 3 Sep 45. Never in a depot before. I had always been in the same unit in the army.

Cross Examination

Q1 Where you in bunch room when Staff Sgt came to wake you at Neville

A1 I was up, I was not in the room, I had got lost in town the night before, it was my first time in Thurs. spent night walking around

Q2 What time did you get back.

A2 I got back, still dark, between 0600 hrs + 0700 hrs. Draft was still there

Q3 You spent the whole night trying to find 9 Dn.

A3 Yes sir.

Q4 When you came in was draft formed up.

A4 They were downstairs under the stairs

Q5 Did you tell any one in charge you might be late.

A5 No sir I thought my friend would

(6)

I expected to be in time. They were all in a bunch, Took me 4 min to put on equipment it was all together.

Q 6 When you got down in 4 min. there was no sign of the draft

A 6 no sir they had gone around corner.

Q 7 Could you see any traces of them

A 7 no sir

Q 8 How large was draft

A 8 about 15

Q 9 How long did you remain at St Pierre Station

A 9 I never got there

Q 10 What did you do

A 10 I felt bad about missing it. Stopped in for a drink and drank too much

By J. A.

Q 11 Were you told time draft would leave

A 11 No sir

Q 12 What warning was given to you.

A 12. I did not get a warning but figured I was going on draft of going through D.O. M.O + 7 m.

Q 13. What equipment do you take.

A 13 Everything, including one blanket

Q 14 Did you still have that blanket

(1) when brought back by Cpl Roberts

A14 yes Sir.

Q15 Where is blanket

A15 Wrapped in groundsheet strapped on bag pack

Q16 When did you do that.

A16 I had everything ready the night before they had a parade the night before when we had to have everything ready.

Q17 then you had full marching order when with Cpl Roberts

A17. Yes Sir.

R.P. 83 B Complied with

Defence is closed

A.M. Everstone Pt
J.A.

Ans

Closing Address for Prosecution

in the case of A54571 Pte Darrah C.T.

Sirs:

The accused is charged with desertion. The evidence brought out by the S/Sgt definitely proves that the accused was warned for draft & that he understood the warning. The accused went through the clearances, had his equipment packed, & admits that he "figured" he was on draft.

The time of departure of this draft was not given to them at the time of the warning because it was not known - however they were told that they would be leaving "next morning or in a day or so". Also at 2300 hrs that night when

Pte Darrah should have been in his quarters the time of departure was given.

The accused claims he spent all the night trying to locate 983. In the morning when he came in the draft was not formed up - it took him four minutes to get on his eggs & when he got out there was no sign of the draft. He started for St Peters station but couldn't find it so decided to have a few drinks —

In closing I should like to say that it is impossible to show "intent" as something concrete but should be judged by the actions of a person.

respectfully submitted HH Saunders

Pte Darrah 4

In summing up this case I should like to condemn the manner of warning men for draft in 6 5 Cay. Everything is so indefinite that it is a wonder to me that any draft gets away at all. I can just imagine the mix-up there is in that Cay when a draft is warned to leave. As far as 5/8gt Ralton evidence is concerned - I doubt that he is ever quite sure what he says.

It is quite evident that Pte Darrah had no intention of missing the draft. Therefore he cannot be charged with desertion. Admittedly he has committed some indiscretion in acting as he did but surely this is an action of a soldier who is disappointed at something that has happened and I feel that he has some reason for his actions.

In connection with the prosecution stating a man on draft holding himself available at all times, I submit that every reinforcement in 2 CBRC is in that category and it does not only apply to men warned for draft.

To this end, I ask the charge of Desertion be dismissed for the prosecution has proved nothing as far as actual intent to desert is concerned.

J Pratt 25

D 6 [illegible]

JUDGE-ADVOCATE ADDRESSES THE COURT
SUMMING UP

IN THE CASE OF: A 54571 Pte Dorset CT

I wish to point out that it is part of my duty as Judge-Advocate to sum up the evidence and advise the Court on the law.

The Court is, however, the sole judge of the facts and anything I say now or may have previously said indicating my personal views as to the facts should be entirely disregarded. The Court and the Court alone is the sole judge of the facts.

I do not think it necessary for me to review the evidence - there does not appear to be any difficulty in that respect.

As to the Law the accused is charged with Desertion. It is a special type of Desertion. Desertion can be divided into two kinds:

(a) What is known as the general type of Desertion where an accused goes absent without leave and forms an intention not to return to the Army again, and

(b) Where he goes absent without leave after having been warned for some special duty or draft and forms an intention to avoid that particular duty. Whether or not he intended to return to the Army eventually is of no importance, the criterion being did he intend to avoid the draft for which he was warned.

The onus is on the Prosecution, it is not for the accused to prove himself innocent, it is for the Prosecution to prove he is guilty. The Prosecution, therefore, must prove to the satisfaction of the Court:

(a) That the accused was AWL during the period charged,

(b) That he was duly and properly warned for the draft and that he understood the warning,

(c) That he was absent without leave with the intention of avoiding that draft, and,

(d) That the draft for which he was warned did in fact proceed.

It is also my duty to point out to the Court that the accused is entitled to the benefit of any reasonable doubt. I say a reasonable doubt, that is some doubt which is based on the facts before the Court and not some doubt which is purely immaginary. If the Court has a reasonable doubt after hearing and weighing the evidence then the accused is entitled to the benefit of that doubt.

On a charge of Desertion the Court may come to any one of the following decisions:

(a) Guilty as charged - that is guilty of Desertion.

(b) Not guilty of Desertion but guilty of absence without leave,

(c) Not guilty of any offence.

That is all I wish to say unless the Court or the Prosecutor or Defending Officer require explanation on any question that I may have overlooked. Mr President, have you any points on which you wish me to address the Court? No. Mr Prosecuting Officer have you any points on which you wish me to address the Court? Yes, [illegible] Mr Defending Officer have you any points on which you wish me to address the Court? No [illegible].

[illegible] P.O. [illegible] Chap VII [illegible]

A.M. [illegible]
J.A.

A Case of Mitigation. Pte Darrah C.T.

I would like to submit to the court at this time a few facts about Pte Darrah. He joined the army in Sept. 1915 and three months later arrived overseas with his unit C. C. B. workshop. He has been with them continuously since then, landing in France on July 14, until he went to hospital on Jan 21 with abdominal trouble. His record with his unit is excellent and he is wanted back by them as they are running for him. Pte Darrah is very anxious to rejoin his unit and I think this slight indiscretion on his part should not be held against him too much.

Pte Darrah has never been on a reinforcement draft before and he was only in C.P.R.C. for two days when this episode occurred. As you have heard he attempted to catch the draft, and then, after missing it wandered off down town. It was his disappointment at missing the draft that

caused him to do this and I ask the court to consider this in her passing judgment.

Pte Darrah was about 14 hours. During that time he was in possession of all his kit. At the end of the day he was still carrying all of this equipment and I submit to the court that this is another example of his good qualities as a soldier. Pte Darrah has been 26 days under arrest and has been of no use to the army during that period. I ask the court in passing judgment to remember that Pte Darrah will be of much more use to the Cdn. Army in his Unit than elsewhere and because of this, to be lenient with the accused.

[illegible]

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A.54571	Pte.	Darrah, C.T.	9 CBR Bn.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, permission being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Original MPM 6 not available	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

, *or*

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is [illegible] the present charge. The accused [illegible]

day of

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 26 days in military custody, making a total of 26 days, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is Born 6 Dec 08.

6. The date of his attestation specified in his attestation paper is 17 Sep 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 5 mos

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 5 mos service.

9. The accused is entitled to reckon 4 yrs 5 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or* corps *or* department) the rank of dated

(*21600) W1.34000/1751 20,000 10/43 A.& E.W.Ltd. Gp.686
(21600) W1.33004/1400 12,000 8/44

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A54571 Rank Pte Name Darrah, C.T. of 9 CBR Bn Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of MAR 45

CAPT. & ADJT.
9 SN. 2 C.B.R. GP.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of . . . years.

In the rank of . . . years.

In the rank of . . . years.

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be dated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

3/17 MFM 6 E/B.
(AFB 122)
40/P&S/130 (5413)

No. A.54571 Name Darrah, C.T.

Date of last entry in Company Conduct Sheet

Sqn, Battery, or Company

No. and date of last drunk

Corps

Period not reckoning towards freedom from extra fine

Date of enlistment

Sheet No

GC Badges

Signature OC Company, etc

Service or Proficiency Pay

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TOS 9 CBR Bn 4 Feb 45					
				Certified true copy taken from books and documents in my possession.					
				[signature] 13 Feb 45.					
				(C.L. Nelson) Captain, Adjutant, 9 Bn, 2 C.B.R.Bn.					

(PTO)

SUMMARY OF EVIDENCE

in the case of

A.54571 Pte. Darrah, C.T. 65 Coy., 9 Bn., 2 CBRG.

The Commanding Officer directs that evidence be taken on oath.

P.27910 S/Sgt Ratto, L.J. 65 Coy., 9 Bn. 2 CBRG having been sworn states:

FIRST WITNESS

I recognize the accused as Pte. Darrah, C.T. On the 5th Feb 45 on 65 Coy parade 1310 hrs. Pte. Darrah, C.T. was warned for draft, went through MO, Dental and AM stores. He was told then that he could go out between 1800 and 2200 hrs at night, but must be in by 2200 hrs. On the 6th of Feb 45 at 0745 hrs I turned over the draft to 9 Bn Records Officer This a/m soldier failed to answer his name.

The accused declines to cross-examine the witness.

(L.J. Ratto) S/Sgt.P27910

SECOND WITNESS

C.20725 Cpl. Roberts, D.E.A. 45 Coy., 10 Bn. 2 CBRG having been worn states:

On the evening of 6 Feb 45 I was in a cafe near St Peters station. I noticed the accused, whom I now recognize, in the cafe and he had been drinking. When it came closing time 2200 hrs the proprietor of the cafe was going to eject the accused. I took charge of the accused and escorted him to 59 Coy of 11 Bn. 2 CBRG. ~~He~~ THERE THE COY COMMANDER WAS CONTACTED AND he advised giving this soldier accomodations for the night. This was done and in the morning on reporting to 59 Coy., I was informed that the accused Pte. Darrah was on strength of 9 Bn. and had been returned to 9 Bn under escort.

The accused declines to cross examine the witness.

(D.E.A. Roberts) Cpl.C20725.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be give in evidence.

After the above cautioned the accused declines to make any statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

E.A. Cartung Lieut.

(E.A. Cartung Lieut.
Officer detailed to take Summary of Evidence.
9 Bn. 2 C.B.R.G.

In the Field
9 Feb 45

ADDITIONAL SUMMARY OF EVIDENCE

in the case of

A.54571 Pte. Darrah, C.T. of 65 Coy., 9 CBR Bn., 2 CBRG., Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

M.27910 S/Sgt. Ratto, L.J. of 65 Coy., 9 CBR Bn., 2 CBRG., sworn, states:

A 65 Company parade was called by the CSM at 1300 hrs 5 Feb 45 and the CSM turned the Coy over to me to call out my draft. I called out the draft at approximately 1310 hrs on 5 Feb 45 and the accused was present. I personally warned the draft in a loud, clear voice that could be heard by all, that they were CB'd to camp during the day and that they could leave barracks between 1800 and 2200 hrs but must be in at 2200 hrs. I told them they had to follow me during the remainder of the afternoon to get a clearance from the M.O., Dental Officer and S.M. The accused was cleared by athe aforementioned. I personally warned the accused by saying that he was on draft and the draft would be leaving within the next day or so. At 0500 hrs on 6 Feb 45 I woke up the whole coy. At 0700 hrs of the same day, I called the roll of the draft and accused was absent. I searched the barracks thoroughly and could not find the accused. His bed had not been slep in that night. I marched the draft to 13 CBR Bn and at 0745 hrs and turned the draft over to a representative of 9 Bn Records reporting the accused absent and removed his documents from the drafts documents and reported the accused absent from draft to 65 Coy C.S.M.

L Ratto

(L.J. Ratto) S/Sgt. M27910

The accused declines to cross-examine the witness.

The accused was cautioned as follows.

Do you wish to make any statement or to give evidence on oath? You arenot obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.
The accused declines to make a statement.
The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

B D Innes

(B.D. Innes) Lieut.,
60 Coy, 9 C.B.H.Bn.
Officer detailed to take Summary of Evidence.

In the Field
17 Feb 45

LIST OF WITNESSES

in the case of

A.54571 Pte. Darrah, C.T. 65 Coy., 9 Bn. 2 CBRG.

FOR PROSECUTION

1. P.27910 S/Sgt. Ratto, J.L. 65 Coy., 9 Bn. 2 CBRG
2. C.20725 Cpl. Roberts, D.E.A. 43 Coy., 10 Bn. 2 CBRG

FOR DEFENCE

Nil.

Pte Darrah.

Date JAN 13 1945

2 CBRG

1. I hereby acknowledge receipt of one copy of Charge Sheet and one copy of the Summary of Evidence delivered to me

~~Gr Darrah~~ Pte Darrah.

2. ✓ (a) I request that Lt. Firth.
if available, be appointed, OR

(b) I request that an officer be appointed as my Defending Officer at my trial by Court-Martial.

Gr Darrah

I hereby certify that Lt J. R. Firth was appointed to defend A5 45 71 Pte Darrah C.T. at his forthcoming trial by Court Martial and that the said Lt J. R. Firth was notified that he was defending officer on JAN 13 1945

Capt

Z-77 (case #2)

GNR DARRAH J.

See S-22 for 1st case

F-59637 Gnr Darrah, John
2 C.A.R.U. 2-77

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this FORTH day of MARCH, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of "C" GROUP, CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:-
*(1) Three Officers to form the Court.)
*(2) A Field Officer as President.)
for the following reasons, namely:—]

*Omit if not applicable.

Proceedings Reviewed
Reviewing Officer
17 Mar 43

Notes.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be inserted. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
LT.-COL.	D.I. REDMAN,	H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
MAJOR	W.G. HANSON, R.C.A.	3 C.A.R.U.
LIEUT	E. SHOREY, R.C.A.	1 C.A.R.U.
LIEUT	G.D. JACK, R.C.A. (Waiting Member)	3 C.A.R.U.

*Must be signed personally by the officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier.
Commanding "C" Group, Cdn Rft Units.
Convening Officer.

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F-59637 Gnr. Darrah, John (R.C.A.) 2 C.A.R.U.	FIRST CHARGE A.A. Sec. 15(1)	Guilty	Guilty Sentence To undergo Detention for a period of six (6) months 5th Mar 1943 [initials]	Confirmed [initials]
	See Charge Sheet attached			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [signature] Brigadier, (Signed) [signature] Lt Col

Commanding "C" Group, Cdn Rft Units.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 5th day of March 1943

[signature] Lt Col

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 62 day of March 1943

[signature]

Confirming Officer.

Brigadier, Commanding "C" Group, Cdn. Reinforcement Units.

Promulgated and extracts taken in the case of F-59637 Gnr. DARRAH J.

(a) (Dated) 7 March 43 (Signed) [signature] Col.

C.O. 2 CARU.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

F 59637 Gnr DARRAH John, a soldier on the strength of "F" Battery, "Q" Wing, No 2 Cdn Arty Rft Unit, Canadian Army (Overseas), is charged with :-

FIRST CHARGE
A A Sec 15(1)

Absence without Leave,

in that he,

While on active service, at Superior Camp, Ludshott, Hants., did absent himself without leave from 0815 hrs 15 Jan 43 until reporting to the Guard Room at 1945 hrs 24 Feb 43.
(Absent 40 days, 11 hours, 30 minutes).

(Mackenzie Waters) Col., RCA
Commanding Officer,
No 2 Cdn Arty Rft Unit,
Cdn Army (Overseas)

Signed at:
Superior Camp,
Ludshott, Hants.,
this twenty-sixth day of
February 1943

To be tried by Field General Court Martial,

Brigadier,
Commanding "C" Group, Cdn Reinforcement Units.
(Convening Officer)

Bordon, Hants.
4 March 1943.

2CAHU Form #92

MEDICAL CERTIFICATE

I certify that I have this day examined No. F59637 CNR DARRAH J.F.

and find him free [redacted], and

fit to undergo [redacted]. COURTS. MARTIAL

Dated at [redacted].
5/3/43 JASPER.CAMP

D Ant Capt
(Medical Officer)
No. 2 Cdn. Arty. Holding Unit
Canadian Army (Overseas)

[illegible] Lt Col

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT 3 CARU Bromshot Hants
ON THE 5 DAY OF March 1943

The accused. E59637 Gwa Darrah, J. Unit 2 CARU

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22&23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt. Colnel D.L. Redman Unit Calg. Highas. HQ. CRU

Members Major W.G. Harson (Harkson) Unit RCA 3 CARU

Lieut. E. S. Harey Unit RCA 1 CARU

Waiting Member Lt. G.D. Sack RCA 3 CARU

The officers under instruction are duly sworn:-

1 Major Unit

9 Lieuts Unit

Prosecutor Capt S.D. MacDonald Unit 2 Caru

Defending officer Lt. Mitchell Unit "

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
RM The Prosecutor ~~is sworn and~~ produces MFB 355 ~~AFB 296~~ and MFM ~~6~~ 4
The Court complies with R.P. 46(B)

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment.~~
(b) ~~calls witnesses as to character.~~
RM (c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE, and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

~~[illegible]~~

Plea mitigation by Defending Officer hereto attached.

[illegible] Lt Col

Plea in Mitigation

Mr. President and Members of the Court.

Mr. Darrah has not a particularly good record. He came to E Bty 2 CARU on the 20th Dec 42. This was during the Christmas season and although he is married and his wife lives in Farnham he was not allowed a pass until Jan 9th thus spending Christmas and New Years in camp away from his wife. On returning from his Jan 9th pass he was late through no fault of his own. He was then told he would receive no further passes from E Bty as he couldn't be trusted. This rather discouraged him as he thought it was descrimination against him due to his past record. He was transferred K F Bty and several days after the transfer went absent suffering to be anywhere but 2 CARU where he felt his past record was being held against him.

JHMitchell Lieut
Defending Officer

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F 59637 Gnr DARRAH John, on the strength of "P" Battery, "Q" Wing, No 2 Cdn Arty Rft Unit, a soldier in the Canadian Army (overseas)

BY DIRECTION OF THE COMMANDING OFFICER, THIS SUMMARY OF EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS For the Prosecution

Capt. R.L. Allely, RCA., of Records Office, R.H.Q., at No 2 Cdn Arty Reinf Unit, an officer in the Cdn Army (Overseas)
A certified true copy of the Record of the Court of Inquiry, dated 6 Feb 43, purported to be signed by him, iss attached to this Summary of Evidence, marked "Exhibit A", which shows the accused to be absent without leave from 0815 hrs 15 January 1943. This statement has been read to the accused.

With due regard to the exigencies of the Service, the attendance of this witness cannot, in my opinion, be readily procured.

(Sgd)..J.C.Hazlewood Lt.....
(J.C. Hazlewood) Lieut., RCA.
OFFICER DETAILED TO TAKE THIS SUMMARY OF EVIDENCE

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS-EXAMINATION

SECOND WITNESS For the Prosecution

D 10666 L/Sjt HANSON A.G. on the strength of "H" Battery "Q" Wing No 2 Cdn Arty Rft Unit, a soldier in the Cdn Army (Overseas) being duly sworn, states :

"I am L/Sjt HANSON A.G., and on the 24 Feb 43 at 1945 hrs I was in charge of the Guard Room, No 2 Cdn Arty Rft Unit, when the accused, Gnr DARRAH J., whom I now see and recognize, surrendered himself to me. I placed him under close arrest and confined him to the guard-room. He was sober and properly dressed.

(Sgd)..A.G.Hanson.....
D 10666 L/Sjt Hanson A.G.

THE ACCUSED DOES NOT WISH TO CROSS-EXAMINE THIS WITNESS

The foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused at No 2 Cdn Arty Rft Unit, Cdn Army (Overseas), this twenty-sixth day of February 1943.
Certified that Rules of Procedure 4(c),(d),(e),(f) and

(CONTINUED OVERLEAF)

D.A.A.G. Can. A. (O)

EXHIBIT "A"

Army Form B 115.

Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

D of the Declaration of a Court of Inquiry assembled at Superior Camp (2 CARU)

on the Sixth day of February 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F-59637 Gnr Darrah J.

DECLARATION.

The Court declare that, F-59637 Gnr Darrah J. has been absent without leave from 0815 hours 15 Jan 43 and is still so absent on the Sixth day of February 1943 and has a deficiency of equipment and clothing as shown:-

VOCAB PRICE	WORN PRICE.
£ 21- 6 - 7½	£ 16 - 6 - 1½

Names of President and Members

PRESIDENT.	Lieut. D.B. Kilpatrick . RCA.
MEMBER	Lieut. R. Bourbonniere RCA.
MEMBER	Lieut. W. Moore RCA.

Signature of Commanding Officer Lt-Col C.E. de Pencier E.D.

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Original Record. 2 CARU

Form B115/56

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F 59637 Gnr DARRAH John, on the strength of "F" Battery, "Q" Wing, No 2 Cdn Arty Rft Unit, a soldier in the Canadian Army (overseas)

BY DIRECTION OF THE COMMANDING OFFICER, THIS SUMMARY OF EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS
For the Prosecution

Capt. R.L. Allely, RCA., of Records Office, R.H.Q., at No 2 Cdn Arty Reinf Unit, an officer in the Cdn Army (Overseas)
A certified true copy of the Record of the Court of Inquiry, dated 6 Feb 43, purported to be signed by him, iss attached to this Summary of Evidence, marked "Exhibit A", which shows the accused to be absent without leave from 0815 hrs 15 January 1943. This statement has been read to the accused.

With due regard to the exigencies of the Service, the attendance of this witness cannot, in my opinion, be readily procured.

(Sgd)...J C Haslewood Lt.....
(J.C. Haslewood) Lieut., RCA
OFFICER DETAILED TO TAKE THIS SUMMARY OF EVIDENCE

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS-EXAMINATION

SECOND WITNESS
For the Prosecution

D 10666 L/Sjt HANSON A.G. on the strength of "H" Battery "Q" Wing No 2 Cdn Arty Rft Unit, a soldier in the Cdn Army (Overseas) being duly sworn, states :

"I am L/Sjt HANSON A.G., and on the 24 Feb 43 at 1945 hrs I was in charge of the Guard Room, No 2 Cdn Arty Rft Unit, when the accused, Gnr DARRAH J., whom I now see and recognize, surrendered himself to me. I placed him under close arrest and confined him to the guard-room. He was sober and properly dressed.

(Sgd)...A G Hanson.....
D 10666 L/Sjt Hanson A.G.

THE ACCUSED DOES NOT WISH TO CROSS-EXAMINE THIS WITNESS

The foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused at No 2 Cdn Arty Rft Unit, Cdn Army (Overseas), this twenty-sixth day of February 1943.
Certified that Rules of Procedure 4(c),(d),(e),(f) and

(CONTINUED OVERLEAF)

O M Vimeur Lt Col

(f) and/
(g) have been complied with

(Sgd) J.C. Hazlewood Lt.
(J.C. Hazlewood) Lieut., RCA
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas)
OFFICER DETAILED TO TAKE THIS SUMMARY OF EVIDENCE

LIST OF ~~EXHIBITS~~ appendix.

Exhibit "A" - Certified true copy of the Record of the Court of Inquiry

EXHIBIT "A"

Army Form B 115.

Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

D of the Declaration of a Court of Inquiry assembled at Superior Camp (2 CARU)

on the Sixth day of February 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F-59637 Gnr Darrah J.

DECLARATION.

The Court declare, that, F-59637 Gnr Darrah J. has been absent without leave from 0815 hours 15 Jan 43 and is still so absent on the Sixth day of February 1943 and has a deficiency of equipment and clothing as shown:-

VOCAB PRICE	WORN PRICE.
£ 21- 6 - 7½	£ 16 - 6 - 1½

Names of President and Members

PRESIDENT.	Lieut. D.B. Kilpatrick . RCA.
MEMBER	Lieut. R. Bourbonniere RCA.
MEMBER	Lieut. W. Moore RCA.

Signature of Commanding Officer Lt-Col C.E. de Pencier E.D.

CERTIFIED TRUE COPY.

Signature of Officer having Custody of the Original Record. 2 CARU.

(12501) Wt.54518/1002 75,000 10/39 A.& E.W.Ltd. Gp.498
(12443) Wt.45725/780 220,000 1/39 " " Form B115/56

26 Feb 43

I hereby make application for an Officer to defend me at my forthcoming trial by Field General Court Martial.

Sgt. J. Darrah

No 2 Cdn Arty Rft Unit
Cdn Army (Overseas)

4 Mar 43.

F-59637 Gnr DARRAH, J.F.

1. Herewith certified true copy of punishments and forfeitures as shown on MFM 4 for the m/n as of 4 Mar 43.

7 dys CB & 7 dys forf pay.	17 Mar 42.
Forf 1 days pay. AWL	20 Apr 42
Forf 6 dys pay AWL	5 Jun 42
Forf 7 dys pay AWL	11 May 42.
80 dys Det.Forf 219 dys pay for AWL	27 Oct 42.
15 dys FP & total 17 dys pay for AWL	22 Dec 42.

R L Allely

REC/c

(R.L.Allely) Captain, RCA.,
Officer i/c Records,
No 2 Cdn Arty Reinf Unit,
Cdn Army (Overseas)

MFM 6 is not in possession of this Unit, nor was it forwarded to 1 Cdn Det Bks by 1 Cdn Med Regt when this man was admitted prior to his being TOS this Unit.

RLA

The Prosecutor stated that the MFM 6 of accused was lost. Court accepted above as next best evidence obtainable

MB

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F-59637	Cpr	DARRAH, J.F.	No. 2 C.A.B.U.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec 15 (1)	4 times	4 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act Section 47 of the Army Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 19 days in military custody, making a total of 19 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 25 yrs, 189 dys attestation paper is 25 yrs, 189 dys

6. The date of his ~~attestation~~ specified in his record of service is attestation paper

7. The service which the accused is allowed to reckon towards discharge is 2 yrs, 156 dys.

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward. military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge on which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4 5 pm day of March 42

[illegible] Capt
Records Officer
No 2 Coln Cntr Rwy Wing
Coln Armd (Bronx)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[illegible]

5 J - 127

Ins. Darrah J. 7

5I-127

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F 59637 Gnr DARRAH J.F. - 1 Cdn Reception Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for -NOT- beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :
To undergo Detention for Period (6) Months

(Sgd) ..... Judge-Advocate, if any. 16 May 45 Date awarded. (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I ~~direct that the accused~~ be not committed to prison or detention ~~barracks until further order~~.(1) NG
(1. AA 57A. Delete if not used.)

(Sgd) ..... Commanding
Date 18 May 45 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F 59637 Gnr DARRAH J.F.	21 MAY 45	Lt/E Donkin Capt & Adjt 1 Cdn Reception Depot.

1 Cdn Recp Depot A.R. II Order 95 d/22 May 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA8) 40/F & S/1000 (6144) 4/38B

Convened by Order of Brig A.B. Connelly Comd "B" Gp CRU dated 15 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 59637 Gnr		John Francis	DARRAH	1 Cdn Reception Dep

PROCEEDINGS REVIEWED
J.P. Taylor Lt 30 May 45.
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 16 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any,~~ and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1205 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ ..... as interpreter ? Ans .....
~~The Interpreter is sworn.~~(1) Do you object to ..... as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	K.L. Miller, ED, KC	HQ CRU
Member	Captain	J.C. Peters	3 Cdn Inf Trg Regt
Member	Lieutenant	G. Oatfield	1 Cdn Inf Trg Regt
~~Judge-Advocate~~			
Prosecutor	Capt	LE Donkin	1 Cdn Recep Dep
Defending Offr	Capt	J. Paquette	1 Cdn Recep Dep

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~(a)~~ plea. (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109F), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes. 3. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Myself on oath
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB 255 or AFB 296.* 2. *AFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, I intend to be guided by the Offr. (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn17.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and 10 permiss, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 340-346, Overseas RO 309, 2323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1B), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused F-59637 Gnr John Francis Darrah R.C.A. on the strength of No., 1 Canadian Reception Depot a soldier of the Canadian Army Overseas , is charged with

FIRST CHARGE
A.A. SEC 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Leipzic Bks absented himself without leave from 0815 hrs 12 Mar 45 until apprehended at Farnham at approx 1840 hrs 4 May 45 (Total Absence 53 days 10 hrs and 25 mins)

Ronald H Back
(Ronald H Back) Lt-Col
Officer Commanding
1 Cdn Reception Depot

In the Field

7 May 45

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

A B Connelly
(A. B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units

IN THE FIELD
15 MAY 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 59637	Gnr		John Francis	DARRAH	1 Cdn Reception Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 May 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	E.M. Miller, ED, EC	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	to be detailed by OC	3 Cdn Inf Trg Regt
Lieutenant	to be detailed by OC	1 Cdn Inf Trg Regt
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Captain	to be detailed by OC	1 Cdn Inf Trg Regt
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England	(A.B. Connelly)	Brig
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 15 May 45

Commanding "B" Gp, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/F & S/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 762, RP 92, 111.)

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jun 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 86.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(F)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly, see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(E), *KR Can* 562(a).)

(vii) Summing up by JA, *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose *sheets* of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy as item of original see KR Can* 560. *As to certified copies of regimental books see AA* 165 (1) (*g*) (*k*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(C), *MML* p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

This is to certify that I have examined No. F 59637

Rank Snr. Name Darrah L.F. this date May 16. 45 and

I have found him fit to under go trial by Court Martial.

L. J. Lofters Major

MEDICAL OFFICER
NO.1. C.R.D.

CASE OF

F.59637 Gnr DARRAH J.F. 1 Cdn Recep Dep

E-1 STATEMENT BY ACCUSED

Sir, the reason I was evacuated from my unit I had a skin disease for 4 mths and was evacuated from Oratona on 7 Apr 44 and sent to 1 Br Force CCS, and from there to the 50th Gen Br, and then to 1st Cdn Gen Hosp, where I remained for a month and was sent to No 6 Bn CBRD and was there put under treatment for skin disease again and was treated for a month until I got this 28 days FP. When I came out I went into treatment again until the latter part of Aug when I was sent to 14 Gen and was then sent back from 14 Gen in Dec to X-9, where I reamined for 3 wks, recd treatement there, and then X-9 sent me back to 4 Bn and then I was returned to X-9 again and X-9 then sent me to X-8. I got back to England in Feb 45 and my category was confirmed. The MO asked me to have a blood test and I told him I hadn't had one and he was quite surprised to find that I hadn't had any blood test after 5½ yrs in the Army. I then went AWL to see my wife and to receive some medical treatment from a civilian doctor. I'm still suffering from the skin disease, Sir, and while I was AWL my son broke his leg, and the Dr said he had the scabies, chronic scabies, and he said I had it also.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

PLEA IN MITIGATION
(NOTE ATT)

16 May 45

Plea of Mitigation of Sentence
in favor of.

F-59637 Gnr. John Francis Darrah. R.C.A.

Sirs

At this point of the procedure may I ask the Court to consider very strongly the circonstances, in which the accused went A.W.L. As previously said, he is in the army since over five years an a half. He served in Sicily, fought in Italy up to Ortana. He is suffering from that skin infection since over a year, and the M.O.s he dealt with, did not cure his sickness. He then went A.W.L. because he was under the impression he was not getting the proper treatments in the army. He saw a civil doctor, who told him he had acute scabies, he was treated accordingly until apprehended.

As told by the accused, he is married in England, and has a young baby, which broke his leg while the accused was on leave, forcing him to lenghten his absence. The accused is still suffering from this skin affection. m/o.

Due to those facts, and considering the long service of the accused, may I ask the clemency of the court in favor of the accused.

Y. Payette Capt.
Defending Officer

SUMMARY OF EVIDENCE

In the case of F-59637 Gnr John Francis DARRAH R.C.A., on the strength of No., 1 Canadian Reception Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution — A/Capt L.E. Donkin Adjutant No., 1 Canadian Reception Depot, having been duly sworn states

"I am A/Capt L.E. Donkin Adjutant No. Cdn Reception Depot. I produce certified true copy of declaration of Court Inquiry showing F-59637 Gnr Darrah J.F. absent from 0815 hrs 12 Mar 45., Marked Exhibit "A"

I also produce certificate in accordance with P.C. 2797 showing F-59637 Gnr Darrah J.F arrested in Farnham at 1840 hrs 4 May 45 marked Exibit "B"

The accused declines to cross examine the witness

The accused was cautioned as follows; Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but what ever you say or any evidence you give will be taken down in writing and may be given in evidence

The accused elects to make the following statement;

I received a medical board on a skin condition which I had 17 months. I received a P-4 in Italy and was sent back to be cured and to be returned to my regiment. On arriving in this country I received another medical board which confirmed my P-4 but have not as yet received any treatment for my skin condition.

Certified that the Rules of Procedure 4 (c), (d), (e), and (f) have been complied with

(M.F Welsh) Capt
Officer Detailed to take Summary of Evidence

7th Day of April 1945

5-4-9

RECORD of the Declaration of a Court of Inquiry assembled at Leipzic Bks. on the 10th day of April 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F-59637 Gnr. Darrah, J.F.

Ex "A"

DECLARATION

The Court declare that No. F-59637 Gnr Darrah, J.F.

illegally absented himself without leave or other sufficient cause at Leipzic Barracks on the 0815 hrs. 12th day of March 45, that he is still so absent, and that on the 13 March 45 he was deficient, and that he is still deficient of the following articles :— as in attached Appendix "A" (Value $64.45.)

ARTICLES	VALUE	ARTICLES	VALUE

Lieut. O.J. Klaus, CIC President

B-49320 S&M Puddicombe, W.H. -CAC Member

Signed at Leipzic Barracks

Member

this 10th day of April 1945

Signature of Commanding Officer Ronald H Back
(Ronald H Back) Lt-Col
O.C. 1 Cdn Reception Depot.

Certified true copy L.E. Donker Capt & Adjt
Signature of Officer having custody of original record.

3/60B MFB 375-AFB 115 40/P&S/292 (6610)

97

Certificate in Accordance with P.O. 2797 of 10 Apr.42.

I CERTIFY THAT NO. F.59637...Rank. Gnr.....Name..DARRAH J. F.....

Unit..No. 1..Cdn. R. DPT...was arrested at. 5 Rivan rd, Farnham.(place)

at..1840...hours.on...4 May 45...(date) and that at the time of his arrest he was wearing (military uniform) or ~~(civilian clothes)~~

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Cdn. Army, into whose custody the above named person was taken on arrest.

C.K.R. Rintoul

(C.K.R. Rintoul) Lt.
A/Officer Commanding
No.9 Cdn Provost Coy.

Ex. "B"

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
T-59627	Gnr	Dearsh John Francis	R.C.A.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of the entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15 (1) X 7 times.
For AA Sec 19 1 times.
For AA Sec 24 (2) 1 times.
For ____ ____ times.

Date of first entry in Field Conduct Sheet 19 Dec 42
Date of last entry in Field Conduct Sheet 30 Dec 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

~~*(a) The accused at the present time is under sentence for~~ (a)
~~[beginning on the ____ day of ____~~ (b)

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for N/L days in civil custody; and for 11 days in military custody, i.e., 0 days in open arrest, 11 days in close arrest; of which N/L days were spent in hospital.

5. The present age of the accused is 29

6. The date of his ~~(a) calling up for military service~~ attestation (a) is 27 Sep 39

7. The service which the accused is allowed to reckon is 5 years 280 days

8. The accused is in possession of: CVSM & Clasp

~~[(a) If the accused is a warrant officer or N.C.O. The accused has served satisfactorily~~ (a)
without reduction, to the present date.

Date of Promotion.

In the substantive rank of ____
In the war substantive rank of ____
~~In the acting rank of ____~~ (a)

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike the military decoration (if any) held by accused.

(28894) W1421/29 4M 42,000 12/44 A.S.R.W.Ltd. Gp.A39 Form C.2 (Wp)/24

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	4 Mar 43	AA. Sec 15)1) AWL 40 days 11 hrs 30 Min	6 Months Det'n	60 Days

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 16 day of May 45

L E Donken Capt & Adjt

3/17 MFM 6
(AFB 122)
40/P&S/136 (7010)

No. [illegible]-59637 Name Darrah J. F | Sqn, Battery, or Company | Corps RCA | Date of enlistment 27 sep 39 | QC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19 Dec 42	Gnr		A.A. Sec 15)1) WOAS AWL from 2200 hrs 19 Dec 42 until 2200 hrs 21 Dec 42	Bdr Stephen Sgt Jones	15 days F.P 15 days pay FR&I 149(")	22 Dec 42	Lt Col J.W.G Thompson	2 days pay FR&I 149(1)a
Field	15 Jan 43	Gnr		AA SEC WOAS AWL 40 days 11 hrs 30 Mins		6 months Det'n	4 Mar 43	FGCM	41 days pay FR&I 149(1)a 184 days FR&I 149 (L)b 8 days pay FR&I 149(1) c Remission 60 days (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	23 Sep	43 Gnr		AA SEC 15(1) WOAS AWL from 0300 hrs 25 sep 43 until 2245 hrs 15 Oct 43 (Total absence 20days 19 hrs 45 mins)	Bdr Wilson LBdr Steppan	28 days det'n	16 Oct 43	Lt-Col Todd	Forfiets 21 days pay FR&L 149(L) & 4 days remission
Field	20 Jun	44 Gnr		A.A SEC 15(1) WOAS AWL from 0800 20 Jun 44 to 1500 hrs 20 Jun 44 AA Sec 24 (2) losing by neglect Regt'l necessarys to the amt of $28.43	L/Sgt Glass Bdr Jenkins	28 Days FP 28 days pay FR&I 149(2) Stoppages of $28.43	22 Jun 43	Maj LWH Randall	1 Days pay FR&I 149(1)
Field	2	Aug 44 Gnr		AA SEC 15(1) WOAS AWL from 1100 hrs 2 Aug 44 until 1345 hrs 2 Aug 44 (2hrs 45 mun) AAsec 15(1) WOAS AWL from 1800 2 Aug until 1900 hrs 2 Aug 44 (1hr)	CSM LeBuffe Bdr Thorton	7 days CB 14 Days pay FR&I 149(2)	3 Aug 44	Lt Col EW Stewart- Jones	

No. F59637 Name Gnr Darrah J. F Sqn, Battery, or Company | Corps R.C.A. | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/139 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Nov 44	Gnr		WOAS AWL AA SEC 15(1) absenting himslef without permission from the expiration of his leave from 0800 hrs 20 Nov 44 until 1145 hrs 20 Nov 44 thereby missing a military duty (Total Absence 3 hrs 45 Mins	S/Sgt James	Sum forf of 2 days pay Art. 149 (2) FR&L (total forf 3 days pay	21 Nov 44	Col GR Forbes	1days pay FR&L 149(1)a 150(b)
Field	10 Dec 44	Gnr	1	AASEC 19 WOAS charged with (1stoffence) drunkenness at Rome Approx 1130 hrs 10 Dec 44 apprehended by CMP drunk	Doc	Admonished	29 Dec 44	Maj C.P Wilkinson	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Dec 44	Gnr		AA SEC 15(1) WOAS AWL from 2145hrs 30 Dec 44 until 1400 hrs 31 Ded 44 (16 hrs 45 mins)	Doc	5 days pay FR&I 149 (2)	2 Jan 45	Lt-Col EW Steuart-Jones	

Certified True Copy
L.E. Donkin Capt
Officer in charge of custody of original document

CERTIFICATE

If he is available I wish.....Capt. Brady.....
.....of.....1 C.A.R.U.....
.....to defend me.

J W Darrah
.....
(Signature of Soldier)

CERTIFICATE

I, 1 Canadian Reception Depot, hereby acknowledge receipt of a true copy of the Charge Sheet in connection with the charges pending against me. I also acknowledge receipt of one True Copy of the Summary of Evidence.

J W Darrah
.....
(Signature of Soldier)

LIST OF WITNESSES

In the case of F-59637 Gnr Darrah J.F. on strength of 1 Canadian Reception Depot, a soldier of the Canadian Army Overseas.

	(Corps)	(Location)
Capt L.E. Donkin	CIC	1 Cdn Reception Depot

LIST OF EXHIBITS.

In the Case of F-59637 Gnr Darrah J.F on strength of 1 Canadian Reception Depot, a soldier of the Canadian Army Overseas.

Exhibit "A" Declaration of the Court of Inquiry

Exhibit "B" Certificate in accordance with P.C. 2797

Exhibit "C"

Exhibit "D"

925.

Gur. Darral, J. F.

O. H. M. S.

M. F. B. 270

H.Q. First Cdn Army
14 Nov 42

22 S.

REVIEW SHEET

F.G.C.M. PROCEEDINGS - Dated 27 Oct 42
F-59637 Gnr. Darrah J.F., 1 Cdn Med Regt, RCA.

1. Confirmed.

2. No comments.

(T. G. Norris) Major
D. J. A.
First Cdn Army

TGM/RP

COUNTER NUMBER 538534

HOUR 11:00

OPERATOR'S INITIALS O.G.

RELIEVING OPERATOR _____

COUNTER NUMBER 538534

HOUR 11:00

OPERATOR'S INITIALS O.G.

RELIEVING OPERATOR RD

225

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 27th day of October, 19 42

Whereas it appears to me, the undersigned, an officer in Command of Corps Medium Artillery, First Canadian Army, Overseas., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*[I am unable to appoint:—~~

~~*(1) Three Officers to form the Court~~

~~*(2) A Field Officer as President.~~

~~for the following reasons, namely:—~~

Proceedings Reviewed

Reviewing Officer (J.A.G.) C.M.Q.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.G. Osler	2 Cdn Med Regt RCA

Members.

Rank.	Name.	Regiment.
Capt	A.I. Morrison	3 Cdn Med Regt RCA
Lieut	E.A. Wilson	5 Cdn Med Regt RCA

*Signed (S.J. Leach) Brigadier,

Commanding CCMA - First Cdn Army.

Convening Officer

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F-59637 Gunner John Francis DARRAH 2nd Bty 1 Cdn Med Regt RCA	First Charge: A.A. Sec 15(1) Absent without leave 113 dys 12 hrs See charge sheet attached. 2nd Charge: A.A. 24(2) Loss by neglect his clothing, equipment and regimental necessaries. See charge sheet attached.	Guilty Guilty	Guilty ~~to be kept in detention~~ ~~and forfeit~~ detention Guilty ~~stoppages~~ ~~in the amount of £4.6.7¾~~ To undergo detention for 80 days and to be put under stoppages of pay until he has made good the sum of £4.6.7¾ in respect of the following articles.	I confirm finding and sentence K.L.

Shirt gd	(1)	8 - 1	
Jacket	(1)	2 - 5 - 9½	
Trouser cloth	(1)	3 - 10½	
Trousers W.D.	(1)	6 - 4½	
Khaki handkfs	(2)	2 - 0	
" Lanyard	(1)	2 - 0	
Comb hair	(1)	1½	October 27th 1942
Lumber Jacket	(1)	6	
Shirt angola	(1)	6 - 10½	John G. Oden Major President
		£4 - 6 - 7¾	

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer to be entered on separate sheet if necessary):—

(Signed) _____ (Signed) _____

(R.J. Leach) Brigadier, Commanding COMA - First Cdn Army. — John G. Oden Major President
Confirming Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 27th day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
~~(3. The interpreter)~~ the reporter
~~(4. The officers under instruction)~~

* Omit if not applicable.

were duly sworn.

Signed this 27th day of October 1942.

John G. Oden major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of A.C.I. 579 of 1918 have been complied with.~~

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.)~~

Signed this 6th day of NOVEMBER 1942.

R. Leach
Confirming Officer.

(R.J. Leach) Brigadier,
C.C.M.A. First Cdn Army.

Promulgated and extracts taken in the case of F59637 Gnr. Darrah, J.F.

(*a*) (Dated) 9 Nov 42. (Signed) J.W. MacNaughton Lieut.
(J.W. MacNaughton) Lieut., R.C.A.,
A/Adjt. 1 Cdn Med Regt.

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B.

John J. Allen
President

CHARGE SHEET

The accused, No. F.59637 Gnr Darrah, John Francis, of the 2nd Bty 1 Cdn Medium Regiment, a soldier of the Canadian Army (Overseas), is charged with:-

First Charge
Sect 15(1)
Army Act

ABSENCE WITHOUT LEAVE

in that he

while on active service at Petworth, Sx, was absent without leave from 1030 hrs 10 Jun 42 until apprehended by Cdn Provost Corps at Farnham, Sy at 2230 hrs 1 Oct 42.
(Absent 113 days 12 hrs.)

Second Charge
Sec 24(2)
Army Act

LOSING BY NEGLECT HIS CLOTHING, EQUIPMENT AND REGIMENTAL NECESSARIES

in that he

while on active service at Sutton, Sy on the 10th day of October 1942, was deficient of the following articles having a value as shown hereunder, namely:-

Article	Catalogue Price	Depreciation Value
Sheets, gd (1)	10 9	8 1
Greatcoat (1)	3 17 ½	2 15 9½
Knives, clasp (1)	5 2½	5 10½
Haversack, WE (1)	8 6	6 4½
Straps, shoulder (2)	3 4	2 6
" haversack (2)	3 4	2 6
Comb, hair (1)	2	1½
Brushes, button (1)	8	6
Shirts, angola (1)	6 7 2	6 10½
	5 18 2	4 6 7½

BE TRIED BY FIELD GENERAL COURT MARTIAL

2 Oct 42

(R.F.Leach) Brigadier
C.C.M.A. First Cdn Army

21 Oct 42
In the Field

D.K. Todd
(D. K. Todd) Lt Col RCA
Comd 1 Cdn Medium Regt

"A" John G. Bell
President

27 Oct 42

I certify that I have this morning examined F59637 Gnr. Darrah, J.F. 2nd. Bty., 1 Cdn Med Regt., R.C.A. and in my opinion he is fit to undergo trial by court-martial.

R. Coddington Capt. RCAMC.

Dated this 27th day of October 1942

Trial of F-59637 Gnr. John Francis DARRAH

Held in the Field on the 27th October 1942.

PRESIDENT

Major John G. Osler, 2nd Cdn Med Regt, R.C.A.

MEMBERS

Capt. A.I. Morrison, 3rd Cdn Med Regt, R.C.A.

Lieut.E.A. Wilson, 5th Cdn Med Regt, R.C.A.

The Order Convening the Court, the Charge Sheet and the Summary of Evidence are laid before the Court.

The Court satisfy themselves as provided by Re. P. 22 and 23 as modified by Re. P. 105 and 106.

PROSECUTOR

Lieut. J.D. Teek, 1st Cdn Med Regt, R.C.A.

DEFENDING OFFICER

Lieut. G.C. Mersereau, 1st Cdn Med Regt, R.C.A.

The Accused is brought before the Court.

The medical certificate is laid before the Court, signed by the President, marked "A" and attached to the Proceedings.

At 1130 hours the trial commences.

The Order Convening the Court is read and signed by the President.

The names of the President and Members of the Court are read over in the hearing of the accused and they severally answer to their names.

President to the accused:

Q. Do you object to be tried by me as President or by any of the officers whose names you have heard read over?

A. No sir.

The President and members are duly sworn.

President to the accused:

Q. Do you object to D-114645 Bdr. Buxton, E.C. acting as shorthand writer?

A. No sir.

D-114645 Bdr. Buxton, E.C. sworn as stenographer.

The Charge Sheet is signed by the President, marked "B" and annexed to the Proceedings.

(2)

The Accused is arraigned upon the first charge in the above mentioned Charge Sheet in accordance with R.P. 112.

President to the Accused;

Q. Are you guilty or not guilty on the First Charge which you have heard read.

A. Guilty sir.

The Accused is arraigned upon the Second Charge in the above mentioned Charge Sheet in accordance with R.P. 112.

President to the Accused:

Q. Are you guilty or not guilty on the Second Charge which you have heard read?

A. Guilty sir.

R.P. 35(B) is complied with.

President to the Accused:

Q. Do you understand that by your plea of guilty you admit being absent without leave and losing your kit and that no evidence will be taken on the charges but the Summary of Evidence will be read and you will be allowed to make a statement in mitigation of punishment and call witnesses as to your character only, if you wish to do so?

A. Yes sir.

President to the Accused:

Q. Do you wish to make any statement in reference to the charges against you?

A. No sir.

The Summary is read, signed by the President, marked "C" and attached to the Proceedings.

President to the Accused:

Q. Do you wish to make any statement in mitigation of punishment?

A. No sir.

President to the Accused:

Q. Do you wish to give evidence yourself or to call any witnesses as to character?

A. No sir.

Lieut. D.J. Teek, 2nd Bty., 1st Cdn Med Regt,R.C.A. sworn states:

I have to present to the Court a certified true copy of the Accused's N.F.M. 6, and a certified true copy of a Statement of Character of the Accused. I also have a certified true copy of the Declaration of the Court of Inquiry which was held for the Accused, and is Exhbit "A" in the Summary. I also have Exhibit "B" to the Summary, which is A.F.B. 252, from the Provost Corps, with the evidence of the Provost Corporals in the case.

The above mentioned Exhibits are signed by the President and marked D.E.F. and G. respectively.

President to the Accused:

Q. Do you wish to address the Court?

A. (Lieut. Mersereau) Yes.

On behalf of the Accused I think it is my duty to bring to the attention of the Court my viewpoints, that may speak for themselves, in favour of the Accused.

The Accused has made to me and his Commanding Officer no excuse whatsoever for his prolonged absence. Upon investigation however, there are a few bits of information that have come to life. At the time the Accused was A.W.L. the regiment was stationed in Petworth, and it is a very lonely place, and it has since been brought out that the Accused put in for passes at that time, which were refused. It has also been brought to light that his relations with his No. 1 were not of the best, which may account for these refusals, but the main thing is that at that time the Accused was married a week before he left to go A.W.L. He was in Petworth, and his newly married bride was in Farnham. I say it has been brought to our attention that these passes were refused and upon questioning, this fact was brought to light from the Accused.

I would suggest to the Court that there was some provocation at this time. You will see by his Crime Sheet that this man went two full years without a crime and it has only been recently that there have been any entries on that sheet at all.

I would ask the Court to take into consideration in awarding sentence, the fact of provocation at the time of being A.W.L. and the fact that he has already spent 27 days in detention awaiting court-martial, and the fact that he is absolutely willing to take his punishment and begin to soldier again.

I can myself testify as to character, having known the Accused in 1940 when he was a member of this Battery, and was a concientious and good soldier. I don't know the date that he left the Battery, but I do know that he has spent eleven months with Brigadier Leach, where his conduct was very good.

President to the Accused:

Q. Gnr. Darrah you will be remanded under close arrest to await promulgation of the sentence.

The Court is closed for consideration of the sentence.

President

SUMMARY OF EVIDENCE

'C' [illegible] President

Summary of Evidence in the case of F.59637, Gnr Darrah, J. F., 2nd Bty 1 Cdn Medium, Canadian Army (Overseas).

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

Capt. D.J. Black, Adjutant 1 Cdn Medium Regt, having been duly sworn states:-

"I produce AFB 115 which I have certified a true copy of the Record in AB 161 the regimental books in my custody containing the Declaration of the Court of Inquiry under Section 72 of the Army Act of the illegal absence and deficiencies of kit of F.59637 Gnr Darrah, J.F. the accused here present.

D.J. Black

(D. J. Black) Capt RCA

The accused declines to cross-examine this witness

This is attached herewith and marked Exhibit A.

2nd. Witness for Prosecution

D-9096 Gnr. Millar, J. having been duly sworn states:-

"I am Storeman in the 2nd. Med. Bty., 1 Cdn Med Regt. R.C.A. on 10 Oct 42 I examined the kit of the accused and he was still deficient the following articles.

Article	Catalogue Price	Depreciation Value
Sheets, ground 1	10. 9	8. 1
Greatcoat 1	3.17. ½	2.15. 9½
Knives, clasp 1	5. 2½	3.10¾
Haversack, W.E. 1	8. 6	6. 4½
Straps, shoulder 2	3. 4	2. 6
Straps, haversack 2	3. 4	2. 6
Comb, hair 1	. 2	. 1½
Brushes, button 1	. 8	. 6
Shirts, (angola) 1	9.2	6. 10½
	£ 5.18.2	£ 4. 6. 7¾

J. Millar

D-9096 Gnr. Millar, J.

The accused declines to cross-examine this witness.

3rd Witness for Prosecution

F-15221 Bdr. Mullin, T.W. having been duly sworn states:-

"I called the roll at 1400 hrs on the 10 ~~July~~ June 42 and found Gnr. Darrah absent. I reported this to 1/Sgt. Gass. I also reported his absence for each of the following four days.

Bdr Mullin T.W

F15221 Bdr. Mullin, T.W.

The accused declines to cross-examine this witness.

"I certify that the above abstract of evidence is a True copy of the abstract of evidence made by the witness under oath in the presence of the accused, and in my presence.

D.J. Teek

D.J. Teek, Lieut., R.C.A.

4th Witness for Prosecution

F14186 L/Sgt. Gass, A. having been duly sworn states:-

"On the 10 June 42, while in charge of the Rear-Party at Petworth, Sussex, Bdr. Mullin, T.W. reported to me the absence of Gnr. Darrah, at 1400 hrs. The accused had been on pass, which expired at 1030 hrs. 10 Jun 42. I found this pass had not been turned in. Bdr. Mullin also reported the accused absent on each of the following four days."

F14186 L/Sgt. Gass A
F14186 L/Sgt. Gass, A.

The accused declines to cross-examine this witness.

5th Witness for Prosecution

F14164 Sgt. Doherty, J.R. having been duly sworn states:-

"I am in charge of "D" Sub-section, "A" Troop, 2nd. Med. Bty. Gnr. Darrah is in my subsection, and I have reported him absent each day from 15 Jun 42 to 1 Oct 42."

Sgt Doherty J R
F14164 Sgt. Doherty, J.R.

The accused declines to cross-examine this witness.

6th Witness for Prosecution

A Statement purporting to have been made by M22883 Cpl. Suess, W.C. No.9 Cdn Provost Corps. has been read to the accused, annexed and marked exhibit "B" to the Summary of Evidence, and is included in the Summary. Owing to the exigencies of the service, expense and loss of time involved, etc., the attendance of this witness cannot readily be procured.

D. J. Teek
D. J. Teek, Lieut., R.C.A.

The accused does not demand the presence of this witness for cross-examination.

7th Witness for Prosecution

A statement purporting to have been signed by F42622 L/Cpl. Morrison, T.O. No. 9 Cdn Provost Corps. has been read to the accused, annexed and marked exhibit "B" to this Summary of Evidence, and is included in this summary. Owing to the exigencies of the service, expense and loss of time involved, etc., the attendance of this witness cannot readily be procured.

D. J. Teek
D. J. Teek, Lieut. R.C.A.

The accused does not demand the presence of this witness for cross-examination.

I certify that the accused has been cautioned in accordance with Rules of Procedure 4 (e) as follows:-

Question to Accused.

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give exidence, unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence."

Answer by Accused.

"No! I reserve my defence."

I certify that Rules of Procedure 4 (c), (d) (f) & (g) have been complied with.

Taken down by me in the presence and hearing of the accused this 10th day of October 1942, at Sutton, Surrey.

D. J. Teek

D. J. Teek, Lieut. R.C.A.

Statement in accordance with rule of procedure 14(b)

I, F.59637 Gnr Darrah, J.F. desire to have an officer, LT. McGUIGAN - No 2 CARU. assigned by the convening officer to represent me at my trial by Field General Court Martial, should he be available.

J. F. Darrah

(J. F. Darrah)

In the case of #F59637 Gnr. Darrah, J.F. exhibit "B" referred to in the Summary of Evidence, taken down by me on the 10th day of October 1942.

D. J. Teek

D. J. Teek, Lieut. R.C.A.

CHARGE

Army Form B 252

1 Cdn Medium

Exhibit "B"

D.J.T.

R.C.A.

Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. F 59637 Rank Gunner

Name DARRAH, J.F.

Place FARNHAM Date of Offence 1 Oct 42

OFFENCE W.O.A.S. -

A.W.L.

Lieut. for

O.C. No. 9 Cdn Provost Company.

Names of Witnesses :—

E 22883 Cpl. Suess, W.G.

F 42622 L/C. Morrison, T.O.

Signature of O.C. Battery, Squadron Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

EVIDENCE

59637 Gnr. DARRAH, J. F.,
Cdn Med Reg't, R.C.A.

Whilst on patrol duty in Farnham on 1 Oct. 1942, I received information from Sgt. Moffatt 3rd Sgt., No. 9 Provost Coy, that the a/m soldier was A.W.L. and thought to be staying at No. 5 River Row, Farnham. I, in company with L/Cpls Morrison and Lindgren, called at this house and found the a/m soldier with his wife. I placed the soldier under close arrest at 2230 hours and escorted him to the Guard Room at 1 C.A.R.U. at 2355 hours.

E 22883 Cpl. Suess, W.G.,
No. 9 Cdn Provost Company.

I have read and corroborate the above statement.

F 42622 L/Cpl Morrison T.O.

F 42622 L/Cpl. Morrison, T.O.,
No. 9 Cdn Provost Company.

REMARKS

O.C. of Formation to be advised direct as to result of this charge.

"D"

M.F.M. 5

175M—7-41—(1215-20)
H.Q. 1772-39-1852

No. F.5963 Name Darrah, J.F. Sqn., Battery, or Company Corps 2nd Med Bty Date of enlistment 1 Sep 39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (dispensing with trial)	By whom awarded	Remarks
On 1 Mar 40 this soldier completed 6 months service and according to RO 319(CA (C) a new sheet was made out and the old one destroyed. No regimental Entries.									
On 1 Sep 41 this soldier completed 2 consecutive years service clear of regimental entry and according to CARO (O) 319 a new sheet was made out and the old one destroyed. No Regimental Entry.									
Felpham Sx	14 Mar 42	Gnr		AA Sec 15(1) absent from 2230 hrs 14 Mar 42 to 2215 hrs 16 Mar 42	Sgt Dennis L/Sgt Petrus	Forfeits 5 days pay FRI 149 (2)	17 Mar 42	Maj Andrew	Forfeits 2 days pay FRI
"	17 Apr 42	"		AA Sec 15(1) absent from 0830 hrs to 0845 hrs 17 Apr 42	TSM Shelfoon	Forfeits one days pay	17 Apr 42	"	
Field	30 May 42	"		AA Sec 15(1) absent from 2200 hrs 30 May 42 to 2145 hrs 2 June 42	"	Forfeits 3 days pay		Lt Col Todd	3 days pay FRI

(F.I.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified true copy of entries in Regimental Records at my disposal

(D. J. Black) Capt RCA
Adj. 1 Can Medium Regt

"E" [signature] President

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
F.59637	Gnr	Darrah, J.F.	1 Can Medium Regt

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Section 15 (1)	3 times	3 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NA

or

There are no entries in the conduct sheets of the accused. NA

2. The accused has not been previously convicted, or NA

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for NA beginning on the — day of —

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 27 days in military custody, making a total of 27 days, of which NIL days were spent in hospital. 1 Oct. to 27th Oct. 1942.

5. The present age of the accused according to his record of service / attestation paper is 25 YRS.

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 1 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is NA

8. The accused is entitled to deferred pay or gratuity in respect of NA service.

9. The accused is entitled to reckon NA service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of NA

12. (*In the case of an officer.*) The accused holds in the army the rank of NA dated and in his regiment (or corps or department) the rank of NA dated —

[illegible] WL[illegible] 75,000 12/40 A.A.R.W.[illegible] Gp.[illegible]

Certified true copy from the regimental books in my custody of a Declaration of a Court of Inquiry under A.A. Sec 72 on the illegal absence of J.59637 Gnr Derrah, J.F. as entered in AB 161 signed by the Commanding Officer.

(D. J. Black) Capt RCA
Adj. 1 Cdn Medium Regt

This is Exhibit A to the evidence of Capt. D.J. Black, taken before me this 10th day of October, 1942.

(D. J. Peek) Lieut. RCA
2nd Sty 1 Cdn Medium Regt

"F"

Army Form B.115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Caterham, Sy on the 27 day of July 19 42, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. 7.59637 Gnr Darrah, J.F.

DECLARATION.

The Court declare. 7.59637 Gnr Darrah, J.F. of the 2nd Sty 1 Medium Regt RCA illegally absented himself without leave at Burton Rough, Sx, on the 10 Jun 42 from 1030 hrs and that he is still so absent, and that on the 23 July 42 he was deficient and is still so deficient of the following articles:-

Badges, cap	1		3d.	Vests, flannel or woollen	1			1d
Braces, pr	1	1	3½	Blouses, S.D.	1	1	7	6
Brushes, hair	1	1	1	Boots, ankle, pr	2	2	3	0
" shoe blacking	1		8	Cape, A.G.	1		12	3
" shoe polish.	1		9	Great coat	1	3	17	½
Cap, comforter	1		11½	Shoes, canvas, prs	1		8	10
Comb, hair	1		2	Trousers, S.D.	2	2	15	10
Drawers, cellular	2	4	1	" denim	1		11	9
" woollen	1	5	3	Haversack	1		8	6
Knives, clasp with lanyard	1	5	3½	Sack	1		8	6
Laces, boot pr	2		3	Strap, shoulder, lt	1		1	11
Shirts, angola	2	18	4	" " rt	1		1	11
Socks, worsted, prs	2	3	4	" web sup.	1			8
				Tins, mess	1		2	10
				Respirator, A.G. complete	1		14	1
						16	1	7

Names of President and Members

President - Lieut. A.D. Talbot
Members 0 " E. Taylor

Signature of Commanding Officer D. A. Todd, R.C.A.
Cmd 1 Sth Medium Regt.

CERTIFIED TRUE COPY

Signature of Officer having custody of the Original Record. Capt.

(17221) W.L.34218/1823 75,000 10/39 A & E.W.Ltd. Gp.698
(17222) W.L.4272/700 250,000 1/42 Forms/B115/56

U.V.-94 } (case #3)
K.V.-95 }
RFN DARROCH L.

See I-65 for 1st case
" J-39 " 2nd "

B-64564, Rfn. Laughton DARROCH
2 Cdn Gen Pnr Coy.

UU-94

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this eighth day of October, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of "A" Group Canadian Reinforcement Units, Canadian Army, Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reasons to be recorded in writing~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*Not applicable to appointment~~

~~*Three Officers to form the Court~~

~~*A Field Officer as President~~

~~for the following reasons namely~~

*Omit if not applicable.

Proceedings Reviewed

Reviewing Officer (J.A.G.) (M.H.Q.)
24 Nov 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.S. Pettapiece	HQ CRU

Members.

Rank.	Name.	Regiment.
Capt.	P.E. Gower (R. Wpg. R.)	2 CIRU
Lt.	J.V. Koester (Regina Rif. R.)	2 CIRU
Waiting Member Lt.	H.E. Evoy (Regina Rif. R.)	"

*Signed (J.A. Calder) A/Col.,
Commanding "A" Gp Cdn Rft Units,
C.A.(O).
Convening Officer.

Arthur S. Pettapiece

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-64564, Rfn. Laughton DARROCH 2 Cdn Gen Pnr Coy	First Charge A.A. Sec. 18 (5)	Not Guilty	Not Guilty	Finding and sentence reserved for confirmation by superior authority.
	Second Charge Alternative A.A. Sec. 8 (2)	Not Guilty	Guilty	Sentenced to undergo penal servitude for a period of three (3) years.
	(SEE CHARGE SHEET ATTACHED)			Finding and sentence not confirmed. P J Montague (P. J. Montague) Major-General Senior Officer Canadian Military Headquarters 18 OCT 1943

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [signature] (J.A. Calder) A/Col., Commanding "A" Gp Cdn Rft Units, C.A.(O). Convening Officer (e)

(Signed) [signature] Arthur S. Pettapiece, Major President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of October 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 9th day of October 1943.

[signature] Arthur S. Pettapiece, Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

*See footnote (b) on page 767 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of B-64564, Rfn. Laughton Darroch

(a) (Dated) 2 Nov '43. (Signed) [signature] MAJOR 2 CDN. GEN. PIONEER COY.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused B-64564, Rfn. Laughton DARROCH, of No. 2 Canadian General Pioneer Coy, a soldier of the Cdn Army, Overseas, is charged with:

First Charge

ARMY ACT
Sec 18 (5)

While on active service

Disgraceful conduct of an indecent kind

in that he,

at Jasper Camp, Witley at approximately 0030 hrs, 2 Oct 43, did use violence upon the person and threaten the life of K-53627, A/Sgt Englehart, C.G. with intent to commit an indecent act.

Second Charge
Alternative

ARMY ACT
Sec 8 (2)

While on active service

Offering violence to his superior officer

in that he,

at Jasper Camp, Witley, at approximately 0030 hrs, 2 Oct 43, did offer violence to K-53627, A/Sgt Englehart, C.G. by striking him and cutting him with a razor.

.....J.H. Craig.....
(J.H. Craig) Major,
Commanding
No. 2 Cdn Gen Pnr Coy

Jasper Camp,
Witley, Surrey.

To be tried by Field General Court Martial

(J.A. Calder) A/Col.,
Comd,
"A" Gp Cdn Rft Units,
C.A.(O).

8 Oct 43

Arthur J. Pettypiece, Major
President

2 CARU Form 202

Medical Officer's Cert.
K.R.(Can) para.557

I certify that I have this morning examined NO...B-64564.....

Rfn.....Parroch, L..... and in my opinion is fit to
(rank) (name)

undergo trial by Court Martial.

Station Jasper Camp.

Date. 9 Oct. 1943...

(Sgd) R C Mellow Capt
(Medical Officer)
[illegible] Army Tenif Unit
[illegible] Army [illegible] Maj

1.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT
ON THE DAY OF 1943

The accused B.64564 Rfn. Gaunch, L. Unit 2 C.F.P.C.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22 and 23.

The accused is brough before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.

The following cnnstitute the Court:-

It having been ascertained that both Lts. Koester & Evry was not qualified to sit because they had not held their commissions for 1 yr., Gowley was substituted.

President Maj. A. J. Pettagrice Unit H.Q. C.R.U.
Members Capt. P. E. Gower Unit 2 C.I.R.U.
Lt. J. Gowley Unit 2 C.I.R.U.

The officers under instruction are duly sworn:-

Lt. Lt. J. G. Koester Unit 2 C.I.R.U.
Lt. H. E. Evry Unit 2 C.I.R.U.

Prosecutor Capt. Kley A. E. Unit 2 C.F.P.C.
Defending Officer Maj. H. J. K. McCullagh Unit 2 C.A.R.U.

The charge sheet is signed by the President and the accused is arraigned.
~~The accused pleads guilty to the charge(s) and R.P.35(B)~~ is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P.37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P.46(B).

Pursuant to R.P.37 THE ACCUSED:-
(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS ~~OF ACCUSED OR HIS DEFINDING OFFICER.~~

The accused pleads "Not Guilty" to both charges

R.P. 39(A) is complied with.

The Prosecutor proceeds to call witnesses.

1st Witness for Prosecution

K53827A/Sgt. Englehart, C.T. of 2C1R4. having been duly sworn, states.

On the night of 1 Oct 43 I was at the Sgts. dance at Jasper Camp, the accused asked me to buy him some beer. I thought he was one of the visitors. He then said to me, I have a room alone by & I have some marks. I am out of cigarettes. I went with him and he gave me a cigarette. I was sitting on the bed and he was counting some money. I asked him what he was going to do with the money and then said that I would be going. He then pulled a razor out of his pocket and told me how well he could use it. This razor is similar to the one he had (Exhibit "A") I felt uneasy and he stood over me with the open razor and said "Take off your shoes & socks." I did this. When his attention was distracted I struck him with my left fist on his forehead. He then hit me over the head with something heavy and blunt. I fell on the floor. He stood over me with the razor and said "I've a good mind to cut you all to pieces." On showing the razor away from my face several times I cut my hand slightly on it. The accused then kicked

I did not buy the accused any beer, what I gave him was the last from the bar because it was closed.

By the Court.

The accused did not say why he wanted me to take off my boots & socks. I took my jacket off in the room of the accused after I took off my boots & socks. This room looked like some one's living quarters. When I left the room I left behind my socks, boots, jacket and cap.

2nd Witness for Prosecution.

B6620 L/Bdr. Armstrong, W. T. of 2 CAR 4, having been duly sworn, states:-

On the night in question I was on duty in the guard room. It was about 0300 hrs when acting on a report I went to the Sgts Quarters & Infrmd Sgt. Englehart. He had no boots or socks on tears on. He appeared to have been injured so I took him to the R.A.P. His head was injured, his forehead, one of his eyes was injured, his nose had been bleeding and there was a few small cuts on the pale of both his hands. I reported the matter to the Orderly Office. This Sgts. Quarters where I saw the Sgt. Englehart is in Jasper Camp. I saw the accused on the morning of 2 Oct 43 at 0900 hrs. He was in the barber shop of the Primer Coy which is in Jasper Camp. The barber shop is located in Jasper Camp and is the corner of a much larger building. After a cumulative

About 0930 hrs on 2 Oct 43 I was in my orderly room. Sgt. Englehart came in and spoke to me. As a result of this conversation I went with Sgt. Englehart to the barber shop of 2 C.G.P.C. The accused lies there. He is the regimental barber. There was a tunic there turned inside out lying on the bed. This Exhibit "C" is the same tunic and I recognize it by the stripes on the sleeve and the blood stains. There was a pair of boots there too, I think these are they (Exhibit "E")

Cross-examination

I did not see a razor at that time, but I did see one there later in the day. Exhibit "A" is the razor. I did not notice any other razors

The Prosecution is closed.

The Defending Office submits under R.P. 40 that the Prosecutor has not made out a prima facie case and the Court is closed for consideration of the submission.

The Court is re-opened and it is announced that the submission on the First Charge is allowed and the accused is thereupon pronounced "not guilty" of the 1st charge.

R.P. 40 is complied with and the Defence proceeds to call witnesses.

1st Witness for Defence.

The accused, having been duly sworn, not ate:-

On the night in question I stopped work at about 2220 hrs. I helped to drink a bottle of beer with a friend of mine. Then we went to the Sgt. Mess to try and get some more beer. I gave a waiter some money to get some beer but it was no go. Then my friend "Danny" who is another barber bell. I went back to the

The accused pleads "Not Guilty" to both charges

R.P. 39(A) is complied with.

The Prosecutor proceeds to call witnesses.

1st Witness for Prosecution

K 53827 A / Sgt. Englehart, C.T. of 2 C.I.R.U. having been duly sworn, states.

On the night of 1 Oct 43 I was at the Sgts. dance at Jasper Camp, the accused asked me to buy him some beer. I thought he was one of the waiters. He then said to me, I have a room alone by a I have some marks. I am out of cigarette. I went with him and he gave me a cigarette. I was sitting on the bed and he was counting some money. I asked him what he was going to do with the money and then said that I would be going. He then pulled a razor out of his pocket and told me how well he could use it. This razor is similar to the one he had (Exhibit A) I felt uneasy and he stood over me with the open razor and said "Take off your shoes & socks." I did this. When his attention was distracted I struck him with my left fist on his forehead. He then hit me over the head with something heavy and blank. I fell on the floor. He stood over me with the razor and said "I've a good mind to cut you all to pieces." On showing the razor away from my face several times I cut my hand slightly on it. The accused then asked

me in the face and body and then I managed to get away. Later a provost found me and took me under his care. I was wearing my battle dress at the time and my proper rank badges. Just the two of us were there. This room I was in was a room that was built into a long brick building in Jasper Camp. This happened sometime after midnight of 1 Oct 43. I was between ~~[illegible]~~ 0100 hrs and 0200 hrs. I think. I had been drinking but was not drunk. The accused did not appear drunk to me. I had given him 1 pint of beer. I went with the accused to get a cigarette from him. I had never seen him before. I identify this shirt as mine, it is the one I was wearing when the incident occurred. (Exhibit "B") I also identify this battle dress blouse as the one I was wearing. (Exhibit "C") I also identify this cap as the one I was wearing (Exhibit "D") I also identify these boots as the one I was wearing (Exhibit "E") He threatened me before I hit him. These marks on my left hand were received at that time.

Cross-examination

I did not pay much attention to what furniture or tools were in the room. I identify this shirt because it is my blood that is on it and I know the shirt. My nose was bleeding and so was my head. I did not have my jacket on when the fight started, but I wore it into the room. I was kicked on the side of the head and mouth. I was at the dance but I do not dance. I talked a lot with Sgt. McGrachie

I did not buy the accused any beer, what I gave him was the last from the bar because it was closed.

By the Court.

The accused did not say why he wanted me to take off my boots & socks. I took my jacket off in the room of the accused after I took off my boots & socks. This room looked like some one's living quarters. When I left the room I left behind my socks, boots, jacket and cap.

2nd Witness for Prosecution. B6620 L/Bdr. Armstrong, W. T. of 2 CAR 4, having been duly sworn, states:-

On the night in question I was on duty in the guard room. It was about 0300 hrs when acting on a report I went to the Sgts Quarters & I found Sgt. Englehart. He had no boots or socks or tunic on. He appeared to have been injured so I took him to the R.A.P. His head was injured, his forehead, one of his eyes was injured, his nose had been bleeding and there were a few small cuts on the palm of both his hands. I reported the matter to the Orderly Office. This Sgts. Quarters where I saw the Sgt. Englehart is in Jasper Camp. I saw the accused on the morning of 2 Oct 43 at 0900 hrs. He was in the barber shop of the Prince Coy which is in Jasper Camp. The barber shop is located in Jasper Camp and is the corner of a much larger building. After a conversation

with the accused I turned the matter over to the Prince M.Ps.
At 0200 hrs Sgt. Englehart was carrying this shirt
Exhibit "B" in his hand.

Cross-examination

When I met the Sgt. there was a slate smell of
liquor off his breath.

3rd Witness for Prosecution

C 21537 Pte. Clement R. of 2 C.G.P.C. having
been duly sworn, states

I am the bar-tender of the Sgt. Mess at
a ~~C.G.P.C.~~ C.A.R.U. There was a Sgt. dance on at that
time. I never sold him any beer that night.

No cross-examination

4th Witness for Prosecution

H 42374 C.S.M. S. McFatridge, T.B. of 2 C.I.R.A.
having been duly sworn, states:-

On 1st Oct. I was at the Sgt. dance
in question. I was with Sgt. McGeachie. I saw Sgt.
Englehart there. We left at 2350 hrs, that is Sgt.
McGeachie and myself. I do not know when Englehart
left the Mess. I do not know what condition he was in
when he left. The dance stopped at 2321 hrs.

No cross-examination

4th Witness for Prosecution

B 62579 A/C.S.M. Graham S.M. of 2 C.G.P.C.
having been duly sworn, states:-

About 0930 hrs on 2 Oct 43 I was in my orderly room. Sgt. Englehart came in and spoke to me. As a result of this conversation I went with Sgt. Englehart to the barber shop of 2 C.G.P.C. The accused lives there. He is the regimental barber. There was a towel there turned inside out lying on the bed. This Exhibit "C" is the same towel and I recognize it by the stripes on the sleeve and the blood stains. There was a pair of boots there too, I think these are they (Exhibit "E")

Cross-examination

I did not see a razor at that time, but I did see one there later in the day. Exhibit "A" is the razor. I did not notice any other razors

The Prosecution is closed.

The Defending Officer submits under R.P. 40 that the Prosecution has not made out a prima facie case and the Court is closed for consideration of this submission.

The Court is re-opened and it is announced that the submission on the First Charge is allowed and the accused is thereupon pronounced "not guilty" of the 1st charge.

R.P. 40 is complied with and the Defence proceeds to call witnesses.

1st Witness for Defence.

The accused, having been duly sworn, states:-

On the night in question I stopped work at about 2220 hrs. I helped to drink a bottle of beer with a friend of mine. Then we went to the Sgt. Mess to try and get more more beer. I gave a visit more money to get more beer but it was no go. Then my friend "Danny" who is another barber left. I went back to the

Sgt. Mess. Then our pay Sgt. came out with a pint of beer and I bought it from him. Then another Sgt. got me a 1/2 pint. Then Sgt. Engelhart came along and he said he would get me some beer. He bought out 4 glasses and went back in. I suggested that he get 1/2 doz. pints and go over to my place and we would drink them. Then I kept on drinking and eventually I went into the Mess and spoke to him. We got 6 pints of beer and Sgt. Englehart & myself went to my room. He suggested staying for the night. I said it was O.K. with me. He started to brag about the States and I told him I did'nt like it and to get out. As I went to the door to show him out I was hit over the head with a glass by Sgt. Englehart. I turned rund and hit at him may be two or three times. I was pretty mad. He pleaded for mercy and I told him to get out. I walked out of the place and went over to the showers. I think it was about ~~0200~~ 0230 hrs 2 Oct 43. There I saw a man called "Pop". The Sgt. was gone. My face was bleeding, my head was too. Then we went over to the kitchen and had some tea. I was working with a pair of clippers while Sgt. Englehart was there. I also had the tools I was using that evening laying on the table. Exhibit "A" belongs to me

Cross-examination

I had about 6 drinks on the night in question. I was not drunk. I have a very clear idea of what happened.

I do not know why the hgt. hit me. I know that if he had come after me with his fist he would have got the same treatment. He was not sober. I did not ask him over to the shop for a smoke.

By the Court.

I dont know why he hit me. I hit the hgt. several times after he hit me.

2nd Witness for Defence

A28199 Tr. Pte Pastorius, W. L. of 2 C. G. P. C. having been duly sworn, states

Early in the morning the accused knocked on the bath room door. I got up and he had blood running down the back of his neck and went over to the barber shop with him. There there were broken beer bottles and blood on the floor and a hgt's tunic on the floor. There was went to get a cup of tea and we couldn't get any so I went to bed. The accused was just scratched on the back of his neck and his ear. It did not require any medical attention.

Cross-examination

His forehead was not injured so far as I could see.

By the Court

The accused said that the same hgt. had come and ushered him up and that there had been a fight. He told me that he had been in bed when the hgt. came

and wakened him up.

The Defense is closed

The Defending Officer makes a closing address (attached hereto)

The Prosecutor replies (attached hereto)

The Court is closed for consideration of finding

The Court is re-opened and Overseas R.O. 3262 is complied with.

The Prosecutor submits the MFB335 and MFM 6 of the accused.

The Defending Officer addresses the Court (attached hereto)

Overseas R.O. 3262 is complied with.

The Court is closed for consideration of sentence.

Arthur S. Pettapiece,
Major

Closing address by Defending Officer.

In closing may it be pointed out that while undoubtably Sgt Copeland received blows and was definately marked up at the hands of the accused and that to a certain extent thes evidence is corroborated both by circumstantial and verbal evidence, the whole affair appears to be the word of one man against another there were no actual eye witnesses.

The Sergeant is a superior officer, and the other is on a soldier striking an N.C.O. but there was considerable drinking by both parties and the fact that a Sergeant in drinking with a inferior lays himself open to question.

In the opinion of the defending officer the accused has produced evidence of extreme provocation.

J.J. McCullagh Major

President
J. G. C. Co.

Reply to the closing address of Defending Officer.

By Prosecuting Offr (Capt A E Kelsey)

I agree with the defence to the extent that the evidence sifts itself down to the word of one man (the accused) against the other (Englehart).

It is very evident that considerable drinking had been in progress up to the time Englehart, according to his story, accepted Dalrock's invitation to the Bunker's Shop in order to get a smoke.

What transpired there is difficult to reconcile with

CHP

the accused's evidence. If as he alleges, he was attacked by Englehart (a husky-build of man) how is it that Sparrow's injuries were practically nil and Englehart was badly beaten up?

It is true that Lgt Englehart placed himself in a very invidious position by accepting the invitation of an inferior rank to go to his quarters. But is that any license for a vicious attack such as he sustained?

I believe that on weighing the evidence adduced at this trial the Court will have no difficulty in arriving at the

same conclusions as the prosecution.

A. E. Halsey Capt
(Gen Trad)

9 Oct 43

Statement in mitigation of punishment
in the case of B.64564 Pfm Laughton Darrock
of No 2 Canadian General Pioneer Coy. Cdn Army

9 Oct 43

The accused was borne in Glasgow Scotland in 1907, he went to Canada with his parents while still a baby and at the age of 6 or 7 years his father left his mother. The mother was forced to provide a living for herself and her young son

The boy did not have much chance he attended school only as far as Grade III and for the rest of his life he made a precarious living in Toronto selling papers and doing various odd jobs. never making a great success of anything. He then took to drink and this has been his downfall.

This man aparently has never had the training that most of us enjoy and appears to have been knocked about during all his life. His Army career reflects this and his mental attitude indicates that he should be examined as to his proper disposal

J H McCullagh Major
M.C.D.

Received of Major G. S. Pettapiece
Exhibits A, B, C, D and E relating
to FGCM charges against
Rfn Darroch, 2 Cdn Gen Pur Coy.

A. E. Kelsey capt
2 Cdn Gen Pur Coy
(Prosecuting Offr.)

9 Oct 43

(1) I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Jasper Camp, Witley, Surrey, preliminary of my Court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

L Darroch
B.64564 Rfn. Darroch L.

Dated at Witley,
Surrey
this fifth day of
October 1943.

(2) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Mgr J. K. McCullagh. ~~Maj~~
if he is available. #2. C.A.R.U.

L Darroch
B.64564 Rfn. Darroch L.

Dated at Witley, Surrey.
this fifth day of
October 1943.

SUMMARY OF EVIDENCE

Jasper Camp,
Witley, Surrey
2 & 4 Oct 43

Summary of Evidence,
in the case of B.64564 Rfn. Laughton Darroch, No 2 Canadian General Pioneer Coy.

R.P.(F) The Commanding Officer directs that the evidence be taken under oath.

19 WITNESS B62579 A/CSM Graham L.M. of No 2 Cdn Gen Pnr Coy, having been duly sworn states:

I am Acting C.S.M. of No 2 Cdn Gen Pnr Coy. On 2 Oct 43 at approximately 0930 hrs., Sgt Englehart C.G. came to my desk of No 2 Pnr Coy, and stated that he wished to lay a charge against B.64564 Rfn. Darroch L. He stated that approximately 0030 hrs on 2 Oct 43 that he had met Rfn. Darroch after the dance held at #2 C.A.R.U. Sergeants Mess, and had been asked to go with Rfn. Darroch to his quarters. He further stated that he had been lucky to get out of Rfn. Darroch's quarters alive. Thinking best that we start at the beginning I asked Sgt Englehart to accompany me to the Sergeants Mess to indentify the spot where he claimed to have the acquaintance of Rfn Darroch. We then proceeded to the Sergeants Mess Hall (the recreation end) and I had him point out where he had met Ref. Darroch. This place was immediately outside of the bar of the mess at its western end, which is approximately 10 feet from the bar itself. We left the mess, and I asked him where he went after they left the mess. He said pointing westward that it seemed to be in that direction. He could not be sure since it was dark. I asked him to describe the room that he was taken to. He stated that it was a room, small, but with the wall covered with pictures of women. Knowing such a room I took him to the barber shop, which is also the sleeping quarters of Rfn. Darroch, and he said this is the room. On entering the room, a battle blouse turned insideout was laying upon the bed. He said "that is my tunic". Cpl Cadotte accompaning me picked up the tunic (Exh.F.) still turned insideout and asked, " can you indentify the tunic (Exh.F.)". Sgt Englehart replied. "Yes ,it had Rifle Regt. stripes on the right arm only. There should be nothing in the pockets". He said, "those are my shoes", pointing to a pair of shoes (Exh.E.) on the floor. Cpl Cadotte asked him " can you indentify your shoes"? He said, "yes, one sole is not worn through the other is? The shoes (Exh.E.) were picked up from the floor and the statement verified. I also noted that on a cupboard on the east wall, and on the outside door there were blood stains.

At 1630 hrs after the preliminary hearing in company of Lt. R.W. Spurr we proceeded to make an examination of Rfn. Darroch's quarters. We found one straight razor (Exh.A) ivory shield, also on examination of the floor found several pieces of broken glass, (Exh.B.) one piece under the table on the south wall and two pieces under the cupboard on the east wall.

Q. by the accused:
"Did the Sgt. say to you this morning that he did not know where my place was ?"

A. by the witness:
"Yes"

Q. by the accused:
"What did he tell you that happened after we met last night"

A. by the witness:
"He stated that he had met Rfn.Darroch after the dance at #2 C.A.R. U. mess and that on Rfn.Darroch's invitation he had gone to Darroch's quarters. On entering the quarters he had had suggestions made to him by Darroch to perform an unnatural thing, that is,Darroch be allowed to suck his penis. He further stated, that with the idea of getting away from Darroch, that he had attempted to kid him along, by saying "that's going to cost you a lot of dough" He further stated, that displayed money and at this point, that he(Sgt Englehart) had got up from the bed with the intention of leaving, on doing so Rfn. Darroch reached into a box and threatened him, that if he did not undress, that it would be just too bad for him. He further stated that he watched his chance, after having removed his shoes(Exh.E.)and tunic(Exh.F.)to escape. He is vague in stating what transpired from that point on, although he did state that he had fought to escape and had been slashed with a razor in Darroch's hands and had been kicked and had had to leave, when he did escape in his bare feet.

B52579 A/CSM.Graham L.M.

The accused declines to cross-examine the witness,further.

2ND WITNESS C.21537 Pte Clement R. of No 2 Cdn Gen Fnr Coy, having been duly sworn states:

I am bartender in Sergeants Mess No 2 C.A.R.U. Last night after the bar closed at 2359 hrs on 1 Oct 43 I went out to pick up bottles, and was stopped and asked if I could get some beer, by the accused. I could not get any.

Q. by the accused:

"Did we get any beer?"

A. by the witness:

"No"

Q. by the accused:

"Is there another man working with you"

A. by the witness:

"Yes, a sergeant caterer"

Q. by the accused:

"Could he sell the beer?"

A. by the witness:

"He could sell to the sergeants, but there was none left."

Q. by the accused:

"Did I give you the remainder of money that was short for six glasses of beer?"

A.by the witness:

"No"

C.21537 Pte Clement R.

The accused declines to cross-examine the witness, further.

WITNESS K53827 A/Sgt Englehart C.G. of R.W.R. #2 Cdn.Inf.Reinf.Unit. having been duly sworn states:

I went to #2 C.A.R.U. Sgts Mess dance on night 1 Oct 43 in company with Sgt.McGeachie and CQMS McFetridge. We did not dance but we drank quite a bit of beer. I was accosted by Rfn. Darroch just as the dance was closing. He wanted me to buy him a beer. I gave him what I had of my own. The bar was closed and I went outside and he asked me to take a walk over to his hut, which I did. I was out of smokes and he said he had tobacco and he rolled me a smoke. He had a few pound notes in his hand which he kept pulling out every now and again. Then I wanted to leave and he pulled out a razor, and I joked because I wanted to cheer him up so that I could get out. He then threatened me with a razor and told me to take my shoes and stockings off. I took them off. I was lying on my right side. I thought if I could hit him hard enough I could knock him out, therefore I did at the first opportunity. I was hit over the head I dont know what with I was dazed but not out cold. He then tried to cut my face with a razor. I pushed away the razor and received some small cuts. Then I was kicked in the face and stomach. I fully believe the accused had every intention of killing me. When he turned from the door I saw my chance to get away. Iwas found by the Provost and taken somewhere for treatment. Istayed there till a truck took me to my own unit.

Q. by the accused:

"Were you at my quarters this morning with the Provost?"

A. by the witness:

"Yes"

Q. by the accused:

"Was that before you saw the Sergeant Major?"

A. by the witness:

"Yes"

Q. by the accused:

"How did we become acquainted?"

A. by the witness:

"You asked me to buy you a beer, I thought you were one of the mess help"

Q. by the accused:

"Was I alone at the time?"

A. by the witness:

"I do not know"

Q. by the accused:

"Did you bring some beer out of the mess?"

A. by the witness

"What I had left in my glass"

Q. by the accused:

"Did you buy beer to take out?"

A. by the witness:

"No"

Q. by the accused:

"Do you know the Sergeant at the bar?"

A. by the witness:

"I do not"

Q. by the accused:

"When you met me, did you ask me if I could get a woman for you?"

A. by the witness

"No"

Q. by the accused:

"You could not get a cigarette in the mess?"

A. by the witness:

"The bar was closed"

Q. by the accused:

"Was there anyone in there who could give you a cigarette?"

A. by the witness:

"We had smoked all we had"

Q. by the accused:

"Was there any beer in my place when you got there?"

A. by the witness:

"No"

Q. by the accused:

"Was there any glasses on the table?"

A. by the witness:

"I do not know"

C. H. Englehart
K55827 A/Sgt Englehart C.G.

The accused declines to cross-examine the witness further.

4th WITNESS. G22740 Pte Guitar A. of No 2 Cdn Gen Pnr Coy, having been duly sworn states:

I am acting M.P. of No 2 Cdn Gen Pnr Coy. On 2 Oct 43 the accused gave me a forage cap(Exh.C.)belonging to Sgt Englehart. I took it to Cpl. Cadotte, and turned it over to him.

Guitar A
G.22740 Pte Guitar A.

The accused declines to cross-examine the witness.

5th WITNESS H42183 Sgt McGeachie D.W. of R.W.R. #2 Cdn Inf Reinf Unit, having been duly sworn states:

Three of us came up to the Sergeants dance at #2 C.A.R.U. on the night of 1 Oct 43 about 22.30 hrs. There were CQMS McFetridge and Sgt Englehart and myself. I stayed in the bar with Sgt Englehart until shortly after it closed and that was the last I saw of him. CQMS McFetridge and myself left about half an hour after. I had one dance during the evening.

Q. by the accused:

"What time did the bar close?"

A. by the witness:

"I do not know, I did not have my watch with me"

Q. by the accused:

"Were you at the bar at midnight?"

A by the witness:

"I cannot say what time, I left when the dance broke up"

Q. by the accused:

"How long were you at the dance?"

A. by the witness:

"I would say about two hours, I am not sure of the time atall"

D.W. McGeachie
H.42183 Sgt McGeachie D.W.

The accused declines to cross-examine the witness further.

6th WITNESS H42374 CQMS McFetridge T.B. of R.W.R. #2 Cdn Inf Reinf Unit. having been duly sworn states:

On the night of the dance 1 Oct 43, Sgt McGeachie and Sgt Englehart and myself came over to the Sergeants Mess #2 CARU around 2200 to 2230 hrs. I danced most of the evening till 2330 hrs. Sgt McGeachie and I then proceeded home approximately midnight. Sgt Englehart did not appear to be in the mess when we left. That being the reason we went home alone.

Q. by the accused:

"Did you have any cigarettes when you left?"

A. by the witness:

"I do not smoke. I did not have any cigarettes"

The accused declines to cross-examine the witness further.

T.B. McFetridge
H.42374 CQMS McFetridge T.B.

7th WITNESS

B6630 L/Bdr. Armstrong W.T. of No 2 Cdn.Arty.Reinf.Unit., having been duly sowrn states:

I am R.P. for No 2 C.A.R.U. I was on night duty in charge of the guard house on the night of 1Oct and 2 Oct 43. At approximately 0300 hrs 2 Oct 43 a man came to me with a report that a man in a hysterical condition was wandering around the lines. When I found him he was dressed only in summer underwear, battle dress trouses, and suspenders. He was bare footed and carried with him a shirt (Exh.D.) and handkerchief badly blood stained. He was in a childish and frantic condition. He had obviously been beaten up and showed the marks of blows. His nose had been bleeding. I took him to the First Aid Post. As he had no means of indentification when the medical orderly made out his 292, that is his medical report. I found he was Sgt Englehart of #2 C.I.R.U. so I called from R.H.C. #2 C.A.R.U. to Orderly room of #2 C.I.R.U. for them to come and get the man. The R.P. from #2 C.I.R.U. came for him at approximately 0600 hrs 2 Oct 43. He returned at approximately 0900 hrs 2 Oct 43 accompanied by the R.S.M. of his camp. The R.S.M. of 2 C.A.R.U. told me to check the case and report to him. I took him to the Sgts mess, from where he described his trip of the night before, and the room in which he claimed to have been attacked. The descriptions led me to take him to the Pioneer Barber shop. Upon arrival there the room at first seemed too small to the Sergeant. Then seeing scars on the barber's forehead he ask the barber how he came by them. The barber said to the effect" You should know, I am the man you are looking for". Upon being asked about the sergeant's clothing he said, "the boots are under my bed"(Exh.E.). I then turned the case over to the R.P's. of his own unit, Cpl Cadotte and Tpr Sarafinchan.

W.T. Armstrong
B.6630 L/Bdr Armstrong W.T.

The accused declines to cross-examine the witness:

8th WITNESS

H.40958 A/Cpl.Cadotte L.J. of No 2 Cdn.Gen.Pnr.Coy., having been duly sworn states:

I was acting R.P. for No 2 C.G.P.C. on the 2 Oct 43. At 0900 hrs L/Bdr Armstrong, R.P. of #2 C.A.R.U. and Sgt Englehart walked up to me in the lines and asked me if I had Rfn.Darroch as a barber. I said yes. Sgt Englehart said I want him under close arrest. I asked why. He said he had had a fight with Rfn Darroch in the barber shop the previous night. He said he is a dangerous man, he made a pass at me with a straight razor. He showed me his fingers and they were cut, so I went to the barber shop and put Rfn Darroch under close arrest in No 2 C.A.R.U Guard Room at 0910 hrs 2 Oct 43. I came back and brought Sgt Englehart to Sgt Major Graham's office. Sgt Major Graham asked me if I had stripped Rfn.Darroch. I said.yes. "Have you got his keys?", I said yes. Sgt Major Graham told me to open the door that Sgt Englehart wanted to look for his boots and tunic. The tunic was laying on the bed and was indentified by three stripes on the one arm, and I asked Sgt Englehart how he knew his boots. He told me the way they were laced, and the sole was worn of one boot. The left boot,size 7. I said it is yours alright. So I brought the boots and tunic to Sgt Major Graham. About 1500 hrs 2 Oct 43 I was checking the lines around the barber shop. I saw a piece of glass(Exh.G.) about 35 to 40 feet from the barber shop alongside a tree. I picked it up and noticed there was blood stains on the glass. I brought it to the Orderly room and turned it over to Capt H.D.Hay.

Q. by the accused:

"Was the Sgt Major with you in the barber shop when you found the tunic?"

A. by the witness:

"Yes"

Cpl Cadotte L.J.
H.40958 A/Cpl Cadotte L.J.

The accused declines to cross-examine the witness further.

9th WITNESS M.12214 Pte Dub P. of No 2 Cdn Gen Pnr Coy having been duly sworn states:

I am acting R.P. of No 2 C.G.P.C. On 2 Oct 43 I was in charge of party cleaning lines. I picked upa few glasses under the tree by the showers, between there and the barber shop. One glass was broken. I took them and placed them in the salvage pit near the barber shop. I do not know how many there were, but think there were four or five.

Dub P.
M.12214 Pte Dub P.

The accused declines to cross-examine the witness.

The accused is duly cautioned as follows:" Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of seven pages, was taken down by me in the presence of the accused at Jasper Camp, Witley, Surrey on the 2nd and 4th Oct 43 and that Rules of Procedure 4(C),(D),(E),(F) have been duly complied with.

W D Hay Capt.
(H. D. Hay) Capt.
Officer taking the Summary

Jasper Camp
Witley, Surrey
4 Oct 43.

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-64564	Rfn	Laughton Darroch,	2 Cdn Gen Pnr Coy

1. The following is a fair and true summary of the entries in the JHC ~~Service and General~~ Regimental ~~and Squadron, Battery~~ JHC ~~Conduct sheets~~ JHC and Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, JHC of summary awards under Section 47 of the JHC ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	Sec.15(1) A.A.	2 times	Sec.15(1) A.A.	4 times
For	Sec.40 A.A.	1 times	Sec.40 A.A.	2 times
For	Sec.19 A.A.	2 times	Sec 19 A.A.	2 times
For		times	Sec.11 A.A.	1 times

JHC ~~Number of instances of gallantry or distinguished conduct~~ JHC

or,

JHC ~~There are no entries in the conduct sheets of the accused.~~ JHC

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

JHC 2. ~~The accused has not been previously convicted~~ JHC

or,

Previous convictions of the accused by a court-martial JHC ~~or a civil court~~ JHC ~~A.F.A. 73~~, of summary awards under Section 47 of the JHC ~~Air Force Act~~ Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

JHC ~~or,~~

JHC ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ JHC ~~day of~~ JHC

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and Seven days in military custody, making a total of Seven days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his JHC ~~record of service is~~ attestation paper is 36

6. The date of his JHC ~~commission~~ attestation specified in his JHC ~~record of service is~~ attestation paper 13 Jun 41.

7. The service which the accused is allowed to reckon towards discharge is 2 yrs, 3 mos, 22 days

8. The accused is entitled to reckon 2 yrs, 3 mos, 22 days. service for the purpose of determining his pension, etc.

JHC ~~9. The accused is in possession of or entitled to an air force decoration, or air force reward (or is~~ JHC ~~military~~ JHC ~~military~~ JHC ~~in possession of or entitled to). State any air force decoration or reward.~~ JHC ~~military~~ JHC

JHC 10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held~~ JHC ~~the regimental rank of~~ JHC

J.H.C.

11. ~~(In the case of an officer.) — The accused holds in the Royal Canadian Air Force the rank of~~ J.H.C. ~~Permanent Force~~ J.H.C. ~~unit~~ J.H.C.

J.H.C. ~~dated~~ ....., ~~and in his regiment (or corps) the rank of~~ J.H.C.

J.H.C. ~~dated~~ .....

J.H.C. ~~12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—~~ J.H.C.

..... ~~Date of promotion~~ J.H.C.

J.H.C. ~~In the rank of~~ ..... ~~years~~ J.H.C.

J.H.C. ~~In the rank of~~ ..... ~~years~~ J.H.C.

J.H.C. ~~In the rank of~~ ..... ~~years~~ J.H.C.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ J.H.C. Army Act, and of cases in which trial has been dispensed with of accused, Number B64564 Rank Rfn

Name Laughton Darroch of No 2 Cdn Gen Pnr Coy Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	14 May 42 Field	Sec 2 A.A.	75 days	detn. 25 days
F.G.C.M.	14 Jun 42 Field	(1)Sec 40 A.A. (2)Sec 15(1)A.A. (3)Sec.19 A.A.	112 days	detn. 36 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~9th~~ 9th day of October 1943 J.H. Craig MAJOR 2 CDN. GEN. PIONEER COY.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

JAG BRANCH - REVIEW RECORD

Accused

B.64564 Rfn. Laughton DARROCH.
2 C.A. Pioneer Coy.

Remarks	Date
Trial in (Country) Eng.	25 Oct.
Charges AA 8(2)	
Sentence not guilty	25 Oct.
Rec'd from CR at JAG Branch	
To Capt Lee for (pre)(post) rev	9 Nov.
Recommendations by [illegible]	
(1) Pass and record	
(2) Ltr on irregularities	
(3) Quash charge(s)	
(4)	
Ret'd to JAG Rev 1 by [illegible]	9 Nov.
Passed to A&AG Cts. with draft observations	10 Nov. 43
Passed to taken up personally by me with Arjan Chee [illegible]	23 Nov 43
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Records file both proceedings Blvd	24 Nov. 43
Instrs completed by	

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.Sec 8(2)	not guilty	not guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ..... ~~beginning on (date)~~ .....(1)

(1. Insert sentence being served, or delete. If not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial : a total of ..... days, of which ..... days were spent in hospital~~(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by the Court~~ : N.S.

(Sgd) W. Marshall Capt 25 Oct 43 (Sgd) W. Kennedy Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

UU-95

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & S/1608 (2964)

Convened by Order of J.A. Calder A/Col., Comd "A" Gp, CRU dated 24 Oct 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B64564	Rfn.	Laughton	DARROCH	2 Cdn Gen Pnr Coy

Proceedings Reviewed Richter and 24 more M.M.....

Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 25 Oct 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmo ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1115 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(1).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to~~ ..... ~~as interpreter ? Ans~~ .....
~~The interpreter is sworn(1). Do you object to~~ ..... ~~as shorthand writer ? Ans~~ .....
~~The shorthand writer is sworn(1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N.O.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Maj.	W. Kennedy (Regina Rif. R.)	2 CIRU
Member	Capt.	D.H. Vermette (Cdn Inf Corps)	6 CIRU
Member	Lt.	W.B. Aitken (R. Wpg. R.)	2 CIRU
Judge-Advocate	Capt.	W.B. Marshall	HQ CRU
Prosecutor	Capt.	A.E. Kelsey (2 Cdn Gen Pnr Coy)	
Defending Offr	Maj.	G.A. McCullagh (R.C.A.)	

Questions by President : Is the Prosecutor a lawyer ? Ans N.O. Is the Defending Offr a lawyer ? Ans N.O.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. ~~The accused~~ ..... ~~declines same as challenges made by him to the panel.~~(2)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 102), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records this plea in Part I of the Schedule.

(1. RP 31, 102. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sw rn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans .....(4)
(*1. RP 27(B). 2. RP 27(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 paras 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such para only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fit here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans no (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) ~~(no)~~ opening address.(1) not.
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ not
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(3) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans yes
Do you intend to call witnesses on your behalf? Ans yes Are they witnesses as to character only? Ans no
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) ~~(no)~~ recorded in Part I of the Schedule.(2) The Court is re-opened. not.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)~~ not.
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~ not.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 5, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. AFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which should affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried sepcrately see RP 7(D). One sentence only, comprised of the punishment or punishments legally allowed in AA 41, 44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-52, 69, 118, 119(A), KR Con 308, 325, 563-564, Overseas RO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(f), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see insters on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B 2

CHARGE SHEET

The accused B.64564, Rfn. Laughton DARROCH of No. 2 Canadian General Pioneer Coy, a soldier of the Canadian Army, Overseas, is charged with:

FIRST CHARGE
ARMY ACT
SEC. 8 (2)

WHILE ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER,

in that he,

at Jasper Camp, Witley, at approximately 0030 hrs, 2 Oct 43, did strike K.53827, A/Sgt. Englehart, C.G., and cut him with a razor.

J.H. Craig

(J.H. Craig) Major,
Commanding,
2 Cdn Gen Pnr Coy.

Jasper Camp,
Witley, Surrey

To be tried by Field General Court Martial.

J.A. Calder

(J.A. Calder) A/Col.,
Commanding,
"A" Gp Cdn Rft Units,
C.A.(O).

24 Oct 43.

2 CARU Form 202

Medical Officer's Cert.
K.R.(Can) para.557

I certify that I have this morning examined No. B-64564
Rfn. Darroch, L. and in my opinion he is ~~unfit~~ fit to
(rank) (name)
undergo trial by Court Martial.

Station. Jasper Camp.

Date. 25 Oct. 1943.

(Sgd) (Medical Officer)
No 2 Cdn Arty Relief Unit
Cdn Army (Overseas).

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2883)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B64564	Rfn.		Laughton	DARROCH	2 Cdn Gen Pnr Coy.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 24 Oct 43 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Maj.	W. Kennedy	(Regina Rif. R.)	2 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
✓ Capt.	D.H. Vermette	(Cdn Inf Corps)	6 CIRU
✓ Lt.	W.F. Aitken	(R. Wpg. R.)	2 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)		(Unit.)
Lt.	R.B. Porter	(Regina Rif. R.)	2 CIRU

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)		(Unit.)
Capt.	W.R. Marshall		HQ CRU

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

(J.A. Calder) A/Col.,

Date 24 Oct 43.

Commanding "A" Gp, Cdn Rft Units, C.A.(O).
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TÉMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.) (*See RP* 46 *fn* 1.)

(iii) Evidence of witnesses for accused as to facts or his character or both.

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 80(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 562(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already so exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Page 1. W.K.

Opening address by prosecution Capt A. L. Kelsey 2 C.P.O.

Evidence of call call shows definitely that an unprovoked assault was made by the accused upon the person of Sgt.

1st witness — K.J. 3827 Sgt. Englehardt, L.G.

Sgt. Swan —

Q. Will you tell us in your own words what happened night of Oct 1st 43

A. I accompanied Mrs K.W.A. Sgt. McCarthy & McDonald to dance at [illegible] of 101, Sgts mess dance and Sgt McCarthy & I talked together all evening. At about 3 AM I was accosted by the accused (whom I recognized today) and he asked me the time. I told him. He had money of his own. Tobacco was closed. So I gave him [illegible] about a glass full of beer, all I had.

Why?

Because I thought he was working in the mess.

Had you known the accused before this night?

No I did not.

I spoke to him for a few moments and then as I was out of cigarettes I asked him for a few cigarettes. The accused invited me to his room for an in order to give me some cigarettes as he said he had some there. ~~[illegible]~~ ~~[illegible]~~ The accused and I proceeded to the accused's room. When I went in I sat on the side of a bed, the accused walked [illegible] and then he walked on in the room. I suggested that I was going to leave. He produced a straight razor with a white bone handle. I did not notice where he pulled it out of his pocket or drawer. Ex P. 1 Food & Medley Arrow Razor [illegible]

57

NOTE.

RP 83 B complied with.

3rd witness

B 112721 L/Bdr Appleton C.H. 2 CARU

Duly sworn states.

I am night medical orderly at 2 CARU. At 0300 hrs 2 Oct '43 I treated Sgt Englehat. I noticed the shirt that Sgt Englehat was carrying was bloodstained identified as Ex "C". After examining him I found that he had an abrasion rear of head, contusion on face below left eye, slight cut on one hand. I treated the wounds. I cannot say that ~~Sgt~~ Englehat was intoxicated but I could smell liquor from his breath. He was highly excited and kept asking for a rifle & bayonet.

On cross examination witness states that the cut on hand was an abrasion.

R P 83 B complied with

4th witness

C 21537 Pte Clement Richard 2 C.G.P. Coy

Witness sworn duly states -

I Pte Clement am employed as a mess steward at Sgts mess 2 CARU Jasper Camp. At 23.59 hrs 1 Oct '43 I was closing the bar and I went outside to pick up some glasses & bottles on the counter. I met the accused whom I recognize in court today and he asked me for some beer. I said no and I went back into the bar. I ~~would state from the actions & speech of the~~ did not notice whether the accused was drunk at the time or not as ~~it was~~ the ~~room~~ lights were off on the outside of the bar. No sales were made from the bar after 23.59 hours ~~on the night of 1 Oct '43~~

W.K.

5th witness

B 62579 A/CSM Graham, L.M. 2.CGP.Coy

Duly sworn states

The witness identifies Exhibit E as having been found on the a bed in the barber shop at 2CGPC at approx 0930 hrs 2 Oct '43.

The witness also identifies Exhibit "B" as having been found beside the bed in the barber shop at 2CGPC. at approx 0930 hrs 2 Oct 43

The witness identifies ex A as the razor taken by him from the barber shop on the afternoon of 2 Oct 43. This razor was found in a small box on the south wall of the barber shop

These articles were found in a room used by as a unit barber shop 2CGPC and personal quarters by the accused whom I recognize here today

On cross examination –

I only saw the one razor but there were other barber tools. There are no partitions in the room. The bed is along the west wall.

On examination of the room I found blood stains on the door jam of the outside door and on a metal cupboard on the east wall. I also found some very small particles of glass on the floor.

RP 83 B complied with

6th witness

Page 8

H40958 a/cpl Cadotte, L.J. 2 C.G.P.C. W.K.

Witness duly sworn states

identifies exhibit "E" as having been found in unit Barber shop 2CGPC on 2 Oct '43. CSM Graham and Sgt Knightlet were also present.

also identifies exhibit "B" first seen by ~~him~~ you underneath table in barber shop at the same time

At 0900 hrs on 2 Oct '43 I saw Sgt. Knightlet and he appeared to have a cut on his left hand, left eye black or discolored.

On cross examination — defending

states that there were several razors, scissors combs etc in the barber shop. I would say about three razors — three straight razors — one had a black handle.

R.P. 83 B complied with

7th witness

W.S.

G 22.740 Pte Guitar, A 2.C.G.P.C.

Duly sworns states

On Oct 2 1943 I was on duty with Regt police 2 C G P C. At 1200 hrs I was given Exs "D" by the accused whom I recognize in court here to day. He told me the cap belonged to Sgt Englehart. I too gave the cap to cpl cadotte.

R.P. 83 B complied with

~~8th witness~~

~~M 12214 Pte Dub, Peter 2 C.G.P.C.~~

~~Duly sworn states~~

~~No examination in chief -~~

~~Cross examination by us~~

Prosecution closed

1st witness defence

B 64564 Rfn Darroch, Laughton 2 C.G.P.C.

duly sworn states

About 2300 hrs 1 Oct 43 I finished work in my barber shop at 2 C G P C. A friend of mine called Danny, a barber at 2 C A R U, came over to my shop, we talked for a while and then went to the sgts mess 2 C A R U. around 2359 hrs to get a beer. We asked one of stewards ~~to~~ if he could get us a beer. He went into the mess and came back out and told us he couldn't get any. Danny then left me and I decided to try further to get a beer. I stood talking to two provosts at the door for a while ~~when~~ then a sgt came out. I do not know his name. This sgt had been drinking. I asked him to get me a beer and gave him the money

for it. He went in and came out with a mug of beer. The sgt returned to the mess, the provost went away and I stood in the doorway drinking the beer. Another sgt came out later and I asked him to get me a beer. I gave him the money and he went inside and then returned with two ½ pints of beer in two small mugs. I do not know this sgt's name but this sgt also had been drinking considerably. I was just about finished then drinks when Sgt Englebert came along. I did not know him before. I asked him if he could get me some beer and he said sure and with that he gave me the glass of beer he had in his hand. I offered to pay for it but he declined to accept. Sgt Englebert then went into the mess and returned with four glasses of beer, he set them on an oil drum outside the entrance to the sgts mess and he said he would get some more. I said get a half dozen and I will pay for them. He said don't worry about that. I said if you can get a half dozen we will take them on to the barber shop. He went into mess and was there ten or fifteen minutes and in the meantime I had consumed most of the four glasses of beer which were only partially filled. Then I went into the mess to look for Sgt Englebert and saw him with the sgts in a room adjoining to the bar. I met the bar steward and asked him why he did not give some beer to another steward for the barber who was outside and told him I was the barber. He gave me reply. Sgt Englebert then came in the bar room, went on to the bar, he picked up two glasses of beer and I picked up four glasses. The beer was already poured and sitting on a shelf. We then went on to my barber shop and took the beer with us. We entered the shop, Sgt Englebert sat on the bed and put his beer on a table near the bed. I set my beer on the other side of the table. On the table was a tin which contained my barbers tools. We sat and talked and drank for an hour or so. Sgt Englebert was

talking about the southern states. I was sitting on a chair by the table trying to fix a pair of clippers. Sgt. Boylehart told me that he was going to stay there all night so I said it was OK for him to stay. He kept raving about the southern states and I got fed up and told him to get out and he said if that is the way you feel about it is OK I'll go. I went to go out to the lavatory and I was struck over the head with a glass. I turned when I was hit and he attempted to grab me and I took a smack at him, hitting him some where on the face. I had nothing in my hands at the time. We tussled for a few minutes and then he fell back on the bed and said that was enough and to leave me alone. I walked out of the room and went over to the showers in another building about ten yds away. My purpose was to see Pat Stories who sleeps there. I told him that I had just had an argument with a sgt. He came back with me and when we got to my room the sgt had gone. I wiped some blood from the left side of my head and laid down on the bed. When I awoke at 0630 hrs 2 Oct 1943 I noticed the floor wet under the table, glasses upset over the table, I went out and went over to the kitchen. I had a cup of tea and a cook called Tommie asked me where I got the blood on the side of the face. I told him I had been in a fight the night before and was hit over the head with a glass. I then went back to my shop and cleaned it up. There was some broken glass on the floor which I picked up and with the

W.S.

glasses I put them under a tree just outside my shop. I was working on customer around 08 30 AM when an R P and Sgt Englehart came to my shop. They stood in the doorway and looked around. Nobody said anything at first. They were talking to each other and the R P appeared to go away & I stopped him and said "I think you are looking for me". With that ~~the~~ Sgt Englehart asked me how I come to get two little scrapes on my left forehead. I said that I got them on the Wednesday night previous in a bush on the way home. The R.P. asked me about some clothes. I told him the boots were ~~under the~~ by the bed - which boots he cannot now identify ~~as exhibit~~ nor can he identify the battle dress blouse. I was then taken to the guard room.

Cannot state whether or not Sgt Englehart took off his boots and some of his clothes but I do know that he laid on the bed and pulled a blanket over him. This took place before our scuffle later.

I have ~~four~~ three straight razors of my own and one other belonging to another soldier.

Cross examined by Prosecutor.

Q. What time do the Sgts mess stop selling beer
Ans. I bought beer after midnight. I know that.

Exhibit A produced to the witness and states that it resembles razor belonging to him
Q- What led you to threaten Sgt Englehart with a razor?
A- I did not threaten Sgt Englehart with a razor
Witness denies holding an open razor
States that cuts on Sgt E hand could be caused by glass breaking in his hand when he hit me on head.
What caused Sgt. Englehart to strike you -
He might have been mad because I told him to go

Witness states that when he first saw Sgt E W.K. at the Sgts mess he appeared to have ~~had~~ consumed considerable liquor.

Q How much time elapsed between the time you first ~~after~~ ~~he~~ met Sgt E and when you left the mess together

A - about 35 minutes

Q. About how far is it from Sgts mess to your barber shop

A about 250 yds

Q - Was Sgt E able to carry 2 glasses of beer ~~in~~ that distance and in his condition

A. I didn't say they were full when they got there.

2nd - defence

M 12214 Pte Dub, Peter 2CGPC

Duly sworn states —

was as employed as R.P. on 2 Oct 43 2CGPC

states that at about 0900 hrs on 2 Oct 1943

he picked up a broken glass with blood on it along with two or three unbroken glasses beside a tree between the barber shop 2CGPC and the shower room.

W.K.

The prosecutor hands to the court a written closing address

The defending officer hands to the court a written closing address.

Judge Avocate summed up in open court and stated that the only conflicting evidence deduced was the evidence of Sgt Englehan and the evidence of Pte Darroch which differed considerably in what actually happened on the night 1-2 Oct '47. The court were informed that they were sole judges of the facts and the credibility of the witnesses. It was pointed out that striking in self defence was an answer to this charge if the court believes that the striking was done in self defence and was only sufficient ~~for~~ that purpose and not exceeded. Any reasonable doubt must be given in favor of the accused.

Defending Officers Closing Address W.S.
in the Case of B64564 Pte. Laughton DARROCH
Canadian General Pioneer Coy. Can. Army.

The prosecution has produced evidence to show that S/Sgt Eglehart became involved in a brawl in which he sustained certain injuries. This borne out by certain exhibits covered with blood allegedly the Sergeants' and statements made by him.

On the other hand the accused under oath states that the Sergeant struck him first and denies that at any time he threatened the Sgt. Eglehart with a razor. Admittedly there were razors in the room where the fracas took place as it was a barber shop, but there is reasonable doubt that any of them were used as stated in the charge.

There is definate evidence that both parties present had been drinking and evidence that Sergeant Eglehart was in no condition at any time to be absolutely sure what actually took place.

Sergeant Eglehart placed himself in a compromising situation when he agreed to drinking with a subordinate and in accompanying Darroch to his room.

After Sergeant Eglehart left Darroch room and received medical treatment he did not

appear to know whom it was or where it was the events took place. I therefore submit that it is highly improbable that he knew how or what had occurred muchly less that he had been threatened with a razor.

The accused had been working until approx 2300 hrs had consumed at the most 6 glasses of beer and would be in a much better condition to know what occurred. The sergeant had been drinking for a considerable time previously and as stated by the accused was fairly drunk.

There is no ~~reason~~ evidence to lead one to believe that Darroch enticed Sgt Englehart to his quarters with the sole purpose of attacking him. The accused under oath refutes statements made by the sergeant and states definitely that he was not the aggressor.

Any blows struck by the accused were in self defence. There was broken glass on the floor ~~and~~ it is quite possible ~~that~~ the Sgt ~~[illegible]~~ was cut by this glass during the scuffle.

J.K. McCullagh Major R.C.A.
Defending Officer.

14 Oct 43

Address of Prosecuting Officer W.K.

Sir,

What we are all concerned with is to get at the truth of what happened in the accused's barber shop at Jasper Camp on the night of 1 October 43.

You have heard Englehart's story - supported in its broad detail by the evidence of L/Bdr Armstrong who found him wandering around the lines in a highly distressed condition, and also by the testimony of the medical orderly at the F.A.P. and the other witnesses.

Clement, the barbender at the Sergeant's mess, has no recollection of Sgt. Englehart appearing under the influence of liquor. Neither has Bdr Armstrong. We can therefore assume that he was in full possession of his faculties at the time he accepted Darrock's offer of a cigarette in his quarters, both being out of tobacco at that time.

I leave it to the Court to supply its own theory of what led to the vicious attack on Sgt. Englehart. Neither he nor Darrock is in agreement on that point - but what must be considered is the fact that, despite the physical advantage enjoyed

by Sgt. Englehart he was the man that was badly beaten. There is no doubt whatever that Darrock threatened him with a razor – the accused says, "in self-defence" – but if we are to believe Englehart's story (and he is very clear on this point) he was forced to partially disrobe under such duress. It was the fear of what might otherwise result that made him comply. One can hardly blame him – most of us have a healthy respect for a razor wielded in anger or with purpose.

The fact remains that Englehart was first intimidated and then struck to the floor by a heavy object. He does not remember much after that except that he continued to receive blows. Collecting himself together he watched an opportunity to make his escape. I suggest it was then that the accused sustained the few scratches he apparently received.

The evidence of the medical orderly only emphasizes the mental stress

W.K. 3

under which Englehart was naturally laboring. It is logical to expect he would want to get on more even terms with his late aggressor and undue importance should not be attached to that point.

Obviously both had been drinking but no evidence has been adduced to indicate that either was under the influence of liquor - it was only here they had been drinking, mind you, not liquor - to the extent they knew not what they did.

If the evidence for the prosecution is to be believed the Court must find the accused guilty of an unprovoked assault upon his superior officer. However, if any doubt whatever exists in your minds the benefit of such doubt must be given to the accused.

F. E. Kelsey Capt
Prosecuting Officer
25 Oct 43.

W.K.

(1) I hereby acknowledge that I have been served with a true copy of the summary of evidence taken at Jasper Camp, Witley, Surrey, preliminary of my Court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court- Martial.

L Darroch
B.64564 Rfn Darroch L.

Dated at Witley
Surrey
this 24th day of
October 1943.

(2) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Major MacCulloch 4A
if he is available.

L Darroch
B.64564 Rfn Darroch L.

Dated at Witley, Surrey,
this 24th day of
October 1943.

W.K.

Received of Major Kennedy, President, FGCM in the case of B64564 Rfn Darroch L., 2 Cdn Gen Pur Coy, the following articles:

Razor
Battledress Blouse
Shirt, G.S.
Cap, F.S.
Boots, ankle.

A E Kelsey
Capt
Prosecuting Offr.

25 Oct 43.

W.15.

SUMMARY OF EVIDENCE

Jasper Camp,
Witley, Surrey.
23 Oct 43

Summary of Evidence,
in the case of B.64564 Rfn. Laughton Darroch, No 2 Canadian General Pioneer Company.

R.P.(F) The Commanding Officer directs that the evidence be taken under oath.

1ST WITNESS K.53827 A/Sgt Englehart C.G. of R.W.R. #2 Cdn Inf Reinf Unit having been duyl sworn states:

On the night of 1 Oct 43 I attended a Sergeants dance in the Sergeants mess No 2 C.A.R.U. I was accosted by the accused and he approched me and asked me to buy him a beer, but the bar was closed, so as I had some I gave him what I had, thinking he was one of the mess help. The fellow I was with, I missed him and I was out of smokes. The accused said he had some close by in his room and asked me to stop in and have one. He rolled me a smoke, and pulled a razor (Exh."A") out of his pocket and told me how he could use it. He had some money in his hand. When I suggested I was going to go, he said, I ~~will~~ go when he let me. He pulled a razor and held it in front of my face and told me to take my boots (Exh."B") and stockings off. I watched my chance and hit him with my left hand. I was then hit in the head by the accused with some object and knocked on the floor. He than made a statement that he had a good mind to cut me up with a razor. Keeping the razor out of my face I had my hands cut. I then escaped out of that room. First I was kicked in the stomach and face, and I escaped in my bare feet, then I was found by the provost who looked after me. I was in a very dazed condition and only remember being picked up in a jeep and taken to our M.O. No 2 C.I.R.U. I also remember someone giving me a pair of canvas shoes. I reported to C.S.M. McLellan, A/R.S.M. of No 2 C.I.R.U. He came up with me and reported to R.S.M. of 2 C.A.R.U. I described the room and when we found it, identified the accused in the room.

C.G. Englehart.
K.53827 A/Sgt Englehart, C.G.

The accused declines to cross-examine the witness.

2nd WITNESS B.6630 L/Bdr Armstrong W.T. of No 2 Cdn Arty Reinf Unit, having been duly sworn states:

At 0300 hrs 2 Oct 43 it was reported to me at the guard house, that a man was wandering around the lines. I checked and found the man who claimed to be a Sergeant from the Infantry Camp, No 2 C.I.R.U. He had no means of identification, was bare footed, wore only his summer underwear and trouses and carried a shirt(Exh."C") and handkerchief, both badly blood stained. He had a stale smell of liquor, but not strong and seemed to be in a childish frame of mind. He had obviously been beaten up. I took him to the first aid post for treatment where we found brusies on his head, slight lacerations on the hands, and the only explanation for the amount of blood being his nose bled, his nose had been bleeding. The orderly made out a sick report (Exh."D") and the sergeant's name was Sgt. Englehart of No 2 C.I.R.U. I left him at the first aid post and went to R.H.Q.

there I called up his own camp. I asked them to come for him and bring boots for him. The R.P's of his camp came at approximately 0600 hrs or 0700 hrs. It was understood they would take him home and put him to bed and to forget about it. He returned approximately at 0900 hrs with R.S.M. of his camp. The R.S.M. returned immediately to his own camp. The R.S.M. of our camp instructed me to get the details of the case, check, and report to him. The Sergeant and myself went to the Sergeants mess and from there a description led us to believe it could be the Pioneer barber shop. On arrival there the barber was working on a customer. We simply stood in the door way. I asked the sergeant if this was the room. He said he thought it looked too small, and was going to leave. Then he noticied some small scars on the barber's forehead. He asked the barber how he came by those marks. There was converstaion between them, which I do not remember at all. The barber then made the statement to me, " I guess I am the man you are looking for". On being asked about the sergeant's clothing. He said to the effect,"His boots are under my bed." The sergeant tried to push past me into the barber shop and I told him it would be better to settle the argument otherwise and took him to the R.P's., of the Pioneers. Telling the barber to carry on with his work I turned the sergeant over to Cpl Cadotte of the Pioneers.

W J Armstrong
B.6630 L/Bdr Armstrong W.T.

The accused declines to cross-examine the witness:

3rd WITNESS

B.112721 L/Bdr.Appleton C.H. of No. 2 Cdn Arty Reinf Unit, having been duly sworn states:

I am medical orderly of #2 C.A.R.U., F.A.P. On Oct 2nd at 0030 hrs, Sgt.Englehart came into the F.A.P. with an R.P. and said that he needed treatment. He had a kahki shirt carried over his arm, blood stained. I went ahead and checked over his body to find out where the blood stains came from, and all I could find was an abrazed wound at the back of the head and also contusion of the face below the eye and a very small cut on the hand. That was the full extent of his injuries. He did have any boots on when he came in, nor hat or tunic, the shirt was on his arm as already stated. He was wearing his undershirt but had no blood stains on it. My job is to find out how the injuries took place. I asked him how he received the injuries and he told me he had been fighting with some Lance Corporal from the Q.M.Stores. He changed the story and stated that Germans and Italians were after him. He kept demanding rifle and bayonet that he was going to kill this L/Cpl with the bayonet. I soaked his feet for him and loaned him my shoes, but he was still insistent on wanting to get this rifle and bayonet. He rushed over to the window to get a window closing pole and he was going out of the building with it, when an R.P. and myself took it from him. Then he still asked for the rifle and bayonet. I told the R.P. to take him over to the guard room and call the provost to take him away. In my opinion the man had a slight case of D.T's. I made out my report for the Medical Officer.

L/Bdr. C H Appleton
B.112721 L/Bdr. Appleton C.H.

The accused declines to cross examine the witness.

4th WITNESS C.21537 Pte Clement, R. of No 2 Canadian General Pioneer Coy., having been duly sworn states:

I am steward in the Sergeants mess at No 2 C.A.R.U. At 2359 hrs 1 Oct 43 I was closing the bar, and went out to get glasses and bottles on the counter. I met the accused who asked me to get some beer. I said "no" and went back in the bar.

C.21537 Pte Clement, R.

The accused declines to cross-examine the witness.

5th WITNESS B.62579 A/CSM Graham L.M. of No 2 Canadian General Pioneer Coy., having been duly sworn states:

At approximately 0930 hrs 2 Oct 43 Sgt Englehart, C.G. reported to me that he wished to lay a charge against B.64564 Rfn Darroch L. I then took him to the sergeants mess hall(the recreation room) where he showed me he had met Rfn Darroch, this was a point outside the bar of the mess, that is the western end, which is approximately 10 feet from the bar itself. I asked him to show me where he went with Darroch after the dance. He told me that a place was small and that the wall was covered with pictures of women. I then took him to the unit barber shop which answered that discription. On entering the room a battle blouse(Exh."E"), turned inside out was lieing on the bunk. Sgt Englehart said,"that is my tunic? Cpl Cadotte also present, picked up the tunic which was still turned inside out, and asked Sgt Englehart, "Can you identify this tunic?" Sgt Englehart then replied " Yes it had rifle regiment stripes on the right arm only? Examining the tunic I noticied blood stains on it. There was a pair of boots on the floor. Sgt Englehart pointed to the boots and said," Those are my boots." He was asked to identify them, he said, "One sole is not worn through and the other is." The boots were picked up from the floor and his statement was substaniated. I also noted that on a cupboard on the east wall and that on the outside wall there were blood stains. At 1630 hrs after the preliminary hearing and in company with Lieut.R.W.Spurr we carried out an examination of Rfn Darroch's quarters. We found one straight razor with ivory shield, and on examination of the floor found several very small pieces of broken glass(Exh."F")

B.62579 A/CSM Graham, L.M.

The accused declines to cross-examine the witness.

WITNESS H.40958 A/Cpl. Cadotte L.J. of No 2 Canadian General Pioneer Coy., having been duly sworn states:

I am Provost of No 2 Cdn Gen Pnr Coy. On 2 Oct 43 at 0900 hrs L/Bdr Armstrong and Sgt Englehart walked up to me in the lines. Sgt Englehart asked me if I had Rfn Darroch, barber. I replied, yes. Sgt Englehart told me to put him under close arrest. I asked, why ? He replied,"Look at my fingers and face, he is a dangerous man, he made a pass with a razor at me." I walked up to the barber shop with two escorts, and put Rfn. Darroch under close arrest in No 2 C.A.R.U. guard room. I walked back and brought in Sgt Englehart to C.S.M. Graham. While I was in the orderly room Sgt Major Graham asked me if

I had stripped Rfn Darroch. I replied, yes. He said, give me the keys of his barber shop. I opened the barber shop, but before opening it, I asked Sgt Englehart why he wanted to go into the barber shop. Then Sgt Major Graham stated that Sgt Englehart had a pair of boots inside and a tunic. I then asked Sgt Englehart if he could identify his clothes, he said, "I can tell my boots the way they are laced, and the sole worn off on the left foot". I then picked up the pair of boots underneath Rfn Barroch's table. I examined the boots, I said, "it's yours sergeant" He then identified his tunic with three stripes on the right arm, and no shoulder patches, and nothing in the pockets. I brought out the belongings to Sgt Englehart and turned them into Sgt Major Graham. At about 1500 hrs the same day I was examining the lines and saw a broken glass about 35 to 40 feet along side a tree near the barber shop. I picked up the piece of glass(Exh."G") and examined it. There was blood stains on the glass and then I turned it over to Capt Hay.

L J Cadotte

M.40958 A/Cpl.Cadotte L.J.

The accused declines to cross-examine the witness.

7th WITNESS G.22740 Pte Guitar A. of No 2 Cdn Gen Pioneer Coy, having been duly sworn states:

I am on the Provost of No 2 Cdn Gen Pioneer Coy. At 1200 hrs 2 Oct 43 Rfn Darroch gave me a cap(Exh."H") and I brought the cap to the orderly room. He told me it belong to the Sergeant and I turned the cap over to Cpl. Cadotte.

A Guitar

G.22740 Pte Guitar A.

The accused declines to cross-examine the witness.

8th WITNESS M.12214 Pte Dub P. of No 2 Canadian Gen Bioneer Coy, having been duly sworn states:

I am on the provost of No 2 C.G.P.C. On 2 Oct 43 I was in charge of party cleaning the lines, and at the time of cleaning found four or five beer glasses lying under a tree between the showers room and barber shop. I picked them up and put them in the s lvage pit by the barber shop.

P Dub P.

M.12214 Pte Dub, P.

The accused declines to cross-examine the witness.

The accused is duly cautioned as follows." Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of five pages, was taken down by me in the presence of the accused at Jasper Camp, Witley, Surrey on the 23rd Oct.43 and that Rules of Procedure 4(C),(D),(E),(F), have been duly complied with.

Lieut. W.D.Lowden
Officer taking the Summary.

Jasper Camp
Witley Surrey
23 Oct 43.

4T-29

Pte. Dan L.R.

FIELD GENERAL COURT-MARTIAL

CFA66 (To Dep of AFA31) 40/P & S/1088 (40/08) 4/38B

Convened by Order of Lt-Col J Bibeau Comd 5 C I B dated 23 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prsnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B138275	Pte		Leonard Roy	DART	Calg Highrs

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 24 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/121

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1455 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial in pursuant of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(E), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ as interpreter? Ans ~~The interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F H Clarke	Calg Highrs
Member	Capt	A R Mannah	R H C
Member	Capt	J N Mathieu	H de Mais
Judge-Advocate	Lieut	J K Kidd	(Tor Scot)HQ 2 Cdn Inf Div
Prosecutor	Lieut	J K Muchllehner	Calg Highrs
Defending Offr	Lieut	D R McGill	Calg Highrs

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI 9 3.)

A8. The accused B138275 Pte Dart L.R. before arraignment make(s) (no) ~~the following~~ objection(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (in closed and), considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Vol IV Folio 50

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B138275 Pte Dart, L R Calg Highrs

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applic. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo detention for a period of two (2) years.

(Sgd) J K Kidd Lieut, Judge-Advocate, if any. 24 Jan 45, Date awarded. (Sgd) F H Clarke Major, President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. Delete if not used.)

(Sgd) J Bibeau Lt-Col

Date 26 Jan 45 Commanding 5 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B138275 Pte Dart L R	27 Jan 45	C W Dore Capt & Adjt The Calgary Highrs Ca(c)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir.(5)
(1. *RP 27(B).* 2. *RP 27(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement(s). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on N/A charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B); 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)
(1. *AFB 255 or AFB 256.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 3.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Only my defending Officer.(2)
(1. *RP 27(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 114, 119(A), KR Can 308, 330, 343-346, Overseas RO 109, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-138275 Private Leonard Roy DART, The Calgary Highlanders, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec. 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at Malden, Holland, on the 14th of December, 1944, absented himself without leave from 2300 hours 14th December 1944, until he surrendered himself at 2215 hours, 4th January, 1945, at Ghent, Belgium.

In the Field
15 Jan 45

.....
(R.L. Ellis) Lt-Col.
The Calgary HighlandersCA(O)

To be tried by F G C M

23 Jan 45

J Bibeau Lt-Col
A/Comd 5 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-138275	Pte		Leonard Roy	DART	Calg Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [have] committed the offence(s) set forth in the Charge Sheet attached and on (date) 23 Jan 45 endorsed by me, [illegible] " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	F H Clarke (Must be named. RP 106.)	Clg Highrs (Unit.)

MEMBERS.

Capt	A R Hannah	R H C
Capt (Rank.)	J M Mathieu (Named or detailed. RP 106.)	R de Mais (Unit.)

WAITING MEMBER.

Capt [illegible] (Rank.)	L W Bedell [illegible] (Named or detailed, if any. RP 106.)	HQ 5 Cdn Inf Div [illegible] (Unit.)

JUDGE-ADVOCATE.

Lieut (Rank.)	J K Kidd (Must be named, if any. RP 106.)	Tor Scot (MG) att HQ 2 Cdn Inf Div (Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

(J Bibeau) Signed personally. RP 105 fn 2.) Lt/Col (Rank.)

Date 23 Jan 45 Commanding 5 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFAO's (in lieu of AFAI) 40/7 & 8/1947 (401)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 96 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 40(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP 40 fn 1(6)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by J.A., if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of registered books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

I have this day examined B136275 PTE. DART, L.R., and find him fit/xxxxx to undergo trial and punishment by Corut Martial.

Date 24 Jan 45

Medicla Officer Capt

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B-138275 Pte. Dart, L.R., "B" Coy, The Calgary Highlanders, CA(O).

By direction of the Commanding Officer the evidence is taken under oath.

FIRST WITNESS

L-103756 L/Cpl. Warner, B.M., # 11 Pl "B" Coy, The Calgary Highlanders, CA(O)

I am L-103756 L/Cpl. Warner, B.M., The Calgary Highlanders, CA(O). On 14 Dec 44 my platoon was in billets in Malden, Holland. I was in charge of the billet where Pte. Dart, L. R. was quartered. At 2300 hours 14 Dec 44 I took tattoo roll-call and found Pte. Dart L.R. to be absent. I reported his absence to my Pl Comd, Lieut. W. H. Powell. I did not see Pte Dart L R again until approximately 1330 hours 13 Jan 45.

The accused declines to cross-examine the witness.

.....
(L103756 L/Cpl Warner, B.M.)

Certificate of surrender, under sec. 163 (1) (y) concerning B-138275 Pte. Dart, L.R. "B" Coy, The Calgary Highlanders, CA(O), purporting to be signed by Lieut. H.W. Maheffy in charge of Ghent Detachment L of C Provost Coy, 21 Army Group. is attached hereto as exhibit "A".

The certificate is read over to the accused.

.....
(W. L. Lyster) A/Capt
Officer Detailed to take
Summary of Evidence.

The accused was cautioned as follows:-

Do you wish to make any statement or give evidence under oath? You are not obliged to sya anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down and may be given in evidence.

The accused declines to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of one (1) page, was taken down by me in the presence of the accused and that R.P. 4 (C)(D) (E) (F) have been complied with.

In the Field
19 Jan 45

.....
(W.L. Lyster) A/Capt
Officer detailed to take
Summary of Evidence.

CERTIFICAT UNDER ARMY ACT. SECTION 163 (1) (j)

Certified that No. B138275 Rank PTE Name DART L R
of the CALGARY HIGHLANDERS 2 CDN DIV Regt., s urrendered to No.L55214
Rank CPL Name SANGSTER H A of the CDN L of C PROV COY, GHENT
BELGIUM at 2215 hrs, on the 4th day of Janua ry , 1945.
He was wearing Military Uniform at the time of his surrender.

Place GHENT, Belgium
Date 4 Jan 44

H W MaBaffy Lieut
Ghent Detachment
2 Cdn L of C Pro Coy
21 Army Group.

Statement as to Character and Particulars of Service of Accused.

ARMY FORM B.296 (WAR).

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 138275	Pte	Dart, L. R.	The Calg. Highrs

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec 14 (1) Army Act — 2 times.

For _____ times.

For _____ times.

For _____ times.

~~[illegible]~~

~~[illegible]~~

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. nil

*Strike out if not applicable.

*3. ~~[illegible]~~

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 20 days in military custody, *i.e.*, nil days in open arrest, 20 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation is 2 Jan 42

7. The ~~[illegible]~~

‡State the military decorations (if any) held by accused.

8. The accused is in possession of: C V S M & Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through*

(P[illegible]) W[illegible] 9[illegible] 9[illegible] A. & E. W. Ltd. Gp.[illegible]

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 24th day of January 1945

C W Dore Capt & Adjt
Calg Highlanders

MFM 6
(AFB 122)
40/PAS/156 (3436)

Old sheet destroyed at the end of six months (initialed (J.R.R.P.)

No B138275 Name DART Leonard Roy

Sqn, Battery, or Company | Corps | Date of enlistment 9.1.43 | Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 3.5.43 | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc Signed (J.R.R.Parent) Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31-8-44	Pte		A.W.L. from 0600 hrs 31 Aug 44 until 2000 hrs 31 Aug 44 (Absent 16 hrs) Sec 15 (1)(A)	Documentary	7 days CB	Major WO Graham	Auto Forf 1 days pay FR&I Forf	149(1)
Field	14-4-44	Pte		Granted 7 days plus 48 hours with T.W.					
Field	22 Nov 44	Pte		A A Sec 15(1) WOAS A W L from 2300 hrs 22 Nov 44 until time of apprehension at 1845 hrs 29 Nov 44 (Absent 6 days 19 hrs 45 mins)	Lt Powell Documentary	28 days F P	11 Dec 44	Major W Heyland A/C.O.	Forf 7 days pay FR&I Forf 28 days pay

Certified true copy

C.W. Dore Capt & Adjt Calg Highrs

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Plea of Mitigation of B 138275 Pte. Dart, L.R.

In putting forward a plea of mitigation for this man I would like to point out first of all, his history. He is 22 years old, was married at the age of 21 and spent only 5 days with his wife before going overseas. At this time he was with the Artillery. He was transferred from the Artillery to the Infantry just before coming to France in October, 1944. He fought with "B" Coy of the Calgary Highlanders for one month. During this time he fought through several battles including the battle of the Causeway on the 1st of Nov., 1944. After that the Battalion had a short rest period. During this period Pte. Dart had a lot of spare time and I am afraid that he started thinking over the vivid details of this last Causeway battle in which his Company had played the most vital part. He went over this battle again and again in his mind until he had almost worked himself into a frenzy of fear which thus led to his going A.W.L. While he was away from the Battalion he was able to get his mind back to normal again and realizing his mistakes gave himself up to the Provost. I believe that Pte. Dart regrets his action and if he is given a chance will once more become an efficient soldier and an asset to his country.

D R McGill Lieut

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B138275 Pte Dart, L R Calg Highrs

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present ~~under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which nil days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to undergo detention for a period of two (2) years.

(Sgd) J K Kidd Lieut — Judge-Advocate, if any. 24 Jan 45 — Date awarded. (Sgd) F H Clarke Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm

~~I direct that the accused be not compelled to undergo the sentence or detention hereafter until further ordered.~~(1)

(1. AA 54(4). Delete if not used.)

(Sgd) J Bibeau Lt-Col

Date 26 Jan 45 — A/ Commanding 5 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B138275 Pte Dart L R	27 Jan 45	C W Dore Capt & Adjt The Calgary Highrs CA(O)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4 T-29.

CPA96 (To Issue of AFA31) 40/P & S, 1690 (40/10)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Lt-Col J Bibeau Comd 5 C I B dated 23 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B138275	Pte	Leonard Roy	DART	Calg Highrs

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 24 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 19/121

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1455 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter? Ans~~ ~~The Interpreter is sworn(1). Do you object to an shorthand writer? Ans~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, (E, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F H Clarke	Calg Highrs
Member	Capt	A R Hannah	R H C
Member	Capt	J N Mathieu	R de Mais
Judge-Advocate	Lieut	J K Kidd	(Tor Scot)HQ 2 Cdn Inf Div
Prosecutor	Lieut	J K Muchlleaner	Calg Highrs
Defending Offr	Lieut	D R McGill	Calg Highrs

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B138275 Pte Dart L.R. before arraignment makes(s) (no) ~~plea~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 896 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is cleared)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Vol IV Folio 50

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No Sir.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~Nil~~ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~A~~, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges to which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B on p 2 (as to charges dealt with under C2).(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed a reasonable time to make his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf?
Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2 respectively.(3)
(1. *AFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans By my defending Officer.(2)
(1. *RP 37(C), 46(D).* 2. *Address not recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. MML p 80, 717-719. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, KP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 48(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-138275 Private Leonard Roy DART, The Calgary Highlanders, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec. 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at Malden, Holland, on the 14th of December, 1944, absented himself without leave from 2300 hours 14th December 1944, until he surrendered himself at 2215 hours, 4th January, 1945, at Ghent, Belgium.

In the Field
15 Jan 45

.....
(R.L. Ellis) Lt-Col.
The Calgary HighlandersCA(O)

To be tried by F G C M

23 Jan 45

J Bibeau Lt-Col
A/Comd 5 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B-138275	Pte		Leonard Roy	DART	Calg Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~[have]~~ committed the offence(s) ~~[s]~~ set forth in the Charge Sheet ~~[s]~~ attached and on (*date*) 23 Jan 45 endorsed by me, ~~[or by an offr of my comd for me]~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[and that it is not practicable to delay the trial for reference to a superior qualified offr]~~.
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I consider it expedient to appoint (others) than those to form the Court, (b) a Fd Offr as President, for the reason I have marked here~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	P H Clarke		Clg Highrs

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	A R Hannah		R H C
Capt	J N Mathieu		R de Mais

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	L W Bedell		HQ 5 Cdn Inf Div

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Lieut	J K Kidd		Tor Scot (MG) att HQ 2 Cdn Inf Div

On Active Service in the Fd

in HOLLAND (Country.)

(J Bibeau) Signed personally. RP 105 fn 2.

Lt/Col (Rank.)

Date 23 Jan 45

Commanding 5 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

4/38A CFAAS (3rd Impn) OF AFAS)
AD/P & R/1607 (A/G)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 46 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 562(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 986). *As to certified copies of regimental books see AA* 142 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(8), *RP* 118(*C*), *MML p* 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

I have this day examined B138275 PTE. DART, L.R., and find him fit/xxxxx to undergo trial and punishment by Corut Martial.

Capt
Medicla Officer

Date 24 Jan 45

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B-138275 Pte. Dart, L.R., "B" Coy, The Calgary Highlanders, CA(C).

By direction of the Commanding Officer the evidence is taken under oath.

FIRST WITNESS

L-103756 L/Cpl. Warner, B.M., # 11 Pl "B" Coy, The Calgary Highlanders, CA(C)

I am L-103756 L/Cpl. Warner, B.M., The Calgary Highlanders, CA(C). On 14 Dec 44 my platoon was in billets in Malden, Holland. I was in charge of the billet where Pte. Dart, L. R. was quartered. At 2300 hours 14 Dec 44 I took tattoo roll-call and found Pte. Dart L.R. to be absent. I reported his absence to my Pl Comd, Lieut. W. H. Powell. I did not see Pte Dart L R again until approximately 1330 hours 13 Jan 45.

The accused declines to cross-examine the witness.

.....
(L103756 L/Cpl Warner, B.M.)

Certificate of surrender, under sec. 163 (1) (y) concerning B-138275 Pte. Dart, L.R. "B" Coy, The Calgary Highlanders, CA(C), purporting to be signed by Lieut. H.W. Mahoffy in charge of Ghent Detachment L of C Provost Coy, 21 Army Group. is attached hereto as exhibit "A".

The certificate is read over to the accused.

.....
(W. L. Lyster) A/Capt
Officer Detailed to take
Summary of Evidence.

The accused was cautioned as follows:-

Do you wish to make any statement or give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down and may be given in evidence.

The accused declines to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of one (1) page, was taken down by me in the presence of the accused and that R.P. 4 (C)(D) (E) (F) have been complied with.

In the Field
19 Jan 45

.....
(W.L. Lyster) A/Capt
Officer detailed to take
Summary of Evidence.

CERTIFICAT UNDER ARMY ACT. SECTION 163 (1) (j)

Certified that No. B138275 Rank PTE Name DART L R
of the CALGARY HIGHLANDERS 2 CDN DIV Regt., surrendered to No.L55214
Rank CPL Name SANGSTER H A of the CDN L of C PROV COY, GHENT
BELGIUM at 2215 hrs, on the 4th day of January, 1945.
He was wearing Military Uniform at the time of his surrender.

Place GHENT, Belgium

Date 4 Jan 44

H W MaBaffy Lieut
Ghent Detachment
2 Cdn L of C Pro Coy
21 Army Group.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 138275	Pte	Dart, L. R.	The Calg. Highrs

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec 14 (1) Army Act ..... 2 times.

For ..... times.

For ..... times.

For ..... times.

~~Date of last entry in Field Conduct Sheet~~

~~Date of last entry in Field Conduct Sheet~~

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. nil

*3. ~~[illegible]~~

~~[illegible]~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 20 days in military custody, *i.e.*, nil days in open arrest, 20 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation is 2 Jan 42

7. The ~~[illegible]~~

8. The accused is in possession of‡ C V S M & Clasp

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.30721/3701 32,000 9.44 A.& E.W.Ltd. 45p.695

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 24th day of January 1945

C W Dore Capt & Adjt
Calg Highlanders

MFM 6
(AFB 122)
40/PAS/158 (3439)

Old sheet destroyed at the end of six months (initialed (J.R.R.P.)

No E138275 Name DART Leonard Roy

Sqn, Battery, or Company | Corps | Date of enlistment 9.1.43 | Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 3.5.43 | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc Signed (J.R.R.Parent) Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31-8-44	Pte		A.W.L. from 0600 hrs 31 Aug 44 until 2000 hrs 31 Aug 44 (Absent 16 hrs) Sec 15 (1)(A)	Documentary	7 days CB	Major WO Graham	Auto Forf 1 days pay FR&I Forf 149(1)	
Field	14-4-44	Pte		Granted 7 days plus 48 hours with T.W.					
Field	22 Nov 44	Pte		A A Sec 15(1) WOAS A W L from 2300 hrs 22 Nov 44 until time of apprehension at 1845 hrs 29 Nov 44 (Absent 6 days 19 hrs 45 mins)	Lt Powell Documentary	28 days F P	11 Dec 44	Major W Heyland A/C.O.	Forf 7 days pay FR&I Forf 28 days pay

Certified true copy

C.W. Dore Capt & Adjt Calg Highrs

(PTO)

Plea of Mitigation of B 138275 Pte. Dart, L.R.

In putting forward a plea of mitigation for this man I would like to point out first of all, his history. He is 22 years old, was married at the age of 21 and spent only 5 days with his wife before going overseas. At this time he was with the Artillery. He was transferred from the Artillery to the Infantry just before coming to France in October, 1944, He fought with "B" Coy of the Calgary Highlanders for one month. During this time he fought through several battles including the battle of the Causeway on the 1st of Nov., 1944. After that the Battalion had a short rest period. During this period Pte. Dart had a lot of spare time and I am afraid that he started thinking over the vivid details of this last Causeway battle in which his Company had played the most vital part. He went over this battle again and again in his mind until he had almost worked himself into a frenzy of fear which thus led to his going A.W.L. While he was away from the Battalion he was able to get his mind back to normal again and realizing his mistakes gave himself up to the Provost. I believe that Pte. Dart regrets his action and if he is given a chance will once more become an efficient soldier and an asset to his country.

D R McGill Lieut

52-57 Dasher, L J.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A.4096 Pte Lloyd James DASHER

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd AA Sec 15(1)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of ten (10) months.

(Sgd) .....
Judge-Advocate, if any.

27 Feb 46
Date awarded.

(Sgd) C.H. Woodrow
President. (RP 45, 50.) Lt Col

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) .....
Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be released from detention~~ (1)

(1. AA 57A. Delete if not used.)

Date 28 Feb 46 (Sgd) H Blackader
(H.G. BLACKADER) BRIG
Commanding COMD CRU
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
4096 Pte. DASHER, L.J.	2 March 1946	H Blackader Maj

Publication in Do. 19A: d. 22 Mar 46.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED IN AB 160 5 Z 457

FIELD GENERAL COURT-MARTIAL

CPA96 (To lieu of AFA81) 40/P & R/Teus (6144) 4/38B

Convened by Order of Brig K.G. Blackader CBE DSO MC ED Comd CRU dated 26 Feb 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 162, 163, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.4096	Pte		Lloyd James	DASHER	No 1 Cdn Repat Depot

PROCEEDINGS REVIEWED
2 Apr 46 C.H. Tait, Maj
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 27 Feb 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instn, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95. For oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1115 hours trial commences.

A4. ~~The Prosecutor informs the Court that accused is to be tried by court-martial instead of being dealt with summarily by the CO.~~(1) The Prosecutor informs the Court that accused is (are) fit to undergo trial by court-martial.(1)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Deletes, if not applicable.)

A5. President to accused : ~~Do you object to the Interpreter so sworn.~~(1) Do you object to EIC/4409 Sgt O'Neill J as shorthand writer ? Ans No Sir

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instn, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	C.H. Woodrow, CBE ED	HQ, CRU
Member	Capt	F.M PRITCHARD	1 Cdn Repat Dep
Member	Lieut	J.F.W. COLLINSON	1 Cdn Repat Dep
~~Judge-Advocate~~			
Prosecutor	LIEUT	G.S MURRAY	1 CDN REPAT DEP
Defending Offr	LIEUT	W.G. PAISLEY	1 CDN REPAT DEP

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused ~~before arraignment make(s) (no) (no) plea~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 34), or as to accused's mental fitness to stand trial (AA 13C, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Stmt.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~charge(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~or~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF RP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Invite the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 42, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Stmt
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 71(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(2), and certified true copy (~~copies~~) of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(4) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(5)
(*1. MFB 235 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Defending Offrs plea in mitigation attached.(2)
(*1. RP 37(C), 44(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove an oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its purposes, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 165, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused A.4096 Private Lloyd James DASHER on the Transient Strength of No. 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

At Superior Camp, Ludshott, Hants., absented himself without leave from 0830 hours 30 June 1945 until surrendering to the Regimental Police at Superior Camp at 1500 hours 11 August 1945.

TIME ABSENT:- 42 days, 6 hours, 30 minutes.

SECOND CHARGE
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

At Superior Camp, Ludshott, Hants., absented himself without leave after escaping from the Unit Guard Room at or about 2135 hours 21 August 1945 until surrendering to the Regimental Police at Superior Camp at 1200 hours 9 February 1946.

TIME ABSENT:/ 171 days, 2 hours, 25 minutes.

M B K Gordon

(M.B.K. Gordon) Colonel
Commanding Officer
1 Canadian Repatriation Depot

SUPERIOR CAMP,
LUDSHOTT, HANTS.,
ENGLAND
13 FEBRUARY 1946.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

IN THE FIELD
26 Feb 46

H Blackader

(K.G. Blackader), Brigadier
Commander
Canadian Repatriation Units

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-4096	Pte		Lloyd James	DASHER	1 Cdn Repat Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Feb 46 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as lodge advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Lt.-Col	C.E. WOODROW, O.B.E. E.D.	HQ CRU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Captain	to be detailed from	1 Cdn Repat Depot
Lieut	to be detailed from	1 Cdn Repat Depot
	~~[illegible]~~	
	~~[illegible]~~	

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.)
(K.G. Blackader),

Brigadier (Rank.)

Dat 26 Feb 46

Commanding Canadian Repatriation Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 96 (In lieu of AFA 3) 40/F & S/1097 (6143)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 89(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(E), *KR Can* 563(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 162 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(C), *MML p* 752.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

27 Feb 46

I hereby certify that A.4096 Private Lloyd James BASHER is fit to undergo trial by Field General Court Martial.

Bruce Capt.

(Medical Officer) Capt

Plea attached of RB

Gentleman! Here is what appears on first sight a flagrant case of violation of Army rules: ~~On second sight~~ But if we examine the case closely we can find some explanation for the actions of the accused. ~~Let me~~ Allow me for a few moments to discuss the Army career of Pte Dasher and the circumstances under which he joined the Can. Army.

Dasher, an American citizen, came to Canada in May 1940 for the sole purpose of joining our forces. The ~~one~~ reason for this action Gentleman, is quite obvious. It was prompted by the same feeling which made many a citizen of another country join our forces. After a short time in ~~infantry~~ R.C.A.S.C. he was transfered to R.C.A.S.C. Where men were urgently needed at the time.

In 1941 Dasher was sent to England for the next three years he was employed in Service Corps work. However ~~for the~~ 1944 this brings us to the momentous year of ~~1944~~

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Many of our men had been lost, consequently there existed, especially in the Infantry Corps, an acute shortage of man power. Pte Dasher at this time decided his services were more urgently needed elsewhere than in his present post and for this reason volunteered for service in the infantry.

After a period of training in England he was sent to the Continent. He went into action with the Essex Scottish in Feb. 1945. This regiment was then fighting in the bitter sector of Calcar. On the 19 Feb Dasher's Platoon ran into very stiff fighting. The Platoon leader was killed, the sgt who took over was wounded. They received orders to withdraw. However 5 men were needed to fight a rear guard action in order that the others might get out safely. Dasher volunteered to be one of the 5. This rear guard fought and protected the rest of the Platoon in the face of a strong German counter attack, until finally they were surrounded and forced to surrender.

After his Capture the Accused was sent to Stalag #11B This camp was one of the worst in Germany. Need I say more. Whilst in this prison Dasher again showed commendable fortitude. The International Red Cross had sent many parcels of food and comforts to the Prisoners of War in Germany. They also provided vehicles to transport them to their many away and dispersed destitutions. Volunteers from P.O.W. Camps were requested to drive these vehicles and deliver them where they were so urgently needed. Again Dasher ventured.

This duty was indeed a hazardous and dangerous one. Please remember gentlemen then our Air force were bombing & machine gunning every moving object on German roads, ~~often they could not see that these vehicles were those of the International Red Cross.~~ In the course of this work Dasher was strafed twice by our own planes and once by [redacted] Russian aircraft. Not a very pleasant experience one must admit, more emphatically so, when one is on a merry mission and has not the means or opportunity of defending oneself, ~~but~~

alone fighting back.

The accused after liberation came back to England. He could have gone straight back HOME However for reasons best known to himself he elected to stay in England. He asked to be discharged here but his request met with no consideration. He was told at that time that EX Prisoners had to return to Canada.

This state of affairs gentleman was the basis of The accused violation of martial law. He like many others, absented himself and then after a time gave himself up to the authorities.

There is a reason for his absenting himself gentlemen and it is the same reason why he wishes to be discharged in the UK. Dasher is in love with a married woman in this country and is soon to have a child by her. Neither the woman or her husband have enough money to get a divorce and if Dasher spends any length of time at all in prison he will not have enough money himself to help them get their divorce. He wants to arrange this divorce in the worst way because the husband is not the type of father who would take care of another mans child and Dasher does want his child to had the best of care. In civil life Dasher works at Petroleum research and he's sure he can get a job in this country. He's old enough to know his own mind gentlemen and in view of all he's been through in this war I plead with you to be lenient with this man and help him make a future for himself. Remember gentlemen Dasher is 39 years of age and

if you deal harshly with him now it will take him years to get started again.

Exhibits "A" & "B"

SUMMARY OF EVIDENCE

In the case of A.4096 Private Lloyd James DASHER on the transient strength of No. 1 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE: A.A. Sec 15 (1)
SECOND CHARGE: A.A. Sec 15 (1)

By direction of the Commanding Officer this Summary is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

Capt. N. Dankiw, Adjutant of No. 1 Canadian Repatriation Depot 2 Wing "B" having been duly sworn states:-

"I am Capt. N. Dankiw, Adjutant of No. 1 Canadian Repatriation Depot 2 Wing (B). The accused was taken on strength from 1 CRD, w.e.f. 14 June 45. I submit as evidence in accordance with AA ss 163 the following documents."

(1) Certified True Copy of Declaration of Court of Inquiry showing the accused as being illegally absent without leave from 0830 hours 30 June 45 and being still absent at 0800 hours on 24 July 45 which is marked Exhibit "A".

(2) Certified True Copy of Declaration of Court of Inquiry showing the accused as being illegally absent without leave from 2135 hours 21 August 45 and being still absent on 13 September 45 which is marked Exhibit "B".

N. Dankiw Capt. Capt.
(N. Dankiw)

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

F.55193 Sgt. WASSILASKUS, A., in charge of the Unit Guard Room 2 Wing (B) 1 Canadian Repatriation Depot having been duly sworn states:-

"I am F.55193 Sgt. WASSILASKUS, A., in charge of the Unit Guard Room 2 Wing (B) 1 Canadian Repatriation Depot. Between the hours of 0800 and 1600 on the 11 August 45 I was NCO i/c the Guard Room of this Wing. At approximately 1500 hours the accused who I now recognize as A.4096 Pte. DASHER, L.J., reported in to the Unit Guard Room giving his name and number which I checked against the absentee report and found his name on it. I then placed him under close arrest. On 21 August 45 between 2130 and 2145 hours I was off duty in my quarters when Cpl. LAMBLE, who has now returned to Canada, notified me that A.4096 Pte. DASHER, L.J., had escaped from the Guard Room. After an intensive search of the camp and surrounding country Pte. DASHER was not located.

(F.55193 Sgt. Wassilaskus, A.)

The witness declines to cross-examine this witness.

THIRD WITNESS FOR THE PROSECUTION

L.103310 Cpl. LONGSTAFF, C.R.R., having been duly sworn states:-

"I am L.103310 Cpl. LONGSTAFF, C.R.R., of the Regimental Police Staff of No. 1 Canadian Repatriation Depot 2 Wing (B). I was on duty as NCO i/c Guard Room from 0830 hours to 1630 hours on the 9 February 1946. At 1200 hours on the 9 Feb. 46 Pte. DASHER, L.J. surrendered himself to the Guard Room stating that he was A.W.L. I checked the absentee report and found his name on it. I placed Pte. DASHER under close arrest.

C.R.R. Longstaff.

[L.103310 Cpl. LONGSTAFF, C.R.R.]

The accused declines to cross-examine this witness.

The accused was warned in accordance with R.P. 4(e) as follows:-

"Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused reserves his defense.

I certify that the foregoing Summary of Evidence consisting of TWO pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), and (f) have been complied with.

W.H. Buck Capt.

[W.H. Buck] Officer detailed to take the Summary of Evidence.

SUPERIOR CAMP,
LUDSHOTT, HANTS.,
ENGLAND
21 FEBRUARY 1946

EXHIBIT "A"
N Hanker Capt. Ad

RECORD of the Declaration of a Court of Inquiry assembled at Superior Camp, Ludshott, Hants. on the 24th day of July 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A.4096 Pte. DASHER L.J.

DECLARATION

The Court declare that No. A.4096 Pte. Dasher, L.J.
1 Canadian Repatriation Depot (Lorne Scots)
illegally absented himself without leave from #2 Wing (B) 1 Cdn Repat Depot
at 0830 hrs on the 30th day of June 45,
that he is still so absent, and that on the 24 July 45 he was deficient, and
that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
attached list.			

Capt. G.H. Milsom (RCA) President

Lieut. G.L. Nix (RCASC) Member

Member

Signed at Superior Camp, Ludshott, Hants.

this 24th day of July 1945

Signature of Commanding Officer (N.B.K. Gordon) Colonel
Commanding Officer
1 Cdn Repat Depot (Lorne Scots)

Certified true copy G.H. Milsom Capt.
Signature of Officer having custody of original record

3/60B MFB 375-AFB 115 40/P&S/392 (6610)

APPENDIX "A"

26 Jul 45

Kit Deciciencies of:-
A 4096 Pte. Dasher, L.J.

6

Item	No	Voc Price £	S	D	Expended Value Less 25 % £	S	D
Blouses Battle-dress	1	1	9	1	1	1	9¾
Boots ankle prs	1	1	6	0	1	0	6
Berets Khaki	1		5	5		4	0¾
Drawers Cell short	2		3	10		2	10½
Shirts Flannle	2	1	1	6		16	1½
Socks prs	3		6	1½		4	7
Trousers Battle-dress	1	1	9	3½	1	1	11½
Bags Kit	1		4	7		3	5¾
Braces prs	1		1	5		1	0¼
Brush clothes	1		2	2		1	7½
shaving	1	x	1	3			11¼
Shoes polishing	1		1	8		1	3
Tooth	1			6			4½
Combs Hair	1			2			1½
Fork NS Table	1			4			3
Holdall	1			10			7½
Knife Table GS	1			8			6
Razor Safety	1			3			2½
Spoons NS Table	1			5			3¾
Vests cotton gym	2		2	10		2	10½
Towels Hand	1		3	0		2	3
Braces WE left	1		1	4		1	0
Haversacks WE	1		8	0		6	0
Tins Mess	1		1	5		1	0¾
Total		7·12·1			5·15·8½		

Checked by:

E 21879 CQMS Smith J

2 Wing (B) 1 C. Repat. D.

22 Aug 45

APPENDIX "A".

ARTICLES IN POSSESSION OF:-
A 4096 Pte. Dasher, L.J.

Item	No.	Voc Price £	S	D	Voc Price less 25% £	S	D
		1	6	0	1	0	6
Boots Ankle prs	1		2	0½		1	6½
Socks Worsted prs	1		1	11		1	5½
Drawers Cell prs	1		10	9		8	0½
Shirt Flannel w/collar	1		5	5		4	0½
Berets Khaki	1		11	3½		8	5½
Overalls Comb							
	Totel	2	17	5	2	4	0½

Checked by :

C 79256
A/C 1 Crawford, P.B.

EXHIBIT "B"
N. Dankin Capt.

RECORD of the Declaration of a Court of Inquiry assembled at Superior Camp, Ludshott, Hants. on the 13th day of September 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A.4096 Pte. DASHER, L.J.

DECLARATION

The Court declare that No. A.4096 Pte. DASHER, L.J. 1 Cdn Repat Depot

illegally absented himself without leave from 1 Cdn Repat Depot 2 Wing (B) at 2135 hrs on the 21st day of August 1945, that he is still so absent, and that on the 13th Sep. 45 he was deficient, and that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
SEE ATTACHED LIST			

(CAPT. G.H. Wilson) RCA President

(LIEUT. N. Dankiw) CIC Member

Signed at SUPERIOR CAMP, LUDSHOTT, HANTS

Member

this 13th day of Sept. 1945

Signature of Commanding Officer (M.B.K. Gordon) Colonel
~~Commanding Officer~~
1 Cdn Repat Depot

Certified true copy N. Dankin Capt.
Signature of Officer having custody of Original record

3/60B MFB 375-AFB 115
40/P&S/292 (8703)

Exhibit "B"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
A.4096	Private	Lloyd James DASHER	

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 577, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is of drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months		* Since Enlistment
For	NIL	AA Sec 15(1) times	3 times
For		AA Sec 40 times	2 times
For		times	times
For		times	times
For		times	times
For		times	times

Number of instances of gallantry or distinguished conduct

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for NO days in civil custody, and 18 .0 days in military custody, making a total of 18 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 29 years 4 months

6. The date of his attestation specified in his attestation paper is 30 May 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 years 9 mos

8. The accused is entitled to deferred pay or gratuity in respect of 5 years 7 mos service.

9. The accused is entitled to reckon 5 years 7 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*). CVSM & Clasp

11. (*In the case of a warrant officer*) The accused has been a warrant officer [illegible] dated

12. (*In the case of an officer*) The accused holds in the army the rank of dated and in his regiment (*or corps or department*) the rank of dated

W.4.5903/2859 20M. 3/40. P. Ltd. TH.4.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of February 1946

N. Dankiw Capt.

(N. Dankiw) Capt.

(INSTRUCTION—If any entries in any of the above paragraphs cannot be extracted from the regimental books the paragraphs must be inserted, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraphs amended accordingly.)

In the rank of

In the rank of

Date of Promotion

MFM 6

No A.4096 Name DASHER, L.J. | Sqn, Battery, or Company | Corps C.D.C. | Date of enlistment 30-5-40 | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon, Ont.	4-11-40	Pte		MISS CHECK R.O.319 A WL Sec 15(1) 7 days 30 mins.	Cpl Heath	8 days C.B. extra drill	11-11-40	J.O. Chittick Capt.	Forf 7 days pay.
Field	27 Jul 43	Pte		Sec 40 A.A. WOAS Conduct to the prejudice etc., improper use of a Military vehicle.	Doc.	28 days forfof pay	30 Jul 43	Capt D.G. Balsillie	
Field	Awarded 19 Nov 44	Volunteer pte		Service Medal & Clasp wef 15 Jan 44 (auth: R.O. 4167) AA Sec 15(1) AWL from 2200 hrs 19 Nov 44 to 0730 hrs 20 Nov. 44. Total absence: 9 hrs 30 mins	Sgt. Dietz JR	3 days C.B.	22 Nov. 44	Capt. A.J. MacAskill	DO 8 s/18 Jan. 44. Forf 1 days pay FRAI 148(1)(a)

(P10)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Oct 44	Pte		OAS/AWL from 2200 hrs 13 Oct. 44 till 2030 hrs 16 Oct 44. Time Absent 22 hrs 30 mins. AA Sec 15(1)	Documentary Cpl MacIntyre	~~17xxxxx44x~~ 7 days pay FR&I 149(2)	~~[illegible]~~ 17 Oct 44	Lt Col W.H. Copeland	3 days pa y FR&I 149 (1) (a) Total For 10 days pa y
Field	9 Jan 45	Pte		A.A. Sec 40 Conduct to the prejudice etc. Beyond limits of barracks when Bn was C.B.	Documentary	15 days F.P. 15 days loss of pay	13 Jan 45	Lt-Col G.H. Logie	

CERTIFIED TRUE COPY OF ORIGINAL IN MY POSSESSION

N. Dankiw Capt. Capt.

(N. Dankiw) Adjutant 2 Wing (B) 1 Cdn Repat Depot

LIST OF WITNESSES

FOR THE PROSECUTION:-

First Witness:	Capt. N. Dankiw, Adjutant 2 Wing (B) 1 Canadian Repatriation Depot.
Second Witness:	F.55193 Sgt. WASSILASKUS, A., NCO i/c Regimental Police of 2 Wing (B) 1 Canadian Repatriation Depot.
Third Witness:	L.103310 Cpl. LONGSTAFF, C.R.R., on the Regimental Police Staff of 2 Wing (B) 1 Canadian Repatriation Depot.

FOR THE DEFENSE:-

NIL

W.R. Buck Capt

(W.R. Buck) Capt.
Officer Detailed to take the
Summary of Evidence

LIST OF EXHIBITS

FOR THE PROSECUTION:-

Exhibit "A":	Certified True Copy of a Declaration of a Court of Inquiry.
Exhibit "B":	Certified True Copy of a Declaration of a Court of Inquiry.

W.R. Buck Capt

(W.R. Buck) Capt
Officer detailed to take the
Summary of Evidence.

21 Feb. 46

I, A.4096 Private Lloyd James DASHER, hereby certify that I have received a copy of the Summary of Evidence and Charge Sheet in the case against me.

L J Dasher

(A.4096 Pte. DASHER, L.J.)

I, A.4096 Private Lloyd James DASHER, request the Convening Officer appoint an Officer to defend me at my forthcoming trial by Field General Court Martial.

L. J. Dasher

(A.4096 Pte. DASHER, L.J.)

QQQ-55
PTE DASHUK JM.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.63874 Pte John Maurice DASHUK - CIC - 4 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 22	Guilty	Guilty	
2nd AA Sec 15(1)	Guilty	Guilty	
3rd			
4th		W.P. Steen Lt	
5th		A.P. June 1944	
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 4 Months beginning on (date) May 24/44 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Eighteen months, and to be placed under stoppage of pay until he has made good the sum of £1-7-11 in respect of Cost of Apprehension

(Sgd) ..... Judge-Advocate, if any. Date awarded June 24/44 (Sgd) W.P. Steen Lt President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be sent unconditionally for release on detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) Robert Lt Stewart Lough Lt Colonel Commander Royal Artillery Group

Date 27 June 1944

Commanding Con. Reinforcement Units C.A. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

B63874 Pte John Maurice Dashuk; 27 Jun 44 A.J. Gaulter Lt Assistant Adjt 4 CIRU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 7 JUL 1944 JAG F...

RECORDED AT CMHQ IN AD 160, QQQ-55

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40/P.S.R./1658 (2864)

(Convened by Order of Brig J.R. Stewart Lough DSO, MC, VD Comd "D" Gp, CRU dated 23 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.63874	Pte	John Maurice	DASHUK	CIC 4 CIRU

PROCEEDINGS REVIEWED W.P. Steen Lt Lt Col

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) June 24/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.10 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans ~~No~~

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans ~~No~~

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.P. Steen	H 4 C IRU.
Member	Capt.	J.B. Morgan	H 4 C IRU
Member	Lt.	J.E. Pope	H 4 C IRU.
Judge-Advocate			
Prosecutor	Lt.	A.M. Menin	H 4 CIRU.
Defending Offr	Lt.	A.H. Krieger	H 4 CIRU.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Confg Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 32.)

A8. The accused B63874 Pte John M. Dashuk before arraignment make(s) (no) (~~no~~) (~~no~~) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the arguments made in support or opposal, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to that cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.63874 Pte John Maurice DASHUK - CIC - 4 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 22	Guilty	Guilty	
2nd AA Sec 15(1)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 4 Months beginning on (date) May 25th/44 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which 11 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Eighteen months, and to be placed under stoppage of pay until he has made good the sum of £1-7-11 in respect of cost of Apprehension

(Sgd) Judge-Advocate, if any. Date awarded June 24/44 (Sgd) W P Steen Lt Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(Dy fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not required to undergo detention hereunto until further ordered. (1. AA 57A. Delete if not used.)

Date 27 June 44 (Sgd) W. Stewart Lough Lt Col Commanding Can. Reinforcement Units C.A. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B63874 Pte John Maurice Dashuk;	27 Jun 44	A J Lyster Lt Actg Maj AAG 2 CIRU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 7 JUL 1944 JAG

RECORDED AT CMHQ IN AB 160 4444-55

FIELD GENERAL COURT-MARTIAL (DP&A86 (in lieu of AFA3) 40-P & S-1698 (2864))

Convened by Order of Brig J.R. Stewart Lough DSO, MC, VD Comd "D" Gp, CRU dated 23 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B.63874	Pte	John Maurice	DASHUK	CIC 4 CIRU

PROCEEDINGS REVIEWED J.A. Judge Advocate

REVIEWING OFFICER, JAG BRANCH Ottawa

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) June 24/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 9. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.12 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the Interpreter~~ as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to ~~the shorthand writer~~ as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.P. Steen	#4 C.I.R.U.
Member	Capt.	J.B. Morgan	#4 C.I.R.U.
Member	Lt.	J.E. Pope	#4 C.I.R.U.
Judge-Advocate			
Prosecutor	Lt.	A.M. Means	#4 CIRU.
Defending Offr	Lt.	A.H. Krieger	#4 CIRU.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Confg Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused B63874 Pte John M. Dashuk before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para i of instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. B 63874 Private JOHN MAURICE DASHUK, of the Canadian Infantry Corps, on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas is charged with:-

First Charge
AA Sec 22

WHILE ON ACTIVE SERVICE, When in lawful Custody escaping
in that he
In the Field, at approximately 1545 hours 31 May 1944, whilst in Confinement in Unit Detention did escape

Second Charge
AA Sec 15

WHILE ON ACTIVE SERVICE, Absenting himself without leave,
in that he
In the Field, absented himself without leave from 1545 hours 31 May 1944 until apprehended by Canadian Provost Corps at Leeds, at 1420 hours 4 June 1944, thereby incurring expenses for himself and escort to the value of £1-7-11.
(Time absent 3 days 22 hours, 35 minutes)

IN THE FIELD
21 JUNE 1944

J Gavan Power Lt-Col
(J Gavan Power) Lt-Col.,
Commanding Officer
4 Cdn Inf Rft Unit

To be tried by Field General Court Martial.

J.R. Stewart Lough
(J.R. Stewart Lough) Brigadier
Commander
"D" Group, Cdn Rft Units
Convening Officer

In the Field
23 Jun 44

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA8)
4/P&B/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 63874	Pte		John Maurice	DASHUK	CIC 4 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 23 Jun 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.P. Steen	4 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by Commanding Officer	4 CIRU
A Lieutenant	to be detailed by Commanding Officer	4 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 23 Jun 44

J.R. Stewart Lough (Signed personally. RP 105 (n 23))

(J.R. Stewart Lough)

Brigadier (Rank.)

Commanding "D" Group, Cdn Rft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following *order* of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 90(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in *Part I* of Schedule on p 4 after minute of sentence awarded. (*AA 52(8), RP 118(C), MML p 758.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. B63874.....

Pte. Darbuk J. M. ..... of....4.C.I.R.V.....

and in my opinion, he is..fit..... to undergo trial by Court Martial.

Station..Field.....

Date....24 June - 44..... (Sgd.)..[illegible]..... (Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

Statement Under Oath

B-63874 Pte Dashuk J. M. of the Canadian Infantry Corps on strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows.

I have been in the army since June 1940 and in this country since 1941. I have tried to soldier until Jan 1943 I had hoped to be transferred to the Airforce but nothing was done about my request therefore I decided not to soldier anymore. I think I have got a raw deal from the army and I dont intend to soldier anymore I have been paraded to numerous S.P.O.'s and they would not give me any satisfaction

W D

Exhibit "B"

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B 63874 Pte Dashuk J M of the Canadian Infantry Corps, on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

The Summary of Evidence is not taken on oath.

FIRST WITNESS

For the Prosecution

C 65036 Cpl. Hicks R J, C I C, on the strength of No. 4 C I R U, a soldier of the Canadian Army Overseas states as follows:-

I am C 65036 Cpl. Hicks R J and am employed on the Regimental Police of 4 C I R U. On May 31st, 1944 I was in charge of the Unit Guard Room. At 1545 hours 31 May 44, I made a check up on the men detained in the Unit Guard Room. I had a roll call and the accused B 63874 Pte Dashuk J M, whom I now recognize, was absent. I searched the grounds and billet hut and could not locate Pte Dashuk.

The accused declines to cross-examine this witness

R. J. Hicks Cpl.
(C 65036 Cpl. Hicks R J)

SECOND WITNESS

For the Prosecution

Capt R J McLaughlin, of the Toronto Scottish Regiment on the strength of No. 4 C I R U, an Officer of the Canadian Army Overseas, states as follows:-

I am Capt R J McLaughlin and am Administration Officer of "H" Wing, 4 C I R U. I present as exhibit "A" Certificate in accordance with P.C.2797 of 10 Apr.42 which relates to the accused, B 63874 Pte Dashuk, J M whom I now recognize, which shows that he was apprehended by the Canadian Provost Corps at 1420 hours 4 June 1944, at Leeds. I produce a certificate purporting to be signed by the Officer who issued the transportation warrants for the return of the accused and his escorts showing the costs of apprehension of the accused, B 63874 Pte Dashuk J M, whom I now recognize. (Certificate marked as Exhibit "B")

The accused declines to cross-examine this witness.

R J McLaughlin
(R J McLaughlin) Capt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence, consisting of ONE page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c),(d),(e),(f) and(g) have been complied with.

T E McKay
(T E McKay) Lieut
Officer detailed to take Summary

IN THE FIELD
21 JUNE 1944

EXHIBIT B
T.E.M.

H.W.

4C/9

Expense Voucher Re- Ref KR & O (Can) 530

Reg No. B 63874 Rank. Pte Name. Dashuk, J.W. Unit. 4 CIRU

The following expenses were incurred in apprehension and return of the m/n Soldier to 4 C.I.R.U.

Date	Particulars	Amount £	s	d
	Escorts return fare from Helmsley To Leeds		8	2
	Prisoners single fare to Helmsley From Leeds		4	1
	Escorts & Prisoners expenses for Bed, Meals and Bus fare		15	8
	Total £:	1	7	11

I certify that the above statement of expenses is correct and that the amounts are fair and just.

Captain Adjutant,

Officer Issuing Railway Warrant and Expense monies.

In lieu of
CMHQ 1000;55

WPS

CERTIFICATE IN ACCORDANCE WITH P.O.2797 of 10 Apr.42.

I Certify that No. B-63874 Rank PTE. Name DASHUK.J.M.

Unit No.4.C.I.R.U. was arrested at LEEDS. (Place)

at 1420 (hour) on 4-JUNE-44 (date) and that at the time of his arrest he was wearing (Military Uniform) or (XXXXXXXXXXXXXXXXXX). Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer, in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

J. Faucher SGT.
(Rank) Provost Detachment.
Co. Canadian Provost Corps.
K-53452. FAUCHER.J. 800 i/c
No.4 Provost Detachment.
6(Area)Provost Company.

LEEDS.
4-JUNE-44

EXHIBIT "A"
T. E. M.

34 CANADIAN INFANTRY REINFORCEMENT UNIT, C.A.(O). 4C/24

21 Jun 44 19..

I, No. B 63874 (Rank) Pte (Name) Dashuk J.M., wish to have an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of Major Bolland J.A. if he is available.

(Sgd.) J.M. Dashuk

LIST OF WITNESSES

in the case of B 63874 Pte Dashuk J M 4 C I R U

FOR THE PROSECUTION

1. C 65036 Cpl. Hicks R J, 4 C I R U
2. Capt. R J McLaughlin, 4 C I R U

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

In the case of B 63874 Pte Dashuk J M, 4 C I R U

Exhibit "A" - Certificate in Accordance with P C 2797

Exhibit "B" - Expense Voucher

21 Jun 44

This is to certify that I have received the following documents free of charge

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 Copy of List of Witnesses
1 Copy of List of Exhibits

J M Dashuk
(B 63874 Pte Dashuk J M)

No. B-63874 Name Dashek, J.M. Sqn., Battery, or Company HQ Wing Corps G.O.R. of C.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 12 June 40 | G.C. Badges | Sheet No. Two | Signature O.C. Company, etc. | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /S136 (2265) | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of under dispensing with trial	By whom awarded	Remarks
Field	28 Jan 43	Rfn		AA 40 Conduct etc in that he failed to return to QM Stores a number of petrol tins after having been warned to do so	Sgt Bradley G.E. Sgt Frost A.J.	7 days CB	30 Jan 43	J.G. Alley Lt.	
Field	18 Feb 43	Rfn		1st Charge AA 15(1) AWL from 2359 hrs 18 Feb 43 until apprehended at 1130 hrs 3 Mar 43 in London (12 days 11 hrs 31 min absent) AA 15(1) AWL from 0830 hrs 6 Mar until 1430 hrs 10 Mar 43 (4 days 6 hrs absent) Under close arrest from 1630 hrs 10 Mar 43 — 8 days	Lt Sgt Henderson Doc Cpl Thompson Cpl Cole, S	14 days CB 25 % pay	18 Mar 43	J.G. Sprague Lt-Col	Fort 12 days pay FRoL 244 (1)a Fort 8 days pay FRoS 144 (1)a Cost of return to [illegible]

W.P.S.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19-10-43	Pte		AA 15(1) WOAS AWL from 2359 hrs 19-10-43 to 1110 hrs 21-10-43 (2 day 12 hrs 31 min)	Cpl McGeod	Forfeits 7 days pay	22-10-43	Lt Col A B Smith	Fort 2 days pay FR&I 144 (1) a
Field	12-Nov 43	Pte		AA 15(1) WOAS AWL from 2 [illegible] 12 nov 43 to 0600 hrs 13 nov 43 (8 hrs)	Cpl Eadsworth DT	Forf 4 days pay	16 nov 43	Lt Col R J Macpherson Fred M Calloy Capt	Forf 1 day pay FR&I 144 (1) a
Field	25 Nov 43	Pte		AA 15(1) WOAS AWL from 0600 hrs 25 nov 43 until apprehended at 1000 hrs 14 Dec 43 (Total absence 19 days 4 hrs)	A/Sgt Hard Doug	27 days FP 27 days loss of pay Stoppage FI-11-3	12 Dec 43	Lt Col R J Macpherson	Forf 20 days pay FR&I 144 (1) a
Field X	16 Mar 44	Pte		(a) AA Sec 15(1) WOAS AWL from 2359 hrs 10 mar 44 to 1515 hrs 22 mar 44 (Total absent 11 days 15 hrs 16 min) (b) AA Sec 40 Cond 8th pry in that he was apprehended by CPC was in possession of a false pass purporting it to be true	(Doc)	28 days detention stoppage of pay 16 S 10 d	25 mar 44	Maj A J Macpherson	Forf 14 days pay FR&I 144 (1) a Forf 28 days pay FR&I 144 (1) b Stoppage of pay 16 S 10 d

M.F.M. 6
(A.F. R.122)
40/P & /S136 (2005)

No. B-63874 Name Dashuk, J.M. Sqn., Battery, or Company H.Q. Corps 1st Bn Q.O.R. of C. (AF) Date of enlistment 17-6-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 16-7-40 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sussex NB	15-1-41	Rfn		(a) A A Sec 19 Drunkeness	Sgt Burgess	Admonished	17-1-41	DJ LeQuesne Capt	
				(b) A A Sec 15(1) AWL from 2200 hrs to 2000 hrs 15-1-41	Sgt Burgess	5 days C B	17-1-41	DJ LeQuesne Capt	
Sussex, NB	31-3-41	Rfn		AWL from 0700 hrs 31-3-41 to 1230 hrs 4-4-41 (4 days 4 hrs. 30 min)	Cpl Lane	168 hrs detention	14-4-41		Fort 5 days pay FA&I Stoppages Cost of Return (F.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sussex, NB	9-7-41			AA Sec 15(1)	Sgt Winney, WH	6 days CB	11-7-41	D.J. LeQuesne Capt	2 days pay FRoL
In the Field	4-7-42	Rtn		AA 11 Neglecting to obey general orders in that he on 4-7-42 did drive a Cdn Army vehicle at an excessive rate of speed and had not an authorized work ticket in accordance with Overseas RO 612	Documentary	7 days CB	10-7-42	J.G. Sprague Lieut col	
Field	6 Jan 43			AA 15(1) AWL from 1130 hrs 6 Jan 43 until 2300 hrs 6 Jan 43 (11 hrs 30 min)	Sgt Bradley Cpl Smith W	5 days CB 5 days loss pay	20 Jan 43	J.G. Sprague Lt. col	Fort 1 day pay FRoL 149 (1)a

M.F.M. 6
(A.F. B.122)
49/P & /B136 (2965)

No. B-63874 Name Dashuk, J.M. Sqn., Battery, or Company Corps C I C Date of enlistment G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Apr 44	Pte		A A Sec 15(1) W OAS AWL from 0240 hrs 20 Apr 44 till apprehended by CPC at 1350 hrs 27 Apr 44 (Total absence 7 days (hrs 10 min)	Cpl Webster R.W. (Doc)	28 days F P Pay 27 days pay PRxI (1)	1 May 44	Lt Col R J McPherson	Fort 8 days pay PRxI 14 [illegible]
Field	2 May 44	Pte		A A Sec 15(1) AWL 16 days 45 (min)	B 85578 Cpl Webster R.W.	6 mos detention stopp of pay 50-1-2 cost of apprehension	25 May 44	F G C M	60 days detn remitted by confirming off

Certified True Copy

[signature]

Captain Adjutant,
4 Cdn Inf Rein Unit.

Offices having custody of original record 22 Jun 44

Exhibit C
[signature]

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

M.F.B. 355
22M—5-41 (379-3)
H.Q. 1773-39-620
A.F.B. 396

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	~~Regiment~~ (or unit)
B 63874	Pte	Dashuk J M	4 C I R U

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and ~~Squadron Ledger~~ or Company ~~Conduct sheet~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment ~~or appointment~~	
For	A A Sec 15(1)	5 times	A A Sec 15(1)	11 times
For	A A Sec 40	1 times	A A Sec 40	2 times
For		~~times~~	A A Sec 19	1 times
For		~~times~~	A A Sec 11	1 times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~2. The accused has not been previously convicted~~

~~or~~

Previous convictions of the accused by a court-martial or a civil court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and dispensations with trial under ~~A.A. 73~~ are set out in the Schedule annexed to this statement.

~~3. The accused is not under sentence at the present time~~ A.G.S.

~~or~~

The accused at the present time is under sentence for 4 months beginning on the 25th day of May 41.

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 19 days in military ~~Air Force~~ custody, making a total of 19 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ attestation paper is 27

6. The date of his ~~attestation~~ specified in his ~~record~~ attestation paper is 17 Jun 40

~~7. The service which the accused is allowed to reckon towards discharge~~

~~8. The accused is entitled to reckon service for the purpose of determining his position, etc~~

~~9. The accused is in possession of or entitled to no air force decoration, or air force award (or is in possession of or entitled to). State any air force decoration or reward~~ ~~Officer~~ ~~military~~ ~~military~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force~~ the regimental rank of

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ RJM
~~Permanent Force~~ RJM
~~unit~~ RJM
~~dated~~ RJM, ~~and in his regiment (or corps) the rank of~~ RJM
~~dated~~ RJM.

~~12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:~~ RJM
~~Date of promotion:~~ RJM

~~In the rank of~~ RJM ~~years.~~ RJM
~~In the rank of~~ RJM ~~years.~~ RJM
~~In the rank of~~ RJM ~~years.~~ RJM

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ RJM Army Act, and of cases in which trial has been dispensed with of accused, Number B 63874 Rank Pte

Name Dashuk J M of 4 C I R U Unit ~~Regiment~~ RJM

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F G C M	IN THE FIELD 2 May 44	A A Sec 15(1)	a.g.g. 6 months detention	60 Days. a.g.g.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24th day of June 44 A. J. Geisler Lt. for Captain Adjutant, Dep. Sta. Unit

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "B" Exhibit signed by the president, and annexed to the proceedings.

[signature]

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-63874 Private John Maurice DASHUK, 48th Highrs - 4 C.I.R.U.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY ~~Not Guilty~~	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 28 days beginning on (date) 1 May 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

~~to cause detention.~~ 522.
~~Forfeits to keep pay in accn with FR I. 149 (1)(a)~~ 522.
~~Stoppage of pay £6 19s 2.~~ 522.

(Sgd) _____ Judge-Advocate, if any. 25 May 44 Date awarded (Sgd) G.F. Foster Maj President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 33(D) fn 6.66(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings of the Court but remit eight (60) days detention

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

Date 28 May 44 (Sgd) J.H. Marsh Lough Lt-Col
Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

B-63874 Pte John Maurice DASHUK 30 MAY 44 [signature] Captain A/D.A.A.G. 4 Can Inf Div Adm Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD AT CMHQ IN AB 160 000-84 C

FIELD GENERAL COURT-MARTIAL (CFAPS (in lieu of AFA3) 40/P.A.S./1006 (2004))

Convened by Order of Brig. J.R. Stewart Lough DSO, MC, VD. Comd "D" Gp CRU dated 24 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-63874	Pte.		John Maurice	DASHUK	48 Highrs 4 CIRU

RECEIVED 9 JUN 1944 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED 12 Jun 44 [signature] Capt

PROCEEDINGS OF TRIAL.

Held at the Orchard, JAG BRANCH C.M.H.Q. on (date(s)) 24 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3) 522.

(1. As to use of Summary of Evidence see RP 17. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1400 hours trial commences.

~~The Prosecutor informs the Court that accused elected to be tried by court-martial thereof being dealt with summarily by the CO.~~(1) 522

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans — 522.

~~The Interpreter is sworn.~~(1) Do you object to _____ as shorthand writer? Ans — 522

~~The shorthand writer is sworn.~~(1) 522

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	G.F. FOSTER (CAMS - York R)	H.C.I.R.U.
Member	CAPT.	J.R. POPHAM. (R.H.C)	4 C.I.R.U.
Member	LIEUT.	G.I. GILLESPIE (C.I.C.)	4 C.I.R.U.
Judge-Advocate			
Prosecutor	LIEUT.	D.H. KNOWLES (HAST + PER.)	4 C.I.R.U.
Defending Offr	LIEUT.	W.H. MACKIE (C.I.C)	4 C.I.R.U.

522.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Comm Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused B 63874 Pte. MASHOR, JOHN MAURICE before arraignment make(s) (no) plea(s). 522

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13(3), RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making plea.)

A9. The accused is (not) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. 522

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A9s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B 522

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), to call witnesses as to character and make an address in mitigation of punishment.(2)
(*I. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.* *5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on charge(s). The accused is (not) so informed, and he (then) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex P, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans YES (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans
Do you intend to call witnesses on your behalf? Ans
Are they witnesses as to character only? Ans
(*1. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans YES. I will give evidence.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (a) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex M and Ex N respectively.(2)
(*1. MFB* 355 *or MFB* 296. *2. MFM* 6. *3. RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* [redacted]. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 64, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Overseas NO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 136. *When accused already under sentence of imprisonment or detention see AA* 44(1) (*b*), 68(1), *KR Con* 564. *2. RP* 50. *As to release from arrest by Convening Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

00084

PTE DASHUK J M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-63874 Private John Maurice DASHUK, 48th Highrs - 4 C.I.R.U.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	~~Not Guilty~~ GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 28 days beginning on (date) 1 May 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which Nil days were spent in hospital. (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: ~~to suss. detention~~ 922.
~~Forfeits to comp for in accn. with F.R.O. 1447 (IIa)~~ 922.
~~Stoppages of pay to comp~~ 922.

(Sgd) ..... Judge-Advocate, if any. 25 May 44 Date awarded (Sgd) A.F. Foster, Maj President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.66(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings of the Court but remit sixty (60) days detention

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (*)
(*. AA 57A. Delete if not used.)

(Sgd) ..... Commanding

Date 28 May 44

Lt. Lt. Lough, D Coy Can Inf Regt (Spec Duties)
Commanding D Coy Can Inf Regt (Spec Duties)
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr
B-63874 PTE JOHN MAURICE DASHUK	30 MAY 44	[signature] Captain A/D Can Inf Regt (Spec Duties)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD AT CMHQ IN AB 160 - 000-84 C

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA3) 40/P & B 14638 (2604)

Convened by Order of Brig. J.R. Stewart Lough DSO, MC, VD. Comd "D" Gp CRU dated 24 May 44

RECEIVED 9 JUN 1944 JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	
B-63874	Pte.		John Maurice	DASHUK	48 Highrs 4 CIRU

PROCEEDINGS REVIEWED 12 June 44
[signature] Capt

PROCEEDINGS OF TRIAL.

Held at the Convening ~~Unit~~ JAG BRANCH C.M.H.Q. on (date(s)) 24 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (2) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (fit) to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans ——
~~The Interpreter is sworn.~~(1) Do you object to ..... as shorthand writer? Ans ——
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	G.F. FOSTER (CAMERON R)	H.C.I.R.V.
Member	CAPT.	J.R. POPHAM. (R.H.C)	H.C.I.R.V.
Member	LIEUT.	G.I. GILLESPIE (C.I.C)	H.C.I.R.V.
Judge-Advocate			
Prosecutor	LIEUT.	D.H. KNOWLES (HAST+PER)	H.C.I.R.V.
Defending Offr	LIEUT.	W.H. MACKIE (C.I.C)	H.C.I.R.V.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D/ p 3.)

A8. The accused B 63874 Pte JOHN MAURICE DASHUK before arraignment make(s) (no) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 117), or in bar if tried (RP 36), or as to accused's mental fitness to stand trial (AA 13C, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (not) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~adjourned and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and to call witnesses as to character and make an address in mitigation of punishment.(1)(2)
(*I. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(3), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(4), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(5)

President to accused: Do you wish to make a statement? Ans. No (5)
(*I. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1) The Court decides (~~has~~) to advise accused to change his (~~their~~) pleas of Guilty ~~to Not Guilty on~~ to the charge(s). The accused is (~~are~~) so informed, and he (~~they~~) ~~change(s) his (their) plea(s) on~~ maintain(s) his (their) plea(s). Part I of the Schedule is amended accordingly.
(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*I. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "P", initialled and read aloud by the President.(1)
(*I. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(*I. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*I. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. YES (1)
(*I. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*I. RP* 39(*B*), 60(*A*) (*2*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*I. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP* [redacted] 2. *RP* 40(*A*); *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 81(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(2) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. [illegible] YES. I will give evidence.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (~~original~~) of Conduct Sheet(s)(2) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because they purport to be signed in the manner required by AA 163(3) (*g*) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "M" and Ex "N" respectively.(3)
(*1. MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes (2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* [redacted]. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 320, 563-566. *Overseas RO* 209, 2323, *MML p* 60, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The Court recommend a further personal investigation of the accused. by Psychiatrist and S.P.O.

G. F. Foster. Maj
Pres.

CHARGE SHEET

The accused, No. B-63874 Private JOHN MAURICE DASHUK, of the 48th Highlanders of Canada, on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
A A Sec 15(1)

WHILE ON ACTIVE SERVICE, Absenting himself without leave,
in that he
In the Field, whilst undergoing Field Punishment, absented himself without leave from 1730 hours, 2 May 1944 until apprehended by the Canadian Provost Corps in Leeds at 1815 hours, 18 May 1944, thereby incurring expenses for himself and escort to the value of £0.19.2.
(Total absence:- 16 days, 45 minutes)

IN THE FIELD
22 MAY 1944

(J.H. Christie) Col.,
Officer Commanding,
4 Cdn Inf Rft Unit, C.A.O.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J.R. Stewart Lough) Brigadier,
Commander 2nd Group,
CANADIAN REINFORCEMENT UNITS.

Convening Officer

In the Field
24 May 44.

G.S. Scales Maj
Pres

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-63874	Pte.		John Maurice	DASNUK	48 Highrs 4 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 24 May 44 endorsed by me, ~~or by an offr of my staff for that~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~).
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Pd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~Name of Judge Advocate (except if a Offr specified hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	G.F. FOSTER, (C & Y REGT)		4 CIRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
~~An Officer~~ CAPT.	CAPT J.R. POPHAM, (R.H.C.)	to be detailed by O.C.	4 CIRU
~~An Officer~~ LIEUT.	LIEUT G.J. GILLESPIE (C.I.C.)	to be detailed by O.C.	4 CIRU

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
			4 CIRU

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
			4 CIRU

On Active Service in the Fd

in England
(Country.)

Date 24 May 44

(Signed personally. RP 103 (b).)
(J.R. Stewart Lough)
Commanding "D" Group, Cdn Rft Units.
Convening Officer

Brigadier
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless there-unto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(*C*), 87(*C*), 92(*C*) (*D*).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)
(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence* except as provided by *RP* 46(*E*), *KR Can* 563(*a*).)
(vii) Summing up by *J.A.*, *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *J.A.*, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *J.A.*, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can* 557.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*ii*).)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 113(*C*), *MML p* 758.)

4. The President or *J.A.*, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

G. F. Foster, Maj
Pres.

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. B.6.3.8.74.....
..Pte. Dashuk J. M..... of....4 C.I.R.V.....
and in my opinion, he is fit..... to undergo trial by Court Martial.

Station....Field.....

Date....May 25 1944..... (Sgd.) [signature] (Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

V

In the case of B 63814 Pte Dashak John Maurice, 48th Highlanders, the court opened at 1400 hrs 24 May 44. Defence asked for 24 hrs adjournment under R.P 39(a). Application was granted. Accused pleaded not guilty

Court resumed at 1400 hrs 25th May 44. The accused changed his plea to "guilty". Accused declined to make any statement.

On a plea of mitigation, the defending officer pointed out that it was apparent from the man's record that there "must be something wrong with the man." Accused enlisted in 1939 — he served for 3 years until C.O.R's. During that time, said defending officer, his conduct sheet was clear. "Not as much as one day C.B." That enlisted, said the officer, the man's desire to be a soldier. "Something happened to man at that time," defence continued. "What it was I am not prepared to say."

Defending officer said "I do know this much - this man has been interviewed by a psychiatrist and his report definitely shows that if this man were publicized he would have a category under the 'S'."

"I think it is duty of this court," defense added, "in their endeavor to do justice to see that this man is psychologically [illegible] that way only defense contended, "Can we be sure that accused was fully aware of the action he was about to take when he went AWOL".

Continuing, def officer submitted a letter written by accused to the S.P.O. "I present the letter to bring out the fact that an examination is necessary."

(Defending officer asked permission to produce documents from S.P.O. files. Permission was granted - and documents tendered.)

Accused has gone a statement under oath.

9.2.2.

L

Statement under oath of B 6874
Pte Dashuk J M., 48th Highlanders of Canada,
Having been duly sworn, the m/m states:
"When I joined the army, I joined army to do all
I could do at the front. Since I joined my
mother died and I was the supporter of the
family. That meant I was eligible for discharge
if I so wanted one. I took it the best way
I could and carried on. While in Canada
after returning from Newfoundland, there were
more domestic troubles. I straightened those out
the best way I could — I was confident
that the people home would keep their
word and I carried on with my
army duties.
I applied for a transfer to the Air
Force. Coming to England I again applied
for such a transfer through proper channels
Evidently the application never reached
'the top.' Again in July 42, I ~~again~~
applied but nothing come through. I still
kept on soldiering. In Feb. 43 I ~~kept~~
had definite papers for my transfer

which were properly signed. Only one more signature was needed. I never got a reply. I tried very hard all the time to soldier-and, in my mind, I figure I got a raw deal in my desire for a transfer. That is the only reason that I've carried on as I have. That is all, sir."

Questioned by the Court.

Q Are you married?
A No, sir!
Q Give details concerning your family
A There are three minor children
Q Did you assign pay to your home
A Yes, $20 to my sister

B.F.F.

A.D.D.

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

April 30/44

Dear Sir

Re my interview with you some months ago Pte J. M. Dashuk. You told me to try getting along, which I tryed finding in my mind I could not see a thing, and infact have gone A.W.L. when not in hospital. I've been at the Vint Det 28 day's twice, and am now waitting for a sentance again. My mind has not changed any since, and even if I have to take a run out on the first draft, I'm on and go up for direction I'd do so. I feel that the Army has wrong'd me, and don't see one good reason for fighting. As God knows I've tried for these year's to become more active, and the thanks I got for it was being put out as you already know. I'm short 17 day's of 4 year's in service and my mind is quite the same, what I mean is no matter how hard I try I just can't see me in the Army. All I think about is how the Army made me go bad this past year, and only when I'm drinking that my mind lets me sleep.

CFA (70)(4)(3)

PLEASE WRITE ON BOTH SIDES

No. 2.

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Now I don't know no one who I can turn to, and you told me if I couldn't get no satisfaction to see you again, my being with No. 4. C.I.R.U. make's it impossible, so I hope my writing will help. All I ask is that you carefully look that report over, and place yourself in my shoe's. I had twice reason which I could of got a discharge back in Canada, yet in face I stuck, I tryed ever so hard to help this War, I'm afraid to-much, which was the cause of my being done wrong. As I see I can't possibly get a transfer into the Air Force as a Gunner or something which I relieved, but I'm not the least bit able to soldier in the Army, in my mind it simply seem's one track and no matter how I just can't get it out. All I think of is drinking as it lifts the weight off my mind, and I feel deeply that every one is against me. The P.S.O. said he couldn't do anything and I don't see nothing but jail for me, and it just because I was so dead set on the Airforce. Why can't you check my case back to the Unit (the 1st Batt A.O.R. of Can) you'll find that I have tried very ~~hard~~ hard to make good, for while I had hope's of the transfer, I played bad.

CFA 170(4213)

PLEASE WRITE ON BOTH SIDES

No 3.

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

You can asked Col Sprague about my apply's for transfer's to R.C.A.F., asked if I got a formal reply, asked my first 18 months in this Country, how I ~~worked~~ worked. Write to Col Mac Wendrick at Ottawa about the letter I wrote him, and his return one which you read, and if needed it I'll get you all the prove I other mean's have, and if you completly check my case, and still say I can ~~do~~ soldier, then I'm in the wrong world. I've never asked in my life asked any thing for my selve, and for the way I tryed to soldier and was driven to go bad. I still do not deserve to go out in a manner which at the last resort I shall do. I just can't soldier no more, as the transfer has been in my mind to long and its all I can see. Its been in my mind so long and not a thing can change it. If I should be forced to carry on, I'll not change as my mind does not see to do so. I'll not stop bucking a solid wall till I get out of the Army and maybe then able to reach my goal. I've see my mind to over 3½ year's ago.

PLEASE WRITE ON BOTH SIDES

CFA 17[illegible]

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

No. 4

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

Its only the army's fault I'm not there, where my heart lies. I'm asking for a Court Marshall and tell them I'll not soldier, If there's such a thing as a honest trial my only hope's lie there. If you could only understand my mind working for that transfer so long, you'll religive that its a thing thats been in mind so long that it can't be put out. Thats all I can say hoping you well help some, I remain most sincerely your dependant. Thanks.

P.S. I do hope you'll remember my case when I was befor you some months back, so I'll have a better idea of how I feels.

B.63874

Pte J. W. Dashed.

No. 4. C.L.R.U.

PLEASE WRITE ON BOTH SIDES

B.63874 Pte. DASHUK J. M. UNIT [illegible]

SCDRE 1/4/42 [17, 09, 19, 21, 21, 10, 15, 27 - 137] ATT. 17/6/40

Retent 4/11/43 INT. 4/11/43.

PULHEMS

AGE 26.3 HT 5' 7" WT. 158 CAT A

EYE 1 EAR 1 HND R. SCH 8 (12) LANG. Eng.

OCC. Truck driver 6 years $25.00

Various odd jobs after leaving school: - carpenter. salesman - fruit business.

Veh (TR) WR (A) WR M.S. S. DEP 1 sister REL. R.C.

HOB art ENT Guitar (ear)

SPORTS Boxing. Hockey

CRI 4-29 C.B. 33 P. HOS 2 1/14 Impetigo 4/105 trench mouth OCC Dvr. Mech. Cl. II

S.D. 1 S.S. 1
2 2

5-11-43. Special report to M.O. ~~fax~~ See Psychiatric file

Crime 16/11/43 - 1 pay

Returned from AWL at 1000 hrs 14/12/43

17/12/43 Crime - 27FP-47P plus 1/11/3

8/1/44 - Referred to legal office for advice. Has received letter from a danger in Scotland refering to an illegitimate child born last April 43.

5 Jan 44 Adm to 10 Can Gen Hosp.

TOS from 10 Cdn Gen Hosp. 22/2/44 (Skin disease)

Enlisted 17/6/40 at Toronto with Q.O.R. Training at Camp Borden and then to Newfoundland Aug 40 on Guard duty Back to Canada 19 Dec 40. Then to Sussex, N.B. training O/S with Q.O.R. July 41. With Regt in field until May 43 then on 9 May 43 went to 1 C.B.R.D. as 49th Reinforcement. Went to Hospital and returned to 4 C.I.R.U. Has been a driver 1/c since enlistment and is receiving Group C trades Pay, drawn - mth.

AWL from 2359 hrs. 10/3/44 DD 75. 15/3/44

SELECTION OF PERSONNEL

SPECIAL REFERRAL FORM

To M.O., No. 4 CIRU Type of Referral Psychiatric

Regt. No. B 63874 Rank Pte Name DASHUK, J.M.

Unit No. 4 CIRU (IGL) Age 26 Med.Cat. A

"M" Test ~~17~~ 1 ~~9~~ 2 ~~19~~ 3 ~~21~~ 4 ~~21~~ 5 ~~10~~ 6 ~~15~~ 7 ~~27~~ 8 ~~139~~ Total ~~45~~ 1-5 ~~42~~ 5 ~~52~~ 6-8 (RETEST)

Education:

Completed grade 8 in St. Mary's School, Toronto, at age of 12. Says that he was pretty good at "art" and that he had hoped to be professional artist, but when asked to do a simple sketch could not do anything with it.

Military Information:

Enlisted 17 Jun 40 in Toronto with COR. Did basic and advanced training with unit. Came O/seas 31 Jul 41. Went to field with unit where he says he was truck driver. Has qualified as driver-mech, group 'C'. Hospitalization: 2/ 14 days for impetago; 105 days for trench mouth. Crime sheet - 4 entries, largest being 14 days CB and 28 pay. AWL - 30 days.

Other Relevant Information: Occupations: 1) Fruit peddler from 12 until 15 yrs of age. 2) Labourer for fruit companies for about 8 yrs., at $25. per wk. worked for various companies. 3) Also did seasonal work as carpenter's helper.....Says he was ~~KK~~ never unemployed.

Personal: Born in Toronto, 13 Aug 17. Father, a labourer, born "some place in Europe." Mother born the same place. Parental language - Ukrainian. 3 brothers - eldest 17; 2 married sisters - and one single, a waitress. Family health fair; youngest sister had St. Vitus dance, he says. Mother died 24 Oct 41, and youngest sister brought up brothers. Father a drunkard, who, he claims, attempted incest with youngest sister. Father then deserted the children in 41, and subject says he has been main support of family.

He himself is single, but says that he has had frequent sexual experience, dating back to when he was 12 or 13 yrs. of age.

Interests: says that he has been interested in art and music, but appears to have little knowledge along these lines. Reading has been of the cowboy and western variety; his general knowledge is quite good, but has little interest in current events. He does not think very quickly and he is inclined to be careless. He admits to heavy drinking (says that he drinks while he has any money), and then stays in afterwards - alone and doing nothing. As result of failure to transfer to RCAF has developed strong feelings of persecution - people are against him. Claims that he cannot sleep; that he has frequent headaches; that he has deteriorated in his thinking. ~~He is careless in his speech; is haggard looking; seems tense~~ and confused.

Recommendation:

//// Recommend consultation with psychiatrist.

Station. No. 4 CIRU Date. 5 Nov 43

S.P.C.

(S.E.Read), Capt.

REPORT ON SOLDIER WITH POSSIBLE
PSYCHIATRIC DISABILITIES.

DATE 6th November, 1943.

Regimental No. B.63874 Pte.

NAME DASHUK, J.M.

Reason for Referral. Possible Psychiatric

Referred by: S.P.O. #4 CIRU

S. P. O's. Report.
Included brief description of personality; etimate of intelligence and stability. Suitable placement possible.

See Attached Form Personal File

S E Reed, Capt

MEDICAL OFFICER'S REPORTS:
Comment on the man's general physical condition; attendance on sick parades, etc.

Never seen on sick parade unless there is some real reason. I do not think he feels he is being persecuted. He has had a hard background and he feels very keenly about the way he claims to have been thrown out of the regiment. I would suggest he is a case for re-allocation. Physically he is A1. W. S. DYMOND Capt. MO 4 CIRU

PSYCHIATRIST'S OPINION AND RECOMMENDATION.

Dept of Neuro Psychiatry 23 Nov 43. No. 2329

MFM6- not complete. Pte states no real crimes. Enlisted Jan 43. Was not getting along in the regt., has been trying to get a transfer ever since in Canada. Got into trouble, hoping for a CM, to see why could not get a transfer. Was AWL repeatedly once for 1 month. Given 14 days CB and 28 days pay. Never been in Cdn. Det., only camp detention.
PRESENT COMPLAINTS: Back trouble a strain on him, has trouble getting to sleep, has headaches, feels tired all the time. No other complaints.
PAST ILLNESSES: Sickly child, appendectomy at 14 or 15. Denies past VD Hospitalized in army twice for 2 weeks each time for impetago; 105 days Trench mouth. Tends to blame treatment for duration of complaint. Had previous attach, cured much faster by local dentist.
Never doctored much in civil life.
HABITS: Has been drinking heavily in the army, especially past year, mostly at pay day - drinks to ease his mind. No drugs.
FAMILY HISTORY: Turbulent home in childhood. Father alcoholic and sexual psychopath. F. deserted the home in 1941. Mother died in 1941 of cancer; was not nervous. Pte has supported the family since 12, taking over most of it since 18. No insanity, no epilepsy.
PERSONAL HISTORY: Born & raised in Toronto. No neurotic xxxx traits in childhood recalled. Completed grade 7 at 12. Fairly steady work record, no complaints from employers, did some carpentry. Never in civil jail. No hoboism. Never on relief. Joined army for duty reasons, was turned down by RCAF. Tried to get in Navy then, was put on waiting list. Was not called until after he had joined army. Fed up with army, thinks he

[illegible]

EXHIBIT W' R2m

B-63074 PTE. DABNUK J.M.

I Certify that No. ..... Rank .....

4 C.I.R.U. (48th.HIGH.) was arrested at LEEDS (Place)
Unit.....

at 10.15 hrs. 16-MAY-44 (hour) on.....(Date) on that at the time of his arrest he was wearing (Military Uniform) or (xxxxxxxxxxxxxxxxxx.
Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer or the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

LEEDS,
16-MAY-44

.....SGT.
(xxxxxxxxxxxxxxxxx

REPORT ON SOLDIER WITH POSSIBLE
PSYCHIATRIC DISABILITIES.

DATE 6th November, 1943.

Regimental No. B.63874 Pte.

NAME DASHUK, J.M.

Reason for Referral. Possible Psychiatric

Referred by: S.P.O. #4 CIRU

S. P. O's. Report.
Included brief description of personality; etimate of intelligence and stability. Suitable placement possible.

See Attached Form Personal File

S E Reed, Capt

MEDICAL OFFICER'S REPORTS:
Comment on the man's general physical condition; attendance on sick parades, etc.

Never seen on sick parade unless there is some real reason. I do not think he feels he is being persecuted. He has had a hard background and he feels very keenly about the way he claims to have been thrown out of the regiment. I would suggest he is a case for re-allocation. Physically he is A1. W. S. DYMOND Capt. MO 4 CIRU

PSYCHIATRIST'S OPINION AND RECOMMENDATION.

Dept of Neuro Psychiatry 23 Nov 43. No. 23.9

MFM6- not complete. Pte states no real crimes. Enlisted Jan 43. Was not getting along in the regt., has been trying to get a transfer ever since in Canada. Got into trouble, hoping for a CM, to see why could not get a transfer. Was AWL repeatedly once for 1 month. Given 14 days CB and 28 days pay. Never been in Cdn. Det., only camp detention.
PRESENT COMPLAINTS: Back trouble a strain on him, has trouble getting to sleep, has headaches, feels tired all the time. No other complaints.
PAST ILLNESSES: Sickly child, appendectomy at 14 or 15. Denies past VD Hospitalized in army twice for 2 weeks each time for impetago; 105 days Trench mouth. Tends to blame treatment for duration of complaint. Had previous attach, cured much faster by local dentist.
Never doctored much in civil life.
HABITS: Has been drinking heavily in the army, especially past year, mostly at pay day - drinks to ease his mind. No drugs.
FAMILY HISTORY: Turbulent home in childhood. Father alcoholic and sexual psychopath. F. deserted the home in 1941. Mother died in 1941 of cancer; was not nervous. Pte has supported the family since 12, taking over most of it since 18. No insanity, no epilepsy.
PERSONAL HISTORY: Born & raised in Toronto. No neurotic xxxx traits in childhood recalled. Completed grade 7 at 12. Fairly steady work record, no complaints from employers, did some carpentry. Never in civil jail. No hoboism. Never on relief. Joined army for duty reasons, was turned down by RCAF. Tried to get in Navy then, was put on waiting list. Was not called until after he had joined army. Fe up with army, thinks he

B.22.

he had grounds twice to get out of army, on basis of support or family. With battalion 3 years and then went to hospital and HU.

EXAMINATION: Med. height WD WN. Fine tremor of hands. CNS N A D. Rather apathetic appearance. Non-psychotic. Dull-normal intelligence. Maladjusted.

IMPRESSION: - Some inadequate traits, but should be able to carry on, if re-allocated successfuly.

RECOMMENDATION: 1. Duty
2. SPO - re-allocation.

B. M. ALLAN Major
RCAMC Psychiatrist.

EXHIBIT W.R.J.M.

I Certify that No. B-63874 PTE. DASHUK J.M.

Unit. # 4 C.I.R.U. (48th.HIGH.) was arrested at. LEEDS (Place)

at. 18.15 hrs. (hour) on. 18-MAY-44 (Date) and that at the time of his arrest he was wearing (Military Uniform) or (~~XXXXXXXXXXXXXXXXXXXXX~~).

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

LEEDS,
18-MAY-44

W.D. Coates Maj
Pres

.....362
(~~XXXXXXXXXXXXXXXXXXXXX~~)
~~XXXXXXXXXXXXXXXXXXXX

EXHIBIT "B" RJM

40/97

Expense Voucher Re- Ref KR & O (Can) 530

Reg No. B63874 Rank. Pte Name. Bashuk, J. Unit. 4 C.I.R.U.

The following expences were incurred in apprehension and return of the m/n Soldier to 4 C.I.R.U.

Date	Particulars	Amount		
	Escorts return fare from Helmsley To Leeds		4	1 (¼share)
	Prisoners single fare to Helmsley From Leeds		4	1
	Prisoners far from To			
	Escorts & Prisoners expense for Bed, Meals and Bus fare		11	(¼ share)
		Total £:	19	2

I certify that the above statement of expences is correct and that the amounts are fair and just.

.....Capt

Officer Issuing Railway Warrant and Expense monies.

Captain Adjutant,
4 Cdn Inf Repl Unit.

In lieu of
CMHQ 1000;55

RECEIVED

22 MAY 1944

23 May 44

This is to certify that I have received the following documents, free of charge.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 Copy of List of Witnesses
1 Copy of List of Exhibits.

J.M. Dashuk

(B[illegible]3874 Pte. Dashuk, J.M.

[illegible]

SUMMARY OF EVIDENCE

Summary of Evidence, in the case of B-63874 Pte. Dashuk, J.M., of the 48th Highlanders of Canada, on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

The Summary of Evidence is not taken on oath.

FIRST WITNESS

For the Prosecution

No. B-85378 Cpl. Webster, R.W., Canadian Infantry Corps, on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, states as follows:-

I am B-85378 Cpl. Webster, R.W. At 1730 hours, 2 May 1944, the accused, B-63874 Pte. Dashuk, J.M., whom I now recognize, was to report to the Coy Orderly Room for Field Punishment. Failing to report, I checked the Coy lines and could not find Pte. Dashuk, J.M. so I marked him as being absent without leave. The accused's name, B-63874 Pte. Dashuk, J.M., whom I now recognize, appears in the Coy C.B. and A.W.L. Book.

The accused declines to cross-examine this witness.

B 85378 Cpl. Webster, R.W.
(B-85378 Cpl. Webster, R.W.)

SECOND WITNESS

For the Prosecution

A/Capt. H.T. Peevers, Queens Own Rifles of Canada, on the strength of No. 4 Canadian Infantry Reinforcement Unit, an Officer of the Canadian Army Overseas, states as follows:-

I am A/Capt. H.T. Peevers and am Assistant Adjutant of No. 4 C.I.R.U. I present as Exhibit "A" certificate in accordance with P.C. 2797 of 10 Apr 42, which relates to the accused, B-63874 Pte. Dashuk, J.M., whom I now recognize, which proves that he was arrested at Leeds at 1815 hours, 18 May 1944. I produce a certificate purporting to be signed by the Officer who issued the transportation warrants for the return of the accused and his escorts showing the costs of apprehension, £0.19.2, of the accused, whom I now recognize. (Certificate marked as Exhibit "B").

The accused declines to cross-examine this witness.

H T Peevers
(H.T. Peevers) A/Capt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence, consisting of ONE page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

R J McLaughlin
(R.J. McLaughlin) Capt.
Officer detailed to take Summary

IN THE FIELD
22 MAY 1944.

H.T. Peevers Maj
Pres.

No. B-63874 Name Dashuk, J.M. Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 17 Jun 40 | G.C. Badges N/A | Service or Proficiency Pay N/A | M.F.M. 6 (A.F. B.122) 40/P & /S136 (2005)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19-10-43	Pte		A.A. 15(1) WOAS AWL from 2359 hrs 19-10-43 to 1330 hrs 21-10-43 (1 day 13 hrs 31 min)	L/CPl McLeod	Forf 7 days pay	22-10-43	Lt-Col A B Smith	Forf 2 days pay FR&I 149(1)(a)
Field	12 Nov 43	Pte		A.A. 15(1) WOAS AWL from 2200 hrs 12 Nov 43 to 0600 hrs 13 Nov 43 (8 hrs)	Cpl Didmour, D T	Forf 4 days pay	16 Nov 43	Lt-Col R J McPherson	Forf 1 days pay FR&I 149(1)(a)
Field	25 Nov 43	Pte		A.A. 15(1) WOAS AWL from 0600 hrs 25 Nov 43 until appre. 1000 hrs 14 Dec 43 (19 days 4 hrs) (1)	A/Sgt Haid Doc'y	27 days F P 27 days loss of pay. Stoppages £1.11.3	17 Dec 43	Lt-Col R J McPherson	Forf 20 days pay FR&I 149(1)(a)
Field	10 Mar 44	Pte		A.A. 15(1) WOAS AWL from 2359 hrs 10 Mar 44 to 1515 hrs 22 Mar 44 (11 days, 15 hrs, 16 min)	Doc'y	28 days Detn. stoppages of pay 16s 10d	25 Mar 44	Maj. A.F. Macpherson	Forf 12 days pay FR&I 149 (1)(a) Forf 28 days pay FR&I 149(1)(b)

(P.T.O.)

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	~~Regiment~~ (or unit)
B-63874	Pte.	Dashuk, J.M.	4 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and ~~Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment ~~or appointment~~	
For A.A. Sec. 15(1)	5	times	A.A. Sec. 15(1)	5 times
For A.A. Sec. 40	1	times	A.A. Sec. 40	1 times
For ~~A.A. Sec.~~	~~times~~		~~times~~	
For ~~A.A. Sec.~~	~~times~~		~~times~~	

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused~~

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

~~2. The accused has not been previously convicted~~

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act~~ ~~A.F.A. 7~~ ~~Section 47 of the Army Act and dispensations with trial under A.A. 72 are set out in the Schedule annexed to this statement.~~

~~3. The accused is not under sentence at the present time.~~

~~or~~

The accused at the present time is under sentence for 28 days beginning on the 1st day of May 1944

4. The accused has been in confinement awaiting trial on the present charges, for N/L days in ~~Air Force~~ civil custody, and 7 days in military custody, making a total of 7 days in custody, of which N/L days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 26

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 17 Jun 40

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon~~ ~~service for the purpose of determining his pension, viz.~~

~~9. The accused is in possession of or entitled to no air force~~ ~~military~~ ~~decoration, or air force~~ ~~military~~ ~~good conduct pay and he is in possession of or entitled to). State any air force~~ ~~military~~ ~~decoration or award~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer was last held~~ ~~Air Force~~ ~~the regimental rank of~~

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ RJM
~~Permanent Force~~ RJM
~~unit~~ RJM
~~dated~~ RJM, ~~and in his regiment (or corps), the rank of~~ RJM
~~dated~~ RJM

~~12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:~~ RJM RJM

~~Date of promotion~~ RJM

~~In the rank of~~ RJM ~~years.~~ RJM
~~In the rank of~~ RJM ~~years.~~ RJM
~~In the rank of~~ RJM ~~years.~~ RJM

~~NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.~~ RJM RJM

SCHEDULE

~~Air Force~~ RJM

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number B-63874 Rank Pte.

Name Dashukm J.M. of 4 C.I.R.U. Unit ~~Regiment~~ RJM

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N I L			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Twenty-third day of May 1944 H. F. Leeuwen Capt.
Captain Adjutant,
[illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "M" signed by the president, and annexed to the proceedings.

G. F. Foster, Maj
Pres

3.

Ph. D' Astaus, P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D121999 Pte Dastous Paul, R de Chaud

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	(AA 15) Desertion	Guilty	Guilty	~~Two years imprisonment~~
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which NC days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: Two years imprisonment without hard labour.

(Sgd) ..... Judge-Advocate, if any. 2 Jun 45 Date awarded. (Sgd) K.D. Dunlerman Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.66(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) Jas A Roberts Brig

Date 11 June 45 Commanding 8 Can Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D121999 Pte Dastous Paul	13 Jun 45	J.L. Espenant Maj D.A.A. & Q.M.G. R de Chaud

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5-M-3.

FIELD GENERAL COURT-MARTIAL

CPA#8 (In lieu of KPA#1) 40/P & R/1698 (H1164) 4/38B

Convening Order of Brigadier J.A. Roberts Comd 8 Can Inf Bde dated 29 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) present, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-121999	Pte	Paul	DASTOUS	R de Chaud

PROCEEDINGS REVIEWED

W T Gunn Maj

23 Jun 45 D J A Can. Sec 1 Ech HQ

PROCEEDINGS REVIEWED

D.M.W. Staer Capt

23 Jun 45

PROCEEDINGS OF TRIAL

Held in the Fd in (Country) Germany by REVIEWING OFFICER, JAG BRANCH C.M.H.Q. on (date(s)) 2 Jun 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/120

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1335 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Capt J.J. Seguin as interpreter? Ans No Sir

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer? Ans .....~~ ~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	B. Dunlerman	Q.O.R.(C.)
Member	A/Capt	L.W. Fullerton	Q.O.R.(C.)
Member	Capt	W.T. Harvey	R.S.Sig.
Judge-Advocate			
Prosecutor	LIEUT	E. Ouellet	de de Chaud
Defending Offr	Present	J.P. Bellavance	the de Chaud

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (3) and fn 2 were not followed. See D1 p 2.)

A8. The accused before arraignment make(s) (no) ~~plea~~ plea (1)

24 Jun 45 (1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 OC Pte

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Nil (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The ~~Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly~~.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of **Guilty** in Part I of the Schedule.(1)
(*1. RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheet

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 52 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Nil
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 5. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. MFB 355 or MFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Nil (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and 62 proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas RO 309, 1223, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest for Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

LE REGIMENT DE LA CHAUDIERE

MEDICAL REPORT

DATE. 2. June. 45..

I certify that I have this morning examined

No. D-121999 Rank Pte..... Name Dastous, P.....

and in my opinion is Fit or Unfit to undergo trial by Court-Martial.

J J O'Neill capt -

P. [illegible] C [illegible] RCAMC
M.O. [illegible] R DE CHAUD

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V [illegible] 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-121999	Pte		Paul	DASTOUS	R de Chaud

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has ~~have~~ committed the offence~~s~~ set forth in the Charge Sheet~~s~~ attached and on (date) 29 May 45 endorsed by me, ~~or by senior authority~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~s~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	B Chamberlain	Q C R/C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A/Capt	C W Fullerton	Q C R/C
Capt	W J Harvey	R S R.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

Jas A Roberts (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Dat 29 May 45

Commanding 8 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In Recs of AFA 2) 50-7-8-1691 (8148)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to *RP* 95(*A*) and 114(*B*), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 80(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(*E*), *KR Can* 562(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*ii*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 113(*C*), *MML* p 758.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

CHARGE SHEET

The accused D-121999 Pte DASTOUS Paul, of Le Regiment de la Chaudiere (CAC) a soldier of the Canadian Army placed on active service, is charged with.

FIRST CHARGE
A.A. Sec. 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

In that he,

In the field, absented himself without leave from Le Regiment de la Chaudiere, from 0600 hrs 19 Jan. 45 until he surrendered himself at 2200 hrs 17 May 45, to Sgt. Leblanc E. R.P. of Le Regiment de la Chaudiere. (Total Abs. 118 Days and 16 Hrs.)

Signed in the field
this 22 day of May 45

W. T. Lapalme
(W.T. Lapalme) Lt.Col
Commanding
Le Regiment de la Chaudiere

TO BE TRIED BY F.G.C.C.

Signed in the field
This 29 day of may 45

J. A. Roberts
(J.A. Roberts) Brigadier
Commanding
8 Cdn Inf. Bde.

Plea of mitigation

(42)

Re: D-121999 Pte Dastous Paul

The accused has plead guilty on the charge laid against him but before convicting this man I pledge the court to consider the fact that the accused has been in action with the R de Chaud since Dt 10 and served with this unit for seven month always fulfilling his duties to the best of his knowledge and ability.

The strenuous battles at wich the Regt took part slowly grinded his moral and he asked for a leave to which he was entitled and that was refused to him.

On the 19 of Jan, his unit beeing on rest he repeat his request and was still refused the priveledge that many of his junior had received.

The accused having fulfilled his duties very consienciously up to the date of his error and which is proven by the fact that he spend seven month in action with his unit, I am sure the court will find that this man has temporarily lost control over himself and made an error which every human beeing is bound to make at one time or an other.

The accused, feeling that he has failed to fulfilled his duties up to the end is ready to repair is fault and has proven it by signing for service in the Far East.

I beg the court to be indulgent and to give a chance to a man who is proving repentance!

F. P. Bellavance Lt R. de Chaud
Defending Officer

D-121949 Pte Paul Dastrous

Plea in Mitigation

I joined the unit (R de Chaud) in February 1942 and landed in France on Jun 16/44. Since that time I have always been with the unit and when I asked for leave I always received the answer "Wait". My 7 days leave to England was due for a long time. Some men who arrived on the continent after me had their leave but I could not get mine. No leave was granted to me! When I went A.W.L. I did not realize what I was doing but when I came back I did and I paid for it.

Exhibit A 31.

SUMMARY OF EVIDENCE

In the case of D-121999 Pte DASTOUS Paul, Le regiment de la Chaudiere.

The C.O. directs that the evidence be taken under Oath.

Sgt. Leblanc E. R.P. Le Regiment de la Chaudiere having been duly sworn states;

I am Sgt. Leblanc E. Le Regiment de la Chaudiere. On the 17 of May 45 at 2200 hrs the accused Pte Dastous P. reported himself at the Guard Room, I then placed him under close arrest.

The accused declines to cross examine the witness.

Sgt. Le. Blanc E....
Sgt. Leblanc E.
Le Regiment de la Chaudiere.

These following exhibits, produced as documentary evidence were read over to the accused, marked Exhibit "A" "B" and "C" signed by me and attached hereto.

Exhibit "A" True extract of Part II Orders No. 7
Exhibit "B" True extract of Part II orders No. 10
Exhibit "C" Certified true copy of C.R. Dated 18-5-45

E. Ouellet
E. Ouellet Lieut.
Le Regiment de laChaudiere.

Question to the accused

Desirez vous faire une declaration ou rendre temoignage sous serment vous n'etes pas oblige de rendre temoignage nide dire quoi que ce soit a moins que vous ne le desiriez mais tout ce que vous direz et toutes declarations que vous ferez seront pris par ecrit et pourront servir de preuve.

Answer by the accused

No, Sir.

Question to the accused

Do you want to call any witness on your behalf

Answer by the accused

No, Sir.

P. Dastous
Pte Dastous P.
Le Regiment de la Chaudiere.

I certify that the foregoing Summary of Evidence consisting of onepage was taken down by me in the presence and hearing of the accused and that R. P. 4 C D E F and G have been complied with.

Signed in the Field.
This 22 May 45

E. Ouellet
E. Ouellet Lieut. Off.Pab.Summ.
Le Regiment de la Chaudiere.

LE REGIMENT DE LA CHAUDIERE
Part II Orders issued by
Canadian Section 2nd Echelong Headquarters
21 Army Group

No. 7
3 Feb. 45

8 ABSENT WITHOUT LEAVE

(a) AWL from 0600 hrs 19 Jan 45 Still absent 0600 hrs 27 Jan 45 (8thDay)

D-121999 Pte DASTOUS P. RCASC

(J.R. Penelon) Capt.
For Officer IC
Cdn Sec. 2 Ech HQ 21 Army Gp.

Certified true extract of Part II Orders

.....H.J.C. Rutledge.....
(H.J.C.Rutledge) Capt Adjt.
Le Regiment De la Chaudiere.

This is Exhibit "A" as referred to in the Summary of Evidence in the case of Pte Dastous P.

.....E. Ouellet.....
E. Ouellet Lieut.
Le Regiment de laChaudiere.

LE REGIMENT DE LA CHAUDIERE
Part II Orders issued by
Canadian Section 2nd Echelon Headquarters
21 Army Group.

No. 10
18 Feb. 45

9 ABSENT WITHOUT LEAVE

(d) AWL from 0600 hrs 19 JAN 45 Still absent 0600 hrs 10 Feb 45 (22nd day)

D-121199 Pte DASTOUS P. RCASC

(J.R.Fenelon) Capt.
For Officer IC
Cdn Sec. 2 Ech HQ 21 Army Gp.

Certified true Extract of Part II orders

.....
(H.J.C. Rutledge) Capt. Adjt.
Le Regiment de la Chaudiere.

This is exhibit "B" as referred to in the summary of Evidence in the case of Pte. Dastous P.

.....
E. Ouellet Lieut.
Le Regiment de la Chaudiere.

Army Form W.

(Margin for filing purposes)

Serial No. 1

Number of sheets to this return

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
	STRENGTH INCREASE					BD
	T.O.S. on surrendering from Des. wef. 2200 hrs 17 May 45					
HQ	D-121999	Pte DASTOUS P.	Cook	"B"	RCASC	
D	E-13163	Pte DUFOUR A.				

This is Exhibit "C" as referred to In the Summary of evidence in the case of Pte Dastous.

Certified True Copy

H.J.C. Rutledge Capt. Adjt.

~~Le Regiment de la Chaudiere~~

LE REGIMENT DE LA CHAUDIERE

J.A. Drapeau Capt. 8 CIB 3rd Cdn Bde.

(Signature and appointment of Officer)

(Bde., Divn., Arms, etc., with which unit is

Le Regt. de la Chaudiere.

(Date) 18 May 1945

Exhibit B

ARMY FORM B.296
(WAR)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.
(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be).
D-121999.	Pte.	DAVIDSON, R.	Le Regiment de La Chaudiere

NOTE.-- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The number herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the Charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:--

For.....Nil.....times.

For.....times

For.....times

For.....times

Date of first entry in Field Conduct Sheet...nil.

Date of last entry in Field Conduct Sheet.....nil

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

#3. ~~The accused at the present time is under sentence for [illegible] day of [illegible]~~

4. The accused has been awaiting trial on the present charges for...nil.....days in civil custody; and for...7.....days in military custody, i.e., ...nil.....days in open arrest,...7.....days in close arrest; of which...9.1.....days were spent in hospital.

#Strike out if not applicable.

5. The present age of the accused is...25.....

6. The date of his attestation ~~[illegible]~~ is Sept. 11 1944.....

7. The service which the accused is allowed to reckon is 3 Yrs. and 9 M. ptbs.

8. The accused is in possession of % CVSM with Clasp

%State the military decorations (if any) held by accused.

9. ~~[illegible]~~

	Date of Promotion
~~In the subsidiative rank of~~	
~~In the substantive rank of~~	
~~In the [illegible]~~	

INSTRUCTION.-- If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT OF SUMMARY UNDER SECTION 47 OF THE ARMY ACT AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OR ACCUSED

D-/121699 Pte Dastous P. Le Regiment le la Chaudiere

NIL

I certify that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody

Signed in the field
This 22 day of May 45

(H.J.C. Rutledge) Capt. Adjt.
Le Regiment de la Chaudiere.

EXIBIT (C) (inserted) 11-9-44

No. D-121999 Name DASTOUS P Sqn, Battery, or Company Corps C I C Date of enlistment GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original Send to 2nd Echelon & MFM 14 send to 2nd echelon					
				Dummy only in unit file					
				Temporary Sheet					

[illegible] Capt adjt

Place	Date of offence	Rank	Corps of Regiment	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D121999 Pte Dastous Paul, R DE CHAUD

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA15(1) Charge	Guilty	guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 : special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~As present sentence to be~~ [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Two years imprisonment without hard labor

(Sgd) _____ Judge-Advocate, if any. 2 Jun 45 Date awarded. (Sgd) "B Dunkelman" Maj President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

~~I direct that the accused be released from custody forthwith and further order~~ (1) "JAR"

(1. AA 57A. Delete if not used.)

(Sgd) "Jas A Roberts" Brig

Date 11 Jun 45 Commanding 6 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
D121999 Pte D'Astous Paul	13 Jun 45	"J P L'Esperance" Major OC R DE CHAUD

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5 M-3

FIELD GENERAL COURT-MARTIAL

CPA86 (To item of AFA21) 40/P No 5, 1000 (40/5) 4/38B

Convened by Order of Brig. J A ROBERTS Comd 6 Cdn Inf Bde dated 29 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or conferred rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 182, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D121999	Pte		Paul	DASTOUS	R de CHaud

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 2 June 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/120

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which insers are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1335 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : Do you object to Capt JG Gagnon as interpreter ? Ans No sir

The Interpreter is sworn.(1) ~~Do you object to as shorthand writer ? Ans~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr. if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	B DUNKELMAN	QOR OF C
Member	A/CAPT	C W FULLERTON	QOR OF C
Member	CAPT	W G HARVEY	N S R
Judge-Advocate			
Prosecutor	LIEUT	E OUELLET	R DE CHAUD
Defending Offr	LIEUT	J P BELLAVANCE	R DE CHAUD

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused _____ before arraignment make(s) (no) (a) plea _____ (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 17), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

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A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(E). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 235 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. *RP 37(C), 44(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346. Overseas AO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 304.* 2. *RP 38. As to release from arrest by Confirming Offr see KR Can 367. As to summary and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D121999 Pte Dastous Paul, R DE CHAUD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA15(1) Charge	Guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~As present sentence to be~~ beginning on that (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Two years imprisonment without hard labor

(Sgd) ..... Judge-Advocate, if any. 2 Jun 45 Date awarded. (Sgd) "B Dunkelman" Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

~~I direct that the accused be released from custody and that further orders~~ "JAR" (1)

(1. AA 57A. Delete if not used.)

(Sgd) "Jas A Roberts" Brig

Date 11 Jun 45 Commanding 8 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D121999 Pte D'Astous Paul	13 Jun 45	"J P L'Esperance" Major OC R DE CHAUD

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5M-3

CFA86 (In lieu of AF A52) 40/P & S/1698 (HQ 28)

4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. J A ROBERTS Comd 8 Cdn Inf Bde dated 29 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D121999	Pte	Paul	DASTOUS	R de Chaud

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) HOLLAND on (*date(s)*) 2 June 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/120

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Captions do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1335 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to Capt JG Gagnon as interpreter ? Ans No sir

The Interpreter is sworn.(1) ~~Do you object to~~ ~~as shorthand writer ? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	B DUNKELMAN	QOR OF C
Member	A/CAPT	C W FULLERTON	QOR OF C
Member	CAPT	W G HARVEY	N S R
Judge-Advocate			
Prosecutor	LIEUT	E OUELLET	R DE CHAUD
Defending Offr	LIEUT	J P BELLAVANCE	R DE CHAUD

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (has) (~~no~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AE rank and name of the accused making the plea.)

24Jun45 jwb

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 52 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 G 2 p 26

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accus. see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s).~~ Part I of the Schedule is ~~amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answers and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D6.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....
Do you intend to call witnesses on your behalf?
Ans..... Are they witnesses as to character only? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, Cf AP3. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans.....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy (copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 251 or MFB 296.* 2. *MFB 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(1. *When several accused tried conjointly see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its premise, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 343-346, Overseas AO 309, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D-121999 Pte DASTOUS Paul, of Le Regiment de la Chaudiere (CAO) a soldier of the Canadian Army placed on active service, is charged with.

FIRST CHARGE
A.A. Sec. 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

In that he,

In the field, absented himself without leave from Le Regiment de la Chaudiere, from 0600 hrs 19 Jan. 45 until he surrendered himself at 2200 hrs 17 May 45, to Sgt. Leblanc E. R.P. of Le Regiment de la Chaudiere. (Total Abs. 118 Days and 16 Hrs.)

Signed in the field
this 22 day of May 45

W Taschereau
.....
(G.O. Taschereau) Lt.Col
Commanding
Le Regiment de la Chaudiere

TO BE TRIED BY F.G.C.M.

Signed in the field
This 29 day of may 45

Jas A Roberts
.....
(J.A.Roberts) Brigadier
Commanding
8 Cdn Inf. Bde.

"BD"

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D121999	Pte		Paul	DASTOUS	R de Chaud

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on "JAR" (date) 29 May 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) "JAR"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "JAR"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~ "JAR"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	B DUNKELMAN	QOR OF C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A/CAPT	C W FULLERTON	QOR OF C
CAPT	W G HARVEY	N S R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.) "Jas A Roberts" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 29 May 45 Commanding 8 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 63 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not *say* he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused *as* to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 507.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 162 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE (KR(Can)Para 557)

I certify that I have this day examined D121999 Pte Dastous P

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station _____

Date 2 June 45

"J J O'Niell" Capt (Sgd)
Medical Officer

Unit

"BD"

PLEA OF MITIGATION RE D121999
PTE DASTOUS PAUL

The accused has plead guilty on the charge laid against him but before convicting this man I pledge the court to consider the fact that the accused has been in action with the R de Chaud since D plus 10 and served with this unit for seven months always fulfilling his duties to the best of his knowledge and ability.

The strenuous battles at wich the Regt took part, slowly grinded his moral and he asked for a leave to which he was entitled and that was refused to him.

In the 19 of Jan, his unit being on rest, he repeat his request and was still refused the priviledge that many of his junior had received.

The accused having fulfilled his duties very consciencously up to the date of his error and which is proven by the fact that he spend seven month in action with his unit, I am sure the court will find that this man has temporarily lost control over himself and made an error which every human being is bound to make at one time or another.

The accused, feeling that he has failed to fulfilled his duties up to the end is ready to repair is fault and has proven it by signing for service in the Far East.

I beg the court to be indulgent and, to give a chance to a man who is proving repentance.

"J P Bellavanie" Lt
R de Chaud, Def Offr

D121999 Pte Paul Dastrous PLEA IN MITIGATION

I joined the unit (R de Chaud) in February 1942 and I landed in France on Jun 16/44. Since that time I have always been with the unit and when I asked for leave I always received the answer "Wait." My 7 days leave to England was due for a long time. Some men who arrived on the continent after me had their leave but I could not get mine. No leave was granted to me. When I went AWL I did not realize what I was doing but when I came back I did and I signed for Japan.

Exhibit "A" "BD"

SUMMARY OF EVIDENCE

In the case of D121999 Pte DASTOUS Paul, Le regiment de la Chaudiere.

The C.O. directs that the evidence be taken under Oath.

Sgt Leblanc E R P Le Regiment de la Chaudiere having been duly sworn states:

I am Sgt Leblanc E Le Regiment de la Chaudiere. On the 17 of May 45 at 2200 hrs the accused Pte Dastous P reported himself at the Guard Room, I then placed him under close arrest.

The accused declines to ross examine the witness.

"Sgt LeBlanc E"
(Sgt Leblanc E)
Le Regiment de la Chaudiere

These following exhibits, produced as documentary evidence were read over to the accused, marked Exhibit "A" "B" and "C" signed by me and attached hereto.

Exhibit "A" True extract of Part II Oriers No 17
Exhibit "B" True extract of Part II orders No 10
Exhibit "C" Certified true copy of CR Dated 18-5-45.

"E Ouellet" Lieut
(E Ouellet Lieut)
Le Regiment de la Chaudiere

Question to the accused

Desirez vous fair une declaration ou rendre temoignage sous serment vous n'etes pas oblige de rendre temoignage nide dire quoi que ce soit a moins que vous ne le desiriez mais tout ce que vous direz at toutes declarations que vous ferez seront pris par ecrit et pourront servir de preuve.

Answer by the accused

No sir.

Question to the accused

Do you want to call any witness on your behalf?

Answer by the accused.

No sir.

"Dastous Paul"
Pte Dastous P
Le Regiment de la Chaudiere.

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused and that RP 4 C D E F & G have been complied with.

Signed in the Field
This 22 May 45

"E Ouellet" Lieut
(E Ouellet Lieut) Off Tak. Summ.
Le Regiment de la Chaudiere.

LE REGIMENT DE LA CHAUDIERE "BD"
Part II Orders issued by
Canadian Section 2nd Echelong Headquarters
21 Army Group

No 7
3 Feb 45

8 ABSENT WITHOUT LEAVE

(a) AWL from 0600 hrs 19 Jan 45 Still absent 0600 hrs 27 Jan 45
(8th day)

D121999 Pte DASTOUS P RCASC

(J R Fenelon) Capt
For Officer IC
Cdn Sec 2 Ech HQ 21 A Gp

Certified true extract of Part II Orders

"H J C Rutledge"
(H J C Rutledge) Capt & Adjt
Le Regiment de la Chaudiere

This is Exhibit "A" as referred to in the
Summary of Evidence in the case of Pte
Dastous P

"E OUELET" Lieut
(E Ouellet) Lieut
Le Regiment de la Chaudiere

LE REGIMENT DE LA CHAUDIERE
Part II Orders issued by
Canadian Section 2nd Echelon Headquarters
21 Army Group.

21

No. 10
18 Feb. 45

9 ABSENT WITHOUT LEAVE

(d) AWL from 0600 hrs 19 JAN 45 Still absent 0600 hrs 10 Feb 45 (22nd day)

D-121199 Pte DASTOUS P. RCASC

(J.R.Fenelon) Capt.
For Officer IC
Cdn Sec. 2 Ech HQ 21 Army Gp.

Certified true Extract of Part II orders

H.J.C. Rutledge
(H.J.C. Rutledge) Capt. Adjt.
Le Regiment de la Chaudiere.

This is exhibit "B" as referred to in the summary of Evidence in the case of Pte. Dastous P.

E. Ouellet
E. Ouellet Lieut.
Le Regiment de la Chaudiere.

(Margin for filing purposes)

Army Form W. 3011A.

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Serial No. 1

Number of sheets to this return

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
	STRENGTH INCREASE					
	T.O.S. on surrendering from Des. wef. 2200 hrs 17 May 45					
HQ	D-121999	Pte DASTOUS P.	Cook "B"	RCASC		
D	B-13163	Pte DUZOUR A.				

This is Exhibit "C" as referred to In he Summary of evidence in the case of Pte Dastous P.

Certified True Copy

[illegible] Capt. Adjt.

Le Regiment de la Chaudiere

LE REGIMENT DE LA CHAUDIERE

(Unit)

Le Regt. de la Chaudiere

(Date) 194

J.A. Drapeau Capt. & Adjt.

8 CIB 3rd Cdn Bde.

(Signature and appointment)

Exhibit "B" "BD"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
D121999	Pte	DASTOUS P	Le Regiment de la Chaudiere

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For ..... NIL ..... times

For .... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* ~~The accused at the present time to ensure~~ HJCR"

~~sentence for~~ .....

~~[illegible]~~ ..... ~~[illegible]~~ ....."HJCR"

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 7 days in military custody, making a total of 7 days of which nil days were spent in hosp.

5. The present age of the accused is 25

6. The date of his attestation is 11 Sept 1941

7. The service which the accused is allowed to reckon is 3 yrs and 9 mths

8. The accused is in possession of #

CVSM & Clasp

9. ~~(If the accused is a serving officer or NCO). The~~ "HJCR"

~~accused has served continuously, without reduction, to the present date~~ -

Date of Promotion

In the substantive rank of ....

In the war substantive rank of ....

In the acting rank of ....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

State the military decorations (if any) held by accused.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

NIL

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ...22..... day of ..May 45.....

"H J C Rutledge"
....(H.J.C.Rutledge) Capt Adjt
Le Regiment de la Chaudière....

No. D121999 Name DASTOUS P

Sqn, Battery, or Company

Corps CIC

EXHIBIT "C" (incorrect date)

"BD"

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Date of enlistment 11-9-44

GC Badges

Service or Proficiency Pay

3/17 MFM 6

Sheet No

Signature OC Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original sent to 2nd Echelond MFM 14 send to 2nd echelon. Dummy only in unit file. Temporary sheet "H J C Rutledge" Capt Adjt					

GG-137
TPR DAUNAIS M.D.

66-137

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 17th day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 2 Canadian Division Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~I am unable to appoint~~

*~~(b.—Three Officers to form the Court.)~~

*~~(b.—A Field Officer as President)~~

~~for the following reasons, namely:—~~]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Maj	J W Russell	Div Tps Coy RCASC

Members.

Rank.	Name.	Regiment.
Capt to be detailed by CRE 2 Cdn Div		RCE
Capt to be detailed by OC 2 Cdn Div Sp Bn		Tor Scot R
Waiting member Capt to be detailed by OC 8 Cdn Recce Regt(14H)		8 Cdn Recce R(14H)

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (E L M Burns) Maj-Gen
Commanding 2 Cdn Div
Convening Officer

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L-53603 Tpr Mark Donald Daunais 8 Cdn Recce Regt(14H)	FIRST CHARGE Sec 15(1) Army Act (see charge sheet attached)	Guilty	Guilty 120 (One hundred and twenty) days detention and stoppage of pay in the sum of £1-19-8 (One Pound Nineteen shillings & Eight pence) 19 June 43 [signature]	Confirmed, but remit 75 days detention E. L. M. Burns Maj-Gen. Comd. - 2 Cdn. Div.
	SECOND CHARGE Sec 40 Army Act (see charge sheet attached)	Guilty		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary):—

(Signed) E. L. M. Burns (Signed) [signature]

(E L M Burns)Maj-Gen
Commanding 2 Cdn Div
Convening Officer (e)

[signature] R.C.A.S.C.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Nineteenth day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this Nineteenth day of June 1943

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

* See footnote (b) on page 762 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ E. L. B.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 21st day of June 1943.

E. L. M. Burns
Confirming Officer.

Maj-Gen.
Comd. - 2 Cdn. Div.

Promulgated and extracts taken in the case of L53603 Tpr DAUNAIS M.D.

(a) (Dated) 22 Jun 43 (Signed) [signature] for (F.A. Vokes)Lt-col., Comd 8 Cdn Recce

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

L 63603 Tpr. Mark Donald Daunais - 8 Canadian Reconnaissance Regiment (14CH) a soldier of the Canadian Army (A.F.) is charged with:

1ST CHARGE
A.A. Sec. 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE

In that he absented himself without leave from 2230 hrs 15 May 43 to 1930 hrs 6 Jun 43 being apprehended by the Corps of Military Police, Manchester.

Cost of return to Unit
£1-19-8

2ND CHARGE
A.A. Sec. 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he on 6 Jun 43 was in possession of a document purporting to be a genuine leave pass well knowing it to be false.

Signed in the Field
this 8th day of Jun 43

(F.A. Volms) Lt.-col.
Comd 8 Cdn Recce Regt (14CH)

TO BE TRIED BY FGCM

In the Field
17 Jun 43

(E L M Burns) Maj-Gen
Comd 2 Cdn Div

"B2"

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at "Field" on the 19th day of June 1943 by order of Major General E. L. M. Burns

Commanding 2 Canadian Division

dated the 17th day of June 1943.

President.

Major J. W. A. Russell. 2 Cdn Div Tps Coy R.C.A.S.C.

Members

Capt. H. L. Watts. 1st Cdn Fd Pk Coy R.C.E.

Actg/Capt. W. Wallace, 2 Cdn Div Sp Bn. (Tor Scot R.)

Judge Advocate.

Trial of*

L-53603 Tpr Mark Donald Daunais.
8 Cdn Recce Regt (14 CH)

The order convening the Court, the charge-sheet and the summary ✓ ~~(or abstract)~~ of evidence are laid before the Court

~~The Court satisfy themselves that ..... is not available to serve owing to~~

~~..... waiting member takes his place as a member of the Court~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23. ✓

The accused is brought before the Court. ✓

Prosecutor,† Lieut. D. G. Bell 8 Cdn Recce Regt (14 CH)

Counsel‡ or defending officer† Lieut. H. V. Ross. 8 Cdn Recce Regt (14 CH)

At 1420 o'clock the Trial commences. ✓

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings. ✓

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names. ✓

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible]

J. W. A. Russell Major.

CC

Proceedings on Plea of Guilty.

* To be struck out in case the plea of "Not Guilty" has been proceeded with

*~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~

The accused is found guilty of Absenting himself without leave (AA Sec 15 (1)) and conduct to the prejudice of good order and military discipline (AA Sec 40)

†The summary ~~or abstract~~ of evidence is read, marked Appendix "A" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— passes on my troop only come one way, once every thirty

~~(or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings)~~

weeks, and it had been two months, since I'd had one.

I now see the error of my ways and will not take the law into my own hands again.

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

May 5th

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at "Field"

on the 19th day of June 1943 by order of

Major General E. L. M. Burns

Commanding 2 Canadian Division

dated the 17th day of June 1943.

President.

Major J. W. A. Russell. 2 Cdn Div Sps Coy R.C.A.S.C.

Members.

Capt. H. L. Watts. 1st Cdn Fd Pk Coy R.C.E.

Actg/Capt. W. Wallace. 2 Cdn Div Sp Bn. (Cov Scot R.)

Judge Advocate.

Trial of*

L-53603 Spr Mark Donald Dannais.

8 Cdn Recce Regt (14 CH)

The order convening the Court, the charge-sheet and the summary ✓ ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that ..... is not available to serve owing to~~

~~..... waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23. ✓

The accused is brought before the Court. ✓

Prosecutor,† Lieut. D. G. Bell 8 Cdn Recce Regt (14 CH)

Counsel‡ or defending officer† Lieut. H. V. Ross. 8 Cdn Recce Regt (14 CH)

At 1420 o'clock the Trial commences. ✓

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings. ✓

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names. ✓

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible]

J. W. A. Russell Major.

B

The President, members ~~and judge-advocate~~ are duly sworn ✓

The following officers under instruction are duly sworn. ✓

Capt. J. C. Blyth. 8 Cdn Resce Regt (4 C.H.).
Lieut. T. Lowe. 8 Cdn Resce Regt (14 C.H.)

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 ✓ and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned ✓ charge-sheet.

Are you guilty or not guilty of the [first] charge against you which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ ~~*Question.*~~

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ ~~*Question.*~~

Answer.

The accused having pleaded Guilty to All charges, the provisions of Rule of Procedure 35 (B) are here complied with. ✓

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

[signature]

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

The accused
is found guilty of Absenting himself without leave (A.A. Sec 15 (1)) and conduct to the prejudice of good order and military discipline (A.A. Sec 40)

†The summary ~~(or abstract)~~ of evidence is read, marked Appendix "A" signed by the President, and attached to the proceedings.

Question to the accused.

Do you wish to make any statement in mitigation of punishment?

Answer.

The accused in mitigation of punishment says:— passes in my troop only come one way, once every thirty ~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~ weeks, and it had been two months, since I'd had one.

I now see the error of my ways and will not take the law into my own hands again.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

[signature] Major

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

No

Evidence as to character.

E

~~Finding.~~ *Ind

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

Proceedings on Conviction *before Sentence.*

~~*The Court being re-opened, the accused is again brought before it.~~

~~is duly sworn.~~

Lieut D. G. Bell, Prosecutor, is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes sir.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "B 3" signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes sir.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes sir.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes sir.

Cross-examined by the accused.

(Instruction.—If by reason of the nature of the service of the accused in a departmental circle, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* No sir

The Court is closed for the consideration of the sentence.

[signature] Major.

F

Sentence.

Sentence.

The Court sentence the accused

~~W~~ One hundred and twenty days detention and stoppage of pay in the sum of £1-19-8 (One Pound nineteen shillings and eight pence)

COUNTER NUMBER 538773

HOUR 1130

OPERATOR'S INITIALS RD

RELIEVING OPERATOR ER

Exhibit "A"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr.42

I CERTIFY that No. L.53603 . Rank Tpr. . . Name Daunais, M.B. . . . . .

Unit 8th. Reece. Bn. . . . . was arrested at Manchester . . . (place)

at 1930 hrs. (hour) on 6 June 43 . . (date) and that at the time of his arrest he was wearing (Military Uniform) or (~~[illegible]~~) Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

[signature] major

[signature] . . . . . Capt.
(W. Dorn) D. A. P. M.,
London Area

"A"

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SECTION 163 (1) (a).

I certify that No. L 53603 Rank Tpr Name Daunais M.B.

of 8th Canadian Recce Unit, was arrested at Brunswick Street, Manchester.

at 19.30 hours, on the 6th day of June 1943

Signature of Provost Marshal, A.P.M., or other Officer into whose custody the above named person was taken on arrest.

F.C.C. Garfit Staff Lieut.
Corps of Military Police,
16th M.Q. Provost Company,
Lancashire and Border District.

Date 6th June 1943.

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539 Exhibit "B"

Reg. No. 53603 Rank Tpr. Name Duamais, M.B. Unit 8 Recce Regt.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ ~~Unit From~~ London from Manchester

Date	Particulars by Portion	Amount		
9 June 41	Escorts return fare from LONDON To Manchester		12	1
	Prisoners single fare to LONDON From Manchester		14	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares (1/7 portion		4	6
	Total £	1	10	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] major

Officer Issuing Railway Warrant and Expense money Lieut.

No. 6 Provost Company, Canadian Provost Corps, London.

[signature] CAPT.
(W. FERN) D.A.P.M.
LONDON AREA.

H.Q. 1000:55
& S/482

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 Exhibit "B"

Reg. No. 453603 Rank Tpr. Name Daunais, A.R. Unit 8 Recce Regt.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London.

Date	Particulars	Amount		
9 June 43	Escorts return fare from LONDON To 1/3 portion Pulborough.		5	2
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Pulborough.		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		9	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Lieut.
(W. FERN) D.A.P.M.
LONDON AREA.

Officer Issuing Railway Warrant and Expense money
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/54
40/P & S/483





CHARGE against No. L53603 Rank Tpr.

Name DAUNAIS. M.B.

Date of Offence

Place

OFFENCE WHILST ON ACTIVE SERVICE

1/ ABSENT FROM 2230 hrs 15.5.43 UNTIL APPREH[redacted]

BY THE MILITARY POLICE IN BRUNSWICK ST. ON

6.6.43 ABOUT 1930 HRS. 2/ BEING IN

POSSESSION OF A DOCUMENT PURPORTING TO BE

A GENUINE LEAVE PASS AND KNOWING IT NOT TO BE GENUINE.

Names of Witnesses :—

806362 L/CPL. L. TINSON C.M. POLICE

7690398 L/CPL. W. TAYLOR. C.M. POLICE

Signature of O.C. Battery, Squadron, Troop or Company } T.C.C. Garfit Capt.

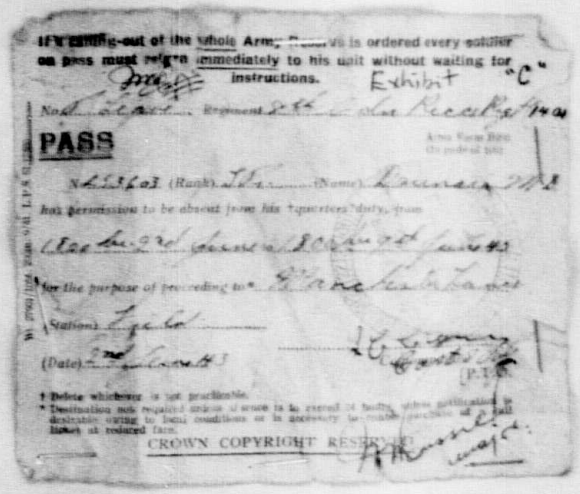
A.F.M. Lancs. & Border District.

Punishment Awarded }

By whom Awarded }

Adjutant.

P.T.O.



If a calling-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

Exhibit "C"

No. [illegible] Regiment 8th [illegible] Rec'd [illegible]

PASS

Army Form B[illegible]
On [illegible]

No. 253603 (Rank) [illegible] (Name) [illegible]

has permission to be absent from his †quarters duty, from

1800 hrs 2nd June to 1800 hrs 9th June 43

for the purpose of proceeding to* [illegible]

(Station) [illegible]

(Date) 2nd June 43

[illegible]
[illegible]
[P.T.O.]

† Delete whichever is not practicable.
* Destination not required unless absence is to exceed 24 hours, unless notification is desirable owing to local conditions or is necessary to enable purchase of a full ticket at reduced fare.

CROWN COPYRIGHT RESERVED

[illegible]

CHARGE

Army Form ~~B 252~~ 9634
(See King's Regulations)

8th CANADIAN RECONNAISSANCE

"H.Q."

Regiment
~~Battery~~
Squadron
~~Troop or~~
~~Company~~

CHARGE against No L53603 Rank TPR

Name DAUNAIS. M.B.

Place Date of Offence

OFFENCE WHILST ON ACTIVE SERVICE
1/ ABSENT FROM 2230 hrs 15-5-43 UNTIL APPREHENDED
BY THE MILITARY POLICE IN BRUNSWICK ST. ON
6.6.43 ABOUT 1930 HRS. 2/ BEING IN
POSSESSION OF A DOCUMENT PURPORTING TO BE
A GENUINE LEAVE PASS AND KNOWING IT NOT TO BE GENUINE.

Names of Witnesses :—

806362 L/CPL. L. TINSON C.M. POLICE

7690398 L/CPL. W. TAYLOR. C.M. POLICE

Signature of O.C. Battery, Squadron, Troop or Company } J.C.C. Garfit Capt.

A.P.M. Lands & Border District.

Punishment Awarded }

By whom Awarded }

Adjutant.

P.T.O.

Statement of **EVIDENCE** In the Case of.

L53603. TPR. DAUNAIS. M.B.
H.Q. SQUADRON.
8th RECC REGT.
CANADIAN FORCES.

Sir,

At MANCHESTER on 6.6.43 at about 1930 hrs I was on duty accompanied by L/CPL TAYLOR. C.M. POLICE in BRUNSWICK ST. where I saw the above named soldier. On being checked he produced the attached Pass. Not being satisfied with this I conveyed him to the DRILL HALL, ARDWICK GREEN,

Where on being cautioned he admitted being absent.

I arrested & handed him over to the H.G.O. I/C GUARD.

He was Sober & wearing Military Uniform.

MANCHESTER
6. 6. 43

L. J. [illegible] L/CPL
C M POLICE

REMARKS

Sir,

I have read over & corroborate the above statement W.B. Taylor

MANCHESTER
6. 43

C M POLICE

SUMMARY OF EVIDENCE

Summary of Evidence in the case of L-~~888882~~ Tpr. Mark, Donald Daunais - 8 Canadian Reconnaissance Regiment (14CH) a soldier of the Canadian Army (A.F.).

The accused is informed of his rights.

The accused does not demand and the C.C. does not direct the evidence be taken on oath.

1ST WITNESS (For the prosecution)
Capt. G.M. Wood

Capt. G.M. Wood, Adjutant, 8 Cdn Recce Regt (14CH) states:
I present - certificate of apprehension purporting to be signed by D.A.P.M. London area showing the accused was apprehended at 1930 hrs 6 Jun 43. (Attached as Exhibit "A")
Certificate of costs of return showing charge to be £1-19-8 and purporting to be signed by D.A.P.M. London Area.
(Attached as Exhibit "B")
Both of which relate to the accused whom I recognise.
In my positionas Adjutant it is my duty to sign leave passes. On the 2nd of Jun 43 I did not sign a pass for the accused nor at any subsequent date.
I do not recognise the signature on the pass labelled Exhibit "C" as belonging to any officer in this unit.

(G.M. Wood) Capt. &Adjt.
8 Cdn Recce Regt (14CH)

The accused declines to cross-examine.

2ND WITNESS (For the prosecution)
L-1427 Cpl. Rodonets M.

L-1427 Cpl. Rodonets M. - 8 Cdn Recce Regt (14CH) states:

At 2230 hrs 15 May 43, I called the Tattoo Roll call and found that Tpr Daunds whom I here recognise, absent. I could not find him in the area. I did not at anytime between 15 May 43 and 6 Jun 43 see Tpr. Daunais.

(L-1427 Cpl. Rodonets M.)
8 Cdn Recce Regt (14CH)

The accused declines to cross-examine.

3RD WITNESS: (For the prosecution)
L/Cpl. W. Taylor - Corps of Military Police

A written statement of this witness's evidence purporting to be signed by him and stating the accused was in possession of a pass dated 2 Jun 43 has been read to the accused and is included in this summary. (Attached as Exhibit "C")

Having regard to the exigencies of the service, the attendance of the witness cannot, in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

(C.D. Williams) Lieut.
8 Cdn Recce Regt(14CH)
Officer detailed to take the summary.

Appendix "A"
page 1

(See page 2)

The accused having been duly cautioned in accordance with R.P. 4 (E) declined to make a statement.

The accused does not wish to call witnesses in his defence at this point.

Certified that R.P. 4 complied with.

(C.D. Williams) Lieut.
8 Cdn Recce Regt (14CH)
Officer detailed to take the summary.

In the Field
8 Jun 43.

The accused when asked if he wished to be represented at his trial requested that Lieut. A.E. Brodie attached to 2nd Echelon be appointed defending Officer.

Appendix "A"
Page 2

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2037)

No. L53603 Name Daunais, H.D. | Sqn., Battery, or Company "C" | Corps 8 Cdn Recce C.A.C. Regt (14 CH) | Date of enlistment 23-2-41 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 22-4-41 | No. and date of last drunk W11 | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
W.Prith	11-12-41	Tpr		Neglectfully losing equipment (rifle bolt) A.A. 24(2)	SQMS McKenzie D.	10s to cover cost of bolt 168 hrs det.	10-12-41	Lt.-col Hopkins	
						7 days pay admonished	6-1-42	Lt.col Hopkins	
					Cpl Hayes	7 d a s C.B.	6-1-42	Lt.-col Hopkins	
W.Prith	4-1-42	Tpr		WOAS being out of Boundis					
W.Prith	4-1-42	Tpr		WOAS Refusing to obey an NCO					
W.Prith	10-1-42	Tpr		WOAS Neglect to the prejudice etc (dirty rifle)	Lt D.L. May	5 days C.B.	12-1-42	A/Mjr D.P. Stewart	

"B3"

Certified true copy of M.F.M. 6 19 June 43 [illegible]
[illegible] Recce Regt. (14 CH)

(P.T.O.)

(substitute for [illegible]
(29[illegible] or [illegible])

STATEMENTS OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. L 53603 NAME Daunais, M.D. UNIT 8 Cdn Recce Regt (14 CH)

AGE 23 MARRIED or SINGLE Single No Of DEPENDENTS None

DATE OF ATTESTATION 18 Feb 41

NO OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL — MILITARY 14 HOSPITAL — TOTAL 14

DATES OF PROMOTION, APPOINTMENTS AND CONFIRMATIONS OF RANK IF ANY

Tpr. no promotions

A CERTIFIED TRUE COPY OF [illegible] MUST ACCOMPANY THIS FORM

(Officer Cdg Records)
CAPT. & ADJT.
8 CDN. RECCE REG (14 CH) UNIT

Dated at
This 19 day of June 1943
(to be dated and signed as of date of trial)

B3

FLASH NUMBER TWO

FLASH NUMBER TWO

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FLASH NUMBER TWO

47-84

Tpr. D'aust. H.P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-76446 Tpr Henry Paul D'AOUST, 3 CAGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd AA Sec 15(1)	Guilty	Guilty	
3rd AA Sec 24(2)	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Nil

At present under sentence for ..... beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 24 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for One (1) year, and to be fined under stoppages of pay until he has made good the sum of $3.57 for deficiencies and to be discharged with ignominy.

(Sgd) ..... Judge-Advocate, if any.

22 Feb 45 Date awarded.

(Sgd) Colin Mason President. (RP 45, 50.)

Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) Capt

(1. AA 57A. Delete if not used.)

Date 24 Feb 45 (Sgd) H Shuttleworth Commanding E Sqn R.C.D. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D76446 TPR D'AOUST, H.P.	26 Feb 45	J.T. Davis CAPT. ADJUTANT 3 C.A.G.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 4T-84

FIELD GENERAL COURT-MARTIAL

CPAGE (In lieu of AFAA1 40/P & B/1608 (R144) 4/38B

Convened by Order of Brig T J Rutherford Comd "E" Gp CRU dated 20 FEB 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-76446	Tpr	Henry Paul	D'AOUST	3 CAGRU

RECEIVED HQMG Sec 6 MAR 1945 PROCEEDINGS REVIEWED 6 Mar 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 22 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, SA, if any,~~ and Offrs ~~under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-75, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~The Interpreter is sworn.~~(1) Do you object to Capt J A Fleming as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~SA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E M Mason EDRE	HQ, CRU
~~Member~~	Capt	H M Lees	2 CAGRU
Member	Lieut	D M Wilmot	2 CAGRU
~~Judge-Advocate~~			
Prosecutor	Capt	J A Fleming	3 CAGRU
Defending Offr	Capt	E T Moores	3 CAGRU

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment makes(s) (no) ~~1st plea~~ (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 154A, 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(each) arraigned (separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95a to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.
Or, The President announces that the accused is found Not Guilty on all charges and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No evidence or witnesses
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct sheet(s), and in mitigation of punishment ?(1) Ans. Rely on plea (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should admonish accused or his witnesses to please on such anything here as previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2222, RP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assemble and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D.76446 Tpr Henry Paul D'AOUST, on strength of No 3 Canadian Armoured Corps Reinforcement Unit, is charged with:-

FIRST CHARGE
AA. SEC 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at No 3 C.A.C.R.U., absented himself without leave from 2359 hrs 10 Dec 44 until he surrendered himself to No 3 C.A.C.R.U. Provost at 0830 hrs 12 Dec 44.
(Total time absent: 1 day, 8 hrs, 31 mins).

SECOND CHARGE
AA. SEC 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at No 3 C.A.C.R.U., when in custody, absented himself without leave from 1330 hrs 12 Dec 44 until he surrendered himself at the Chadwell Heath Police Station at 0030 hrs 28 Jan 45.
(Total time absent: 46 days, 11 hrs).

THIRD CHARGE
AA. SEC 24(2)

WHEN ON ACTIVE SERVICE, LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES

in that he

at No 3 C.A.C.R.U., on 7 Feb 45, was deficient the following articles.

Article	Qty	100% Vocab Price	75% Unexpired Wear Price
Anklets web prs	1	$ .99	$ .75
Drawers cell short	1	.43	.32
Gloves prs	1	.47	.35
Jersey pullover	1	1.79	1.34
Socks prs	1	.37	.28
Caps comforter	1	.34	.26
Vest Cotton gym	1	.36	.27
		$4.75	$3.57

In the field
15 Feb 45

(R.E.A. Morton) Colonel
Commanding
3 CACRU

To be tried by Field General Court Martial.

In the fd.,
20 FEB 45.

(T. [illegible] RUTHERFORD) Brig
Comd "E" Gp CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D-76446	Tpr		Henry Paul	D'AOUST	3 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 FEB 45 endorsed by me, ~~(or by an officer subordinate to me)~~, "I do order that he be tried." To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior competent offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (A) three officers to form a court, (B) five officers, as Revision, for the reasons I have stated below:~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge-Advocate, (except the Officer mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	E M Miller, MD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	H M Lees	2 CACRU
Lt	D Wilmot	2 CACRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 20 FEB 45

(Signature personally. RP 106(2).) Brig (Rank.)

(T J RUTHERFORD) Brig

Commanding "E" GP CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFAS 13b (Sec of AFAS) AD/P & S/1697 (4601))

(See overleaf for oaths and notes for use on trial.)

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Medical Officers' Certificate
KR(Can) para 557.

I certify that I have this morning examined:-

Regt'l No D76446 Rank Tpr Name Dorst H.P.

of 3 CAC RU. (unit) and in my opinion he is

Fit ~~[illegible]~~ to undergo trial by Court Martial.

#(cross out one N/A and initial)

Station: Field

Date (of Court Martial) 22-2-45.

Sgd. R.A. Caudwell Capt (Rank)
Unit 3 CAC RU
Medical Officer, RCAMC.

CASE OF

E-1 D.76446 Trooper D'AOUST, H.P., On strength No. 3 CACRU

The accused, sworn, states:-

As you know, I have been overseas since Dec 39. Of course, I admit that since that time my conduct has not been any too good but now I can see that the war is not going to last very much longer and I would like to get overseas before the conflict is over. If I'm in detn once the war is over, I will never be able to face my people any more. I have no excuse to offer. I came out of detn in Nov and I firmly resolved that I would soldier. For one month, I was on put on coal fatigues here. I worked hard. I got a nine-day pass and came back to camp after a long walk from the station in the rain. I came back an hour before my pass was finished. I thought I was on the right road. Two weeks later, I got a week-end pass. I came back to Waterloo Stn on time to get back. I went in the buffet bar, had too many drinks and naturally missed the train. With the conduct that I have, knowing that being late an hour, I knew that the punishment would be very severe. I woke up the next morning and I said to myself, "What's the use". While absent, I did not enjoy myself. I don't know why I do it. I don't think I'm smart or that I'm fooling the Army, nothing like that. I should have $1,200 deferred pay in my paybook but now I have only $500.00; my gratuity after the war is gone. I would like to ask the Court to get me overseas before this war is over as I want to do something worthwhile.

QUESTIONS BY THE COURT

Q. Why did you go absent on the 12 Dec 44, while you were in arrest?
A. I was up before the Major and he sent me up before the Col. He gave me a good talking to. I knew what I was in for. It frightened me more and I was mad and that's why I went away.

Q. If you want to soldier why did yougo absent on the 30 June, 44, shortly after "D-Day".
A. I was trying to get married. I had a woman which was in the family. I was trying to get permission to get married. I didn't get it. So I went to Sheffield to try and get married without permission. I didn't succeed.

Q. How are your personal affairs now?
A. It's all settled now, Sir. She had a miscarriage in Sep of last year.

Q. How did you live while you were AWL?
A. I was in Southend and talked to American soldiers and told them I was AWL. They looked after me.

Q. What is your Cat?
A. "A", Sir.

QUESTION BY THE DEF OFFR

Q. You came overseas on the 17th Dec 39 and how have you been employed since you are over here?
A. Yes, Sir, I've been over here since 39 and I have always worked in the Officers' Messes as batman, etc.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

PLEA IN MITIGATION OF SENTENCE

This man has been employed as batman. He is cat "A". He came over here on the 17th Dec 39 and I can quite understand the man being rushed around in these various jobs getting absolutely "fed up". I'd like the COURT to consider this in making their verdict. This man would like to go overseas as early as possible because the war will end soon and I would like you to be as lenient as possible as he wants to get overseas before the war is over.

Summary of Evidence in the case of D.76446 Tpr. D'Aoust, H.P. on strength of No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness for the Prosecution

Capt J.P. Hughes on the strength of No. 3 CACRU, an officer of the Canadian Army Overseas, having been duly sworn, states:-

I hereby produce as documentary evidence in the case of D.76446 Tpr. D'Aoust, H.P., whom I now recognize, as the accused, the following:-

Certified true extract from No. 3 CACRU Regimental Part II Order No. 289 dated 14th Dec 44 showing the commencement of absence without leave of D.76446 Tpr. D'Aoust, H.P., from 2359 hrs 10 Dec 44 to 0830 hrs 12 Dec 44 and also from 1330 hrs 12 Dec 44 (Exhibit A).

Also certificate of surrender in accordance with Army Act 163(1)(k) purporting to be signed by E. Hanley, No. P.S. 38"K" who is the officer of police in charge of Chadwell Heath Police Station, showing his surrender at 0030 hrs 28 Jan 45. (Exhibit B)

The accused declines to cross-examine this witness.

(J.P. Hughes) A/Capt

The above exhibits have been shown to the accused, marked by me as Exhibit A and B respectively and attached to the Summary of Evidence.

(G. Dodds) Capt
Officer detailed to take
The Summary of Evidence

2nd Witness for the Prosecution

D.27040 SSM Bowden, B.L. on strength of No. 3 C.A.C.R.U., a soldier of the Canadian Army Overseas, having been duly sworn, states:-

At approx 1115 hrs on 12 Dec 44, I paraded D.76446 Tpr. D'Aoust, H.P., whom I now recognize as the accused, before Major C.M. Lewis, Officer Commanding "A" Sqn, to answer a charge of AWL under AA.Sec.15(1). Major Lewis' disposition of the case was to remand Tpr. D'Aoust to the Administration Wing Commanding Officer under open arrest.

The accused declines to cross-examine this witness.

B.L. Bowden

D.27040 SSM Bowden, B.L.

3rd Witness for the Prosecution

C.54513 Sgt Huycke, D.W., Acting SQMS of "A" Sqn, No. 3 CACRU, on strength of No. 3 CACRU, a soldier of the Canadian Army Overseas, having been duly sworn states:-

As SQMS of "A" Sqn I kit inspected D.76446 Tpr. D'Aoust, H.P., whom I now recognize as the accused, in the Unit Guard Room on 7 Feb 45 from his MBM I Part III, clothing and equipment statement and found him deficient of kit the following items:-

Article	Qty	100% Vocab Price	75% Unexpired Wear Price
Anklets web prs	1	$ .99	$ .75
Drawers cell short	1	.43	.32
Gloves prs	1	.47	.35
Jersey pullover	1	1.79	1.34
Socks prs	1	.37	.28
Caps comforter	1	.34	.26
Vest Cotton gym	1	.36	.27
		$4.75	$3.57

The accused declines to cross-examine this witness.

D W Huycke
C.54513 Sgt Huycke, D.W.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence or make a statement

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e), (f), and (g) have been complied with.

C. Dodd
C. Dodd Capt
Officer detailed to take The Summary of Evidence

EXHIBIT A 9

NO. 3 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

PART II ORDERS

BY

A/Lt-Colonel C.E.S. WALLS

A/Commanding Officer

Last Order No. 288
Dated 14 Dec 44

This Order No. 289
Dated 15 Dec 44

12. ABSENT WITHOUT LEAVE

D.76446 Tpr D'AOUST, H.P., is AWL from 2359 hrs 10 Dec 44 to 0830 hrs 12 Dec 44 and is AWL from 1330 hrs 12 Dec 44.

Sgd (J.T. DAVIES) Capt.,
Adjutant,
No 3 C.A.C.R.U.

Extract from No. 3 CACRU Regt'l Part II Order No. 289 d/15 Dec 44 and certified to be a true copy of the original document.

J.T. Davies Capt Adjt.

(J.T. DAVIES) Capt.,
Adjutant
No. 3 C.A.C.R.U. 14 Feb 45

EXHIBIT B

Army Form O.1617
R.A.F. Form 1617

I CERTIFY that the man whose personal description is given below surrendered himself to* P.S.38"K"Harley at Chadwell Heath Police Station at (hour) 12-30am on the 28th day of Jan 1945 as being No. D.76446 (Rank and Name) Tpr. Henry Paul DAOUST, a deserter (or absentee without leave) from No.5. CACRU. and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 26 Height 5 Feet 8 Inches

Complexion fresh Hair brown

Eyes blue

Marks Scar back of index finger left hand

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	Montreal, Canada, 26/9/39.
Probable Date of Desertion or beginning of absence, and from what place	Blackdown, Surrey. 12/12/44.

P.S.38"K".

Signature of Officer of Police in charge of Chadwell Heath Police Station

28th.Jan.1945 Date of Signature.

METROPOLITAN POLICE CHADWELL HEATH K.E. DIVISION

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. ..... who surrendered to the Police at ..... on ..... Payable to .....

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at .....

Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

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* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police, *e.g.*, such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 480/1940).

[illegible] 30,000 [illegible] Gp.698

LIST OF WITNESSES IN THE CASE OF

D.76446 Tpr. D'Aoust, H.P.

FOR THE PROSECUTION

1.	Capt J.P. Hughes	-	3 CACRU
2.	D.27040 SSM Bowden, B.L.	-	3 CACRU
3.	G.54513 SGT Huycke, D.W.	-	3 CACRU

FOR THE DEFENCE

NIL

(G.Dodds) Capt
Officer detailed to take
The Summary of Evidence

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D.76446	Tpr.	Daoust, H.P.	3 CACRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	A.A.Sec 15 (1)	Twelve times.
For	A.A.Sec 12 (1) (a)	One times.
For		times.
For		times.

Date of first entry in Field Conduct Sheet 16 Aug 40

Date of last entry in Field Conduct Sheet 2 Oct 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

~~[illegible]~~ fTA

~~[illegible]~~ fTA

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~9~~ 24 days in military custody, *i.e.*, Nil days in open arrest, ~~9~~ 24 days in close arrest, of which Nil days were spent in hospital. as of ~~16~~ Feb 45

5. The present age of the accused is 25 years

6. The date of his attestation ~~[illegible]~~ fTA 26 Sep 39

7. The service which the accused is allowed to reckon is 5 yrs 4 mos 20 dys

8. The accused is in possession of‡ C.V.S.M. & Clasp

‡State the military decorations (if any) held by accused.

~~[illegible]~~ fTA

~~[illegible]~~ fTA ~~[illegible]~~ fTA

~~[illegible]~~ fTA

~~[illegible]~~ fTA

~~[illegible]~~ fTA

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*20872) Wt.[illegible] [illegible] 9-44 A.&E.W.Ltd. Gp.498

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	16 Sep 42	A.A. Sec 15(1)AWL 33 dys, 4 hrs, 10 mins	6 mos detn	60 days
F.G.C.M.	8 Nov 43	A.A. Sec 15 (1) AWL 103 dys, 9 hrs, 30 mins	9 mos detn	90 days
F.G.C.M.	2 Oct 44	A.A. 15 (1) AWL 22 dys, 16 hrs A.A. 24 (2) Loss of kit	60 dys detn	20 dys

J.T.D.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 2 day of Feb 45

J. T. Davies CAPT.
ADJUTANT 3 C.A.G.R.U.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31 Aug 44	Tpr		1st Charge AA Sec 15(1) AWL from 2230 hrs 31 Aug 44 until 1430 hrs 23 Sep 44 (Absent 22 dys 16 hrs) 2nd Charge AA Sec 24(2) Remission of sentence 20 dys. CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT E.J. Williams Lt Asst ADJUTANT 3 C.A.C.R.U.	Documentary	60 dys Detn & placed under stoppages of pay to the sum of $6.31 to make good loss of kit.	2 Oct 44	FGCM Brig T.J. Rutherford	For 23 dys Pay FR&I 149 1(a) For 7 dys Pay FR&I 149 1 (c)(1) For 60 dys Pay FR&I 149 1(b)

No. D76446 Name Daoust, H.P. Sqn, Battery, or Company | Corps C.A.C. | Date of enlistment 26 Sep 39 | GC Badges | Service or Proficiency Pay N/A | 3/17 MFM 6 (AFB 122) 40/PAM/130 (5413)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 3 | Signature OC Company, etc S. Watkins, Lt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Aug 44	Tpr		1st Charge AA Sec 12(1)(a) Attempted Desertion, picked up in plain clothes	Documentary	27 dys Detn	28 Aug 44	Col A.T. Patterson	9 dys Pay FR&I 149
Field	9 Aug 44	Tpr		2nd Charge AA Sec 15(1) AWL from 1800 hrs 9 Aug 44 to 1100 hrs 18 Aug 44 (8 dys 17 hrs)					
Field	30 Aug 44	Tpr		Punishment remitted to 27 dys F.P.				L. Kerstead, Capt & Adjt	

(PTO)

Place	Date of offence	Rank	Dates of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 May 44	Tpr		AA Sec 15(1) AWL from 0800 hrs 8 May 44 until apprehended at 0850 hrs 23 May 44. (Absent: 15 days 50 mins)	Documentary Cpl Wood S/Sgt Parsons	28 dys F.P. 28 dys Pay	26 May 44	Col A.T. Paterson	28 dys Pay FR&I 16 dys Pay FR&I 149 1(a)
Field	30 Jun 44	Tpr		AA Sec 15(1) AWL from 0700 hrs 30 Jun 44 until 0855 hrs 6 Jul 44. (Absent: 6 dys 1 hr 55mins)	Cpl Tasker L/C Larsen	28 dys Detn	6 Jul 44	Col A.T. Paterson	7 dys Pay FR&I 149 1(a)

Released from the Detention Barrack H. Down on 29 Jul 44, sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons". 4 days. Commandants initials L.S.S.

No. D76446 Name Dacust, H.P. Sqn, Battery, or Company | Corps C.A.C. | Date of enlistment 26 Sep 39 | GC Badges | Service or Proficiency Pay N/A | 3/17 MFM 6 (AFB 122) 60/PAB/126 (5412)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 2 | Signature OC Company, etc W.G. Carr, Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14 Jul 43	Tpr	-	A.A. Sec 15(1) AWL from 2230 hrs 14 Jul 43 to 0800 hrs 26 Oct 43. (Absent: 103 dys 9 hrs 30 mins)	Documentary	9 mos Detn Stoppage 13/8 escort expenses	F.G.C.M. convened by Col D.H. Storms CE (WKS) 1 Cdn Army held 6 Nov 43, Maj J.W. Maxwell 23 Cdn Fd Regt (S.P) RCA Pres. Close arrest 0800 hrs 26 Oct 43 to date of trial. For 12 dys Pay FR&I 149 1(c)(1) For 104 dys Pay FR&I 149 1(a)		

Released from Detention Barrack H. Down on 6 May 44, sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons" 90 days.
Commandants initials ????

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England	2/2/42	Pte		AWL A.A. Sec 15(1)		4 dys Pay			For 1 dys Pay FR&I 149 1(a)
England	7/8/42	"		A.A. Sec 15(1) AWL 33 dys, 4 hrs, 10 mins	Sgt.Faubert	6 mos Detn	16-9-42	F.G.C.M.	For 221 dys Pay
						Released from the Detention Barrack H. Down on Jan 14 1943, sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons 60 days. Commandants initials ?????			
Field	21 Mar 43	Tpr		A.A. Sec 15(1) AWL from 2230 hrs 21 Mar 43 to 0915 hrs 25 Mar 43. (Absent: 3 dys 10 hrs 45 mins	L/C Davidson Sgt Gindras	5 dys F.P. 5 dys Pay	26 Mar 43	Lt-Col J.A. Calder	For 4 dys Pay FR&I 149 1(a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
England	2/2/42	Pte		AWL A.A. Sec 15(1)		4 dys Pay			For 1 dys Pay FR&I 149 1(a)
England	7/8/42	"		A.A. Sec 15(1) AWL 33 dys, 4 hrs, 10 mins	Sgt.Faubert	6 mos Detn	16-9-42	F.G.C.M.	For 221 dys Pay
						Released from the Detention Barrack H. Down on Jan 14 1943, sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons 60 days. Commandants initials ????			
Field	21 Mar 43	Tpr		A.A. Sec 15(1) AWL from 2230 hrs 21 Mar 43 to 0915 hrs 25 Mar 43. (Absent: 3 dys 10 hrs 45 mins	L/C Davidson Sgt Gindras	5 dys F.P. 5 dys Pay	26 Mar 43	Lt-Col J.A. Calder	For 4 dys Pay FR&I 149 1(a)

COEY FROM MFM 4

No. D76446 Name Daoust, H.P. Sqn, Battery, or Company Corps C.A.C. Date of enlistment 26 Sep 39 GC Badges Service or Proficiency Pay N/A 3/17 MFM 6 (AFB 122) 40/P&S/126 (5413

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc J.W. Allen, Major Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England	9/8/40	Pte		AWL 2 days A.A. Sec 15(1)		Admonished	16 Aug 40		For 2 dys Pay FR&I 149 1(a
England	29/8/40	"		AWL 1 day A.A. Sec 15(1)		7 dys C.B.	31 Aug 40		For 1 dys Pay FR&I 149 1(a
England	28/9/40	"		AWL 12 days A.A. Sec 15(1)		14 dys Pay.	11 Oct 40		For 12 dys Pay FR&I 149 1(a
England	21/10/40	"		AWL 2 dys A.A. Sec 15(1)		7 dys Pay	21 Oct 40		For 2 dys Pay FR&I 149 1(a
England	21/2/41	"		AWL 4 dys 13 hrs 1 min A.A. Sec 15(1)		15 dys Pay	21 Oct 41		For 5 dys Pay FR&I 149 1(a
England	12/5/41	"		AWL 4 dys 8 hrs 15 mins A.A. Sec 15(1)		14 dys Detn	26 May 41		For 5 dys Pay FR&I 149 1(a
England	1/6/41	"		AWL 14 dys 30 mins A.A. Sec 15(1)		Admonished	17 Jun 41		For 15 dys Pay FR&I 149 1(a

(PTO)

NNN·113
PTE DAUTEUIL M

Correspondence to be PINNED here.

RECORDED AT CMHQ IN A3 160
NNN-115

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

RECEIVED
5 JUN 1944
JAG BRANCH
C.M.H.Q.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-eighth day of March, 1944.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

F139

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

CANADIAN SECTION
G.H.Q.
2nd ECHELON
24 APR 1944

*Omit if not applicable.

*[redacted]

PROCEEDINGS REVIEWED 11 Jan 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

3

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	B A Kennedy	Carlt & York R

Members.

Rank.	Name.	Regiment.
Captain	J M Bursey	Carlt & York R
Lieut	G A Fortin	R 22e R
Lieut	F de St-Victor	R 22e R

Waiting

*Signed [signature] Brigadier
Commanding 3 Cdn Inf Bde
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

F139

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
4084 Pte Maurice AUTEUIL, R 22e R	First Charge Sec 6(2)(h) AA	Not Guilty	Guilty 90 Days F.P. C&R with loss of pay for same BA.	Confirmed NWL

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) NWLeckie Brigadier (Signed) BAMcCuaig Major
Commanding 3 Cdn Inf Bde
Convening Officer (c) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of March, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ N/A
*(4. ~~The officers under instruction~~ N/A

were duly sworn.

* Omit if not applicable.

Signed this 29th day of March 19 44

BAMcCuaig Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) NWL

Signed this 1 day of Apr 19 44

NWLeckie
Confirming Officer.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of E 4084 Pte M. D'Auteuil Unit

(a) (Dated) 3 Apr 44 (Signed) Pte Secretary

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field on the 29th day of March 1944 by order of

Brigadier L. G. Gibson

Commanding 3 Cdn Inf Bde

dated the 28th day of March 1944

President.

Major B A Kennedy Carlt. & York R.

Members.

Capt J M Bursey Carlt. & York R.

Lieut G A Fortin R 22 c R.

, ~~Judge Advocate~~

Trial of* C 4084 Pte Maurice Dauteuil, R 22 c R

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

The Court satisfy themselves that N/A is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut F S J Hogan R 22 c R

Counsel‡ or defending officer† Capt J B Jolbert R 22 c R

At 1520 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] 12.41 K. & H. Ltd. [illegible] Form [illegible]

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ?

Question to the accused.

Not Guilty

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read ?

Question.

N/A

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read ?

Question.

Answer.

N/A

Are you guilty or not guilty of the fourth charge against you, which you have heard read ?

Question.

N/A

Answer.

The accused having pleaded Guilty to N/A charge , the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

C H A R G E - S H E E T

The accused E.4084 Private DAUTEUIL Maurice, a soldier of the Royal 22e Regiment, Canadian Army Overseas, On Active Service, is charged with:

1st Charge
AA Sec 6 (2)(h) WHEN ON ACTIVE SERVICE

When a soldier acting as Sentinel on active service, leaving his post before he was regularly relieved

in that he

In the field, at or about 1830 hrs on the 6th of March 1944, after being posted as a sentry on his post, left his post without having been regularly relieved.

(J.G. Charlebois,) Major,
T/Commanding, Royal 22e Regiment.

In the field,
14 Mar 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(T G Gibson), Brigadier,
Commanding 3 Cdn Inf Bde.

In the Field
28 Mar 44

MEDICAL OFFICER's CERTIFICATE

I certify that I have this morning examined No. E 40.84.....

Rank. Pte.... Name D'Auteuil M.... of. Royal 22e Regt.....

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station. 1 N. The Field.

Date. 29. Mar. 1944.

Richard S Burks Capt
(Medical Officer)

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.] No

The prosecutor proceeds to call witnesses.

First witness for prosecution. D106214 Capt Lieutenant V R.A.R.

being duly sworn, is examined by the prosecutor.

Q. Do you recognise the accused Pte Dauteuil?
A yes.
Q. Say what you know about Pte Dauteuil concerning this charge?
A. Pte Dauteuil reported to me when he was on duty saying that he was fed up and he didnt want to go on his duty. I sent him to Sgt. Smithers who was on duty on that day.
Q. Was Pte Dauteuil supposed to be on duty when he reported himself to you?
A. Yes, sir, he still had another half an hours for his duty.

Cross. ham.

Q.1. Did you notice that the accused had been drinking when he reported to you?

A- Yes, sir
Q. How can you say that he had been drinking vino?
A. He was tight-(chaud). He was not drunk neither sober, he had been drinking vino.
~~Q. Was he tight~~
~~Q. Was it you who~~

2nd Witness for prosecution E4392 sgt. Gauthier J. R22R being duly sworn is examined by the prosecutor

Q.1- Do you know the accused Pte Dautenil?
A. Yes.
Q. What do you know about Pte Dautenil concerning the present charge?
A. I was guard commander at San Nicholas on the 6th or 7th March 44, Pte Dautenil was detailed to be on guard from 1700 to 1900 hrs, at 1830 h he came to me saying that he did not want to be on guard any longer. I asked him why and he said that he had no reasons and put me on charge - I put him under open arrest.

Cross-exam by defense

Q. Where was this post?
A- On the right of the village St Nicholas.
Q. Were you far from that post yourself?
A- I was about 300 yards from that post.
Q. Could you see that post from your position?
A- NO.
Q. Was it an advance Post?
A. No, that was at Bn H.Q. guard.

~~Q. Was it a post in front of the enemy?~~

Q. When you put the accused on the post did you notice ~~that~~ he had been drinking?

A. I did not see him before he went to his post, but I noticed that he had been drinking when he reported back to me.

Q. Did you or did you not place him on this post yourself?

A. I warned him to take his post and when the other sentry came back he informed me that Pte Dautenil had relieved him.

Q. Did the other sentry come to ask you to be relieved?

A. No.

Q. Had the accused done sentry duty on this particular post before.

A. Yes, three days.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. no

Question. Do you intend to call any other witness in your defence?

Answer. ~~[illegible]~~ no

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence? no

Answer. The accused in his defence says†

[hands in a written address which is read, marked (A) signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused E4084 Pte Maurice Dautavil Guilty of the first charge as laid

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut A.J.J. Hogan 22nd L. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* N/A

[Instructions.—If by reason of the nature of the service of the accused in a dependency only, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of the additional punishment.]

Cross-examined by the accused. No

Question to the accused.

Do you wish to address the Court? *Answer.* Yes

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused E 4084. Pte Maurice Dauteuil R 22er R. To undergo a period of 90 Days, 90 Days Pay

Sentence.

F.P. for

[illegible signature]

Bal

Prosecution

Whether Pte Dautenil was sober tight or drunk the charge against him is still leaving his post before he was regularly relieved.

Two N.C.O.s both under oath have stated that Pte Dautenil left his post and quoted Dautenil as saying he was not doing any more guard.

There is absolutely no doubt that he left his post & that he is guilty of the charge

Golf Hogan Lieut

Bk 1A

I wish to bring the attention of the Court to Note 7 of the Section of A.A. under which the accused is charged. It is stated there than on a charge like the present one it has to be proved that the accused had been regularly posted. This has not been proved by the prosecution and both witnesses have clearly declared that they did not post the sentry themselves.

[illegible] Capt.

In mitigation of sentence I wish to bring to the attention of the court the record of this soldier. The fact that in his whole service which dates back to 1939 he has had only one charge of A.W.L. The fact that when he left his post he had was under the influence of "wine" and not in possession of all his senses. The fact that on leaving his post he made sure to report to his Sgt so his post would not be left unattended and the fact that this post was not an important one. Due to all these considerations I ask the Court to be lenient in its sentence.

Respectfully.

LIST OF WITNESSES FOR THE PROSECUTION

FOR THE PROSECUTION D.10614 a/Cpl Guilbault, V.
E.4392 Sgt Gauthier, J.

FOR THE DEFENSE N i l

LIST OF EXHIBITS

N i l

I hereby acknowledge the receipt of a true copy of the Summary of Evidence taken prior to my trial by FGCM. I further acknowledge the receipt of a true copy of a charge sheet upon which I am being brought into Court Martial.

I desire the service of _____
if he is available.

_____ pte.

In the field,
14 Mar 44.

SUMMARY OF EVIDENCE

In the case of E.4084 private DAUTEUIL Maurice, a soldier of the Royal 22e Regiment, Canadian Army Overseas, On Active Service.

By direction of the Commanding Officer this Summary of Evidence is taken under oath.

1st Witness For the Prosecution.

D.10614 s/Cpl Guilbeault, V. Royal 22e Regiment, Sp coy, having been duly sworn states:

" I am and was at all times material hereto, a soldier of the Royal 22e Regiment, posted to Support company. On the 6th of March 1944, at or about 1830 hrs, E.4084 Pte Dauteuil, M who was on guard duty in number 3 post came to me saying that he had left his post and had enough of that guard duty. Then I told him to go back to his post, he answered me that he would not be on duty any more. So I told him to report to Sgt Gauthier, the guard commander.

The accused declines to cross examine the accused.

V. Guilbeault, s/Cpl.

2nd Witness For the Prosecution.

E.4392 Sgt Gauthier, J. Royal 22e Regiment, Sp coy, having been duly sworn states:

" I am and was at all times material hereto a sgt of the Royal 22e Regiment, posted to Support company. On the 6th of March 1944, at or about 1830 hrs, E.4084 Pte Dauteuil, M reported to me saying that he had left his post and was fed up with that guard duty. I asked him if he had any explanations or reasons to do so. He answered me no and asked me to make a charge against him. So. I put him under open arrest and replaced him on his post.

The accused declines to cross examine the witness.

Jules Gauthier, Sgt.

The accused having been duly cautioned in French in accordance with RO 1424 reserves his defense.

I certify that the foregoing Summary of Evidence, consisting of one page was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c),(d),(e),(f) and (g) were duly complied with.

Officer taking Summary.

In the field,
14 Mar 44.

ADDITIONAL SUMMARY OF EVIDENCE

In the case of E.4084 private Maurice D'AUTEUIL, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service

By direction of the Commanding Officer this Summary of Evidence is taken under oath.

3rd Witness for Prosecution

E.4392 Sgt Gauthier J. Royal 22e Regiment, having been duly sworn states:-

" I am E.4392 Sgt Gauthier J. of R.22e.R. posted to Sp Coy.

On 6 Mar 1944 at about 1700 hrs I placed E.4084 pte Maurice D'Auteuil at number 3 post with instructions to remain there until relieved. He left his post at 1830 hrs. His guard duty was to finish at 1900 hrs.

The accused declined to cross-examine the witness.

Sgt.

The accused having been duly cautioned in French in accordance with RO 1424 reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e), (f) and (g) were duly complied with.

Officer taking Summary

In the Field
14 Mar 1944

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2965)

No. E4084 Name D'Auteuil 'M Sqn., Battery, or Company Support Corps R. 22 Regt Date of enlistment 11-7-39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On 11-7-41 this soldier completed two years service and in accordance with R.O. 71 Ovs. the above regt entries were transferred from previous sheet which was destroyed.									
In the field	2-7-44	Pte		Sec 15(1) J.A. 1940 in that he absented himself without leave 6 days [illegible]	L/S Felion L P/S Dupuis	14 days F.P. 21 days Pay		Lt Col. Allard	

Certified true copy of original in my possession
P. Aiguillay Lieut
[illegible] Mar 44.

(P.T.O.)

Bak.

17 Mar. 44

M.F.B. 388
22M—5-41 (372-3)
H.Q. 1772-39-(93)
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number E.4084 Rank Private Name Dauteuil,M Regiment (or unit) Royal 22e Regiment

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

Within last 12 months Since enlistment or appointment

For A.A. Sec. 15(1) 1 times ..... times

For ..... times ..... times

For ..... times ..... times

For ..... times ..... times

Number of instances of gallantry or distinguished conduct

or, N/A

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or, N/A

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or, N/A

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and nil days in ~~Air Force~~ military custody, making a total of 11 days in custody, of which 11 days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is .....

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 11 Sept. 39

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force military decoration, or air force military reward (or is in possession of or entitled to). State any air force military decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force Regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated N/A, and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of N/A years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank [illegible] Unit Name [illegible], of [illegible] Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N/A		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this [illegible] day of March, 1944 [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

85E - Ple Daverick C.

O. H. M. S.

Pte Dawrick

85E

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this eleventh day of November, 1941.

(Order convening the Court)

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

~~I am unable to appoint~~

~~(1) Three Officers to form the Court~~

~~(2) A Field Officer as President~~

~~(3) Three Officers having more than one year service~~

~~to the following reasons, namely:~~

Proceedings Received 12/1/42 [illegible] Lieut Convening Officer (85E) Ex HQ

President.

Rank.	Name.	Regiment.
Major	R.R. Church	Hast & P.E.R.

Members.

Rank.	Name.	Regiment.
Capt	I. A. Hodson	R.C.R.
Lieut	H. McLoed	R.C.R.
Lieut	E. L. Littleford	R.C.R.

*Signed [signature] Brigadier

Commanding 1 Cdn Inf Bde

Convening Officer.

Waiting Officer

* Waiting Officer is formally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C5290 Pte Bale, E.H. Hast & P.E.R. C5428 Pte Daverick, C. Hast & P.E.R.	(1) WOAS committing a civil offence, that is to say, house-breaking with intent to commit a felony contrary to section 27 (2) of the Larceny Act, 1916 in that they etc. (see att'd charge sheet) AA SEC 41	guilty	guilty	I confirm the finding but remit two months imprisonment from the sentence J.F.L.H.
	(2) WOAS committing a civil offence that is to say assault with intent to prevent lawful apprehension, contrary to Section 38 of the Offences Against the person Act, 1861, in that they etc. (see att'd charge sheet) AA Sec 41	guilty	guilty	
C5428 Pte Daverick, C. Hast & P.E.R.	(3rd Charge Sheet) (1) WOAS absenting himself without leave, in that he etc. (see att charge sheet) AA Sec 15 (1)	guilty	guilty	

C 5428 Pte Daverick C one year imprisonment

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) J.F.L. Heller Brigadier (Signed) R.R. Lehurst Major
Commanding 1 Can Inf Bde Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14 day of Nov, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 14 day of Nov 1941.

R.R. Lehurst Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

R.R. Lehurst
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ RR

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 18th day of November 1941.

J.F.L. Heller Brigadier
Confirming Officer

Promulgated and extracts taken in the case of C5428 Pte DAVERICK, C. HAST. & P.E.R.

(a) (Dated) 21 November 41 (Signed) W.W. Exley, Capt ADJUTANT, THE HASTINGS & PRINCE EDWARD REGT. C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET.

The accused, C.5290 Pte. Bale, K.H. and C.5428 Pte. Daverick, C. both of The Hastings and Prince Edward Regiment, C.A.(A.F.) soldiers of the Canadian Army Overseas, are charged with:-

First Charge
A.A.Sec 41

W.O.A.S. committing a civil offence, that is to say, housebreaking with intent to commit a felony contrary to Section 27 (2) of the Larceny Act 1916,
in that they,
at, "Buckland", Surrey at 0415 hrs. on the 25th. Oct. 1941 concerned together did feloniously break and enter a lock-up safe, there situated and known as "Jacks' Snack Bar" in the occupation of one John Leonard with intent to commit a felony therein.

Second Charge
A.A.Sec 41

W.O.A.S. committing a civil offence that is to say assault with intent to prevent lawful apprehension, contrary to Section 38 of the Offences Against the Person Act. 1861,
in that they,
at, "Buckland", Surrey on the 25th. Oct. 1941 concerned together, did unlawfully assault Police Constable Frederick Haseman in the due execution of his duty.

(H.D. Graham) Lieut.-Col.,
Commanding,
The Hastings & Prince Edward Regiment,
C.A.(A.F.)

"In the Field"
7th. Day of November 1941.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(R.F.L. Keller) Brigadier
Comd, 1 Can Inf Bde.

3rd CHARGE SHEET.

The accused, C.5428 Pte. Daverick, C. a soldier of The Hastings and Prince Edward Regiment, C.A.(A.F.)

is charged with:-

FIRST CHARGE A.A. Sec 15(1)

W.O.A.S. absenting himself without leave,

in that he,

at billets, "In the Field" absented himself without leave from 2359 hours 9 Oct. 41 until apprehended at 1715 hrs. 8 Nov. 41.

(H.D. Graham) Lieut.-Col.,
Commanding,
The Hastings and Prince Edward Regiment,
C.A.(A.F.)

"In the Field",
7th. November, 1941.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(H.F.L. Keller) Brigadier
Comd. 2 Can Inf Bde

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD ON THE DAY OF 1941

Trial of No. C5426 Pte Davrick L

Prosecutor Maj Ketchison TS

Defending Officer Lieut MacDonald D

Officers under instruction nil

1. The order convening the Court is read in the presence of the accused.

The accused is asked the following question:-

"Do you object to be tried by the President, or any Members of the Court whose names you have heard read over?"

Answer:- no

3. The President, Members, Judge Advocate, Officers under Instruction, Shorthand Writer and Interpreter are duly sworn.

4. (a) The accused answers his name and number and is duly arraigned on the charges.

(b) The accused having pleaded guilty to the 3 charge(s), R.r. 35(B) is complied with.

5. The accused is asked the question at the foot of Page 2 of A.F.A. 3 and his answer is recorded beneath the question.

6. The Prosecutor makes (no) (~~the following~~) opening address.

DEFENCE

The accused is informed of his rights in accordance with R.P. 40(a) and Note 2 on page 644 of the Manual of Military Law, 1929 edition.

The accused is asked the following questions:-

Q.1 Do you wish to give evidence as a witness?

A.1 no

Q.2 Do you intend to call any other witnesses on your behalf?

A.2 no

Q.3 Are they witnesses as to character only?

A.3 ——

See R.P. 41

After Finding.

is sworn and states:-

"I produce a certified copy of A.F.N. 122 relating to the accused. (The said copy is marked signed by the President, and attached to the proceedings.)

Question to the accused

"Do you wish to address the Court, or to call evidence as to character?"

Answer:- no

The (accused) (Defending Officer) makes the following plea in mitigation of sentence:-

My ex

R R Clement Major

Summary of Evidence in the case of C.5428 Pte. Daverick, C. "A" Coy., The Hastings and Prince Edward Regiment, C.A.(A.F.)

For charge 1st. Witness. C.4402 Cpl. McCaw, R.J. "A" Coy., Hast. & P.E.R. having been duly sworn, states:-

I am the Orderly Room Cpl.
On the 9th. Oct. 41 Pte. Daverick applied for a midnight pass which was granted. I made the pass out and it was given to Pte. Daverick. The morning of 10 Oct. 41 at approximately 0815 hrs. Pte. Daverick was reported A.W.L. and on checking with the Guard Commander I found that he had not turned his pass in. I reported his absence to Bn. Orderly Room on my daily absentee report as of 2359 hrs. 9 Oct. 41. He was shown A.W.L. on all daily absentee reports each day for a period of 21 days when I was then informed by Bn. Orderly Room that Pte. Daverick was S.O.S. The first indication I had of Pte. Daverick's return was when his charge sheet was sent to our Coy. Orderly Room on 5 Nov. 41.

The accused declines to cross-examine the witness.

R.J. McCaw
.....
Cpl. McCaw, R.J. "A" Coy.

Summary of Evidence in the case of C.5428 Pte. Daverick, C. "A" Coy., The Hastings and Prince Edward Regiment, C.A.(A.F.)

Sgt. charge
2nd. Witness.

C.4141 Sgt. Corfield, F.P. "A" Coy., Hast. & P.E.R. having been duly sworn, states:-

I am a Pl. Sgt. "A" Coy. No. 9 Pln.
Sir, on the day of 9th. Oct. 41 I was notified that Pte. Daverick had been issued with a mid-night pass expiring at 2359 hrs. I called the roll at 0800 hrs. on the 10 Oct. 41 and Pte. Daverick was A.W.L. - Sir.

Q.1 How did you know that Daverick was back with his Unit?

A.1 I didn't know until the Orderly Room Clerk notified me that Pte. Daverick was over at Bn. H.Q.

The accused declines to further cross-examine the witness.

F. P. Corfield
(Sgt. Corfield) "A" Coy.

The accused having been duly warned in accordance with rule of procedure 4 (E) reserves his defence.

Certified that rule of procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Taken down by me in the presence of and hearing of the accused this 7th. day of November 1941 at, "In the Field".

W.W. Exley, Capt

(W.W. Exley, Capt.,
Adjutant,
The Hastings & Prince Edward Regiment,
C.A.(A.F.)

STATEMENT OF WITNESS

NAME :- Douglas L. BRAZIER.

ADDRESS :- Reigate Borough Police.

OCCUPATION :- Police Constable No.40.

STATES :-

"At 4.30 am on Saturday the 25th of October 1941 I was on duty in West Street, Reigate, when I was approached by a pedal cyclist Mr Maurice Harris, of 12 Kiln Lane, Brockham, a cleaner at the L.P.T.B. Garage, Reigate.

In consequence of what he told me I borrowed his cycle and after communicating with Reigate Police Station from the Black Horse telephone kioskI proceeded with all possible speed to the Buckland Cafe.

On arrival I found that the Cafe door had been forced.

I entered and searched the building and on the floor found a Policeman's helmet.

On a chair just inside the door I found an Army Forage cap bearing a Hastings and Prince Edward Regiment of Canada badge and inside the cap was the number C.5290.

At this stage Sergeant Patrick and Special Constable Vreglown arrived and together we further examined the premises.

Behind the door I found half a brick and a gents leather fur lined glove.

I handed all the articles which I had found to Sergeant Patrick who took them to the Buckland Police Office.

After the sergeant left I further examined the vicinity and outside the Cafe door I found a piece of iron 9 inches in length and 2 inches in width which exactly fitted the marks on the door.

I remained in the vicinity and kept observation on the premises until the arrival of Sergeant Tuggey of the County Police and conferred with him before leaving".

Signed :- Douglas L.Brazier P.C.40.

FREDERICK HARRIMAN, Police Constable No.140.
Surrey Constabulary,
REIGH.

States:-

"At 4.15.a.m. on Saturday the 25th Oct., 1941, I was on duty at Reigate Road, Buckland, and when about 50 yards from "Jack's Snack Bar" I heard a door crash in the direction of the snack bar. I immediately went there and saw an electric torch being used inside the snack bar. I found the door had been forced open and inside the snack bar I saw two soldiers standing in front of the counter. I said to them, "What are you doing in here", and at the same time switched on my electric lamp and observed that both soldiers belonged to the Hastings and Prince Edward Regiment. One of them, who I now know as Bale, said, "We just walked in". I said, "You have broken in". He said, "No", the door was open." I said to them; "You belong to the Hastings and Prince Edward Regiment, where do you come from". The soldier, who I now know as Daverick, said, "Just up the road". I said, "You will have to come with me". Bale then rushed at me, grabbed me by the neck and pushed the piece of iron produced into my stomach. Daverick started to punch the side of my head. I struggled with them and worked towards the door. I had my truncheon drawn and struck Bale across the head, which caused his hat to fall off. We eventually got out of the cafe door and they both pushed me over on to a table which was standing outside the snack bar. They tore my cape off and continued to punch me about the body. I shouted for help and they both ran off in the direction of Reigate, throwing the piece of iron (produced) at me as they went.".

"I obtained assistance and an immediate search was made for the two men, but without successful result. As a result of my injuries I was unfit for duty for two days."

"At 3.p.m. on the 6th Nov., 1941, I attended an identification parade at "Ravenleigh", Betchworth, which was conducted by Provost Sergt. Cornish, where I identified Ptes. Bale and Daverick as the two men who assaulted me at the snack bar previously referred to."

Frederick Harriman No.140.

CECIL HERBERT TUDGAY, Sergt.No.4,
SURREY CONSTABULARY,
BUCKLAND.

D/States:-

"At 4.40a.m. on the 25th Oct.,1941, I received a report from P.C.Haseman that he had been assaulted by two soldiers of the Hastings and Prince Edward Regiment, who he had found in Jack's Snack Bar, Buckland, at 4.15.a.m. that morning. He was in a distressed condition and his face bore marks of recent blows."

"I immediately went to the snack bar and found entrance had been effected by forcing the door with some instrument and the marks were identical with the piece of iron produced which I found outside the snack bar."

"As the result of an Army cap, bearing No.C6290, and Hastings and Prince Edward Regimental badge, I made enquiries with the Regimental Police at local units and ascertained that the hat was the property of Pte.Howard Harold Hale,"A" Company, Morden Grange, Hetchworth. I later ascertained that he had been absent from his unit for the past 16 days with Pte. C.Deverick."

"The description furnished of the two wanted men was identical with that of Hale and Deverick."

"On the evening of the 4th Nov.,1941, I interviewed Pte. Hale, who was then under close arrest at Battalion Headquarters.I told him the nature of my enquiries and he strongly denied all knowledge of the matter. He was then in possession of the Army cap produced, which he first stated was issued to him about a month ago, but later he said it was issued to him about 18 months ago when he was at Aldershot."

"On the afternoon of the 5th Nov.,1941, I interviewed Pte. Deverick at Buckland. I acquainted him with the nature of my enquiries and whilst he admitted he had been in the company of Hale during the whole time he had been absent from his regiment, he denied all knowledge of the matter in question."

C.H. Tudgay P.S No 4

JOHN LEONARD,
10,Reigate Heath,
REIGATE.

Cafe Proprietor.

States:-

"I am the owner of "Jack's Snack Bar, at Buckland Sand pits, Reigate Road,Buckland."

"At 5.45.p.m. on Friday the 24th Oct., 1941. I swept up the cafe and left about 6.p.m.All windows were secure and the door properly locked. There was no article whatever of soldier's clothing when I left the cafe at 6.p.m."

"I was called to the cafe by the Police at 8.a.m on the 25th Oct.,1941, and upon making an examination I found the place had been entered by forcing the door,xxxx the lock having been damaged. There was nothing whatever stolen from the cafe".

sgd. John Leonard.

Statement taken by Sergt.Cecil H.Tadgey on 25.10.41.

LIST OF WITNESSES FOR PROSECUTION

C.4141 Sgt. Corfield, F.P. Hast. & P.E.R.
C.4402 Cpl. McCaw, R.J. Hast. & P.E.R.

Frederick Haseman, Police Constable No. 140
Surrey Constabulary,
Leigh.

Douglas L. Brasier, Police Constable No. 40.
Reigate Borough Police.

Cecil Herbert Tudgay, Sgt. No. 4
Surrey Constabulary, Buckland.

John Leonard - 10 Reigate Heath, Reigate.
(Jacks' Snack Bar Proprietor)

C & M S. Morden. Nay

LIST OF WITNESSES FOR DEFENCE.

STATEMENT IN ACCORDANCE WITH R. OF P. 14 (b)

I, C.5428 Pte. Daverick, C. desire to have an officer assigned to represent me at my trial by Court Martial, and desire the services of ~~Lieut. [illegible]~~ Lieut Mac Donald if he is available.

7 Nov. 1941.

C. Daverick
Pte. Daverick
The Hastings & Prince Edward Regiment,
C.A.(A.F.)

Army Form B 120.

REGIMENTAL CONDUCT SHEET.

Army Number C5428
Surname Daverick
Christian Names C.
Attested 8 Mar 19 40

Corps Hast & PE Regt

Number of sheets (in words)

Signature of C.O. or Adjutant

Place	Date of Offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award, or of order dispensing with trial	By whom	Remarks
Borden	17/8/40	Pte		WOAS. AWL. from 0800 hrs 17/8/40 until 2130 hrs 19/8/40	Sgt Warwick	168 hrs. detn.	19/8/40		Forfeits 3 days Pay.
In the Field	30/11/40	Pte		WOAS - AWL. from 2230 hrs. 30/11/40 until 1300 hrs. 3/12/40	L/Cpl. Hewton L/Cpl Lloyd	14 days C.B.	3/12/40	Capt. Fenton	Forfeits 3 days Pay.
In the Field	4/12/40	Pte		WOAS - Charged with being in possession of goods not belonging to him	Sgt Potts	96 hrs detn	4/12/40	Capt Fenton	Forfeits 4 days Pay.
In the Field	26/12/40	Pte		WOAS - AWL. from his quarters while on CB	Sgt Clarke	168 hrs. detn.	26/12/40	Capt Fenton	Forfeits 7 days Pay
In the Field	2/1/41	Pte		WOAS - Charged with being in improper possession of a W.D. Vehicle	Lieut Allison	7 days F.P. Forfeits 7 days Pay.	2/1/41	Maj Sutcliffe	Forfeits 7 days Pay
In the Field	14/2/41	Pte		WOAS - AWL. from 1300 hrs until 1200 hrs 17/2/41	Cpl Pearson	7 days C.B. 3 days Pay	24/2/41	Maj Sutcliffe	Forfeits 3 days Pay.

To be carried over

Place	Date of Offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award, or of order dispensing with trial	By whom	Remarks
the Field	9/6/41	Pte		WOAS - A.W.L. from 2359 hrs 9/6/41 until 0300 hrs 22/6/41	Sgt. Potts	28 days F.P.	27/6/41	Lt-Col. Graham	Forfeits 46 days Pay
the Field	30/7/41	Pte		WOAS - A.W.L. from 1630 hrs. 30/7/41 until 1310 hrs 4/8/41	L/Sgt Anderson	28 days F.P.	9/8/41	Lt-Col. Graham	Forfeits 37 days Pay.
~~the Field~~	~~[illegible]~~	~~Pte~~		~~WOAS - A.W.L. from 1630 hrs 31/7/41 until~~					

Certified true copy

W.W. Ezley, Capt
ADJUTANT
THE [illegible]

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Seventh day of November 1941

W. W. Eddy, Capt.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

C.5428 Pte. Daverick, C.
~~[illegible]~~ of the Hastings & Prince Edward Regiment.

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, K.R., 1935

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.W.L.	six	times	seven	times
For An offence under A.A. Section 40	Once	times	Once	times
For An offence under A.A. Sec. 40.	Once	times	Once	times
For		times		times

~~Number of instances of gallantry or distinguished conduct.~~

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

or,

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~
~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges

for No days in Civil Custody,

and Three days in Military Custody.

Total Three days.

Of which No days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 20 yrs. 9 months 7 days

6. The date of his ~~[illegible]~~ attestation specified in his record of service ~~attestation paper~~ is 8 Mar. 40.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 20 months

8. The accused is entitled to deferred pay or gratuity in respect of 1 yrs & 8 months years' service.

9. The accused is entitled to reckon 1 yr 8 months. years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

]

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

~~12. (If the case of an officer.) The accused holds in the army the rank of [illegible] dated [illegible] and in his regiment (or corps [illegible]) the rank of [illegible] dated [illegible]~~

~~13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

KK-118
SPR DAVEY C.K.

KK-118

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Fourth day of August, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Division, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ E. Lee

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*[I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~ E. Lee B

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~

*Omit if not applicable.

Capt. W.M.W. Shaw, ADJA, 2 Cdn Div is hereby appointed Judge Advocate

W.M.W. Shaw Capt

R.M. Campbell Major

President.

Rank.	Name.	Regiment.
Major	R.M. Campbell	Cams of Can.

Members.

Rank.	Name.	Regiment.
Capt or Lieut to be detailed by O.C., S Sask R		S Sask R
Capt or Lieut to be detailed by O.C., Fus M R		Fus M R
~~Waiting Member~~		
Capt or Lieut to be detailed by O.C., Fus M R		Fus M R

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed E. Lee Burns (E.L.M. Burns) Major-General

Commanding 2 Cdn Div.

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Proceedings Reviewed

E.K. McDougall, Capt

7 Sep 43

ELECTS TRIAL BY COURT MARTIAL

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F91676, Spr Charles Kenneth Davey, 2 Cdn Fd Coy, R.C.E.,	First charge Sec 15(1), Army Act	not guilty	not guilty	Confirm, but remit 13 days' E.L.M. FP and 13 days' forfeiture of pay. E.L.M. Burns
	Second charge Sec 15(1), Army Act	not guilty	guilty	
	(See charge sheet attached)		To undergo F.P. for 27 days and to forfeit 27 days pay. 5 Aug 43. R.M. Campbell Major	Maj-Gen Comd 2 Cdn Div 6 AUG 1943

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary):—

(Signed) E.L.M. Burns (E.L.M. Burns) Major-General Commanding 2 Cdn Div. (Signed) R.M. Campbell Major President Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of Aug 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

Signed this 5 day of Aug 1943.

R.M. Campbell Major
President of the Court Martial.

W.M.W. Shaw Capt

* Omit if not applicable.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

* See footnote (b) on page 742 M.M.L.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ E.L.M. B

Signed this 6th day of August 1943.

E.L.M. Burns
Confirming Officer.

Maj-Gen Comd 2 Cdn Div 6 AUG 1943

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of F91676 Spr Davey, C.H.

(a) (Dated) 7th August, 1943 (Signed) [signature] Captain for Major Commanding 2 Fd. Coy., R. C. E.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

ELECTE TRIAL

CHARGE SHEET

The accused No. F91676 Spr. Charles Kenneth Davey, of the 2 Cdn. Field Coy., Royal Canadian Engineers, a soldier of the Canadian Army is charged with:-

First Charge:- Sec. 15(1) A.A.

Absenting himself without leave, in that he, in the Field at 1430 hrs on the 22 July 43 was not at his vehicle after being ordered to attend by L/Cpl. Virtue, R.W.

Second Charge:- Sec. 15 (1) A.A.

Absenting himself without leave, in that he in the Field, while under open arrest, absented himself without leave from Tattoo at 1300 hrs. 25 July 43 until Reveille at 0600 hrs 26 July 43.

In the Field
2 Aug. 43

Scott Grimmer
Officer Commanding
2 Cdn. Field Coy. R.C.E.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
4 Aug 43

E L M Burns
(E.L.M.Burns)Major-General
Comdg, 2 Cdn Div.

B2
R W Campbell
Major

5 Aug 43

Certified that I have to-day examined F91676 Spr. Davey, C.K., 2 Cdn. Fd. Coy. R.C.E., and find him to be medically fit to attend trial by Court Martial

W Burrow Capt.
RCAMC Capt.

R W Campbell
Major

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Gen Court-Martial held at In the field on the 5 day of Aug 1943 by order of Maj Gen E L M Burns

Commanding 2 Cdn Div

dated the 4 day of Aug 1943

President.

Major R M Campbell Cams of C

Members.

Capt J. A. Berthiaume, Fus M R

Lieut J. A. Racine, Fus M R.

Capt W M W Shaw, ADJA, 2 Cdn Div

Judge Advocate.

Trial of* F91676 Dfr Charles Kenneth Davey, 2 Cdn Fd Coy RCE

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

WMWS

The Court satisfy themselves that member from SSR is not available to serve owing to absence, Lieut J A Racine

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt H T Ramsden, 2 Cdn Fd Coy RCE

WMWS ~~[illegible]~~ defending officer† Lt V. A. Moore, 2 Cdn Fd Coy RCE

At 1150 o'clock the Trial commences.

The order convening the Court is read, and is marked "X" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No, Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members and judge-advocate are duly sworn

The following officers under instruction are duly sworn.

Lt M. Gravel, Fus MR.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you which you have heard read? *Question to the accused.*

Not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty *Answer.*

WMWS ~~Are you guilty or not guilty of the third charge against you, which you have heard read~~? *Question.*

Answer.

WMWS ~~Are you guilty or not guilty of the fourth charge against you, which you have heard read~~? *Question.*

Answer.

WMWS ~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 85 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty.

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? Yes, Sir. – I have some witnesses as to facts whose attendance could not be obtained this morning.

Answer. Of the states was only issued at 1 a.m. this morning & I had no opportunity to interview witnesses for defence.
Court adjourn & re-assemble at 1730 hrs, present same members as on adjournment.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

WMills

The prosecutor proceeds to call witnesses.

First witness for prosecution. C 33312 Pte Virtue, R.W., 2 Cdn Fd Coy RCE.

being duly sworn, is examined by the prosecutor.

On 22 Jul 43 I found Spr Davey, the accd, in his hut & told him to report back to his vehicle & carry on with his maintenance, which he did. This was at 1430 hrs. On 1330 hrs his parade on 22 Jul there was a skin inspection in one of the huts, it was not in Davey's own hut. Sgt Ruffell gave me order in presence of accd that MT section would carry on with maintenance of vehs after skin inspection. I gave the order to MT at 1410 hrs & Spr Davey was present.

WMills

On 24 Jul I reported this occurrence to Sgt Ruffell.

Cross-exam There was a kit inspection this day. Spr Davey was sitting at the table & kit laying out on bed. On morning parade had been told there was a kit inspection but kit had not been inspected up to 1430 hrs.

Re-exam none

Court – Sgt Ruffell gave order on morning parade for kit inspection. MT sec were standing to their kits all morning – some of their kits but not all had been inspected in the morning. MT sec fell in at 1330 hrs & were on skin inspection until 1410 hrs when I gave order. No further orders were given about kit inspection after morning parade. Order was for whole section to lay out their kits & stand by their beds & wait for kit inspection. After skin inspection I told all MT to break off & carry on with the maintenance of their vehicles. Have no reason for not reporting this until 24th – did not consider it very important –
Just normal kit lay out, that is, everything he possessed was laid out on his bed & was to be inspected by an officer. No order or understanding when kit would be taken up or packed away.

2nd Wit Pros] B25370 Sgt Ruffell, L.C., 2 Cdn Fd Coy, RCE, duly sworn, states:-
On 24 Jul @ 1100 hrs placed Spr Davey under open arrest.
On 22 Jul at 0830 hrs 2 gave orders for kit inspection + told personnel to stand by their bed after laying out their kit.
On 1330 parade gave orders to L/Cpl Virtue that at 1500 after skin inspection would continue with their duties maintaining their vehicles & when kit was to be inspected they would be called in from their duties individually.
Cross-exam. Was a room orderly for 4 huts + his job to watch the 4 huts. Whole coy on skin inspection so nothing should have been stolen.
Re-exam - Normal procedure to have only 1 orderly for 4 huts + they contained about same equipment as every other day.
Court. 2 gave order to L/Cpl Virtue at 1330 hrs - did not instruct whole parade just L/Cpl Virtue. Was not present when he passed the order on. During morning all men were standing by their beds in accordance with orders.
Usual order to do maintenance is carry on with maintenance should not confuse this order as meaning that would carry on with maintenance after kit inspected + packed away. Is not know whether Cpl Virtue told men that they would be called in individually when kit was to be inspected.

3rd Wit Pros] B25747 Cpl Koen, H, 2nd Cdn Fd Coy RCE, duly sworn, states:-
On 25 July 43 2 was hut orderly - at 2300 hrs 2 took tattoo report. Spr Davey, CK, the accused, was absent. 2 marked him absent on tattoo report. 2 took no further action to search for him. At 0600 hrs next morning 2 found Spr Davey in his bed. He did not report to me during the night.
2 go thru hut to bedsen taking tattoo - they are supposed to be in bed at 2300 hrs.
Cross-exam. Tattoo is rigidly enforced. - Tattoo reports have been taken early but the men were all in. If man not in 2 told tattoo until 2300 hrs. 2 told it this night. 2 enquired from men in the hut. If man outside walking around would be absent - lights put out at 2300 hrs. Do not let men come in late unless they are marked absent.
Re-exam - none
Court. Orders are that tattoo will be taken at 2300 hrs + this is generally known. If man not present 2 just make enquiries from other men but do not go out looking for him. If man not present at tattoo it is generally understood + published in Pt I orders that he is absent + it is generally understood that a man absent must report to guard room or hut Cpl.

D

The prosecution is closed.

R.F. 40 complied with.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No, Sir.

Question. Do you intend to call any other witness in your defence?

Answer. Yes.

Question. Is he a witness as to character only? *Answer.* No

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says† No, Sir.

~~[hands in a written address which is read, marked~~

WMWS - ~~signed by the President and attached to the proceedings.]~~

1st Wit Defence] B94834 Spr Johnson, W. G., 2 Cdn Fd Coy RCE
duly sworn, states:-
If a man absent from tattoo for ½ to 1 hr NCO does not usually mark him AWH.
Saw Spr Davey in camp at approx 0020 hrs 26 Jul
2 was going to bathroom & he was going toward his hut. Have not been marked absent on tattoo although late quite a few times
Cross-exam. Was first asked to appear this afternoon
Remember because heard next morning that he was AWH. Am not in same hut. Can't say whether

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

Cpl Keen is one of the NCO's who lets men come in late for tattoo.

Re-exam. none

Court. Are supposed to be in at tattoo but if out the Cpl generally covers up + fixes it up before morning. Orders are that everyone will be in bed at tattoo at 2300 hrs - Orderly offr makes a spot check. Know that if found out will be considered awk.

Am in NT sec. Was on parades in morning + afternoon of 22 Jul. Cpl Kintue did not give us any orders they were given by sec Sgt. We stood to our kits all morning & no order was given in the afternoon differing from this.

Two huts hadn't been inspected in the morning, ours was one - all men in our hut whose kit hadn't been inspected stood to their kits in the afternoon until inspected

No orders or instructions given at 1330 hrs parade as to what was to be done that afternoon we were marched to MO for skin inspection by NCO sections + as I came out of inspection room the sec Sgt told me to go back to my hut + have my kit ready.

When saw accd Sun nite I said "just coming in?" + he said something I didn't catch. He had on a white shirt + pants, no hat. He was just going to open the door when I saw him.

If awk are supposed to report to gd comdr, orderly room or your Cpl

Defence closed

Prosecutor - no closing address

Def offr - no "

E

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

WMWS ~~Finding~~.*

WMWS ~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

*When the Court is already open this sentence will be struck out. Evidence, character, &c.

Proceedings on Conviction *before Sentence.*

WMWS ~~The Court being re-opened, the accused is again brought before~~ it.

Prosecutor is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness* MFB 358 + MFM 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked H + I signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer* yes

Instruction.—If by reason of the nature of the service of the accused in a departmental service otherwise, the finding of the Court retains less liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must require into the nature and amount of that additional punishment.]

NOT Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* no.

The Court is closed for the consideration of the sentence.

WMWS Shaw Capt
Judge Advocate

R M Campbell Major
President

Summary of Evidence in the Case of No F 91676 Spr. CHARLES KENNETH DAVEY of the 2 Cdn. Fd Coy. Royal Canadian Engineers a soldier of the Cdn Army Overseas.

The O.C. directs that the evidence be taken on oath.

First Witness for the Prosecution:-

C. 33312 L/Cpl VIRTUE, R.W. 2 Cdn Fd. Coy. R.C.E having been duly sworn states:-

I C 33312 L/Cpl VIRTUE, R.W at PETWORTH CAMP No on 22 July 43 at 1430 hrs found Spr DAVEY, C.K. whom I now recognize, in his hut and told him to report back to his vehicle and carry on with its maintenance which he did. At 1330 hrs on the 22 July, the afternoon parade at which Spr DAVEY C.K. was present there was a SKIN inspection in one of H.Qs huts, it was not in Spr DAVEYS, C.K. own hut. Sgt RUFFELL, L.C. gave me the order that as soon as the skin inspection was over the M.T. section of which Spr DAVEY C.K. is a member, were go to their vehicles and carry on maintenance and I gave this order to the M.T. section after the skin inspection which was over at about 1410 hrs and Spr DAVEY, C.K. was present. At about 1000 hrs 24 Jul 43 I reported I had found Spr Davey CK in his hut while he was detailed to be doing maintenance on his vehicle.

Cross examined by the accused

~~Q.1. When was our hut to have a kit inspection~~ Hold

~~A.1. They were told nothing about kit inspection on the 1330 hr parade~~

Q.1. When did our hut have its kit inspection, in the forenoon or in the afternoon

A.1. I was told in the morning at the 0830 hr parade that there was to be a kit inspection but nothing was said at 1330 hr parade about kit inspection.

R.W. Virtue L/Cpl.

Second Witness for the Prosecution

B25370 Sgt RUFFELL, L.C 2 Cdn Fd Coy. R.C.E. having been duly sworn states—

I B25370 Sgt RUFFELL, L.C. 2 Cdn Fd. Coy. R.C.E. Pl Sgt of No 2 Pl at PETWORTH CAMP No 1 on 24 Jul 43 at about 1100 hrs, placed Spr DAVEY, C.K. whom I now recognise under open arrest as a result of a report to me on Spr DAVEY, C.K. by L/Cpl VIRTUE, R.W. On 22 July 0830 hrs I gave orders to No 2 Pl. and Spr DAVEY, C.K. was present that all men would lay out their kits and stand by their beds in their huts in preparation for a kit inspection. This was carried out in the morning. About 1330 hrs I instructed L/Cpl VIRTUE, R.W. that after this inspection the M.T. sect would carry on with maintenance of their vehicles, ~~When a kit [illegible] still kits to be examined in the afternoon~~ and when a kit belonging to a M.T. personnel was to be inspected he was to be called in from maintenance work on his vehicle

The accused declines to cross-examine the witness

L Ruffell Sgt

Third Witness for the Prosecution:

B75447 Cpl KOEN, H. 2/4th Fd Coy RCE. having been duly sworn states:-
I, B75447 Cpl KOEN, H. at PETWORTH CAMP No 1 on Sunday 25 Jul 43 as Unit Cpl I at 2300 hrs I made out the TATTOO Report and found Spr DAVEY, C.K. whom I now recognise, was absent. I marked him absent on the TATTOO report. At 0600 hrs 26 July 43 I found Spr DAVEY, C.K. in his bed. He had not reported to me during the night.
The accused declines to cross-examine the witness

H Koen Cpl.

The accused having been duly cautioned in accordance with R.P. 41(2) says
"I want to make a statement"
"I, F41676 Spr DAVEY, C.K. understood that when a kit inspection was being held and your equipment was laid out on your bed that you are supposed to stay there and look after it.

C.K. Davey

The accused does not wish to call witnesses in his defence at this point.

Certified that R.P. 4 complied with

In the Field
2 Aug 43

H Ramsden Lieut RCE
Officer detailed to take the Summary

Old sheet destroyed and revised in accordance with C.A.R.O. 2084 10 Nov 42

No. F91676 Name Davey, C.K. Sqn., Battery, or Company Corps Date of enlistment 9 Mar 40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1215-20) H.Q. 1772-59-1662

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. ?? ????? Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Oxshot	30 Dec 40	Spr		A.A. Sec. 15(1) AWL 15 days 13 hrs 51 minutes	L/Sgt Hughes Sgt Pelowski	14 days F.P.	15 Jan 41	Capt Christian	Forf 16 days pay.
Cove	8 Aug 41	Spr		A.A. Pass not stamped by RTO	Doc	3 days CB	25 Aug 41	EW. Hensel[illegible], Lt.	
Cove	19 Sept 41	Spr		A.A. Sec. 40 broken dishes value of 2 s 5½d	Sgt Simcox Cpl. White	To pay for dishes 2s. 5½d	24 Sep 41	Major Southern	
Cove	11 Oct 41	Spr.		A.A. 15(1) AWL 1day 6 hrs	Cpl. White	14 days CB	13 Oct 41	Lt-Col. Barnes	Forf 2 days pay
Cove	16 Oct 41	Spr		A.A. 40 Failing to report on defaulters	Cpl. White	168 hrs Detn	16 Oct 41	Lt-Col Barnes	Forf 2 days pay
Cove	31 Oct 41	Spr		A.A. 15(2) Absent from appointment with M.O.	Sgt Spratt	14 days Detn	5 Nov 41	Lt-Col Barnes	Forfs 3 days pay
Cove				A.A. 15(1) AWL 2 days 2 hours	DOC				

(P.T.O.)

L Rev Campbell Maps

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Cove 26	Dec 41	Spr		A.A. Sec.15(1) AWL 9 hrs 26 mins	L/C. Bechwarth	7 days GB	20 Dec 41	Lt-Col. Barnes	Forfs 1 days pay
Cove 16	Jan 42	Spr		A.A.15(1) AWL 19 days 14 hrs 30 mins	Doc	27 days detn	7 Feb 42	Lt-Col Barnes	Forfs 20 days pay
Field 13	Jan 42	Spr		Civil offence, stealing money to the value of £12.5.0 belonging to Martha Anne Dye, Camberly		Three months imprisonment with hard labour	19 Feb 42	Civil Court	Forfs 98 days pay FRI.149.1(b) Auth part 11 #24 d/24 Feb 42
Field 12	Jul 42	Spr		Sec.15(1) AA AWL from 0600 hrs 8 Jul 42 till 1330 hrs 13 Jul (absent 1 day 7 hrs 30 mins)	Sgt R. Levesque Spr Hall	Forfs 2 days pay under FRAI 149.2	23 Jul 42	S.W. Archibald Lt/Col	Forfs 2 days pay under FRAI.
Field 27	Oct 42	Spr		A.A. 24(1) Selling his Regt issue (clothing)	Lt. J.A. Carran	28 days F.P.	3 Nov 42	Lt-Col S. Thompson	Cost of replacement. Forf 25 days pay FRAI
Field 10	Apr 43	Spr		A.W.L. from 1200 hrs 10 Apr 43 until 0830 hrs 12 Apr 43 A.A. Sec 15(1)	CSM. Porter, CSM. Brown Sgt. Ruffell	8 days C.M.	12 Apr 43	[illegible]	Forf 2 days pay FRI.

Certified to be Copy [illegible]

for C.C. & Cdn. Fd. Cov. R.C.E.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
P91676	Sapper	Davey, C.K.	2 Cdn. Fd. Coy. R.C.E.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.W.L., Sec. 15(1)	1 times	AWL. Sec 15(1)	7 times
For	A.A. Sec. 24(1) Selling	times	A.A. Sec. 11	1 times
For	reg't issue clothing	1 times	A.A. Sec. 40	2 times
For		times	A.A. Sec. 24(1)	1 times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement. (1)

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 6 days in Air Force military custody, making a total of 6 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 31 years
attestation paper is 31 years

6. The date of his commission specified in his record of service is ~~[illegible]~~ 9 Mar 40
attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward. N/A
military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the Air Force regimental rank of N/A

"H"

R.W. Campbell
Major.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force

N/A unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number P91676 Rank Spr Name Davey, C.K. of 2 Cdn. Fd. Coy. R.C.E. Unit Air Force Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Civil Court	19 Feb 42 Field	Civil offence of stealing money to the value of £13-5-0 belonging to Martha Anne Dye, Camberly	Three months imprisonment with hard labour	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of Aug 42

C.O. Capt.

The above statement (with the schedule of convictions and cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

2 Can Fd Coy RCE
2 Aug 43

I desire the services of Lieut Moore of the 2 Fd Coy. if he is available.

Lieut Moore will be available

Captain,
for Major Commanding
2 Fd. Coy., R. C. E

C K Davey

F9167 Sgt Davey C.K.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-139111 Cpl DAVEY, F.F.C. - 3 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on ~~(date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be severely reprimanded.

(Sgd) ..... Judge-Advocate, if any.

25 JAN 46 Date awarded.

(Sgd) C.E. Woodrow Lt Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be obtained before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be sent committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

Date 28 Jan 46 (Sgd) W.T. Ibbott Col

T/Commanding B Gp CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused B-139111 Cpl DAVEY F.F.C. Date 30 Jan 46 Signature of Offr. H.E. Woodrow Lt Col ROE

Published in DO 17 d/5 Feb 46.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 168 5/-624

RECEIVED 13 FEB 1946 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA98 (In lieu of AFA81) 40/F & S/1698 (6144) 4/388

Convened by Order of COL W.T. IBBOTT MM ED T/Comd "B" GP, CRU dated 22 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B-139111	Cpl	Frances Frederick Charles	DAVEY	3 Cdn Repat Dep

PROCEEDINGS REVIEWED 13 Feb 46 AJB Brady maj

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 25 Jan 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1150 hours trial commences.

A4. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans .....

~~The Interpreter is sworn.~~(1) Do you object to MAJOR A/Sgt RUMSEY RA as shorthand writer? Ans NO - I.I.R.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO - I.I.R.(2)

(1. RP 112. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	C.E. WOODROW OBE ED	HQ CRU
Member	Captain	J.L. HACHEY	1 Cdn Adm Tpt Coy
Member	Lieutenant	J.R. WALDRON	1 Cdn Sub Wksp
Judge-Advocate			
Prosecutor	Lieut.	D.R. PILKEY.	3 C REP DEP
Defending Offr	CAPT	J. KIRK.	3 C REP DEP

Questions by President: Is the Prosecutor a lawyer? Ans N.I. Is the Defending Offr a lawyer? Ans N.I.(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)

(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment makes(s) (no) (at) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) ~~severally~~ arraigned ~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes. 3. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(1) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~—
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement ur evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, 112.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, *117*(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*E*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*). *RP* 45, *120*(*A*). 2. *AA* 54(3), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR. - CALL EVIDENCE SIR ~~EVIDENCE CERTIFICATE~~
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *B* and Ex *C* respectively.(3)
(1. *MML p* 355 *or MFB* 286. 2. *MML* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. PLEA IN MITIGATION ATTACHED (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *Where several accused tried separately see RP* 71 (2). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 142, *RP* 46-50, 69, 108, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas AO* 209, 2323, *MML p* 60, 757-759. *As to sentences consigned for civil offences to the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 46(1), *KR Can* 564. 2. *RP* 50. *As to remove from sunset by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

ab

CHARGE SHEET

The accused, B-139111 Cpl Frances Frederick Charles DAVEY, Canadian Infantry Corps, on strength of No2 Wing, No 3 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
AA Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, at Seymour Place London, at about 1820 hours, 10 January 1946, was found to be in improper possession of a .38 calibre Smith and Wesson Service pistol, barrel number 730289 and frame number 647732, same being public property.

(K.G. McCULLAGH) Lieut-Col
Commanding
No 3 Cdn Repat Depot
Canadian Army (Overseas)

In the Field
19 Jan 46

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(W.T. Ibbott) Col
T/Comd "B" Gp
Cdn Repat Units

In the Field
22 Jan 46

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-139111	Cpl		Frances Frederick Charles	DAVEY	3 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 22 Jan 46 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	C.E. WOODROW OBE ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by CO	1 Cdn Adm Tpt Coy
Lieutenant	to be detailed by CO	1 Cdn Sub Wksp

~~WAITING MEMBER.~~ W.T.I.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~ W.T.I.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

W.T. Ibbott

(W.T. IBBOTT) (Signed personally. RP 105 fn 2.)

COL (Rank.)

Dat 22 Jan 46

T/Commanding "B" GP, CDN REPAT UNITS
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) 40/P & R/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. B139111 Cpl. Davey F.F.

of #3 Cdn. Repat. Depot. #2 Wing: and in my opinion he

is fit to undergo Trial by Court Martial.

Station Field

Date 25.1.46

F.D. Rugg Capt.
Medical Officer.

IN THE CASE OF

R.139111 Cpl DAVEY FFC --- 3 CDN REPAT DEPOT

CHARACTER WITNESS

Capt. W.L. STIRLING, 3 CDN REPAT DEPOT, sworn, states:-

Sir, I am Capt. W.L. Stirling now on transient strength of 3 Wing, 3 Cdn Repat Depot. I have known the accused over a period of 6 months, during that time he was employed at the supply depot of the Educational services on the continent and attached to 23 Educational Section of which I was the Admin officer. At all times I found the accused to be an efficient soldier and he was promoted to the rank of Cpl and confirmed in that rank from Pte and recommended for the promotion to Acting Sgt and the fact that the unit was disbanding alone stopped the granting of Sgts stripes. I have always found the accused to be a soldier of exemplary conduct. When he came to the section there was no entries on his NPM 6 and he never came before the C.O. on any charge whatever. Furthermore I would like to point out that I always found Cpl Davey to be a trustworthy soldier, in addition to his normal duties he slept in the supply depot, he had the key to the warehouse at all times, in that depot were stored the supplies and equipment including typewriters and other office machinery and other equipment of considerable value and there were never any shortages and this bears witness to his honesty. I have no hesitation whatever in making this plea on his behalf.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

PLEA OF MITIGATION BY ACCUSED

THE ACCUSED SWORN, STATES:-

Between Dec the 26 and 29th I was attached to 4 Bn Repat Camp in Nijmegen Holland. On one of those days I heard one of the men in the hut ask the other fellows with a view to selling a revolver. He pointed out that he needed some Dutch currency and was willing to part with his weapon for a sum of 25 guilders. Since most of the men in the hut had already in their possession weapons as souvenirs, he made no sale until he came to me. As it happened I was in a position to furnish the necessary currency I thought the revolver would make a good souvenir. I noticed that it was wrapped in two pieces, the barrel and the body and the numbers on the barrel and the body did not agree and the barrel did not screw into the body, however as my intention was to keep it as a souvenir I didn't mind. I went on leave over here and included the weapon with my kit, I figured it was much safer than leaving it here. While on leave I was talking to several Canadians and I gathered that it might not be a good idea to retain the weapon in my possession. On Jan 10 I decided to dispose of it. I talked to an American soldier and he said that Americans were permitted to take weapons back with them and he suggested selling it to an American. Later on that day in the afternoon I was walking along a street in London near Marble Arch and passed three men in American Uniform. They stopped me and we engaged in conversation. I told them about the revolver, one of them looked at it under his coat and he suggested trading it for a .45 calibre weapon. I didn't particularly want to trade for another weapon and my idea was to get rid of it altogether. The Americans went into a building nearby and I waited and I presumed they were going to get the .45. A few seconds later I noticed a civilian walking across the street toward me and he introduced himself as a police officer and asked to see the parcel, I showed him on which he placed the two parcels in his overcoat and informed me I was to go with him, I was taken into custody from there and was taken to the Provost and returned to this camp and later remanded for FOCN. From remarks that had been made I had gathered that weapons were not to be taken back to England.

IN THE CASE OF

B.139111 Cpl DAVEY FFC --- 3 CDN REPAT DEPOT

CHARACTER WITNESS

Capt. W.L. STIRLING, 3 CDN REPAT DEPOT, sworn, states:-

Sir, I am Capt. W.L. Stirling now on transient strength of 3 wing, 3 Cdn Repat Depot. I have known the accused over a period of 6 months, during that time he was employed at the supply depot of the educational services on the continent and attached to 23 Educational Section of which I was the Admin officer. At all times I found the accused to be an efficient soldier and he was promoted to the rank of Cpl and confirmed in that rank from Pte and recommended for the promotion to Acting Sgt and the fact that the unit was disbanding alone stopped the granting of Sgts stripes. I have always found the accused to be a soldier of exemplory conduct. When he came to the section there was no entries on his NPF 6 and he never came before the C.O. on any charge whatever. Furthermore I would like to point out that I always found Cpl Davey to be a trustworthy soldier, in addition to his normal duties he slept in the supply depot, he had the key to the warehouse at all times, in that depot were stored the supplies and equipment including typewriters and other office machinery and other equipment of considerable value and there were never any shortages and this bears witness to his honesty. I have no hesitation whatever in making this plea on his behalf.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

PLEA OF MITIGATION BY ACCUSED

THE ACCUSED SWORN, STATES:-

Between Dec the 26 and 29th I was attached to 4 Bn Repat Camp in Nijmegen Holland. On one of those days I heard one of the men in the hut ask the other fellows with a view to selling a revolver. He pointed out that he needed some Dutch currency and was willing to part with his weapon for a sum of 25 guilders. Since most of the men in the hut had already in their possession weapons as souvenirs, he made no sale until he came to me. As it happened I was in a position to furnish the necessary currency I thought the revolver would make a good souvenir. I noticed that it was wrapped in two pieces, the barrel and the body and the numbers on the barrel and the body did not agree and the barrel did not screw into the body, however as my intention was to keep it as a souvenir I didn't mind. I went on leave over here and included the weapon with my kit, I figured it was much safer than l aving it here. While on leave I was talking to several Canadians and I gathered that it might not be a good idea to retain the weapon in my possession. On Jan 10 I decided to dispose of it. I talked to an American soldier and he said that Americans were permitted to take weapons back with them and he suggested selling it to an American. Later on that day in the afternoon I was walking along a street in London near Marble Arch and passed three men in American Uniform . They stopped me and we engaged in conversation. I told them about the revolver, one of them looked at it under his coat and he suggested trading it for a .45 calibre weapon. I didn't particularly want to trade for another weapon and my idea was to get rid of it altogether. The Americans went into a building nearby and I waited and I presumed they were going to get the .45. A few seconds later I noticed a civilian walking across the street toward me and he introduced himself as a police officer and asked to see the parcel, I showed him on which he placed the two parcels in his overcoat and informed me I was to go with him, I was taken into custody from there and was taken to the Provost and returned to this camp and later remanded for FOCM. From remarks that had been made I had gathered that weapons were not to be taken back to England.

SUMMARY OF EVIDENCE

Exhibit A
CEA

Summary of Evidence in the case of B-139111 Cpl Francis Frederick Charles DAVEY, Cdn Infantry Corps, No 2 Wing, No 3 Cdn Repat Depot, a soldier of the Canadian Army, (Overseas)

By direction of the Commanding Officer the Summary of Evidence is taken under Oath.

FIRST WITNESS
For the prosecution

Police Constable 326 George STEPHENSON, Police Station, Marybone Lane, LONDON W.1; A Statement of this witness's evidence purporting to have been signed by him has been read to the accused and is included in this Summary of Evidence and marked Exhibit "A".

Having regard to the expence and loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

Doug. R. Pilkey Lt.
(D.R. PILKEY) Lieut RCAC
Officer detailed to take the Summary of Evidence

The accused does not demand the attendance of this witness for cross-examination.

SECOND WITNESS
For the prosecution

Lieut R. WOODBURN, Cdn Infantry Corps, No 2 Wing No 3 Cdn Repat Depot, having been duly sworn states:

I am Lt R. WOODBURN, Quartermaster at No 2 Wing, No 3 Cdn Repat Depot. The revolver (Exhibit "C"), a .38 calibre Smith and Wesson frame, No 64732 and barrel No 730289, I recognize as being property of the Canadian Army. R Woodburn Lieut

The accused declines to question the witness.

THIRD WITNESS
For the prosecution

G-7274 Sgt G.A. ROSE, Special Investigation Section, C.M.H.Q.; a statement of this witness's evidence purporting to have been signed by him has been read to the accused and is included in Summary of Evidence and marked Exhibit "B"

Having regard to the expense and loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

Doug. R. Pilkey Lt.
(D.R. PILKEY) Lieut RCAC
Officer detailed to take the Summary of Evidence

The accused does not demand the attendance of this witness for cross-examination.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence under Oath? You are not obliged to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given as evidence."

The accused reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me, in the presence and hearing of the accused and that Rules of procedure 4 (C) (D) (E) (F) and (G) have been complied with.

David R. Pilley Lt.
(D.R. PILLEY) Lieut RCAC
Officer detailed to take
the Summary of Evidence

In the field
15 Jan 46.

METROPOLITAN POLICE. **STATEMENT OF WITNESS** Exhibit "A" No. 992.

Marylebone Lane Police Station. 'D' Divn. 10th January 1946.

Name George Stephenson. Age

Address Police Station. Marylebone Lane. London. W.1. Occupation P.C. 324D.

Statement On 10th January 1946 at 3-20pm, at Seymour Place, London. W.1, I saw Corporal Frances Frederick Charles DAVEY. Reg. No. 139111. of The Royal Canadian Regiment, in uniform, he approached three U.S. Soldiers, and was in conversation with them, when I walked passed them, I heard the Canadian Soldier say "I want three pound ten for it," and I noticed that the Canadian Soldier was holding something, wrapped in newspaper; The American to whom DAVEY was speaking then entered a cafe close by, and I then approached DAVEY and told him I was a Police officer, and that I would like to know what he was offering for sale, he replied "Nothing". I then asked him to open the paper parcel he was carrying, he did so, I then saw that it was a service revolver, No. 730289, I then asked him how he came into possession of the revolver, and he said "I bought it in Holland"

Signature George Stephenson PC 324D. Signature witnessed by

M.P. 29154/50,000 Jan. 1945 G25 (4) (Continue overleaf if necessary.)

I told him he would be arrested for being in possession of a firearm, and also for offering a firearm for sale, he said "All right." He was taken to Marylebone Home Police Station, and after enquiries, he was handed to a Canadian Military escort.

George Stephenson. Pb. 324 P (Aid to C.I.D).

S.I.S. C.M.H.Q. PROVOST

LONDON 12th. Jan.1946 Exhibit "B"

Reg. No. B139111 Cpl.DAVEY F.C.
No. 3 Cdn. Repatriation Depot

ILLEGAL POSSESSION OF WEAPONS.

SIS/W-3-213

1. At 15.20 hrs. of 10th. Jan.1946, the a/m soldier was apprehended by the Civil Police for being in possession of a .38 Cal.Smith & Wessen revolver at Seymour Place, W.1, London. This revolver, bearing a frame number 64732 and a barrel number 730289, was in two parts, the barrel having been unscrewed from the frame and each part having then been wrapped in a separate parcel.

2. Cpl.Davey was handed into military custody and escorted to the guardroom of No. 6 Cdn.Provost Coy. On the 11th. Jan. 1946, he was interviewed by the writer and a statement taken as follows; Statement of Reg. No. B139111 Cpl.Davey F.C.:- I have been warned by Sgt. G.A.Rose of the S.I.S. that I do not have to say anything if I do not wish to do so and that whatever I do say will be taken down in writing and may be used as evidence. To show that I understand this caution I sign my name here.....Sgd F.C.Davey.

I had a leave pass from No. 3 Repat. Depot, dated 3rd. to 10th. Jan.1946. When I came on leave I had in my kitbag a Smith & Wessen revolver that I brought with me because I did not like leaving it at camp where my kitbag might be tampered with. This revolver I had bought from a man who needed Guilders, in my but at 4 Btn. Repat. camp at Nijmegen, Holland. I gave twenty five guilders for it and intended taking it back to Canada as a souvenir. I have no ammunition for it. On the 10th. Jan.1946, about three o'clock in the afternoon, near Marble Arch, three Americans asked me if I had anything to sell. I told them I had a revolver .38 cal. and one of them looked at it under his coat. He suggested trading a .45 for it. I hesitated and the Americans walked off. I presumed they had gone to fetch the .45. As I stood there a man came and said he was a police officer.

I have made the above statement without fear of threat or hope of favour and it is true.

Sgd. F.C.Davey.

After making this statement Cpl.Davey wished to add further to it; further statement of Cpl.Davey F.C.:- When I bought the above mentioned Smith & Wessen revolver it was in two parts, the barrel being seperate from the remainder. I had kept it in the seperate parcels and it was in two parcels when the police officer picked me up. I had never had it together, the barrel would not screw into the other part as it was too tight fitting.

Sgd. F.C.Davey

3. Cpl.Davey did not wish to reveal the identity of the man who sold him this weapon. The revolver is being disposed of according to Exhibit Report Feral 116. B139111 Cpl.Davey F.C. is being returned to his unit, Form 252 and Civil Police certificate of apprehension accompanying.

HANDED OVER

E.A. Rose Sgt.

(G.A.Rose) 87274
SIS CMHQ

re the case of.

I hereby undertake to deliver to the unit adjt for at his disposal on further instruction the exhibit "C" in the above case.

Serg. R. V. Pelley 1st

Exhibit "C"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-139111	Cpl	DAVEY Frances Frederick Charles	3 Cdn Repat Dep ot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be entered to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Nil ____ times.

For ____ times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3 XXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 25th day of January 1946

(L.J. BROWN) Major R.C.E.
Offr having custody Regt Book

No. B-139111 Name DAVEY, FFC | Sqn, Battery, or Company | Corps CIC | Date of enlistment 25/1/43 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/086 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc ? | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				No entries					
				CERTIFIED TRUE COPY	H Brown Maj RCE.				

(PTO)

LIST OF WITNESSES

List of Witnesses in the case of B-139111 Cpl Francis Frederick Charles DAVEY, Cdn Infantry Corps, No 2 Wing No 3 Cdn Repat Depot, a soldier of the Canadian Army, (Overseas)

FOR THE PROSECUTION

Police Constable 326, George STEPHENSON	Police Station Marybone Lane LONDON, W.1.
Lt R. WOODBURN, CIC	Quartermaster No 2 Wing No 3 Cdn Repat Depo C.A. England
G-7274 Sgt G.A. ROSE	Special Investigati Section C.M.H.Q., LONDON

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

FOR THE PROSECUTION

(1) A statement by Police Constable 326, George STEPHENSON, Police Station, Marybone Lane LONDON W.1. Exhibit "A"

(2) A statement by G-7274 Sgt G.A. ROSE, Special Investigation Section C.M.H.Q. LONDON marked Exhibit "B".

(3) A .38 calibre Smith and Wesson Service revolver frame No 64732 and barrel No 730269 marked Exhibit "C".

FOR THE DEFENCE

N I L

RECEIPT OF DOCUMENTS

I B-139111 Cpl F F C DAVEY hereby acknowledge receipt of one copy of the Charge Sheet and Summary of Evidence dated this 17th JANUARY 1946.

(B-139111 Cpl DAVEY F F C)

APPLICATION FOR DEFENCE OFFICER

I desire that an officer be assigned to represent me in the event of a Court-Martial.

(B-139111 Cpl DAVEY F F C

4448.

(L/Sgt). Davey. H.F.

RECORDED AT CMHQ IN AB 160, 4L-48.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA31 40/P & B/168) (40760) 4/38B

RECEIVED 17 JAN 1945 JUDGE ADVOCATE BRANCH

Convened by Order of BRIG F N CABELDU Comd 4 Cdn Inf Bde dated 25 Nov 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-22653	PTE (a) L/SGT (b)	HARVEY FREDERICK	DAVEY	Edmr Sco Regt Cdn Sec HQ 2 Cdn Army Gp

PROCEEDINGS REVIEWED 17 Jan 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 27th Nov 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 17/3

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for paths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1340 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ Lt Rae as interpreter? Ans ~~Yes~~ No

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ Sgt Kerr as shorthand writer? Ans ~~Yes~~ No ~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(2) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	A Mac Millan	R Regt C.
Member	Capt	G H Howarth	R H & I
Member	Capt	J C Stewart	Edmr Scottish
Judge-Advocate	N/A	N/A	N/A
Prosecutor	Lieut	R de La Montagne	Edmr Scottish
Defending Offr	Lieut	R G Gammell	R C C S.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused A-22653 Sgt Davey, Harvey Frederick before arraignment makes(s) (no) ~~No~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 17 C + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 22653 L/Sgt Davey Harvey Frederick

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	1st Charge	Guilty	Guilty	
2nd	2nd Charge	Not Guilty	Not Guilty	Prosecution unable to establish Prima Facie Case.
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ no beginning on (date) no. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which 17 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: ~~To be reduced to the ranks.~~ To forfeit Thirty Days Ordinary Pay. ~~RM~~

(Sgd) N/a Judge-Advocate, if any. 27th Nov 1944 Date awarded. (Sgd) A Mac Millan Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP (20)(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not cited.)

Date 17 Dec 44 (Sgd) (F.N. CABELDU) Brig Commanding 4 CDN INF BDE Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A-22653 L/Sgt Davey H.F. 1st Bn Edmr Scottish Regt	18 Dec 44	G.D.F. Tatlow Capt + Adjt 1st Bn Edmr Scottish Regt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your pleas. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your pleas and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 5. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 2.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is ~~disallowed~~ on the ..... charge(s) and allowed on the ..... charge(s), and that, accordingly, ~~the trial will proceed on the former, but~~ the accused is (~~are~~) found Not Guilty on the latter charge(s).(3)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*). *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....

(*1. RP 115. 2. RP* 40(*A*), *see* 60(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA* 54(3) (*i*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

Or, The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 8. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *B* and Ex *C* respectively.(3)

(*1. MFB 255 or MFB 256. 2. MFB 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No (2)

(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 45. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas* 80 309, 1222, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. *2. RP* 50. *As to releases from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

A 22653 L/Sgt DAVEY, Harvey Frederick of the 1st B., The Essex Scottish Regiment, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
A.A. Sec 15(1)

Whilst on Active Service
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, on 8 NOV 44 absented himself without leave when in arrest, from 1915 hrs until he surrendered to the Military Police at ANTWERP at approximately 2230 hrs 10 NOV 44.
Total Time Absent - 2 days 3 hrs 15 mins.

SECOND CHARGE
A.A. Sec 19

Whilst on Active Service
DRUNKENNESS,

in that he, when in conflict with the enemy

in the field, on 30 OCT 44, when in charge of a 6 pdr gun detachment was drunk.

(J.E.C. PANGMAN) Lt Col
Officer Commanding
ESSEX SCOTTISH REGIMENT

In the Field
25 NOV 44

To Be Tried by Field General Court Martial.

Brig
Comd
4 Cdn Inf Bde

In the Field
25 NOV 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-22653	PTE	L/SGT	HARVEY FREDERICK	DAVEY	Essex Scot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 NOV 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	A MacMillan	R Regt C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	W. S. Howard To be detailed by RHLI	RHLI
Capt	T. C. Stewart To be detailed by Essex Scot	Essex Scottish

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	A. C. Gillespie To be detailed by R Regt C	R. Regt C.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	N/A	

On Active Service in the Fd

in HOLLAND (Country.)

(Signed personally. RP 105 fn 2.) Brig (Rank.)

(F N Cabeldu)

Dat 25 Nov 44

Commanding 4 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 56 (In lieu of AFA 3) 40/P & S/1697 (6143)

ARMY FORM C2136 (Small)

MESSAGE FORM

Register No.

Call	Srl. No.	Priority	Transmission Instructions

ABOVE THIS LINE FOR SIGNALS USE ONLY

FROM (A) Originator: MO.

Date-Time of Origin: 270800B.

Office Date Stamp

For Action

TO adjt.

(W) For Information (INFO)

Message Instructions | GR

Originator's No.

I have this morning examined Sgt Davey A22653 and find he is fit to undergo trial by F.G.C.M.

C.B. Richardson Capt

A. MacMillan Major

This Message may be sent AS WRITTEN by any means { Except / Wireless

If liable to be intercepted or to fall into enemy hands, this message must be sent IN CIPHER

Originator's Instructions Degree of Priority

Time	System	Op.
THI ... TOR		
Time cleared		

Signed

Signed

Wt. 49625 50 Pads 2/44 B. & S. Ltd. 48-244

E.A.
Ar

CANADIAN SERVICE
IMCA

ON ACTIVE SERVICE

STATEMENT of A-22653 L/Sgt DAVEY, Harvey Frederick in mitigation of sentence.

1. I enlisted 13 July 40 with the Essex Scottish Regiment. Came overseas as an NCO, and was promoted to the rank of L/Sgt I Aug 43. I have been with the A/Tk Platoon ever since it was formed.

2. On the morning 30 Oct 44, I was in charge of a gun detachment. The gun-tower driver had been wounded; the vehicle had developed a faulty right brake and was very difficult to handle. For these reasons I was driving the vehicle myself. It was because of the condition of the vehicle that it threw a track. ~~This fact has been proved in the evidence of the Cpl mechanic and other witnesses.~~ In spite of this unavoidable accident to the gun-tower, my crew, the gun and myself were immediately ready for action and ready to take on our target.

3. Sgt Belland went past me and was very annoyed because the gun-tower had thrown the track. He had shown a great deal of hostility towards me for some time, for no good reason. He stated at the time that I would be up on charge. But I thought nothing of his threat and heard nothing more about the matter until several days later when our unit was out of the line. Then I was informed that I would be charged for driving a carrier when drunk.

4. This charge was absolutely untrue as I was absolutely sober at the time and had had nothing to drink. I was before the 2 i/c of the unit on this charge on two occasions, but the

PLEASE WRITE ON BOTH SIDES

CANADIAN YMCA

ON ACTIVE SERVICE

case was remanded on both occasions. I was very anxious to get the whole matter disposed of immediately as it was completely an injustice started from the personal animosity of Sgt Belland towards me, with no facts or evidence to support the charge.

5. The unit was granting recreational passes to everyone while we were out of the line. When my turn came I was granted my pass, and then at the last minute it was cancelled when it was remembered that the charge had not been cleared up. I paraded before the 2 i/c and asked to have the matter disposed of or to be granted the pass. This was not done.

6. I felt that I had been very unjustly treated in being put up on a false charge and then to have my pass refused because it had not been disposed of. I took it upon myself to take the pass which I thought was rightly mine. I realize that this should not have been done. But the only reason I did was because I had been in the line continually with the unit, and felt very "browned off" when my leave was held up on account of a false charge laid because of a personal jealousy.

7

7. In all the time I have been overseas I have only once been on charge before. On that occasion I was reprimanded.

8. I would ask that the Court would take into consideration all the above facts and my long service with the Essex Scottish in the front lines.

A22653 Dmy 7th Fyfe

PLEASE WRITE ON BOTH SIDES

Character witness for L/Sgt. Davey H. F. LD
having been duly sworn, states

I am A 21435 A/RSM Wilkinson D. F. I was formerly a member of the anti-tank pl. and served in that pl. with L/Sgt Davies. For several months Sgt Davies was in my section and at all times was a good soldier. He landed in France with the regt. I was then Sp. Coy. C.S.M. He served all thru Verson, Verriere & Caen & ~~too~~ to my knowledge did a good job.

Field General Court Martial Ex. E

Accused A22653. L/Sgt. Davey. Harvey Frederick

First witness for the prosecution - (having been duly sworn states)

"I am A22605 Sgt. Belland R.A. On Oct 30 - 1944 while acting O.C. of Anti Tank, No 1 Sec. was detailed to fire at some dykes, supporting E. Coy. I went to check the sec. and found Sgt Davey's carrier & gun off the road. A track was off the carrier and trail leg of gun was bent. We had to return the gun to the work shops for repairs. ~~Sgt Davey~~ I have known Sgt Davey for a long time and at one time was his section commander and in that time, never saw him act as he did on this particular occasion. I could actually smell liquor on his breath and he did not seem his old self."

Q. Which track was off the carrier

A. The track on the left side.

Cross Examination

Q. Did you examine the carrier at any time?

A. No sir

Q. Did you know the condition of the carrier previous to this time.

A. Only from the report of the Driver Mech.

Q. ~~Did~~ How long had it been since you had previously seen Sgt. Davey?

A. About 36 hours

Q. Do you know if he had had anything to drink

A. I could smell it on his breath.

Q. In what way were his actions not normal?

A. He could not get his gun in position. Normally he would have been able to.

Q. Did he eventually get his gun into position

A. Yes.

Q. Was he permitted to carry on positioning his gun after you concluded he was drunk?

A. Yes. I felt every effort must be made to get the Gun in action and it was necessary to utilize available men.

~~Statem~~ Ex 6 [redacted]

Evidence given in the Case of — Sgt Davey - 2nd Charge

2nd Witness A22473 Sgt Goodfellow J.J.

states:-

On the morning of 30 Oct 44 I was detailed to fire on the Dykes in support of "C" Coy who were to make an attack. A D/R was sent to me and I hollered for Sgt Davey to follow on behind my Ammo tower. As he swung around the corner with his gun tower he struck a fence I thought it was an accident. He fixed it up quickly and followed on behind me. The next time I looked back Sgt Davey's gun tower was over the Dyke I went back to find out the trouble and seen that the carrier had a track off and the gun was damaged ~~I also found Sgt Davey under the influence of liquor I left him there and continued on to a firing position~~ ~~Question~~ Sgt Davey talked with a thick voice, and I could smell liquor on his breath.

~~Cross~~ examination by Prosecution:-

Question: Tell us the direction in which the road turned at the point where the carrier went over the Dyke

Answer: The road was straight — there was no turn.

Question: On which side of the road did the carrier go off

Answer: On the left hand side from the direction we were travelling

---

Cross Exam by Def:

Question: How close did you come to Sgt Davey on that occasion

Answer: - about 1 foot - the width of the trail legs apart.

Question: If several witness stated the they were 20 feet away - would they be wrong.

Answer: - Yes Sir. If Sgt Davey had sat in the carrier I would never had noticed - but he came around to the back

Question - From your own personal knowledge do you know anything of the condition of the steering mechanism or the brakes of the carrier

Answer: No Sir.

SUMMARY OF EVIDENCE

in the case of A 22653 L/Sgt Davey, Harvey Frederick, 1st Bn Essex Scottish Regiment, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION: A 22605 Sgt Belland, L., A tk pl sgt, 1st Bn. Essex Scottish Regiment (sworn) states:

On Oct 30, 44, No 1 sec of the A tk pl was detailed to fire on some dykes in support of 'C' Coy. When I went to check on the guns. I found Sgt Davey, carrier and gun below the dyke with the track off the carrier and the trail damaged. Sgt Davey was under the influence of liquor. I could smell the liquor on his breath. He was acting defferently from his usual self.

Question by Accused

Q1 Did I help you to straighten track?
A1 Yes, you did.

Q2 Did I go down and take my position for the job I was called upon to do?
A2 He reported to 'C' Coy but only one gun of the sec fired.

Sgd L.A. Belland, Sgt

SECOND WITNESS FOR PROSECUTION: A 22473 Sgt Goodfellow, J.J.A., sec sgt A tk pl., 1st Bn Essex Scottish Regt (sworn) states:

"On morning of 30 Oct 44, I was detailed to take my sec (No 1 sec) to do a job on the dykes. When I started out, I hollered to Sgt Davey to follow with his gun and vehicles. Sgt Davey was driving when he swung around the corner, he struck a fence. I thought it was an accident at the time. We continued on and later, when I looked behind, Sgt Davey's gun and vehicle was over the dyke. I went back to find out the trouble. There was a track off the vehicle and trail legs were bent. I hollered to take the gun and put it on the other vehicle. Just then Sgt Davey came around behind the vehicle. I could smell liquor on his breath. His speech was thick. I left the gun and gun-tower there and took his ammunition-tower with me.

Q1 Where was the fence I first hit?
A1 When you first made your turn.

Q2 Do you still think it was an accident that I hit the fence?
A2 It is possible that it was an accident.

Q3 Did I report shortly afterwards and inquire whether there was a target for me on which to fire?
A3 You reported eventually after my other gun had taken on three targets and had been moved twice.

Q4 If there had been a target for me to fire on, would I have been capable of doing so?
A4 No! I don't think so, you were not sober enough.

Sgd J.J. Goodfellow, Sgt

The accused having been duly cautioned in accordance with RP 4(c) says:

"I want to make a statement."

"I have been with the A tk pl since it was formed. Sgt Belland and Sgt Crawford have always been trying to get me on a charge to be broken. The reason for this they will not tell. This incident that happened on 30 Oct 44 is just another means of having me reduced. Sgt Belland and Sgt Goodfellow have stated that this accident was due to drunkenness. They have no proof that I was drinking. The accident was due to faulty steering."

H.F. Davey L/Sgt

Sgd H.F. Davey, L/Sgt

FIRST WITNESS FOR THE DEFENCE: A 22398 Pte Meloche, A.J. 1st Bn The Essex Scottish Regiment, Canadian Army Overseas, (sworn) states:

"I am a dvr mech i/c Sgt Davey's vehicle. Sgt Davey's carrier had a faulty right brake. I noticed this when I drove the carrier back to 'A' Ech after the accident.

A.J. Meloche Pte

Sgd A.J. Meloche, Pte

Certified that RP 4 complied with.

R.L. Woodenough Capt

R.L. Woodenough, Capt
Offr detailed to take Summary

In the field

4 Nov 44

"Do you wish a defending offr?"

"Have the Adjt detail one, please."

H.F. Davey L/Sgt

H.F. Davey, L/Sgt

Dr. A. MacMillan

ADDITIONAL SUMMARY OF EVIDENCE

in the case of A 22653 L/Sgt DAVEY, Harvey Frederick, 1st Bn The Essex Scottish Regiment, a soldier of the Canadian Army Overseas.

The accused is informed of his rights

The Commanding Officer directs that the evidence be taken on oath.

THIRD WITNESS FOR PROSECUTION: A 22605 Sgt Belland, L. pl Sgt A tk pl, 1st Bn Essex Scottish Regiment (sworn) states:

"I am pl sgt A tk pl, Essex Scottish Regt, of which L/Sgt Davey is a member. On the day of our move, approx 1915 hrs 8 NOV 44, Lt Haggans, our pl offr called for all dets comds and found L/Sgt Davey absent from the 'O' Gp. I checked the pl later, at 2015 hrs just before we moved off but he was still absent. I did not see him again until 1745 hrs 14 Nov 44."

Q1 Was L/Sgt Davey warned that regiment would be moving?
A1 A/Cpl Brule, 2 i/c of his det, was ordered to tell him.

Q2 Did pl know where they were moving?
A 2 They were told they were moving to operations.

Question by Accused

Q3 Was I present when platoon was told they were moving to operations?
A3 No! 2 i/c det was present.

L/Sgt Belland.
Sgd L.A. Belland

FOURTH WITNESS FOR THE PROSECUTION: Lt R.C. Dunn, No 7 Cdn Pro Coy, IC Antwerp Detachment.

A written statement of this witness' evidence purporting to be signed by him, has been read to the accused and is included in this Summary (att as Exhibit 'A'), having regard to the exigencies of the service the attendance of this witness can not, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

R Goodenough Capt
Sgd R.C. Goodenough, Capt
Offr detailed to take Summary

FIFTH WITNESS FOR THE PROSECUTION: H103162 A/Cpl Brule, Leopold, 1st Bn. Essex Scottish Regt, Cdn Army Overseas (sworn) states:

"I am second-in-command of No 1 Det of which L/Sgt Davey is Det Comd. On Nov 8, I attended an 'O' Gp at approx 1130 hrs. The pl comd gave us information that we would probably move about 2000 hrs that night into Holland. I told L/Sgt Davey after returning from 'O' Gp that we would probably move about to take over positions from English troops somewhere in Holland. At approx 1915 hrs we held another 'O' Gp when the pl comd told us that we must be in the carriers at 1945 hrs ready to move off. L/Sgt Davey was missing at the time of the 'O' Gp. I searched the house but could not find him. I have not seen him since."

Questioned by Accused

Q1 After the first 'O' Gp did you have any reason to believe that you were going into operations against the enemy?

A1 Yes, there were rumours that we were going into action. But what made me believe we were going into action was the fact that we were moving out from the area where we had been resting.

Q2 When I asked you what information you got from the 'O' Gp, do you remember telling me definitely that we were going to Holland?

A2 I remember telling him that we may be moving but I do not remember saying that we were going to Holland.

L. Brule Cpl

Sgd B103162 Cpl Brule,L.

The accused, having been duly cautioned in accordance with RP 4(e), says:

"I want to make a statement". - "When I joined the Army, it was voluntary. I don't like to be treated as though I was compelled to join up. At the time of this incident I had come back from the front the same as the others. They were allowed to go on leave and because of a charge (Charge I above) I was refused. I applied for a pass through the proper channels and was turned down. I took my leave anyway. I only took what was coming to me."

R. V. Davey L/Sgt.

Sgd A22653 L/Sgt Davey,R.P.

Certified that RP 4 complied with.

In the field

15 Nov 44

R.L. Goodenough Capt

R.L. Goodenough, Capt
Offr detailed to take Summary

A.P.M

CHARGE

Army Form B 252
(See King's Regulations)

ESSEX SCOTTISH REGT. Regiment

2nd.Cdn.Division. Battery / Squadron / Troop or Company

CHARGE against No. A-22653 Rank Sgt.

Name DAVEY H.P.

Place ANTWERP Date of Offence 10 Nov.44.

OFFENCE W.O.A.S.

A.W.L.

[signature] Lieut
R.O. DUNN
No.7.Cdn.Provst Coy
i/c Antwerp Det.

Names of Witnesses :—

L-IS005 CPL.BELL A.No.7.Cdn.Provst Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

Ayrwhom Awarded

Certificate of apprehension fwd to Bde with appln for FGCM

[signature] Adjutant.

P.T.O.

Received 14/4/40 A

Statement of EVIDENCE in the case of ;

A-22653 Sgt. DAVEY H.F. ESSEX SCOTTISH REGT
2nd.Cdn.Division.

While on duty at this Det.H.Q.at app.2230 hrs 10 Nov.44 the A/M soldier surrendered himself to me stating he was A.W.L.
I placed him under close arrest and he was escorted to the Town Guard Room where he was handed over to the N.C.O.i/c of the Guard Room from whom a body receipt was obtained.

?.....CPL.
L-18005 BELL A.
No.7.Cdn.Provst Coy.

REMARKS

CHARGE

Army Form B 252
(See King's Regulations)

ESSEX SCOTTISH REGT. — Regiment
2nd.Cdn.Division. — Battery / Squadron / Troop or Company

CHARGE against No. A-22653 Rank Sgt.

Name DAVEY H.F.

Place ANTWERP Date of Offence 10 Nov.44.

OFFENCE R.O.A.S.

A.W.L.

Lieut
R.O. DUNN
No.7.Cdn.Provst Coy
i/c Antwerp Det.

Names of Witnesses:—

L-18005 CPL.BELL A.No.7.Cdn.Provst Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment awarded

By whom awarded

Adjutant.

P.T.O.

Antwerp IL-91

Statement of **EVIDENCE** in the case of ;

A-22653 Sgt. DAVEY H.F. ESSEX SCOTTISH REGT
2nd.Cdn.Division.

While on duty at this Det.H.Q.at app.2230 hrs 10 Nov.44 the A/M soldier surrendered himself to me stating he was A.W.L.
I placed him under close arrest and he was escorted to the Town Guard Room where he was handed over to the N.C.O.i/c of the Guard Room from whom a body receipt was obtained.

?.....CPL.
L-18005 BELL A.
No.7.Cdn.Provst Coy.

No signature
Hyp [illegible]

REMARKS

CERTIFICATE UNDER SECTION 163 (1)(ii) OF THE ARMY ACT

I, (a) R. O. DUNN certify that No. A22653 Rank Sgt.

Name DAVEY H.E of ESSEX SCOTTISH Regiment

surrendered himself to No. 1-18005 Rank Gnr Name BELL A. of

No 1 Can Prov. Coy. (or me) in the field at 1230 hours on the 10 day of

Nov. 1944 ~~as a deserter~~ (or absentee without leave.

He was wearing Military Uniform

R.O. Dunn Lieut.

R.O. Dunn Lieut.
No.7 Can. Prev. Coy.
i/c Antwerp Det.

~~APPENDIX~~
EXHIBIT "A"

Ex B Amacmillan Major

Substitute for A.F.B.296

STATEMENT OF CHARACTER AND PARTICULARS
OF THE SERVICE OF ACCUSED

No. A22653 RANK L/Sgt NAME DAVEY, Harvey Frederick

OF THE ESSEX SCOTTISH REGIMENT, CANADIAN ARMY OVERSEAS.

AGE 25 MARRIED OR SINGLE married NO OF DEPENDENTS wife

DATE OF ATTESTATION 13 JUL 40

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL):

CIVIL _____ MILITARY 17 days (open arrest) HOSPITAL _____ TOTAL _____

DATE OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY:

L/Cpl 4 Jun 43

A/L/Sgt 1 Aug 43

Conf L/Sgt 8 Dec 43

CERTIFIED TRUE COPY OF M.F.J.L. CHEST ACCOUNT THIS FORM.

H Ashburg A/Capt

Adjutant,
ESSEX SCOTTISH REGIMENT.

DATED: In the Field

This .....day of .....19....

No. A22653 Name DAVEY, Harvey Frederick Sqn., Battery, or Company Sp Corps CIC

Date of last entry in Company Conduct Sheet nil No. and date of last drunk nil Period not reckoning towards freedom from extra fine

Date of enlistment 13 Jul 40 G.C. Badges Service or Proficiency Pay

Sheet No. 1 Signature O.C. Company, etc. J.W. BURGESS CAPT. Character

M.F. 6 (A.F. 2) 500M—8-39 (1703) H.Q. 1773-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				PREVIOUS SHEET DESTROYED 13 JAN 41					
Camp Borden Ont	19 Feb	41 Pte		AA 15(1) AWL from 0100 hrs 19-2-41 until 0705 hrs 10-3-41	Cpl Barnes Cpl Hilliges (Written)	14 dys CB	10-3-41	LtCol J.P. Guvin	Forf 20 dys pay
Camp Borden Ont	21 Apr	41 Pte		AA15(1) AWL from 1300 hrs 21-4-41 until 0200 hrs 12-5-41.	L/Cpl MacDougall Pte Fairbairn Documentary	168 hrs detn	12-5-41	Maj W.C. Kearns	forfs 20 d pay FR&I
Camp Borden Ont	7 Jul	31 Pte		AA15(1) AWL from 0200 hrs 7-7-41 until 0015 hrs 7-8-41. Cost of apprehension $11.38 (2) AA 40	Cpl Large L/Cpl MacDougall (written)	28 dys detn	11-8-41	Lt Col J.P. Guvin	21 dys pay FR&I plus cost of appr $11.38
Camp Borden Ont	29-6-42	Pte		AA 15(1) AWL from 0600 hrs 29-6-42 until 0700 hrs 3-6-42	Cpl Whyte W Cpl Royan, R	5 dys CB	30-6-42	Capt D Moore	Forf 2 dys pay FR&I

(P.T.O.)

No.	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
[illegible]ld	9-4-44	L/Sgt		Conduct etc unbecoming an NCO AA sec 40	RSM Campbell	Reprimand	9-4-44	LtCol Macdonald	

CERTIFIED TRUE COPY

R.W. McAnwell.

(R.W. McANWELL) Lt & Asst Adjt
for Officer Commanding
ESSEX SCOTTISH REGIMENT

5F. 144.

Cpl. Davey, N.F.

RECORDED AT CMHQ IN AB 160 5F-144

FIELD GENERAL COURT-MARTIAL

CFA86 (To take place of AFA31) 40/P.R. 8/1698 (4000) 4/38B

RECEIVED 8 MAY 1945 JAG Branch CMHQ

Convened by Order of Brig FN Cabeldu Comd 4 CDN INF BDE dated 27 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
A22653	Cpl	Harvey Frederick	DAVEY	Essex Scot

PROCEEDINGS REVIEWED
J. Duliquelo Capt.
10 May 45
REVIEWING OFFICER. [illegible]

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 28 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

~~A5. President to accused: Do you object to [illegible] as interpreter? Ans~~

~~The interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans~~

~~the shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	J. K.	SHORTREED	R Regt C
Member	CAPT	K A	WHARTON	RHLI
Member	CAPT	J D	BELL	RHLI
Judge-Advocate				
Prosecutor	Lt	S	FIDLER	Essex Scot
Defending Offr	Lt	ER	THOMPSON	Essex Scot

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Com Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

~~A8. The accused before arraignment make(s) (no) (a) plea~~

THE ACCUSED BEFORE ARRAIGNMENT MADES NO PLEA (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references as fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

VA II - Jul 4

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 22653 CPL DAVIS, H F ESSEX SCOT

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1) ~~as~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the ranks and to forfeit all pay and allowances for a period of sixty (60) days.

(Sgd) [illegible] 28 MAR 45 (Sgd) [illegible]
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 29 Mar 45 (Sgd) [illegible] Brig
Commanding 4 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A-22653 Cpl Davey, H.F.	30 MAR 45	R.W. Meanwell Capt Adjt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans YES NO (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under* B5 *such parts only of the Summary of Evidence are read as relate to the charges dealt with under* C1. *If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....

Do you intend to call witnesses on your behalf? Ans .....

Are they witnesses as to character only? Ans .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf RP* 95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 86(*A*) *fn* 1, 86(*C*). *Invite the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(7) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(7) *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans NO

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 3. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to [a] soldier[s] having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)

(1. *MML p* 253 *or AFB* 296. 2. *MML* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment?(1) Ans Yes, defending Offr will

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove as much anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 142. *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exh 8

CHARGE SHEET

The accused, A22653 Cpl Harvey Frederick DAVEY, a soldier of the Canadian Army Overseas, 1st Bn Essex Scottish Regiment on active service is charged with:-

FIRST CHARGE
Army Act
Sec 15(1)

when on active service
ABSENTING HIMSELF WITHOUT LEAVE
in that he
in the field, on 19 MAR 45, absented himself without leave from 0800 hrs 19 MAR 45 until 1200 hrs 23 MAR 45 (Absent 4 days 4 hrs)

In the Field
25 MAR 45

(JBC PANGMAN) Lt Col
Officer Commanding
THE ESSEX SCOTTISH REGIMENT

To be tried by Field General Court Martial

In the Field
27 MAR 45

Comd
4 Cdn Inf Bde

Brig

Ex A 9s

CHARGE SHEET

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(JEC PANGMAN) Lt Col
Officer Commanding
THE ESSEX SCOTTISH REGIMENT

To be tried by Field General Court Martial

In the Field
27 MAR 45

Brig
Comd
4 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 58, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 328, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A22653	Cpl		Harvey Frederick	DAVEY	Essex Scot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 MAR 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	J W K SHORTREED	R Regt C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
	To be detailed by CO FHLI	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	To be detailed by CO R Regt C	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	N/A	

On Active Service in the Fd

in GERMANY (Country.)

(F M Cassidy) (Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 27 Mar 45

Commanding 4 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Para 12b Sec of AFAI 44-P & R 1947 (Air)) *(See overleaf for notes and notes for use on trial.)*

ED 98

I hereby certify that A 22653 Cpl Davey HF is fit to undergo trial by Field General Court Martial

28 Mar 45

(CA Richardson) Capt

Ex F

PLEA OF MITIGATION

Sire,

We have before you a man who has been a detachment Comm. of the Anti Tank Platoon since the Essex Scottish landed in France. This man has led his detachment through all the actions that his Battalion has been in. Even the steel & iron that we use has its breaking point. ~~flesh & blood~~. We are all made of flesh & blood which also has its breaking point. This man has, I feel, reached the breaking point. Now this man did not leave his detachment in duty but went through channels back to the R.A.P. The Medical officer reported to Cpl Davey's Platoon Commander that he considered him a nervous case & recommended that Cpl Davey be re-allocated if possible. Cpl Davey did not sit idle, he did feel that as he could no longer fulfill his duties there was another place that he could still carry

or as a useful member of our
great Canadian Army. I feel quite
sure that this man, who has proved
himself in action, could certainly
fill his place in the 7th Medium
Regimental Platoon of the B.C.A.S.C.
I feel that men of this kind should
be given that chance instead of being
so harshly treated.

CO

JS

Summary of Evidence in the case of A 22653 Cpl. Davey H.F., The Essex Scottish Regiment, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The C.O. directs that the evidence be taken on oath.

First Witness for the prosecution: A 86727 Sgt. Howieson J.B. The Essex Scottish Regiment, sworn, states:

"I, A86727 Sgt. Howieson J.B., am pl. sgt. of 13 pl. in which A 22653 ~~Cpl.~~ Cpl. Davey H.F. was a member. I called the roll at 0800 hrs 14 mar. 45 and ~~Cpl.~~ Cpl. Davey H.F. did not answer his name. I searched the entire area but he could not be found. I then marked him AWL and notified the coy orderly room."

The accused declines to cross-examine. J.B. Howieson

Second Witness for the prosecution: KS 7238 C.S.M. Anderson W.W. The Essex Scottish Regiment, sworn, states:

"I am C.S.M. of 'C' coy in which A 22653 ~~Cpl.~~ Cpl. Davey H.F. was a member. On the morning of 23 Mar 45 at 1200 hrs ~~Cpl.~~ Cpl. Davey H.F. reported to me that he had returned. At which time I placed him under open arrest"

The accused declines to cross examine. W. Anderson

The accused, having been duly cautioned in accordance with R.P. 45 says:

"I want to be sworn"

The accused A 22653 Cpl. Davey H.F., sworn, states:

"On my last charge I made the statement to the C.O. that I couldn't go on any longer. I also said I wanted to revert and would like a job in one of the echelons or be reallocated. I thought perhaps by taking I could get something done, but it

seems that nowadays it doesn't pay to ask for things.

After that last charge against me there was a considerable amount of talk passed through the regt and through that the boys turned against me. O.C. C.S.M. said they should have shot me, but I know that if he had known the whole story he never would have made that statement. The only fellows that would continue to work with me, and without any trouble or comments are the boys that were with me when I checked in. No one will say anything about it to my face, which is a good thing for them. I can't stop them from thinking but if I get to ever hear any one, barring none, talking about me, I would make him think twice before he opened his mouth again about anybody. I have never been in a rifle coy since I came overseas and I always said that I would never soldier in one either, and believe me, I mean it, I will be content to go to jail first. When I looked at the orders and saw that I had been posted to 'C' coy, I asked for an interview immediately because I wanted to get things straightened out so there would be no trouble, but it seems that Major Thomson told Capt. Grandjean that he didn't see as it was necessary for me to have the interview.

I did the next best thing - D.W.L. If I hadn't done that, then I know I'd have been on a more serious charge. The thing that happened to me also happened to Mr. Higgins and what he put on charge? No. he was sent out of the regt. There was also a lot of talk about him. He just couldn't stand it any longer and neither could I. I would like to see credit given where and when it is due. Any man that has come through France to Germany deserves a lot of it especially if he has been right in there all the way. There are very few of these men left, and if any of them feel that they can't go on they shouldn't be classed as being no good. That seems to happen every time. They should be given something else to do.

As for myself. I've gone the limit and now I would like to be transfered out of this regt. I have had a talk with the O.C. 7th Med. Regimental Pl. R.C.A.S.C., Capt. Mills and he said he would accept me if I can get a transfer. I would be better off there and still doing the job. I am quite prepared to take any punishment that is coming to me, because as soon as I am S.O.S. from the regt, I will notify Capt Mills and will carry on my job from there.

Cpl. Davy W.P.

"The accused does not wish to call witnesses in his defence at this point"

Certified that R.P. 4 complied with.

In the Field,
25 Mar 45

Officer detailed to take the Summary.

"I wish a defending Officer"
"I desire the services of Maj. D. McIntyre, if he is available"

In the field
25 Mar 45

Cpl. Davy W.P.

Ex e 18

SUMMARY OF EVIDENCE

In the case of A22653 Cpl Harvey Frederick DAVEY, of the 1st Bn., The Essex Scottish Regiment, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: For the Prosecution

A86727 Sgt HOWIESON, J.B., 1st Bn., The Essex Scottish Regiment, having been duly sworn, states:

"I, A86727 Sgt Howieson, J.B., am pl Sgt of 15 pl in which A22653 Cpl Davey, H.F., was a member. I called the roll at 0800 hrs 19 MAR 45 and Cpl Davey, H.F., did not answer his name. I searched the entire area but he could not be found. I then marked him AWL and notified the coy orderly room."

Sgd."J.B. HOWIESON" Sgt
A86727

The accused declines to cross-examine the witness.

SECOND WITNESS: For the Prosecution

K57238 Sgt(A/CSM) ANDERSON, W.W. 1st Bn., The Essex Scottish Regiment, having been duly sworn, states:

"I am CSM of 'C' Coy in which A22653 Cpl Davey, H.F., was a member. On the morning of 23 MAR 45 at 1200 hrs Cpl Davey, H.F. reported to me that he had returned, at which time I placed him under open arrest."

Sgd. "W.W. ANDERSON" A/CSM
K57238

The accused declines to cross-examine the witness.

The accused, having been duly cautioned in accordance with R.P. 4(e) says:

"I want to be sworn."

The accused, A22653 Cpl DAVEY, H.F., 1st Bn., The Essex Scottish Regiment having been duly sworn, states:

"On my last charge, I made the statement to the Commanding Officer that I couldn't go on any longer. I also said I wanted to revert and would like a job in one of the echelons or be re-allocated. I thought perhaps by asking I could get something done, but it seems that nowadays it doesn't pay to ask for things.

...../2

After that last charge against me there was a considerable amount of talk passed through the Regt and through that the boys turned against me. A CSM said they should have shot me, but I know that if he had known the whole story he never would have made that statement. The only fellows that would continue to work with me, and without any trouble or comments are the boys that were with me when I checked in. No one will say anything about it to my face, which is a good thing for them. I can't stop them from thinking but if I was to ever hear anyone, barring none, talking about me, I would make him think twice before he opened his mouth again about anybody. I have never been in a rifle coy since I came overseas and I always said that I would never soldier in one either, and believe me, I mean it, I will be content to go to jail first. When I looked at the orders and saw that I had been posted to 'C' Coy, I asked for an interview immediately because I wanted to get things straightened out so there would be no trouble, but it seems that Major Thomson told Capt Grandjean that he didn't see as it was necessary for me to have the interview.

I did the next best thing - AWL. If I hadn't done that, then I know I'd have been on a more serious charge. The thing that happened to me also happened to Mr. Haggans and was he put on charge? No. He was sent out of the Regt. There was also a lot of talk about him. He just couldn't stand it any longer and neither could I. I would like to see credit given where and when it is due. Any man that has come through France to Germany deserves a lot of it especially if he has been right in there all the way. There are very few of these men left, and if any of them feel that they can't go on they shouldn't be classed as being no good. That seems to happen every time. They could be given something else to do.

As for myself, I've gone the limit and now I would like to be transferred out of this Regt. I have had a talk with the Officer Commanding 7th Med Regimental Pl., RCASC, Capt Mills and he said he would accept me if I can get a transfer. I would be better off there and still doing the job. I am quite prepared to take any punishment that is coming to me, because as soon as I am SOS from the Regt, I will notify Capt Mills and will carry on my job from there."

Sgd. "H.P. Davey" Cpl
A22653

The accused does not wish to call witnesses in his defence at this point.

Certified that R.P. 4 has been complied with.

In the Field
25 MAR 45

Sgd. "H.A.Secord" Lt
Offr detailed to take the Summary.

JS

Ex E

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

A22653 Cpl DAVEY, Harvey Frederick .....of THE 1st BN.,

THE ESSEX SCOTTISH REGIMENT.

1. The following is a fair and true summary of the entries in the Regimental and Company conduct sheets of the accused, exclusive of convictions by a Court Martial or a Civil Court, of summary of awards under Section 47 of the Army Act and of cases in which trial has been dispensed with:-

	Within last 12 months	Since Enlistment
For Absence without Leave.	nil times	four times
For Conduct to the prejudice etc	two RWM times	three times
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~
~~For~~	~~times~~	~~times~~

Un Number of instances of gallantry or distinguished conduct.

nil

~~or,~~

~~There are no entries in the Conduct Sheets of the accused.~~

~~2. The accused has not been previously convicted,~~

~~or,~~

Previous convictions of the accused by a Court Martial or a Civil Court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexe to this statement.

3. The accused in not under sentence at the present time,

~~or,~~

~~The accused at the present time is under sentence for .....~~

~~.....beginning with on the .....day of .....~~

4. ~~The accused has been in confinement, awaiting trial on the present charges for .....day in civil custody and .....days in military Custody. Total .....days, of which .....days were spent in hospital.~~

5. The present age of the accused according to his record of service attestation paper is 25 yrs.

6. The date of ~~hai~~ Commission specified in his record of service attestation paper is 13 July 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to reckon .....years' service for the purpose of determining his pension, etc.

9. The accused is entitled to deferred pay or gratuity in respect of ....years service.

10. The accused ~~is in possession of, or entitled to, no military decoration~~ or ~~military award/ or~~ is in possession of or entitled to ..... C.V.S.M. and Clasp.

11. ~~(If the accused is a warrant officer.) The accused before he was a warrant officer last held the regimental rank of~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of , dated , and in his regiment (or corps or department) the rank of , dated~~

13. The accused has served as a non-commissioned officer continuously, with reduction, to the present date,

		Date of ~~Promotion~~ Reduction
In the rank of Cpl.	years, 6 days	20 Mar 45
~~In the rank of~~	~~years,~~	
~~In the rank of~~	~~years,~~	

(Instruction.--- If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.)

The above statment (with ~~out~~ schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the President, and annexed to the proceedings.

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR OF [illegible]
47 of the ARMY ACT WHICH TRIAL HAS BEEN DISPENSED WITH

Army Number, Rank and Name A. 22633 Cpl. Harvey Frederick Davey. ..... of the 1st BN., THE ESSEX SCOTTISH REGIMENT.

Note: A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Offr disposing of the charge or dispensing with trial	Date and Place of Trial, or summary award, or of order dispensing with Trial.	Charge upon which convicted, or in respect of which trial was dispensed with.	Sentence of the Court, or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
FGCM	27/8/44 - Field	Absence without Leave.	30 Days pay	

I HEREBY CERTIFY that the foregoing Schedule of Convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of March 1945

H.W. Meanwell Capt. Adjt.

(A.F.B. 296)

No. A22653 Name DAVEY Harvey Frederick Sqn., Battery, or Company 'Sp[T] COPY Corps C.I.C. Date of enlistment 13 JUL 40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Nil Date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. 3gd"JW Burgess Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed 13 Jan 41					
Camp Borden Ont	19 FEB 41	Pte		AA15(1) AWL from 0100 hrs 19-2-41 until 0705 hrs 10-3-41	Cpl Barnes Cpl Hilliges (written)	14 days CB	10-3-41	Lt Col JP Guvin	Forfs 20 dys pay
Camp Borden Ont	21 APR 41	Pte		AA15(1) AWL from 1300 hrs 21-4-41 until 0200 hrs 12-5-41	L/Cpl MacDougall Pte Fairbairn (documentary)	168 hrs det'n	12-5-41	Maj WC Kearns	Forf 20 pay FRA
Camp Borden Ont	7 JUL 41	Pte		AA15(1) AWL from 0200 hrs 7-7-41 until 0015 hrs 7-8-41 Cost of apprehension $11.38 (2)AA 40	Cpl Large L/C MacDougall (written)	28 dys det'n	11-8-41	Lt Col JP Guvin	21 dys FRI plus cost of apprehension forf 2
Camp Borden	29-6-42	Pte		AA15(1)AWL from 0600 hrs 29-6-42 until 0700 hrs 30-6-42	Cpl WhyteW" Cpl Rogan R	5 days CB	30-6-42	Capt D Moore	pay FR
Field	9-4-44	L/Sgt		Conduct etc unbecoming an NCO AA Sec 40	RSM Campbell	Reprimanded	9-4-44	Lt Col MacDonald	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	27-11-44	L/Sgt		AWL from 1915 hrs 8 NOV to 2230 hrs 10 NOV 44(2 dys 3 hrs 15 min) AA Sec 15(1)AA Sec 19 Drunkenness	RSM Campbell	Forf 30 dys pay	27 NOV 44	FGCM	Forf 49 dys pay
Field	1/3/45	L/Sgt		(Not guilty) Close arrest:16 dys Conduct etc sometime on 1 MAR 45 in the afternoon when his duty required him to be with his coy was not with his coy AA Sec 40	Lt JM Haggans	Severe Reprimand	10-3-45	Lt Col JEC Pangman	

CERTIFIED TRUE COPY

W Meanwell.

25 MAR 45 (R.W. MEANWELL) A/Capt & Adjt
Offr having custody of Original documents

5 R-127

Pt. Davey, N.J.

12 Oct 45

J.A.G. Rev

Original proceedings despatched
Bomber to DND.

This H.Q. 10/Davey HF/1

Dated 10 Oct 45

[illegible]
J.G. Rev

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 53) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No sir (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are relevant as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith(2) and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(3)
(1. *AA* 54(2) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character.(1)
Ans. No
(1. *If evidence has already been given for accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex C respectively.(3)
(1. *MFB* 355 *or MFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No thank you sir
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(5), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its purview, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 2322, *MML p* 60, 757-759. *As to sentences consigned for civil offences by the law of England see AA* 41 (5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

I certify that I have this morning examined A 22653 Pte Davey, H.F.
and that he is fit to undergo trial by Court Martial

17 Apr 45

"G.R.Richardson" Capt RCMC

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, EWS, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (or, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to *facts or his character* or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 45(E), KR Con 562(a).*)

(vii) Summing up by *J.A.*, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *J.A.*, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *J.A.*, if any, and then pinned by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Con 560. As to certified copies of regimental books see AA 162 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 96(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 6 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 739.*)

4. The President or *J.A.* if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.22653	Pte		Harvey Frederick	DAVEY	Essex Scot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 16 Apr 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.M.E. Shortreed	R Regt C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
	To be detailed by CO HQLI	
	To be detailed by CO HQLI	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	To be detailed by CO R Regt C	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	A.J.L. DESCOTEAUX	No 2 CDN ENT DIV

On Active Service in the Fd

in Holland (*Country.*)

"F.N. Cabeldu" (*Signed personally. RP 105 fn 2.*)
(F.N. Cabeldu)

Brigadier (*Rank.*)

Date 16 Apr 45

Commanding 4 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAO 119 (To Sets of AFA2) as of 1 Jul 1947 (Amdt).)

(*See overleaf for oaths and notes for use on trial.*)

CHARGE SHEET

THE ACCUSED NO. A-22653 PTE HARVEY FREDERICK DAVEY, THE ESSEX SCOTTISH REGIMENT, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH:

FIRST CHARGE
SECTION 9(2)
ARMY ACT

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

In the Field, on 1 Apr 45, at approximately 0620 hrs, when ordered by Capt R W Meanwell, Essex Scot, his superior officer, to return to his Coy, refused to do so and did not do so

"J.E.C.Pangman"
(J.E.C.Pangman) Lt-col
Commanding Officer
Essex Scottish Regiment

In the Field
16 Apr 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"F.N.Cabeldu"
(F.N.Cabeldu) Brig
Comd 4 Cdn Inf Bde

In the Field
16 Apr 45

Ex A JMKS

SUMMARY OF EVIDENCE

In the case of A22653 Pte Harvey Frederick DAVEY, of the 1st Bn, The Essex Scottish Regiment, a soldier of the Canadian Army Overseas

The accused is informed of his rights

The Commanding Officer directs that the evidence be taken on oath

FIRST WITNESS for the Prosecution

A.121435 RSM Wilkinson, D.F. of 1st Bn., The Essex Scottish Regiment, having been duly sworn, states:

"At approximately 0620 hrs 1 Apr 45 Pte Davey, H.F. whom I now recognize, reported to me at Tac HQ saying he was going to turn himself over to the provost. I asked him the reason and he replied he would not go with his coy. The Adjt and myself went to Pte Davey H F and the Adjt ordered Pte Davey H.F. to return to his coy as we were going into the line. Pte Davey, H.F. refused. The Adjt, then repeated the order and he again refused. The Adjt then turned Pte Davey H.F. over to me and I placed him under close arrest.

The accused declines to cross-examine

Sgd "D.F.Wilkinson" RSM

Second Witness for the Prosecution

Capt. R.W.Meanwell, Adjutant, 1st Bn, The Essex Scottish Regiment, having been duly sworn, states:

"On 1 Apr 45 at approximately 0620 hrs Pte Davey, H.F. whom I recognized appeared in the area where Tac HQ vehs were being marshalled prior to moving off to a concentration area. After investigation, the RSM reported to me that Pte Davey H.F. was there to give himself up to the provost. I went over to Pte Davey H.F. with the RSM and said to Davey "You know what the situation is in your case. You will report back to your company and go into action with them". He replied that he was not going back to his company. I then repeated my order, warning him that I was so doing. My exact words were "You will move back to your company now". Pte Davey remained where he was standing and failed to obey my order. After a few moments I ordered RSM Wilkinson to place Pte Davey in close arrest

The accused declines to cross-examine

Sgd "R.W.Meanwell" Capt

The accused having been duly cautioned in accordance with R.P.4(e) says:

"I do not wish to make a statemt"

The accused does not wish to call witnesses in his defence at this point.

Certified that R.P.4 complied with

In the Field
6 Apr 45

Sgd "H.A.Secord" Lt
Offr detailed to take the Summary

No A22653 Name DAVEY HF | Sqn, Battery or Company "SP" | Corps CIC | Date of enlistment 13 Jul 40 | CC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet Nil | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc J.W.Burgess Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden Ont	19 Feb 41	Pte		AA15(1)AWL from 0100 hrs 19-2-41 until 0805 hrs 10-3-41	Cpl Barnes Cpl Hillier (Written)	14 days CB	10-3-41	Lt-col JP Guvin	Forfs 20 days pay FR&I
Camp Borden Ont	21 Apr 41	"		AA15(1)AWL from 1300 hrs 21-4-41 until 0200 hrs 12-5-41	Cpl McDougall Pte Fairbarn Cpl Large	168 hrs detn	12-5-41	Maj WC Kearns	Forfs 20 dys pay FR&I
Camp Borden Ont	7 Jul 41	"		AA15(1)AWL from 0200 hrs 7-7-41 until 0015 hrs 7-8-41 cost of apprehension AA11.36(2)AA 40	L/Cpl McDougall (Written)	28 days det	11-8-41	Lt-col JP Guvin	21 dys pay FR A Plus 11.35
Camp Borden Ont	29-6-42	"		AA15(1)AWL from 0600 hrs 29-6-42 until 0700 hrs 30-6-42	Cpl White Cpl Boyen R	5 days CB	30-6-42	Capt D Moore	Forfs 2 dys pay FR&I
Field	9-4-44	L/Sgt		Conduct etc unbecoming an NCO	RSM Campbell	Reprimanded	9-4-44	Lt-col MacDonald	
Field	27-11-44	L/Sgt		AWL from 1915 hrs 8-11 to 2230 hrs 10 Nov 44 (2 dys 3 hrs 15 min) AA15(1)AWL Sec 19 drunkenness not guilty close arrest 16 dys		Forfeits 30 days pay	27-11-44	FGCM	For 49 dys in

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-3-45	L/Bdr		Conduct etc sometime on 1 Mar 45 in the afternoon when his duty required him to be with his coy was not with his coy AA 40	Lt JN Haggans	Severe reprimand	10-3-45	Lt-col JRC Fangman	
Field	28-3-45	Cpl		Was tried by FGCM for an offence under AA96cl5(1) AWL from 0800 hrs 19 Mar 45 to 1200 hrs 23 Mar 45 Absent 4 dys 4 hrs	Documentary	Reduced to the ranks and to forf all ordinary pay for		FGCM	Forf 60 dys pay under FRI(149(2) 5 dys under FR&I 149(1)(a)
				CERTIFIED TRUE COPY "R.W.Meanwell" R.W.Meanwell Capt & Adjt offr having custody of original document					
		6 Apr 45							

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A22653	Pte	Harvey Frederick Davey	1st Bn The Essex Scot Regt

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL ..... four times.
For Conduct to the prejudice ..... two times.
For ..... times.
For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 16 days in military custody, *i.e.*, ... days in open arrest, ... days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 25 years

6. The date of his attestation ~~calling up for military service~~ is 19 Jul 40

7. The service which the accused is allowed to reckon is 4 years

8. The accused is in possession of† CSM and Clasp

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W: [illegible] 20,000 3/44 81-4151. Forms/B.296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	27.11.44	Field AWL	30 days pay	NIL
FGCM	28-3-45	AWL	Reduced to Rank Forfeit 60 dys pay	Nil

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17th day of April 1945

[illegible] Dept A Adjt

Statement in Mitigation

Acc pleaded guilty to charge which is result of attempts by acc to have certain action taken which was not taken.

In the Army almost 5 years - had been promoted up to L/Sgt in A/Tk pln. While serving there he found nerves were letting him down. Contacted medical off and told him his story. MO promised investigation and did so. Told acc nothing wrong with him. Acc then tried to get position in A/Tk pl where his nerves would not affect other men. No success there. Was brought up for awl in trying other means to get that job. Told senior off of his case. Acc as pte now was told he was transferred to rifle coy. Told all offrs including CO his nerves would not stand rifle Coy were less than A/Tk pln. Told them he would go to rifle Coy and there he told CO he could not stand the strain. After every attempt made through his own offrs to be reallocated, acc felt he must take matter in his own hands.

Acc did what was told to do, i.e. get paraded to CO until he saw no result did arise of it

Acc is married and has 2 children - 4 & 5 yrs old. Asks for leniency

JWB

LLL-143 PTE DAVEY H.R.

LLL-144 PTE MERASTY A.

RECORDED AT CMHQ IN AB 160.. LLL-143

C 114

Regt	No	Rank and Name	Description of Court Martial	Date and Place of Trial
2 Cdn Inf Bde Sp Gp (SLI)	B76439	Pte Davey, J.R.	FGCM	Fd 25 Jan 44

Accused elects trial

CHARGE(S)

(1) AA 41 WOAS, Committing a civil offence, common assault 9 Jan 44 assaulted Tommaso D'Arielli by attacking him with a stick.

(2) AA 19 WOAS, Drunkenness, 9 Jan 44 at about 1945 hrs near Ortona was drunk.

President and Members of Court	Plea	Finding
Maj. J.H. Gowan Seaforth of C	1. Not Guilty	1. Guilty
Capt L.J. Courtin, Seaforth of C	2. "	2. "
Lt D.I. Hatch, PPCLI		

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

SENTENCE AND MINUTE OF CONFIRMATION

28 days FP A forf of 28 days pay

Confirmed by Lt-Col C.B. Mere, 2 Cdn Inf Bde 28 Jan 44

Transmitted for Promulgation	When and where Promulgated	Field 30 Jan 44	Court dissolved	19

Forwarded to CMHQ 12 Feb 44

Certified correct

Date...12 Feb 44.....

Signature. W. B. Bate.....
Capt ADJA 1 CBRGp

Rank and Appt.....

CERTIFIED TRUE COPY

W.B. Bate

(W.B. Bate) Capt
ADJA 1 CBRGp

RECORDED AT CMHQ IN AB 160.. LLL-144

C 115

Regt	No	Rank and Name	Description of Court Martial	Date and Place of Trial
Cdn Inf Bde Sp Gp (SLI)	L2947	Pte Merasty, A.	FGCM	Fd 25 Jan 44

Accused elects trial

CHARGE

(1) AA 41 WOAS Committing a civil offence - common assault, near Ortona, Italy 9 Jan 44, assaulted Tommaso D'Arielli (Nephew) by pushing him and striking him.

(2) AA 19 WOAS, Drunkenness 9 Jan 44 at 1945 hrs near Ortona

President and Members of Court	Plea	Finding
Maj J.H. Gowan, Seaforth of C	1. Not Guilty	1. Guilty
Capt L.J. Courtin, "	2. "	2. "
Lt D.I. Hatch, PPCLI		

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

SENTENCE AND MINUTE OF CONFIRMATION

28 days FP and 28 days forf of pay

Confirmed by Lt Col C B Ware 2 Cdn Inf Bde 28 Jan 44

Transmitted for Promulgation	When and where promulgated	Fd 30 Jan 44	Court dissolved	19

Forwarded to CMHQ 12 Feb 44

Date 12 Feb 44

Certified correct

Signature W. B Bate
Capt ADJA 1 CBRGp

Rank and Appt

CERTIFIED TRUE COPY

W.B. Bate.

(W.B. Bate) Capt
ADJA 1 CBRGp

40C (115) RECORDED AT CMHQ IN AB 160 LLL-144 (1/72)

Army Book, 160. Whether elected Trial Case No.

5238 PMEM—300 Bks.—5-43

Regt.	No.	Rank and Name	Description of Court-Martial	Date and Place of Trial
2 CIB Sp Gp (SLI)	L-2947	Pte. Merasty, A.	F.G.C.M.	Italy 25 Jan 1944

CHARGES

See also certified copy AB 160 kept by 1 CBRGp.-

(1) AA 41
(2) AA 19

President and Members of Court	Pleaded	Finding
Major J.H. Gowan Capt L.J. Courtin Lieut D.I. Hatch (W) Lieut S. Dickenson	(1) Not Guilty (2) Not Guilty	(1) Guilty (2) Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

Character	Decorations, Honours and Rewards	Age	Service

SENTENCE AND MINUTE OF CONFIRMATION

28 days field Punishment with forfeiture of 28 days pay.
Findings & Sentence confirmed.
Lt.Col C.B. Ware, T/Comd. 2 Cdn Inf Bde.

Transmitted for Promulgation — When and where Promulgated 30 Jan 44 2 CIB Sp Gp (SLI) — Court dissolved 19

Date of Receipt	To whom sent	Date sent	Purport
4 Feb 44	Certified true Copy R. Cordeau Capt. (R. Cordeau)		

RECEIVED 22 MAY 1944 JAG BRANCH

RECORDED AT CMHQ IN AB 160

C(114) Army Book, 160. Whether elected Trial LLL-143 (1773) Case No. 39

Regt.	No.	Rank and Name	Description of Court-Martial	Date and Place of Trial
CIB Sp (SLI)	B-76439	Pte. Davey, H.R.	F.G.C.M.	Italy 25 Jan 1944

CHARGES

See also certified copy AB 160 kept by 1 CBRGp.-

(1) AA 41
(2) AA 19

President and Members of Court	Pleaded	Finding
Major J.H. Gowan Capt L.J. Courtin Lieut D.I. Hatch (W) Lieut S. Dickenson	(1) Not Guilty (2) Not Guilty	(1) Guilty (2) Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

Character	Decorations, Honours and Rewards	Age	Service

SENTENCE AND MINUTE OF CONFIRMATION

28 days Field Punishment with forfeiture of 28 days Pay.
Findings & Sentence Confirmed.
Lt.Col C.B. Ware, T/Comd. 2 Cdn Inf Bde.

Transmitted for Promulgation	When and where Promulgated	Court dissolved
	30 Jan 44 2 CIB Sp Gp (SLI)	19

Date of Receipt	To whom sent	Date sent	Purport
4 Feb 44			

Certified true Copy
R Cordeau Capt
(R. Cordeau)

J.M.J.

MM-96
PTE DAVEY M.A.

C-21348 Pte. Merle Allen DAVEY.
C.H. of O. - 5 C.I.R.U.

MM-96

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 10th day of AUGUST, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "G" GROUP CANADIAN REINFORCEMENT UNITS C.A.(O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [illegible]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [illegible]

*(1. [illegible])

*(2. [illegible])

[illegible]

*Omit if not applicable.

21-4-43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be notified. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	S.A. GERMAN	1 C.A.S.C.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	to be detailed by O.C.	5 C.I.R.U.
A Lieutenant	to be detailed by O.C.	1 C.I.R.U.
A Lieutenant	to be detailed by O.C.	1 C.C.R.U.

Waiting Member

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible] Brigadier
Commanding "G" Gp Cdn Rft Units,
Convening Officer. CA(O)

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C-21348 Pte. rle Allen DAVEY .H. of O. - 5 C.I.R.U.	First Charge A.A. Sec 15(1)	Guilty	Guilty	
		To undergo detention for a period of Ninety (90) days 10 Aug 43 S. C. Lerman Maj Pres		Confirmed
	SEE CHARGE SHEET ATTACHED			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J. R. Stewart Lough (Signed) S. C. Lerman Maj

Brigadier
Commanding "G" Gp Cdn Rft Units
Convening Officer (e) CA(O)

1 CASCRU.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of Aug 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~
*~~(3. The Interpreter)~~
*~~(4. The officers under instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this 10th day of Aug 1943.

S. C. Lerman Maj
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 782 M.M.L. 1929.

~~Signed this~~ day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 11 day of Aug 1943.

J. R. Stewart Lough
Confirming Officer.
Brigadier
Commanding "G" Gp. Cdn. Rft. Units

Promulgated and extracts taken in the case of C-21348 Pte DAVEY, M.A.
(Authority Pt. 11 D.O. #139 d/13 Aug 43)
(a) (Dated) 11 Aug 43 (Signed) [illegible] Capt. & Adjt. 5 Cdn. Inf. Rft. Unit

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Do 139 d/13 Aug 43
E.P.B.

CHARGE SHEET

The accused No. C-21346 Private DAVEY, Merle Allen, The Cameron Highlanders of Ottawa, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec. 15 (1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

did absent himself from 1 Canadian Base Reinforcement Depot 1st Battalion from 0800 hours the 18th day of June 1943 until he surrendered to Officer i/c Rear Party, 1 Canadian Base Reinforcement Depot, at Chobham at 2100 hours the 7th day of July 1943.

Total time absent 19 days, 13 hours.

(A. C. Pearson) Colonel,
Commander
5 Cdn. Inf. Reinf. Unit.

In the Field
the 9th day of August
1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

10 Aug 43

(J.R. Stewart Lough) Brigadier,
Commanding,
"G" Group Cdn Rft Units, C.A.(O).

Convening Officer.

Medical Officers Certificate
K.R. (Can.) para 557

I certify that I have this morning examined No. C.21348 Pte.
DAVEY, N.A. / S.C.I.R.U. and in my opinion he is ~~unfit~~ fit to
(Rank) (Name)
undergo trial by Court Martial.

Station S.C.I.R.U.

Date 10 AUG 43.

(Sgd.) Capt.
(Medical Officer) R.C.A.M.C.
5 Cdn Inf Reinf Unit.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT
ON THE 10th DAY OF August 1943

The accused C-21348 Pte. Mark Allen Davey ....Unit Cameron Highlanders of O. - 5C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Major S.A. German .....Unit I.C.A.S.C. R.U.

Members Capt. L.E. Fox .....Unit Gen. List 5C.I.R.U.

Lieut. O.C. Grant .....Unit Seaforths of Canada I.C.I.R.U.

The officers under instruction are duly sworn:-

.....Unit.....

.....Unit.....

Prosecutor Lieut. J.H. ACKERMAN ..Unit S.A.A. & P.E. - 5C.I.R.U.

Defending Officer Lieut. J.C. KIRBY ....Unit C.I.C. - 5C.I.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

S.A. German Maj
Pres.

The accused makes a statement in mitigation
Signed by the President and attached to the proceedings

Statement in Mitigation

By Re: C. 21348. Pte Davey M.A.

Sir:

I joined the army on May 30, 1940 and on July 7, 1940, I arrived in Iceland with my unit, the Camerons of Ottawa, where I remained for 10 months. I landed with my regiment in England on May 2, 1941. Since the time I joined the army until about 2 months ago I was with the Camerons of Ottawa, when I was suddenly transferred to the Hastings and Prince Edward Regiment at #1 C.B.R.D. This made me sore for I had been with the Camerons for over three years and had made many friends in the regiment. I was a N.C.O. with the Camerons. I became fed up and went A.W.L., particularly when we were confined to barracks week after week

over

(2)

for 5 weeks. Had I known that the Hastings and P.E. Regiment were going to Sicily I certainly would not have gone A.W.L.

Pte. M. A. Davy.

Witness:

[illegible] Lt.

C. 21348.

Exhibit A

FIRST ORDER ISSUED — REAR PARTY 1 CANADIAN BASE REINFORCEMENT DEPOT — NO 1 — 5 Aug 43.

Part 11 Orders issued by

CDN SEC GHQ 2nd ECHELON DET AT CAN RECORDS

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1. STRENGTH DECREASE

(c) S.O.S. to 5 C.I.R.U. w.e.f. 18 Jun 43 whilst A.W.L. from 0800 hrs.
18 Jun 43
Auth - ESD/0003 d/26 Jul 43
C.21348 Pte Davey, M.A.

(W.J.C. Johnston) Lieut.,
Officer i/c
Cdn.Sect., G.H.Q. 2nd Ech. Det. at Can. Records.

Certified true copy of extract taken from Rear Party 1 Cdn Base Reinforcement Depot Part 11 Order No. 1 d/5 Aug 43.

.....Capt.
Records Officer,
5 C.I.R.U.

Exhibit B

Certificate of Surrender (AA 163(i) j) 6(b)

I certify that ~~Dr~~ C 21348 Pte Davey M. A. of 1 C. B. R. D 1st Bn surrender at Chobham to myself at 2100 hrs on the 7th day of July 1943. He was in uniform.

7 Jul 43

Documents at Mid Echelon

M. F. Lo Fermenfrey
Pres Andre E Rivest H.
O'K Rear Party
1 C.B.R.D.

AWL from
0800 – 18 June 43

(c) Remanded by Adj 8 July 43 (15 months)

SUMMARY OF EVIDENCE

In the case of No. C.21348 Private DAVEY, Merle Allen, The Cameron Highlanders of Ottawa, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION.

Lieut. W.W.Thom, Royal Canadian Artillery, Assistant Records Officer, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Lieut. W.W.Thom, Royal Canadian Artillery, employed as Assistant Records Officer at 5 Canadian Infantry Reinforcement Unit. I produce a certified true copy of an extract taken from Hear Party No. 1 Canadian Base Reinforcement Depot part II Order No. 1 dated 5 August 1943 showing the accused whom I now recognize as absenting himself without leave from 0800 hours the 18th day of June 1943 and taken on strength 5 Canadian Infantry Reinforcement Unit with effect from the 18th day of June 1943 whilst absent without leave. This Order purports to be signed by W.J.C. Johnston, Lieut., Canadian Section G.H.Q., 2nd Echelon Detachment at Canadian Records. As assistant Records Officer of 5 Canadian Infantry Reinforcement Unit I have certified this extract and present it as Exhibit "A". I also produce Certificate under the Army Act, Section 165 (1) (J), showing the accused whom I now recognize as surrendering himself to the Officer in charge of Hear Party, 1 Canadian Base Reinforcement Depot, at 2100 hours on the 7th day of July 1943, and that at the time of surrender he was in Military Uniform. This document purporting to be signed by Lieut. Andre Rivard, Officer in charge of Hear Party, 1 Canadian Base Reinforcement Depot, is marked Exhibit "B".

W.W. Thom Lieut.

.....

(W.W. Thom) Lieut.

The accused declines to cross examine this Witness.

The accused having been warned according to Rules of Procedure 4 (E), reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C), (D), (E), and (F) have been complied with.

.....

(J.B. Dodd) Lieut.
Officer Detailed to Take Summary of Evidence.

In the Field
9th day of August
1943.

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. C-2134 Name Davey M A | Sqn., Battery, or Company | Corps C H C Inf. | Date of enlistment 30May40 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.	31Oct41	Pte		AA Sec 40 & Sec 15(1) AWL from 1800 hrs 31 Oct to 0035 hrs 1 Nov 41 (6hrs 35mins)		7 Dys FP 7 dys pay FRI 149 1.b. 7 dys pay FRI 149(2)	1Nov41		Perf 7 dys pay FRI 149(2) 7 dys pay FRI 149(1)(a) 1 dys pay FRI 149(1)(b) Tot.15 dys pay
U.K.	13Sept41	Pte		AA Sec 15(1) AWL 2300hrs 13 Sept 41 to 1100hrs 14 Sept 41 (12hrs)		14 dys CB 14 dys pay FRI 149 (2)	16Sept41		Perf 14 dys pay FRI 149 (e) 1 dy FRI 149 1.a. Tot 15 dys pay
U.K.		Pte		AA Sec 40		21 dys Perf pay FRI 149 (2)	26Sept41		Perf 21 dys pay FRI 149(2)4 dys concur p.s

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.	20Oct41	Pte		AA Sec 15(1) AWL from 2359hrs 20Dec41 to 1000hrs 22Dec41 (1dy 10hrs 1min)		14 dys CB Forf 27 dys pay FRI 149(2)	23Oct41		Forf 27 dys pay FRI 149(2) 2 dys pay FRI 149(1)(a) Tot. 29 dys pay
U.K.	19July42	Pte		AA Sec 15(1) AWL from 2359hrs 19 July 42 to 0745hrs 20 July (7hrs 46mins)		7 dys CB	1Sept42		Forf 1 dys pay FRI 149 (1)(a) Forf 10 dys pay FRI 149 (2) 2 dys pay FRI 149(1)(a) Tot.12 dys pay
U.K.	29Aug42	Pte		AA Sec 15(1) AWL from 2359hrs 29 Aug 42 to 0930hrs 31 Aug 42 (1dy 9hrs 31mins) AA Sec 9(2)		14 dys CB	1Sept42		
U.K.	23Dec42	Pte		AA Sec 15(1) AWL from 2000hrs 23 Dec 42 to 0020hrs 13 Jan 43 (19dys 2hrs 20mins) close arrest 1 dy.		Forf 10 dys pay FRI 149 (2) 28 dys FRI 149(2) 28 dys PP	14Jan43		Forf 28 dys pay FRI 148(2)20dys pay FRI 149(1)(a)1dyFRI149 1c Tot 49 dys pay

Certified true copy of the documents on my custody

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-520
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-21348	Pte	DAVEY, M.A	5 C.R.O.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. Sec. 15(1)	Two (2) times	A.A. Sec 15(1)	Six (6) times
For	A.A. Sec 9(2)	One (1) times	A.A. Sec 9(2)	One (1) times
For		times	A.A. Sec 40	Two (2) times
For		times		times

Number of instances of gallantry or distinguished conduct Nil

~~or,~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or,~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and ~~[illegible]~~ 34 9th days in ~~Air Force~~ military custody, making a total of ~~[illegible]~~ 34 9th days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 23 yrs. 11 mos.

6. The date of his commission specified in his ~~record of service is~~ ~~attestation~~ attestation paper 30 May 40

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 1 mo

8. The accused is entitled to reckon 3 yrs. 1 mo service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). ~~State any air force decoration or reward.~~ ~~military~~

10. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held the Air Force regimental rank of .....

11. (~~In the case of an officer.~~) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
..... dated ....., ~~and in his regiment (or corps)~~, the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE.

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....
Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. ~~10~~ 10th Aug

Signed this ~~10~~ 10th day of July 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Annex signed by the president, and annexed to the proceedings.

10 Aug 43

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournai Barracks, Farnborough Hants on the 9th day of August 1943 preliminary to my Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

C.21348 Davey W A
(C.21348 Pte Davey, W.A.)

Dated at Tournai Barracks
this 9th day of August 1943.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of: Lt J.C. Kirby SC.IRU

if he is available.

C.21348 Davey W A
(C.21348 Pte Davey, W.A.)

Dated at Tournai Barracks
this 9th day of August 1943.

LIST OF WITNESSES

In the case of No. C-21348 Private DAVEY, Merle Allen, The Cameron Highlanders of Ottawa, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

(FOR THE PROSECUTION)

1. Lieut. W.W. Thom, Royal Canadian Artillery, Assistant Records Officer, 5 Canadian Infantry Reinforcement Unit.

(FOR THE DEFENCE)

NIL

VU-64
PTE DAVEY M. A.

FIELD GENERAL COURT-MARTIAL

CFA90 (In lieu of AFA31 40/P & S/1898 (2804))

Convened by Order of Brig. J.R. Stewart Lough DSO, MC, VD. Comd "G" Gp CRU dated 10 Nov 43

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-21348 Private Merle Allen DAVEY, C.H. of O, - 5 C.I.R.U.

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ____ beginning on (date) ____ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of (120) One hundred & twenty days.

11 Nov 43 (Sgd) H.D. Chesterfield-Smyth

(Sgd) ____ Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.66(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further ordered.(1)

(1. AA 57A. Delete if not used.)

(Sgd) J. Stewart Lough Brigadier, Commanding "G" Gp Can Ref. Units

Date 12 Nov 43 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused. Date. Signature of Offr.

C-21348 Pte. DAVEY, M.A. 15 Nov 43. (Sgd) Gleason Col

(2 CIRU PF 22 D.S.to 219 dated 26 Nov 43.) Commander, 5 C.I.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

Proceedings Reviewed

C-21348 Pte. Ellis 12 Nov 43 Merle Allen DAVEY C.H. of O 5 C.I.R.U.

Reviewing Officer (I.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 11 Nov 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(or)~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1125 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ~~(a)~~ ~~as Interpreter?~~ ~~Ans~~ ~~as shorthand writer? Ans~~

~~The Interpreter is sworn.(1) Do you object to~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court.(2)

President	Brig	H.D. Chesterfield	5 CIRU
Member	Maj	F. Chaworth	1 CIRU
Member	Lieut	J.J. Murphy	1 CIRU
Judge-Advocate			
Prosecutor	Capt	J.C. Kirby	5 CIRU
Defending Offr	Lieut	J.E. Martin	5 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 32.)

A8. The accused ____ before arraignment makes(s) (no) (a) plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p **3**.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

JAT President to accused: Do you wish to make a statement? Ans No Sir.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~JAT (their)~~ plea(s) of Guilty to Not Guilty on ~~the first~~ charge(s). ~~The accused is (are) so informed, and he (they)~~ ~~JAT changes(s) his (their) plea(s) to~~ ~~charge(s).~~ Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

JAT B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

JAT B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....
(*1. RP 155. 2. RP 40(A), see 40(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 137(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
JAT Ans No Sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and JAT marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes see attached statement.(2)
JAT
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas AO 309, 2323, MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 66(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispatch of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D.O. 219/16 Nov 43 EDS

CHARGE SHEET

The accused No. C.21348 Private DAVEY, Merle Allen, The Cameron Highlanders of Ottawa, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE Army Act Sec. 15 (1) WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

did absent himself without leave, from 5 Canadian Infantry Reinforcement Unit, from 2200 hours the 5th day of October 1943 until surrendering himself at 5 Canadian Infantry Reinforcement Unit Guard Room at 0010 hours the 5th day of November 1943.

Total time absent 30 days 2 hours 10 minutes

A.S. Pearson

(A.S. Pearson) Colonel
Commander
5 Cdn Inf Rft Unit

In the Field
6th day of November
1943

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J.R. Stewart Lough

(J.R. Stewart Lough) Brigadier,
Commander "G" Group,
CANADIAN REINFORCEMENT UNITS.

10 Nov. 43

Convening Officer

A.D.V.

Medical Officer's Certificate
K.R. (Can.) para 557

I certify that I have this morning examined No. C-21348

Pte. DAVEY, W.A.....and in my opinion he is

~~unfit~~ fit to undergo trail by Court Martial.

Station 5 Cdn Inf Reinf Unit.

Date. 11 Nov 45

R. Dale .....Capt
(Medical officer) RCAMC
5 Cdn Inf Reinf Unit.

W.A.D.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-21348	Pte.		Merle Allen	DAVEY	C.H. of O. 5 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Nov 43 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	N.D. THEOBALD MC (Westmr R.)	5 C.I.R.U.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Major	F Shawcross ~~to be detailed by O.C.~~	1 C.I.R.U.
A Lieut	E.L. Murphy ~~to be detailed by O.C.~~	1 C.I.R.U.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 10 Nov 43

J.R. Stewart Lough (Signed personally. RP 105 (n 2.)) (J.R. Stewart Lough) Brigadier (Rank.)

Commanding "G" Group Cdn Rft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

N. D. T.

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Opl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 88(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 2(b)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(E), *KR Can* 562(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can* 566. *As to certified copies of regimental books see AA* 162 (1) (g) (ii).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 118(C), *MML* p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

Pte. Davey M. A. C 21348.
in his plea of mitigation states

I received news from home that my family was separated which upset me greatly. I have a young brother, 20 years of age, in the R.C.A.F. London, who has a clean record so I wanted to go to him so he would not get into trouble, I asked for leave but was refused, so I went away nevertheless. I contacted him and straightened him out, then realizing my position, I returned to camp.

Questioned by the Court

Did it take 30 days to settle your troubles?

Answer My brother is a very highly strung individual and I stayed with him till he was

Completely pacified as he is
apt at times to take convulsions.

Signed

pt. M. A. Dawey

N.A.T.

Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at Tournay Barracks Farnborough, Hants. on the 28th day of October 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. C.21348, Pte. Davey, M.A.

DECLARATION

The Court declare that No. C.21348, Pte Davey, M.A. Cameron Highlanders of Ottawa, 5 Canadian Infantry Reinforcement Unit illegally absented himself without leave from 5 Cdn Inf Rft Unit. at 2200 hours on the 5th day of October 1943, that he is still so absent, and that on the 27th Oct 43. he was deficient, and that he is still deficient of the following articles:—

ARTICLES	Vocab Price	VALUE	ARTICLES	VALUE
1 Blouse, B.D.	1-7-8	1-0-9		
1 Trousers, B.D.	1-7-11	1-0-11½		
1 Pr Boots, Ankle	1-1-6	0-16-1½		
1 Balmoral	0-4-2	0-3-3½		
1 Brasses, Button	0-0-2	0-0-2		
1 Brush, Shaving	0-1-4	0-1-0		
1 Brush, Tooth	0-0-4½	0-0-3½		
1 Knife, Table	0-0-9½	0-0-9½		
1 Razor,	0-1-10½	0-1-5		
1 Pr Socks	0-1-9	0-1-3		
1 Frog, Bayonet	0-0-11½	0-0-8½		
TOTAL	4-8-6	3-6-9		

Capt. D. Cowans, (R.H.C.) President

Lieut. M. Corbett, (C.I.C.) Member

Lieut. J.R. Duvall, (C.I.C.) Member

Signed at Tournay Barracks, Farnborough, Hants.

this 28th day of Oct 19 43

Signature of Commanding Officer Sgd: A.S. Pearson, Colonel Commander, 5 C.I.R.U.

Certified true copy

Signature of Officer having custody of original record

M.F.B. 275
A.F.B. 115
[illegible]
B.Q. [illegible]

[illegible]

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournay Barracks Farnborough Hants on the 8th day of November 1943, preliminary to my Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

C.2134 Pte. Davy W.A.

(C.2134 Pte Davy, W.A.)

Dated at Tournay Barracks
this 8th day of November 1943.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.
I desire the services of Lieut J. E. Martin R.A.O.C.
if he is available.

C.2134 Pte. Davy W.A.

(C.2134 Pte Davy, W.A.)

Dated at Tournay Barracks
this 8th day of November 1943

W.D.J.

SUMMARY OF EVIDENCE

In the case of No. C.21348 Private DAVEY, Merle Allen, The Cameron Highlanders of Ottawa, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut. W.W. Thom, Royal Canadian Artillery, Assistant Records Officer, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Lieut. W.W. Thom, Royal Canadian Artillery, employed as Assistant Records Officer at 5 Canadian Infantry Reinforcement Unit. I produce a certified true copy of a Record of the Declaration of the Court of Inquiry, which assembled at Tournay Barracks, Farnborough Hants, on the 28th day of October 1943, showing the accused whom I now recognize as absenting himself without leave from 5 Canadian Infantry Reinforcement Unit at 2200 hours on the 5th day of October 1943. This document is marked Exhibit "A".

W.W. Thom Lieut.

(W.W. Thom) Lieut.

The accused declines to cross examine this witness.

SECOND WITNESS FOR THE PROSECUTION

D.81987 L/Cpl Cornell,F., The Black Watch (RHR) of Canada, Regimental Police, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am D.81987 L/Cpl Cornell,F., The Black Watch (RHR) of Canada, employed as a Regimental Police at 5 Canadian Infantry Reinforcement Unit. At 0010 hours the 5th day of November 1943, No. C.21348 Pte Davey, M.A., The Cameron Highlanders of Ottawa, 5 Canadian Infantry Reinforcement Unit, surrendered himself to me at the Unit Guard Room 5 Canadian Infantry Reinforcement Unit. This evidence pertains to the accused whom I now recognize.

D81987 L/Cpl Cornell F.

(D. 81987 L/Cpl Cornell,F.)

The accused declines to cross examine this witness.

The accused having been warned according to Rules of Procedure 4 (E), reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C), (D), (E), (F), (G), have been complied with.

for J.E. Pope Lieut

(J.E. Pope) Lieut,
Officer detailed to take Summary of Evidence

In the Field
8th day of November
1943

Exhibit A to D.7

No C21348 Name DAVEY M.A. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 30May 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/Pam/136 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				ORIGINAL SHEET DESTROYED AFTER SIX MONTHS OF SERVICE- 30 Nov 40.					
FIELD	31Oct 41	Pte		A.A. SEC 15 (1) (6 hrs 35 mins)		7 days F.P.& 14 days Pay	1 Nov41		Forf 1 day 149 (1) (a)
Field	13Sep 41	Pte.		A.A. Sec 15 (1) AWL 12 hrs		14 days C.B.& 14 days pay	16 Sep41		Forf 1 day 149 (1) (a)
Field		Pte.		A.A. Sec 40		Forf21daysPay	26Sep 41		
Field	20Dec 41	Pte.		A.A. Sec 15 (1) AWL from 2359hrs 20 Dec to 1000 hrs 22 Dec 41		14 days C.B.& 27 days pay	23Dec41		forf 2 days 149 (1) (a)
Field	19Jul 42	Pte.		A.A. Sec 15(1) AWL from 2359 hrs 19 Jul to 0745 hrs 20 Jul 42		7 days C.B.	22Jul42		forf 1 day 149 (1) (a)

Exhibit "C" to A.F.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.	29Aug 42	PTE.		AA SEC 15(1) AWL from 2359 hrs 29 Aug 42 to 0930hrs 31 Aug 42 (Absent 1 day 9 hrs 31 mins) AA Sec 9(2)		14 days C.B. & 10 days pay	1Sep 42		2 days pay FRI 149 (1)(a)
U.k.	23Dec 42	Pte.		AA SEC 15(1) AWL from 2200hrs 23 Dec 42 to 0020 hrs 13 Jan 43 (absent 19 days 2 hrs 20 min (close arrest one day)		28 days F.P. 28 days pay FRI 149(2)	14Jan43		one days pay FRI 149 (1)(b) 20 days pay 149 (1)(b)(11)

Certfied true copy as taken from documents un my custody

.....
Records Officer,
5 Cdn Inf Rft Unit.

No C21348 Name DAVEY, M.A. Sqn, Battery, or Company Corps Cdn Inf Corps Date of enlistment 30May43 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAS/136 (3428)

Date of last entry in Company Conduct Sheet 23Dec 42 No and date of last drunk NIL Period not reckoning towards freedom from extra fine Sheet No 2 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18Jun43	Pte		A.A. 15(1) AWL from 0800 hrs 18 Jun to 2100 hrs 7 Jul 43 (19 days 13 hrs)	F.G.C.M.	90 days detn	10 Aug 43	F.G.C.M.	20 days pay 149 (1)(a) 33 days pay
				Granted remission of 57 days					
Field	18Sep43	Pte		A.A. 15 (1) AWL from 2200 hrs 18 Sep to 0800 hrs 20 Sep 43 (1 day 10 hrs)		7 days F.P. 7 days pay	20 Sep 43		2 days pay 149(1)(a)

Certified true copy as taken from documents in my custody

Records Officer, 5 C.I.R.U.

(PTO)

M.F.B. 355
22M—5-41 (572-2)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C.21348	Pte.	Davey, N.A.	5 C.I.R.D

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. Sec 15 (1)	2 times	A.A. Sec 15 (1)	7 times
For		times	A.A. Sec 40	1 times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct Nil

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 6 days in ~~Air Force~~ military custody, making a total of 6 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 24 yrs. 3 mos.

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 30 May 40

7. The service which the accused is allowed to reckon towards discharge is 3 yrs. 5 mos.

8. The accused is entitled to reckon 3 mos. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). ~~State any air force decoration or reward.~~ ~~military.~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ ~~Air Force~~

Exhibit B N.A.T.

11. ~~(In the case of an officer.)~~ The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , ~~and in his regiment (or corps)~~, the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused. Number C-21345 Rank L/C Unit ~~Regiment~~

Name Davey, M. A. of 5 CIRU.

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F. G. C. M.	UK. 10 Aug 43	A.A. Sec 15(1)	90 DAYS DETENTION.	47 DAYS.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11th day of November, 1943. [illegible] 5 CIRU.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

121.P

Pte Davey, L.

O. H. M. S.

121-P

Correspondence to be PINNED here

Army Form A.d.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this ELEVENTH day of OCTOBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Army Tank Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[redacted]

JUDGE ADVOCATE

CAPT. W.B. BATE ADJA 1 CDN CORPS.

PROCEEDINGS REVISED

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
MAJOR	C. H. MITROUTSOS	12 CDN ARMY TANK REGT.

Members.

Rank.	Name.	Regiment.
CAPT	F. DEACON	1 CDN ARMY TANK BDE SIGS (RCCS)
CAPT	T. S. DUNLOP	2 CDN LT FD AMB (RCAMC)
CAPT	E.A. RICHARDSON	14 Can Army Tank Regt

*Signed (R. A. Wyman) Brigadier,
Commanding 1 Cdn Army Tank Bde.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A-50106 Pte Davey, R. 1 Cdn Army Tank Ordnance Fd Pk (3 Ech) RCOC.	1st CHARGE A.A. Sec 18 (4) See Charge Sheets for particulars.	NOT GUILTY	NOT GUILTY	
	2nd CHARGE (Alternative) A.A. Sec 40. See Charge Sheets for particulars.	NOT GUILTY	Guilty	
	3rd CHARGE A.A. Sec 40. See Charge Sheets for particulars.	NOT GUILTY	Not Guilty	
	4th CHARGE (alternative) A.A. Sec 40. See Charge Sheets for particulars.	NOT GUILTY	Guilty	
			To undergo detention for 50 days 13 Oct 42.	

Finding and sentence confirmed. To be promulgated on a parade if held as soon as practicable.

W. A. Bradbrooke Capt. Judge Advocate

W. A. Bradbrooke Capt. Judge Advocate

W. A. Bradbrooke Capt. Judge Advocate

COVERING SHEET

F.G.C.M. - Trial: A.30106 - Pte. Davey, R., 1 Cdn Army Tk Grd Fd Pk RCOC

Date of trial: 13 Oct 42

President of Court: Major C.N. Heroutsos, 1st Cdn Army Tk Regt

1. For the information of the officers asked to sign below, the following irregularities are noted:-

(a) The full name of the accused is not set out in the schedule on page 2 of the AFA 3 or in the charge sheet (See K.M.L. page 714)

(b) Minute of the Convening Officer is not dated on the Charge Sheet.

(c) Name, number and Unit of the accused is not filled in in the Extract of Promulgation at the bottom of page 3 of the A.F.A. 3

(d) It is considered that the third charge under Army Act Sec 40 alleging that the accused "did make away with one compass proportional, being public property, by selling the same to etc." As the case in fact is stealing public property, should have been laid under Army Act Sec. 18(4). Theft is defined in K.M.L. at page 118, Chapter VII, para. 201. "without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent, at the time of such taking, permanently to deprive the owner thereof." In these circumstances it is considered that the third charge should have been laid as an alternative charge. This is being submitted to the J.A.G. Branch under K.R. (Can.) 573.

(e) Proceedings were completed in the handwriting of the Judge Advocate on 13 Oct 42. If they had been delivered by hand to the Confirming Officer, no reason is seen why two days should elapse before confirmation on 15 Oct 42.

(f) No reason is seen why forty-three days should have elapsed before the accused was brought to trial.

2. May these remarks and the authorities quoted be read by the following officers, signed and returned to this Headquarters, please.

C. C. 1 Cdn A Tk Bde Grd Fd Pk RCOC

Adjutant 1 Cdn A Tk Bde Grd Fd Pk RCOC

President of the Court

A.D.J.A. Cdn Div Staff Capt, Can Army Tk Bde.

Staff Officer for Convening Officer

Staff Officer for Confirming Officer

(A.W. Embury) Major,
D.J.A., 1 Cdn Corps.

DISTRIBUTION:

C.M.H.Q.
H.Q. 1 Cdn. Army Tank Bde
File

W. B. Scott Capt
Judge Advocate

B2.

O. M. Meurubas
Major
President

CHARGE SHEET

The accused No. A-50106 Pte. DAVEY, R., of 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) a soldier of the Canadian Army Overseas, placed on active service, is charged with:-

FIRST CHARGE
SEC 18 (4)
ARMY ACT

STEALING PUBLIC PROPERTY, in that he, In the Field, between the 14th. May 1942 and the 5th. of June 1942, stole one compasses, proportional, being public property.

SECOND CHARGE
(ALTERNATIVE)
SEC 40
ARMY ACT

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, in the Field, on or about 9 July 1942, was improperly in possession of one compasses, proportional, being public property.

THIRD CHARGE
SEC 40
ARMY ACT

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, in the Field, on or about 9 July 1942, did make away with, one compasses, proportional, being public property by selling the same to A-49922 Pte. GREENTREE, A. A., 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon)

FOURTH CHARGE
(ALTERNATIVE)
SEC 40
ARMY ACT

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, in the Field, on or about 9 July 1942, did make away with one compasses, proportional, being public property, by delivering same to A-49922 Pte. GREENTREE, A.A., of 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) for subsequent re-sale.

In the Field
6 October 1942.

B W Ingram .....Lieut.
(B. W. INGRAM)
T/Officer Commanding
1 Cdn. Army Tank Ordnance Field
Park R. C. O. C. (3rd. Echelon)

To be tried by a Field General Court Martial.

R A Wyman
(R. A. Wyman)
Brigadier,
Bde Comd., 1 Cdn Army Tank Bde.

X

This is to certify that I have this morning medically examined A-50106 Pte. DAVEY, R. of 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) and found him fit to undergo trial by Court-Martial.

[illegible] Major
President
[illegible] Capt.
Judge Advocate

E. B. Patterson Capt.
2 Can. L. Field Amb.

In the Field
13 October 42.

Army Form A 9.

A

**Form of Proceedings for General and District Courts-Martial.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

Proceedings of a Field General Court-Martial held as in the Field on the 13th day of October 1942 by order of Brigadier R. A. Wyman E.D. Commanding 1 Cdn. Army Tank Bde dated the 11th day of October 1942

President.

Major C. H. McAuliffe 12 Cdn. Army Tank Regt.

Members.

Capt. F. Deacon 1 Cdn. Army Tank Bde Sigs. R.C.C.S.

Capt. J.C. Dudlop 2 Cdn. Lt. Fd. Amb. RCAMC

Capt. W. B. Bate ADIA 1 Cdn Corps., Judge Advocate.

Trial of* A. 50106 Pte Davey R. 1 Cdn. Army Tank Ordnance Field Park RCOC (3rd Echelon)

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that Capt J.C. Dudlop is not available to serve owing to the exigencies of the service, Capt. E.A. Richardson 14 Cdn Army Tank Regt., waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. W. D. Stanley 12 Cdn Army Tank Regt.

~~Counsel‡ or~~ defending officer† Lieut. H.S.W. Alexander 11 Cdn Army Tank Regt

At 1540 ~~o'clock~~ hours the Trial commences.

WAB

The order convening the Court is read, and is marked A1. signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4278. Wt.W1630/78. 25,000 ots. 6/40. K. & H., Ltd. G482/11., Forms A 9/20.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

~~Capt. C. A. Richardson 14 Cdn. Army Tank Regt~~
Lieut. F. G. Rivers 14 Cdn Army Tank Regt
Lieut H. S. Roadhouse 14 Cdn Army Tank Regt
Lieut A. H. Wallace 14 Cdn Army Tank Regt
Lieut J. G. Henderson 14 Cdn Army Tank Regt.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Not guilty. *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Not guilty. *Answer.*

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked , signed by the President, and attached to the proceedings).~~

W.B.B.

The prosecutor proceeds to call witnesses.

First witness for prosecution. Capt. D. O. Stanley 12 Edn. Army Tank Regt. prosecutor, duly sworn states.

~~being duly sworn, is examined by the prosecutor.~~

W.B.B.

On 6 Oct 42, in accordance with an order given by Capt. H. Williamson Staff Capt. 1 Edn. Army Tank Bde. I proceeded to Tyne House, near Capel, Surrey where on that day in the presence of the accused I took a Summary of Evidence regarding this case. The accused was duly cautioned in accordance with R.P. 14(E) and elected to give evidence on oath. This was recorded. I produce that part of the Summary of Evidence containing the statement made by the accused (Exhibit S1) At the time the accused made this statement the accused indicated the contents, which I now produce (Exhibit 11) and which were then lying on the table. He examined them before making the statement as to his recognition of them. Cross examined: The statement was read back to the accused. He understood it and the implications of it were fully explained to him before he signed it. I pointed out to the accused the phrase beginning "I picked them up" and ending "by the Army work" was not a good one in his favour. I explained what it meant and he signed the statement. By the Judge Advocate: The signature on the document (Exhibit S2) is to the best of my knowledge

the signature of the accused. He signed it in my presence in its present form. In cautioning the accused I used the exact wording in R.P. 4(E). I read it from the MML.

R.P. 83(b) complied with.

Second Witness for the Prosecution } A. 21953 Cpl. Gallimore H, 1 Cdn. Army Tank Ord. Fd. Pk. R.C.O.C. (3rd Echelon). being duly sworn is examined by the prosecutor:

In ufc. quartermaster stores of Fd. Pk. 3rd. Echelon. I recognise the compasses and case (Exhibit H). which I know to be government property by the government stamp on it. That item of equipment has never been issued to the unit. I recognise the accused as Lte. Davey. The compasses (Exhibit H) at no time to my knowledge have been issued to the accused. It would have been recorded on his MFC. 800 if it had been. I produce the MFC. 800 of the accused (Exhibit I). I recognise the signature of the accused on it, as he signed it in my presence.

WHB Cross examination: Every type of instrument of that nature issued to the accused would have to come through me and be signed for on his MFC. 800. If on a map reading course, he would sign for it but it would necessarily not be shown on his MFC. 800. We have never had a ~~compass divider~~ compasses proportional on our unit.

No re-examination

By the Court: There is nothing in our unit resembling this compass (Exhibit H).

R.P. 83(B) complied with.

Third Witness for the Prosecution } A. 49922 Lte. Greentree AA. 1 Cdn. Army Tank Ord. Fd. Pk. R.C.O.C. (3rd Echelon). being duly sworn is examined by the prosecutor:

I recognise the accused as Lte. Ross Davey. I have seen ~~an article~~ one exactly like it before (on being shown Exhibit H.) on or about the 9th of July 1942. At that time Lte Davey came to me and asked for a loan of 10 shillings. I borrowed it from someone else not having the money myself and gave it to Tpr. Davey. Later in the day Lte Davey brought to me a proportional compass. He told me if I sold it I could get the money which he borrowed from me so that I could repay it to the person I borrowed it from. On the 15th of the month after that Lte. Davey paid me back the 10 shillings he had borrowed from me. Later that day I

asked him what I was to do with the instrument. He said to sell it or do what I wished with it as it was no use to him. To the best of my knowledge the compasses (Exhibit H) are the same compasses. The accused cautioned me to keep the compasses out of sight. He said nothing to me about the ownership of the compasses.

Cross examined: The compasses were not actually sold to me. I never gave it a thought as to whether the compasses were government property or not. I just put them away without looking at them.

No re-examination.

By the Court: The compasses (Exhibit H) looks the same as the ones I got from Pte. Davey. The first time I realized they were government property was when Sgt. Ross or Cross of the Security Police showed them to me and told me they were government property.

By the Judge Advocate: I have been in the Army about 26 months and never before I've I seen a broad arrow mark on government property. I may have seen it but never recognised it as a government marking.

R.P. 88(B) complied with.

The prosecution is closed.

Defence.

R.P 40(A) complied with.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes sir.

Question. Do you intend to call any other witness in your defence?

Answer. Yes sir.

Question. Is he a witness as to character only? *Answer.* Yes.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Instruction

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First Witness for the Defence } A. 50106 Pte. Dawes, R., the accused, being duly sworn is examined by the defending Officer, -

When I was running stores to Pde. unit one day I came upon an issue for Pde. Signals 10 miles north of Brighton. When I came out the driver of the truck was away for the moment. I spied (Exhibit 4) this article and case across the road lying in the grass. I picked it up and put it in my pocket and returned to Bergen Hill, my starting point. While at Bergen Hill I put it in the bottom of my duffle bag and left it there until such time as I went back to Nottingham where my unit was stationed. One day when needing 10 shillings I went to Pte Greentree and asked him for the loan of 10 shillings. He didn't have it. It came to my mind about 20 minutes later that I could give him this article as security. About 15 July last it being pay day I paid Pte Greentree the 10 shillings he had lent me and asked me what he should do with the compass proportional. I told him to look at it under cover, and to sell it or do what he liked with it, not knowing at the time it was W.D. property. I did not know until Sgt. Cross produced the instrument to me around 1 Sept 42. The place I found the compasses was not on W.D. property at all but on the opposite side of the camp. I was questioned by the C.O., by Sgt. Cross became confused and that is why I said I knew the compasses were W.D. property in my statement.

Cross examined: I was on a Store Course when the unit was at Nottingham. I was learning how to do the job on this course. My job is to issue stores. I know the broad arrow meant government property when I picked up the compasses but I did not look at them carefully and did not know there were actually Government property. Normally when stuff is found in the army it is turned into the Orderly room if W.D. property; if not one endeavours to find the owner oneself. I did not attempt to turn the compasses (Exhibit 4) into the orderly room at any time. I made no attempt to find a private owner for it. When I asked Pte. Greentree he could do what he liked with the compasses I did not consider them mine as that I had the right to do that.

On hearing the Summary of Evidence, nothing was hearried & rushed. At the time I considered everything over upon which in connection with taking the summary was correct. But since then I felt I was confused because of the number of investigations there have been and the number of questions I have been asked.

No re examination:

By the Court: One would not use instruments like these compasses (Exhibit H). If enquiries had been made I might have found an owner for them. When I found the compasses I put them in my pocket and said nothing about it.

R.P. 83(E) complied with.

Court adjourns at 1725 hrs.
Court re-opened at 1740 hrs.
The Defence is closed.

The Prosecutor addresses the Court: The fact that the accused admits taking the compasses; that he knew they were not his own property; that he made no attempt to find the owner of the compasses: that at about 9 July 42 he delivered them to someone else for disposal constitutes theft. As to the second charge it is immaterial if the accused knew the compasses were government property or not. With regard to the last charge the facts prove the accused delivered them to Pte Swentzell for subsequent re sale.

The Defending Officer addresses the Court. The accused found the compasses and one, picked them up without careful examination put them away. The element of intent is lacking to constitute stealing. The fact that the accused did not know they were W.D. property shows that the accused was not in unlawful possession. On the third charge there is no evidence that the accused sold the compasses to Pte Swentzell. Accused had no intention of selling them; he merely used them as security for the loan. The accused neglected to ascertain their true ownership - a perfectly natural thing in the circumstances.

The Judge Advocate, summed up; pointing out to the Court the definition of theft found in DORs p. 22 para 35: the fact that on the alternative charges the accused could not be found guilty of both charges: that the accused must be given the benefit of any reasonable doubt: that the Court must be satisfied that the requirements of "unlawful possession" must be met: and with respect to the 2nd and 3rd and 4th charges must be satisfied that such acts are to the prejudice of good order and military discipline.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused guilty of the second and fourth charges and not guilty of the first and third charges.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt. W. D. Stanley, already ~~in duly~~ sworn. W.S.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes. I produce MFB 355 and certified true copy of MEM. 6.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked J & K. signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* I have.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* To the best of my knowledge, yes.

[Instructions.—If by reason of the nature of the service of the accused in a department corps or otherwise the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the proceedings must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.—None.

See page F. - for evidence of character on behalf the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* No sir. ~~The Defending Officer addresses the Court in mitigation.~~

The Court is closed for the consideration of the sentence.

F

Sentence.

~~The Court sentence the accused~~ Sentence.

2nd Witness for the Accused } Lieut. H.S.D. Alexander, 11 Can. Army Tank Regt. being duly sworn states,-

I have known the accused from 1934 - 39 when we were employed together at the Daily Star, Windsor, Ont. Canada. During this time the accused had a spotless record, especially concerning theft of any type. While through his duties concerned collecting money and accounts for the paper. The manager of his department with whom I was very friendly often spoke highly of his work, conduct and integrity.

No cross-examination:

R.P. 83(B) complied with.

Exhibit "B" in the case of A50106 Pte DAVEY R. Court Martial

INDIVIDUAL'S CLOTHING AND EQUIPMENT STATEMENT

Free Issues only to be accounted for on this form.
Blank spaces left after an issue has been entered will be ruled through before the individual signs for articles issued to him.

Regtl. No. A.50106 Rank PTE Name DAVEY, R. Date of Attestation 13/8/40

DESCRIPTION OF ARTICLES	Number	Date of Issue	Number	Date of Issue	Number	Date of Issue	Number	Date of Issue
Anklets, web, prs.	1	8/9/40						
Badges, arm.			1	13/8/40				
Badges, cap.			1	13/8/40				
Badges, ——, prs.								
" shoulder or worsted, prs.	1	8/9/40						
Bags, kit, Mk. II								
Battle dress, serge—	1	13/8/40	1	13/8/40				
Blouses	1	13/8/40	1	13/8/40				
Trousers, prs.	1	13/8/40	1	13/8/40				
Belts, waist, leather, brown	1	13/8/40						
Blacking, tins	2	13/8/40						
Boots, ankle, prs.								
" felt, prs.								
" Lumbermans, rubber, prs.	1	13/8/40						
Boot dressing, tins	1	13/8/40						
Boot laces, prs.	1	13/8/40						
Braces, prs.	1	13/8/40						
Brasses, button								
Brushes, D.C., prs.								
Brushes, boot, blacking	1	13/8/40						
" " polishing	1	13/8/40						
" button	1	13/8/40						
" cloth	1	13/8/40						
" hair	1	13/8/40						
" shaving	1	13/8/40						
" tooth	1	13/8/40						
Buttons, G.S., large								
" " small								
Caps, comforter	1	13/8/40						
" field service	1	13/8/40						
" forage, drab								
" tank battalion								
" winter, mutton cloth								
Cloth or greatcoat, drab	1	13/8/40						
Combs	1	13/8/40						
Discs, identity, with cord	2	13/8/40			2	13/8/40		
Drawers, cotton, short, prs.	2	13/8/40						
" woollen, prs.								

DESCRIPTION OF ARTICLES	Number	Date of Issue	Number	Date of Issue	Number	Date of Issue	Number	Date of Issue
Dressings, first, field	1	8/9/40						
Forks	1	13/8/40						
Gloves, woollen, khaki, prs.	1	13/8/40						
Helmets, sun	1	13/8/40						
Holdalls	1	13/8/40						
Housewives								
Jackets or doublets, S.D.	1	13/8/40						
" khaki drill								
" sweater	1	13/8/40						
Knives, clasp and lanyard	1	13/8/40						
" table								
Mitts, pullover, leather, prs.								
Overalls—Blouses, denim								
" Trousers, denim, prs.								
Overshoes or rubbers, prs.	1	8/9/40						
Pantaloons, service, prs.	1	13/8/40	2	13/8/40				
Puttees, prs.	1	13/8/40	2	13/8/40				
Razors, safety								
" blades								
Shirts, flannel, khaki	2	13/8/40						
" khaki, cotton, with short sleeves	2	13/8/40						
" service	2	13/8/40						
" under, cotton	2	13/8/40						
" woollen	1	13/8/40						
Shoes, canvas, prs.	2	13/8/40						
Socks, prs.								
Sponges, pipeclay	1	13/8/40						
Spoons, table	2	13/8/40						
Towels, hand								
Trousers, khaki, drill, prs.	2	13/8/40						
" " short, prs.								
" serge, drab, prs.								
" service, prs.	1	13/8/40						

Over Coat
Goggles M.T
Caps Mac

Exhibit "1"
Commissioned Judge
R. D. Hall Capt
President

R. Davey
Signature of Soldier

R. Davey
Signature of Soldier

Signature of Soldier

Signature of Soldier

R. Davey
Signature of Soldier

R. Davey
Signature of Soldier

Signature of Soldier

Signature of Soldier

M.F.C. 220
300m—3-41 (9682)
H.Q. 1772-39-1543

CERTIFICATE TO BE SIGNED BY ACCOUNTING OFFICER ON TRANSFER OR ATTACHMENT OF SOLDIER

Certified that the record detailed on this form is correct			Certified that the record detailed on this form has been verified with the articles in possession of the soldier			Transferred	Attached
On transfer or attachment to the undermentioned Unit	Date	Signature of Accounting Officer	On transfer or attachment from the undermentioned Unit	Date	Signature of Accounting Officer		
No. 1 ARMY TANK ORDNANCE FIELD PARK R.C.D.C.	21-7-41	[signature]					

EQUIPMENT (a)	Number	Date of Issue	Number	Date of Issue	Number	Date of Issue	Number	Date of Issue
Attachments, brace	14	21/7						
Bags, ration	1	21/7						
Bandoliers	1							
Belts, waist	1	21/7						
Bottles, water	1	21/7						
Braces	2	21/7						
Carriers, cartridge	1	21/7						
* waterbottle	1	21/7						
Cases, pistol	1							
Covers, messtin	1	21/7						
Frogs, bayonet	1							
Haversacks	1	21/7						
Helmets, steel	1	21/7						
Lanyards, pistol	1							
Packs	1	21/7						
Pouches, ammunition	1							
Pouches, basic	2	21/7						
Slings, rifle	1	21/7						
Spurs, jack, prs.	1							
Straps, shoulder	2	21/7						
* web, supporting	2	21/7						
Tins, screw	1	21/7						

ARMS AND MISCELLANEOUS (a)	Number	Date of Issue	Number	Date of Issue	Number	Date of Issue	Number	Date of Issue
Eyeshields, Anti-gas Mk. II	6	21/7						
Respirator Anti-gas:—								
Container, Type "E", Mk. VI	1	21/7						
Disc, Identity, Red, No. 2	1	21/7						
Facepiece, Mk. IV	1	21/7						
Haversack, Mk. VI	1	21/7						
Line, natural, whipcord, 7-in.	1	21/7						
Outfit anti-dimming Mk. I	1	21/7						
Seal, disc, identity (lead)	1	21/7						
Bayonet and scabbard*	1							
Bottle, oil	1	21/7						
Pistol*	1		4	21/7				
Pullthrough	1	21/7						
Rifle*	1							
Sword and scabbard	1							
Tool, entrenching	1							
Tool, gas Mk. I	1	21/7						
Tool, M.T. 1-pr.	1	21/7						
Tool, Breech	1	21/7						
Blankets			1	21/7				
Sheets, ground	1	21/7						
Helmet, steel	1	21/7						
Helmet, gas	1	21/7						
Tippet, gas	1	21/7						

(a) Arms and equipment will not be transferred with the soldier unless authorised by the D.O.C.

On return of any article the Q.M. will initial in the date column opposite the article returned and line through in red ink.

Signature of Soldier	Signature of Soldier	Signature of Soldier	Signature of Soldier	Signature of Soldier	Signature of Soldier	Signature of Soldier	Signature of Soldier
P. Davey				P. Davey	P. Davey		

*QUOTE UNIT CONSECUTIVE NUMBER OF BAYONET AND SERIAL NUMBER OF PISTOL OR RIFLE.

1 Cdn. Army Tank Ordnance Field
Park R. C. O. C. (3rd. Echelon)

SUMMARY OF EVIDENCE

Summary of evidence in the case of A-50106 Pte. DAVEY, R., of 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon).

The C[redacted]manding Officer directs that all evidence be taken under Oath.

Rights of the Accused before Summary of Evidence are explained to him.

1st. WITNESS - A-21953 Cpl. GALLIMORE, H., 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) having been duly sworn states:

"I, A-21953 Cpl. GALLIMORE, H., have been in charge of the Q.M. Stores of the 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) since the unit was organized. I recognise the pair of proportional compasses (Attached and marked Exhibit "A") as public property by reason of the stamp ↑ on the upper arm. This item of equipment has never been issued to and is not on charge to this unit. It has never been issued to the accused and is not shown on his M.F.C. 800. (Attached and marked Exhibit "B") which I now produce."
The accused declines to cross examine the witness.

H. Gallimore

A-21953 Cpl. GALLIMORE, H.
1 Cdn. Army Tank Ordnance Field
Park R. C. O. C. (3rd. Echelon)

2nd. WITNESS - A-49922 Pte. GREENTREE, A.A. 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) having been duly sworn states:

"On or about the 9 July, when I, A-49922 Pte. GREENTREE A.A., of 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) was with the unit at BILBOROUGH CAMP near NOTTINGHAM, the accused, whom I recognize, asked me to lend him ten shillings. I did not have the money at the time but I borrowed ten shillings and gave it to him. Later that day the accused approached me and gave me the pair of proportional compasses, which I recognize. He said "If you sell these you should get a pound for them and you will be able to repay the money you borrowed to lend me" He also told me to keep them out of sight until I sold them and that they were a compass of some sort. I did not ask him where he got them and he did not tell me. On or about 15 July the accused paid me back the ten shillings. Later that day I asked him what I should do with the compasses and he said "Do what you please with them. They are no good to me."

The accused declines to cross examine the witness.

A. Greentree

A-49922 Pte. GREENTREE, A.A.
1 Cdn. Army Tank Ordnance Field
Park R. C. O. C. (3rd. Echelon)

A-50106 Pte. DAVEY, R. 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon).

Accused is asked: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but what ever you say, or any evidence you give, will be taken down in writing, and may be used in evidence."

Accused elects to give evidence on Oath.

3rd. WITNESS - A-50106 Pte. DAVEY, R., 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) being duly sworn states:-

"Between 14 May 1942 and 6 June 1942 whilst I was attached to the Brigade Field Park R.C.O.C. I went out with a vehicle delivering stores to the different units on various days and was being taught how to issue stores. On one of these runs, the driver stopped at a Canadian Brigade Signal Unit about 10 miles north of BRIGHTON. I issued stores to the unit and as I came out I saw the proportional compasses, which I now, to the best of my knowledge, recognize, lying on the grass in their case. I picked them up, inspected them, and knew they were W.D. property, by the arrow mark. No one was present at the time. I put them in my pocket and brought them back to the unit. On or about 9 July 1942 whilst at BILBOROUGH CAMP, near NOTTINGHAM, I gave them to A-49922 Pte. GREENTREE, A.A. 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) who had lent me ten shillings that day, and told me that if he could sell them to go right ahead as they were no use to me. I did not tell him they were W.D. Property."

Pte. R. Davey A-50106

The accused declines to call any further witnesses.

Rules of Procedure 4(c)(d)(e)(f)(g) have been complied with.

Taken before, me, In the Field, in the presence of the accused person, at Lyne House, nr. Capel, Surrey, England, this sixth day of October 1942.

.....Capt.
(W. D. STANLEY)
12 Cdn. Army Tank Regiment
(T.R.R.(T)) C.A.C.

LIST OF WITNESSES

In the case of A-50106 Pte. DAVEY, R., of 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon)

A-21953 Cpl. GALLIMORE, H.	1 Cdn. Army Tank Ordnance Field Park R. C. O. C. (3rd. Echelon)
A-49922 Pte. GREENTREE, A.A.	1 Cdn. Army Tank Ordnance Field Park R. C. O. C. (3rd. Echelon)
A-50106 Pte. DAVEY, R.	1 Cdn. Army Tank Ordnance Field Park R. C. O. C. (3rd. Echelon)

.....Lieut.
(B. W. INGRAM)
Officer Commanding
1 Cdn. Army Tank Ordnance Field
Park R. C. O. C. (3rd. Echelon)

LIST OF EXHIBITS

In the case of A-50106 Pte. DAVEY, R., of 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon).

EXHIBIT "A" - 1 Compasses Proportional 9".

EXHIBIT "B" - M.F.C. 800 - A-50106 Pte. DAVEY, R.

1 Cdn. Army Tank Ordnance Field Park R. C. O. C. (3rd. Echelon)

.....Lieut.
(B. W. INGRAM)
Officer Commanding
1 Cdn. Army Tank Ordnance Field
Park R. C. O. C. (3rd. Echelon)

1 Cdn. Army Tank Ordnance Field
Park R. C. O. C. (3rd. Echelon)

In the Field
6 October 1942.

If I am to be tried by a Field General Court-Martial I would like to have Lieutenant H.S.W. ALEXANDER, 11th. Cdn. Army Tank Regiment, as defending officer.

R. Davey
.....
A.50106 Pte. DAVEY, R.
1 Cdn. Army Tank Ordnance Field
Park R. C. O. C. (3rd. Echelon)

APPROVED

B.W. Ingram
.....Lieut.
(B. W. INGRAM)
Officer Commanding
1 Cdn. Army Tank Ordnance Field
Park R. C. O. C. (3rd. Echelon)

Exhibit G
Commanding Major
President

A-50106 Pte. DAVEY, R. 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon).

Accused is asked: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing, and may be used in evidence."

Q.B. Peats Capt
Judge Advocate.

Accused elects to give evidence on Oath.

3rd. WITNESS - A-50106 Pte. DAVEY, R., 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) being duly sworn states:-

"Between 14 May 1942 and 6 June 1942 whilst I was attached to the Brigade Field Park R.C.O.C. I went out with a vehicle delivering stores to the different units on various days and was being taught how to issue stores. On one of these runs, the driver stopped at a Canadian Brigade Signal Unit about 10 miles north of BRIGHTON. I issued stores to the unit and as I came out I saw the proportional compasses, which I now, to the best of my knowledge, recognize, lying on the grass in their case. I picked them up, inspected them, and knew they were W.D. property, by the arrow mark. No one was present at the time. I put them in my pocket and brought them back to the unit. On or about 9 July 1942 whilst at BILBOROUGH CAMP, near NOTTINGHAM, I gave them to A-49922 Pte. GREENTREE, A.A. 1 Cdn. Army Tank Ordnance Field Park R.C.O.C. (3rd. Echelon) who had lent me ten shillings that day, and told him that if he could sell them to go right ahead as they were no use to me. I did not tell him they were W.D. Property."

Pte R. Davey A50106

The accused declines to call any further witnesses.

Rules of Procedure 4(c)(d)(e)(f)(g) have been complied with.

Taken before me, In the Field, in the presence of the accused person, at Lyne House, nr. Capel, Surrey, England, this sixth day of October 1942.

W. D. Stanley Capt.

.....Capt.
(W. D. STANLEY)
1st Cdn. Army Tank Regiment
(T.R.R.(T)) C.A.C.

1 Cdn Army Tk Ord
Fld Pk RCOC
Corps (3rd. Echelon)

No A50106 Name DAVEY Ross

Sqn., Battery, or Company

Date of enlistment 13-8-40

G.C. Badges

Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) SSBM—8-39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet 28-11-41

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 3

Signature O.C. Company, etc. C.H.SIFTON Capt.

Character GOOD.

Place	Date of offence	Rank	Cases of drunkenness	Sheet #2 destroyed 31-12-41	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	To whom awarded	Remarks
	1942			CERTIFIED TRUE COPY					

B.W. Ingram .....Lieut.
(B.W. INGRAM)
Commanding
1 Cdn. Army Tank Ordnance
Fld. Park RCOC (3rd. Echelon)

Exhibit K.
[illegible] Major.
[illegible] Capt
Judge Advocate.

(P.T.O.)

1 Cdn Army Tk Cond Fd Pk (3 Ech)

M.F.B. 555
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-50106	Pte.	DAVEY, R.	1 Cdn. Army Tank Ordnance Field Park R. C. O. C. (3rd. Echelon)

~~1. The following is a fair and true summary of the entries in the Service and General Conduct sheets Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court,~~ of summary awards under ~~Section~~ 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 72 A.A. 72 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~ The accused has been under open arrest for thirty-six (36) days awaiting trial on present charges

~~4. The accused has been in confinement awaiting trial on the present charges, for days in civil custody, and days in military custody, making a total of days in custody, of which days were spent in hospital.~~

5. The present age of the accused according to his ~~record of service~~ Pay Book ~~attestation paper~~ is 23 years, 0 mos., 27 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ Pay Book ~~attestation paper~~ is 15/8/40.

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any air force military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

Exhibit "J"

W. B. Gate Capt
Judge Advocate

[signature] Major
President

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated N/A, and in his regiment (or corps), the rank of

N/A dated N/A

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of Pte. 2 yrs.1 mo.24 days.

In the rank of N/A years.

In the rank of N/A years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force~~ B

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with, of accused, Number A-50106 Rank Pte. Name DAVEY, ROSS of 1 Cdn. Army Tank Ordnance Field Park R. C. O. C. (3rd. Echelon) Unit

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th. day of October 1942.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

WW.101
PTE DAVEY W.h.

COUNTER NUMBER 5 34227

HOUR 1700

OPERATOR'S INITIALS CR

RELIEVING OPERATOR RD

WW-101 745

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA37) 40-P-N-B/1668 (2864)

Convened by Order of Lt-Col D.K. Black, Comd CRE 2 Cdn Corps Tps dated 30 NOV 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B38475	Private	William Loraine	DAVEY	95 L.A.D. RCOC attached to 8 Cdn Fd Pk Coy

Proceedings Reviewed
16 Dec 43
Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 2 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53; RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet[1] attached thereto.[2] The Court is satisfied that it is properly convened and constituted[3], accused is ~~not~~ amenable to military law, and each charge discloses an offence.[4]

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.[1]

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~[2]

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.[1] Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.[1]~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.[1] President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.[2]

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.[1] The following are the ranks, names and units of the offrs comprising the Court, viz:

President	Major	R.J. Smallian	30 Cdn Fd Coy RCE
Member	Capt	W.D. Kingsford	46 Cdn Gen Tpt Coy RCASC
Member	Lt	H.C. Lane	30 Cdn Fd Coy RCE
Judge-Advocate	Capt	G.H. Jessup	HQ 2 Cdn Corps [illegible]
Prosecutor	Lt	R.R. McLeod	8 Cdn Fd Pk Coy
Defending Offr	Lt	L.R. Kingston	31 Cdn Fd Coy

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.[1]

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 59 (8) and fn 2 were not followed. See DI p 33.)

A8. The accused before arraignment make(s) (no) ~~(1)~~ plea[2]

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.[1] The accused does ~~not~~ not object to any charge.[2] There is no amendment to be made to the Charge Sheet.[3] The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~re-checks~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form ~~B~~ C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-38475 Pte Davey, W.L. 95 L.A.D. attd 8 Cdn Fd Pk Coy

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd	NOT GUILTY	GUILTY	
3rd	NOT GUILTY	GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~(1)~~ ~~a imprisonment etc (date)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which 0 days were spent in hospital.[1]

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for (8) eight months

(Sgd) Gordon H. Jessup Judge-Advocate, if any. 2 Dec 43 Date awarded. (Sgd) R.J. Smallian Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~[1] NB

(1. AA 57A. Delete if not used.)

(Sgd) N.B. Black, LtCol

Date 8 Dec 43 Commanding HQ RCE 2 Cdn Corps Tps Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 38475 Pte Davey W.L.	9 Dec. 43	[signature] Major W.S.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of J A see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(1)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR (5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (read) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO SIR (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. I will give evidence on oath. Do you intend to call witnesses on your behalf ? Ans. YES Are they witnesses as to character only ? Ans. NO
(*1. RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court (is) (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the 2nd and 3rd charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2).~~
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively (3)
(*1. MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans. YES Sir (2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 122(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) RP37(E2)
(*1. When several accused tried separately see RP*—. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 230, 543-566, *Overseas RO* 309, 2323, *MML p* 462, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*E*), 98(*7*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B38475 Pte William Loraine Davey, 95 L.A.D. R.C.O.C. attached 8 Cdn Fd Pk Coy, a soldier of the Canadian Army Overseas, is charged with:

First Charge Army Act Section 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field between 1800 hours and 2300 hours on 12 Nov 43 improperly and without authority used Canadian Military Vehicle, W.D. No CM-4202718 for privare purposes.

Second Charge Army Act Section 40

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field at about 2225 hours on 12 Nov 43, negligently drove Canadian Military Vehicle W.D. No CM-4202718 thereby seriously injuring one, Hubert George Maynard.

Third Charge Army Act Section 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field at about 2225 hours on 12 Nov 43 after being involved in an accident did leave the scene of the accident without leaving his particulars or taking steps to assist the injured person.

In the Field,
19 Nov 43

(Signed:) A. Webster, Major RCE
Commanding,
8 Cdn Fd Pk Coy

To be tried by Field General Court Martial.

(D.K. Black) Lt-Col
CRE 2 Cdn Corps Tps

In the Field
29 NOV 43

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can) Para 557

I certify that I have this morning examined No. B38475, Pte. Davey, W.L., of the 95 L.A.D., R.C.O.C., and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station Field

Date 2 Dec 43

J.W. Wemstock Capt.
(Medical Officer)

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FGCM/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B38475	Private	William Loraine	DAVEY	95 L.A.D. RCOC Attached to 8 Cdn Fd Pk Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 30 NOV 43 endorsed by me, ~~(or by an offr of my unit for trial)~~ To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for obtaining the services of a superior authority)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby appoint (or have Offrs to form the Court) to act as Presidents, the persons I have appointed hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	R.J. Smallian (Must be named. RP 106.)	30 Cdn Fd Coy (Unit.)

MEMBERS.

Capt	W.D. Hungerford	46 Cdn Gen Tpt Coy
Lt (Rank.)	H.C. Lane (Named or detailed. RP 106.)	30 Cdn Fd Coy (Unit.)

WAITING MEMBER.

Lt (Rank.)	To be detailed by (Named or detailed, if any. RP 106.)	31 Cdn Fd Coy (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	G.H. Jermyn (Must be named, if any. RP 106.)	HQ 2 Cdn Corps (Unit.)

On Active Service in the Fd

in England (Country.)

Date 30 NOV 43

(Signed personally. RP 105 fn 2.)

(D.K. Black) Lt-Col (Rank.)

Commanding CRE 2 Cdn Corps Tps

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and dir not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to *RP* 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, *86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(*C*), 92(*C*) (*D*).) Both Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 562(a).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits (numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 153 (1) (*g*) (*k*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML* p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Prosecution

1st Witness.

W. F. L. Beedell, Police Sgt # 3, Surrey Joint Police, sworn, states

On 12 Nov 43 I was on duty. At 10.35 in consequence of a telephone call I attended in the Borough Ambulance to a point on Hutfield Road, Redhill. It was a bright moonlight night. On arrival at the scene of the accident which was near the entrance to Patterson Court I found a civilian lying on the northern footpath with his feet in the road. He was being supported by a second civilian. The ~~injured~~ man was bleeding from the nose, mouth and left ear and was unconscious. First aid was rendered and he was conveyed to the East Surrey Hospital in Redhill in the ambulance.

I took statements and measurements of the road. On the footpath adjacent to where the man was lying I found a denture and an artificial eye.

The width of the road was 20'. There was a tyre impression commencing 8' West of the edge of the footpath which terminates at the entrance to Patterson Court. The tyre impression continued ~~from~~ for 25' on the footpath where it went onto the road. I also found a mark on the fence 2' from the ground commencing from the second paling of the fence and continuing eastward for 6' where some part of a vehicle had grazed the fence. Brown paint was at the commencement and at the end of the mark.

In consequence of statements taken I caused the description of a military station waggon to be circulated within the County ~~around the Camp~~ & I made further enquiries and contacted witnesses from whom I took statements.

Cross-examination

I can't say whether or not the injured man was moved before I got there.

There was only a scrape on the fence. It was a fresh scratch. There were no old scratches on the fence. The paint was right at the beginning and at the end of the scrape which was 6'. You couldn't tell whether there were one or two tyre impressions.

I recognise this picture as the scene of the accident.

Picture presented and marked Exhibit "A"

The Tyre impression was too wide for a single tyre. It was about 10" wide. I should say it was only one wheel. There was no sign of any brake being used.

I recognise this picture as the scene ~~of the~~ ~~this~~ approaching from the West i.e. from the direction of Redhill.

Picture accepted and marked Exhibit "B"

The tyre impression was about 10" from the base of the fence.

Re-examined

I am familiar with this road. The photograph shows the directional points, the white line, and cats' eyes. There is an A.A. sign on an iron post at the end of the fence, facing west, indicating a danger point.

~~By the Court~~ Gt.

R.P. 83 (a) complied with

2nd Witness

R152564 LAC Franks, W. RCAF sworn, states

On 12 Nov 43 I left Redhill accompanied by P.C. Jennings at about 2200 hrs. As we were approaching Hilbrows School on the Lodstone Road. I heard a vehicle stop behind me. ~~Coming~~ After we had passed Hilsbrow School at a bend in the road we found a man sitting on the sidewalk with ~~another~~ ~~man~~ Gt an injured man in his lap. The injured man's feet were on the road.

The vehicle that stopped behind us passed us going at a pretty fast clip - about 45 to 50 m.p.h. It didn't look like an English vehicle couldn't tell exact type of vehicle. Thought there was a luggage rack on top. Would say it was a ford from the sound of the engine.

~~No other vehicle passed~~. I did not see any other vehicle on the road between the time the vehicle I have described passed us and the time I found the injured man.

As the vehicle passed it seemed to me it had a luggage rack on the top with something in it but I wouldn't say for sure. It seemed to have a square back. It was a covered vehicle ~~the same as a~~ Gt something the same as a sedan or a chad.

It was a moonlight night.

It was on its own side of the road when it passed me.

Cross-examination

I did not see the accident. I couldn't see the scene of the accident. I wasn't very far away when I heard the cries. When we came to the bend we cut over to the middle of the road. Then we heard the cries and went over to the injured man. I couldn't see the man from the centre of the road.

It was only making the usual amount of engine noise that any car would make

By the Court

I was a couple of hundred yards from the scene of the accident when the vehicle passed me. It is a couple of minutes walk. I did not hear any brakes being applied, nor any crash, nor any outcry until I got to the scene.

R.P. § 3 (b) complied with.

3rd Witness.

W-S 3166 Pte Jennings, Ellen, A.T.S. sworn states

I was walking up the road from Redhill with L.A.C. Franks when we got to Hillsbrow School. We were about 20 yards past Hillsbrow School when a car passed us. We walked on down the road to Patterson's Corner when someone shouted to me. We went over and saw a man was hurt. I went and phoned the police. I think it was a staff car.

The vehicle was travelling fast. Definitely faster than cars do travel on the road.

I did not see any other vehicle pass us ~~from the time I arrived~~ to the time I arrived at the scene of the accident. There was only one other vehicle passed us ~~the~~ from the time we left Redhill.

I did not hear any noise at all.

No Cross-examination

By the Court

The first vehicle that passed us was going towards Nutfield I think it was about twenty minutes before the second vehicle which passed us.

R.P. § 3 (b) complied with.

4th Witness

R-160020 AC/1 Minter, W.A. - R.A.F. sworn states.

At 9 o'clock on 12 Nov. 43 Cpl Roach, the accused and myself left the W.V.S. canteen in Redhill to deliver a despatch. After delivering the despatch we went to a pub some distance from Redhill where we had three pints of beer each - pints -. We went to another pub which again was some distance away. We had 3 pts of beer each again. By that time it was closing time and we left. The driver, said he would take us home. On the way we stopped to cash 3 A.T.S. girls at the junction of the cut-off from Nutfield to South Nutfield. As they were going along the same road they were invited to ride along with us to their quarters

Shortly after we picked the girls up we came to a bend in the road. We were driving quite fast. I don't know exactly how fast. It was a moonlight night. At the bend in the road there appeared to be a break in the sidewalk which might be taken for a continuation of the road in the glare of the moonlight. As we came to this spot we swerved out and as we swerved we hit someone. I heard someone yell. I felt two impacts and told the driver to stop. We continued on to where the girls lived which was approximately 1/2 mile down the road. The driver then proceeded on to take us to our billets. I got out first and the driver and Cpl Roach went on. I reported the accident to the service police. The day following the accident in the afternoon I went out with the police to try and locate the driver.

Cross-examination

I did not actually see the man and vehicle come together.

To my impression it was a staff car. The car did not slow down to any appreciable extent when approaching the curve in the road. I don't remember whether he slowed down or not. It was my impression that the car just ~~glazed~~ grazed the curb. I was on the left hand side in the front seat. When I first saw the man he was between the breaks in the sidewalk. ~~It was an end~~ He was walking across the entrance to a property which made a break in the sidewalk.

By the Court

The car went over the edge of the road. I saw a man there. I felt two impacts and heard a man yell. After this yell we all told him to stop. I don't remember him saying anything. I recognize the driver (the accused) R.P. 83(b) complied with.

5th Witness

R-89565 Cpl Roche, T.M. - R.A.F. sworn states.

On 12 Nov 43 after the accused delivered his despatch we went to a pub. I had three pints of bitter. We each bought a round. We went to another pub further down the road where ~~we~~ each had three pints. It was closing time. The accused was going to drive. Mintern and myself to our billets.

We proceeded in the direction of Nutfield. We stopped to enquire how to get to Nutfield. We asked 3 ATS girls to get in and we would drive them home which was only a little way down.

On the way we hit the curb. The girls screamed. There were quite a few people walking along the footpath. I saw two people on the left hand

side of the road. The vehicle just seemed to hit the curb. I couldn't see whether it went over the curb or not.

The girls screamed, ~~and saw~~ Mintern asked the driver to stop. The girls said ~~you~~ hit somebody. The driver swore and started up the car. I think it stopped. I'm not exactly sure. We dropped off the A.T.S. girls then we proceeded to Nutfield and dropped off Mintern then he took me to my billets.

He was going about 40 before the accident. He slowed down after he had been told he hit someone.

I had made a date with him to see at the W.V.S. at Rehill. ~~I~~ G.T. next day. I met him and told him I had been told that someone had been badly injured on Nutfield Road. I told him the police had been down to get a statement ~~He said to keep quiet about it.~~

~~Later that day I~~

I knew his name was Clavies. He spelt it out but I don't know whether he said Clavey or Clavies.

I ~~sig~~ G.T. recognize the driver of the vehicle here in court.

~~I didn't~~ Once I told Clavey that he should slow down. and Mintern told the driver he was going too fast ~~just~~ about 5 or ten minutes after we came out of the second pub. We had gone approximately 5 miles. I said "you'd better slow down a little"

The girls screamed and one of them said "you've hit somebody." The driver said "fuck" then said "excuse me" to the girls Then he either slowed down or stopped I'm not sure which. I'm not sure whether we were stopped or not.

Cross examination

The police took a statement from me the night of the accident. I can't remember whether he slowed up or not before he got to the curve.

By the Court

I was sitting in the front seat in the centre between Mintern and the driver. The car was going over 30 m.p.h. just before the girls screamed. I think the headlights were on. I didn't see any one in front of the car. As we came around the bend it gave me the impression that it hit the curb. The girls screamed one of them said you have hit someone. The driver changed gears.

~~R.P. 8 3 (b) complied with~~ G.T.

R.P. 8 3 (b) complied with.

6th Witness

14650162 Pte. Moore, E.J. sworn states.

Mr Maynard and I were walking in the direction of Nutfield. We reached the west entrance of Patterson Court. All I remember is a vehicle came up behind. I heard a thud and the next thing I saw Mr Maynard lying on the pavement. The vehicle ~~was~~ was up on the footpath. I heard it graze the fence. I couldn't see what sort of vehicle it was owing to the speed of it. which I estimate to be 40 to 45 miles an hour. It failed to stop. It drove straight on. I went to Mr Maynard and waited until help came.

Cross-examination

I did not see the vehicle hit Mr Maynard. The pavement breaks to make way for the drive to Patterson Court. We were just stepping ~~off~~ onto the pavement on the Nutfield side of the break. I was on the inside.

We were just about level with the A.A. reflector. It was on our left. At a rough estimate the reflector is about 3'6" from the ground. We would not interfere with the occupants any vehicle coming from Redhill seeing the reflector.

By the Court

~~I did not see the from~~ Get

I did not have a front view of the car. It had a tail light on. A red light. The R.A.F. man and A.T.S. girl were the first to arrive at the scene ~~of the~~ Get. I heard a definite thud. The sound of the vehicle scraping on the fence.

R.P. § 3 (b) complied with.

7th Witness

W/153158 L/Cpl Laffling, P.H. ATS sworn states

After we got onto the car we travelled about 200 to 300 yds we were travelling between 30 and 40 m.p.h. We came to a bend just at the entrance of Patterson Court. It was a very bright moonlight night and I think the driver thought the entrance was a continuation of the road. It does give that impression. The vehicle mounted the pavement. I was sitting just behind the driver. For a split second I saw two people on the path. Then we hit the fence and swerved back onto the road. I looked back and saw one of the men lying on the pavement. I told the driver to stop. I thought he was going to stop. He seemed to slow down. But he didn't and continued until we got to the Priory Gates. We got out there. The car then continued

straight on. I would not recognise the drivers if I saw him again. The Priory Gate is about 100 yards beyond the entrance to Patterson Court.

Cross-examination

When the vehicle hit the fence I would estimate its speed at from 20 to 25 m.p.h.

By the Court

I was sitting right behind the driver on the right hand side. There were three members of the A.T.S. in the rear seat. The driver and two men were in the front seat. After we had hit the fence and got back onto the road again we all asked him to stop.

After we got out of the vehicle I went back and found the man lying in the same position as when I saw him from the car. His feet were lying over the edge of the pavement. Cpl. Jenkins went back with me. To my mind the driver seemed quite capable of driving the vehicle. They all seemed quite all right. The other two were laughing and talking but they weren't positively or anything like that. It was a station waggon.

R.P. § 3(b) complied with.

8th Witness.

W/36624 Cpl. Jenkins, M. A.T.S. sworn, states

We had not been in the car very long before we got to the entrance of Patterson Court and I was under the impression that the driver thought the entrance was a continuation of the road because he made for it but saw his mistake and swerved quickly to the right. I did not notice that he struck the fence. I felt the car strike something just as he swerved. I saw two men on the pavement. Then I felt we skidded a bit. I told the driver to stop that we had hit somebody. He didn't stop. He carried on. We kept on asking him to stop but he did not stop. He carried on. We kept on asking him to stop but he did not until we got to the Priory when we told him we would have to get off then. I got out. L/Cpl Leffling and I went back and found a man lying on the pavement. It was a station waggon.

No. cross examination

By the Court

The injured man was lying on his back. His feet up to the calf of his legs were on the road. I was on the left side of the car the other side. I did not see the man hit. I looked around but the car appeared on my vision and I couldn't see anything. I felt only one bump. The driver did not brake. He seemed to take his foot off the throttle then put it back on again. He did not stop until he got to the Priory.

R.P. § 3(b) complied with

9th Witness

W/231959 Pte Chisholm, J. A.T.S. sworn, states

When we got to Patterson Court the driver ~~turned~~ did not appear to know the road. We didn't see the people on the footpath until we were right on top of them.

We mounted the footpath went into the fence and went straight on. I turned around and saw someone lying partly on the footpath and partly on the road. I told the driver to stop I told him he had knocked someone over. But he drove straight on. He did not slow down after he struck the fence. I think it was a station waggon.

No Cross-examination

By the Court

I was sitting in the back seat in the centre. I had no trouble seeing out of the station waggon I felt two bumps. He didn't actually slow down until we got to the Priory gates. We grazed the fence.

RP. 83(b) complied with.

10th Witness

Police Sergeant Bowles, John Rideout #31 Reigate Borrough Division. sworn, states

On Mon 15 Nov 43 about 5.30 P.M. I saw the defendant Pte Blaney at a Cdn. Mil. establishment at Chipstead Surrey. In the presence of his C.O. Capt Findlay. Also present was Sgt Harrison of the Cdn S.I.S. I said to Pte Blaney "I am making enquiries respecting an accident which occurred on the Nutfield Road Red hill, about 10.25 P.M. on Fri Nov 12, 1943. in which a man walking on the near side footpath towards Nutfield was knocked down and seriously injured by a vehicle going towards Nutfield which failed to stop. It has been ascertained that the vehicle was a Cdn Station waggon and carried two airmen and 3 A.T.S. girls were you the driver of the vehicle? He replied "yes I was" The girls said I had knocked somebody down but I didn't think I had so didn't stop." I then said to him do you care to make any statement as to what occurred. He sought advice of Capt Findlay and then said "yes I wish to make a statement. At this stage I cautioned him explaining exactly what was meant by it. I also made it plain to him that the statement was entirely voluntary. I then took down in writing at the dictation of the defendant a statement which was read over to him after which he signed

The Judge Advocate explains to the defending officer his right to cross-examine the witness, and to call witnesses, including the accused on the issue as to whether or not the statement was voluntary.

Cross-examined by Defending Officer

Q. Did you tell the accused that it would be easier for him at the time if he made the statement

A. Definitely not

Q. Did you hear any other person say it would be easier for him if he made a statement.

A. No sir. I would like to add that I did tell the accused that if he was fit to make a statement it would be beneficial to him and to the police in so far that both sides of the story could be ascertained.

Defending Officer

This particular statement by the sergeant is an inducement to the accused to make a statement.

Prosecuting Officer

The statement was voluntary.

The court is closed to consider the submission.

The court is re-opened.

The President announces that the statement is admissible.

The witness reads the statement which is accepted by the court and marked Exhibit "C"

Examination in Chief - Continued

At 11.00 AM the following morning I went to the scene of the accident with Sgt Riddell who pointed out to me various marks on the fence. One such mark consisted of a horizontal mark about 6" long made by paint of a brownish colour. This mark was 2 feet above the footpath. at 11.15 AM. I went to the unit camp at Chipstead where in the presence of the accused and Capt Findlay I made an examination of Canadian Ford Military Station Waggon # CM 42 02 716. I found the mudguards were painted a brownish colour. On the front near side of the mudguard I found several horizontal marks where the paint had been rubbed off apparently due to the vehicle coming into contact with something hard. These marks were various heights from the ground but one was 2 feet above the ground and could have been caused by striking the fence at the scene of the accident. The accused informed me that the three ATS girls sat on the centre seat of the vehicle and that the two airmen sat on the front seat next to him, the rear seat being vacant. In view of the reference in his statement to her turning her head around to see if an accident had occurred I decided to test her vision I accordingly caused three soldiers of small stature to sit on the

centre seat and two more to sit on the front seat to represent the airmen I found the rear window of the vehicle to measure 4 feet wide by 11 inches high. I then sat in the driving seat and turned my head around and looked out of the rear window. I found that the only view I had was between the heads of the three persons on the centre seat. My view was very limited and I formed the opinion that as the accused is a much shorter man than myself his view would have been more limited.

XD. Cross-examination:

R.P. § 3 (d) complied with.

Defence

1st Witness. B-39475 PC Davey, W. L. sworn, states

after leaving Redhill I proceeded on the road to Nutfield. On arriving at the top of the hill I was beginning to wonder if I was on the correct road to Nutfield. After driving some distance I observed 3 A.T.S. I stopped and asked if I was on the correct road to Nutfield. They answered yes. I asked them if they were going that way. They got into the car. I started off down the road. At this time I mentioned to Cpl Cook that the moon was very bright and made the road glaring. After saying this I looked up and found I was approaching a dark object in front of me so I slowed down from 30 to 20 miles an hour approximately. Coming to a break on the left hand curb I was not sure whether the road continued to the left or swung to the right. After seeing a gate on the left side I looked over to the right and saw where the road and sidewalk continued I then slowed down and endeavoured to swing the vehicle to the right. About 25 upon arriving at the break in the road I looked up and saw two men walking straight ahead of me. It looked to me as though the men on the outside was walking with one foot on the main roadway and one on the driveway to the private cars. By then the two people had left the glare of my headlights Arriving where the curb commenced I found that it was not several yards to the centre of the road than the one I had left. Arriving at this point I felt the car hit the curb and the car started to swing after this the three A.T.S. in the back all started screaming and hollering at once that I had hit something. I then put my foot on the clutch and the brake taking the car out of gear and slowing the vehicle down I then looked around between the two A.T.S on the right hand side of the vehicle where heads were turned around. I could see two people walking out of the rear window so I decided the girls were just frightened of being in a swaying vehicle so I put the car into low gear and started on down the

road. The vehicle did not come to a dead stop. After driving down the road a hundred yards or so I stopped and let out the three A.T.S. After they got out an English soldier came to the car door and asked if I was going to Godstone. I replied that I was not so he closed the rear left door and I proceeded on down to the air force billets. Upon arriving at the billets I let out the fellow I knew by the name of Bell. I then drove to Cpl Roche's billets. There I stopped the vehicle and we talked about home for several minutes - between 10 and 15 minutes. As I decided to return to camp Cpl Roche suggested that it would be a good idea if we looked the car over to see if we had dented a finder or wheel when I presume we had hit the curb. I could not find no marks on the vehicle that I had not seen before. I then told Cpl Roche that I would see him the following day at 1 O'clock at the W.V.S. canteen at Redhill. I then returned to camp across the shortcut from Nutfield to Merstham instead of going back via Redhill which was farther and I knew it was getting late and I wanted to get the vehicle back to the parking lot. The following day at 1 P.M. I met Cpl Roche in the W.V.S. canteen I told him that I was still on duty. That I had a 60 cwt Chev G.S. with some supplies on it to take back to camp. Cpl Roche did not say anything to me about the questioning by the police. I was told that later by Sgt Bowles. We did not talk about the accident at all. I was sitting on a bolster when I was driving the car. The bolster is between 4 and 5 inches high. I was using the curb as a guide line. There was not a red glare at that corner. If there was a sign there there was something between my vehicle and it. I think now it was the men. When I looked over to the right I saw eight or nine cats eyes in the centre of the road. If I had noticed any new marks on the fender I would have gone back to the scene of the accident. On finding no marks on the car I was convinced that I had not hit any one. I forgot all about it until I was questioned by the police. My answer to the police question was "That I had had a military vehicle on that road on the said night and that I had hit the curb and the girls had said that I had hit someone but I, believing in my own mind, that I did not do so I had forgot about the matter"

Cross-examination:

I had the impression at the time that the vehicle had just bumped against the curb. It had not mounted it to my knowledge. The two men were standing directly in line with the sign. Driving down the road I was keeping about four feet from the curb. As soon as the break came in the curb I swung the wheel to the right. I couldn't swing it fast because there were three in the front seat. The centre seat is a partial seat. One A.T.S. was only half on the seat. I could see between the two that were on the same side

of the car as I was. As regards the part of my statement where I said the amount of beer had taken effect on me. I was feeling warm. It had not affected my ability to see or think.

By the Court

When I looked back the car was on level road. I knew the road up to Redhill but I had not been on the road past there more than twice. I have driven in England a year.

R.P. 83 (b) complied with.

2nd Witness Capt F. P. Findlay, sworn states

I recognise the accused. He has been driving in the unit for 1 year and two weeks. He has never had an accident. He recently drove me on a long trip in a Ford Station Waggon. I had no fault with the way he was driving. The seat is moveable. He uses a bolster. I was present when Sgt Bowles was questioning the accused. To the question by the police were you the driving the station waggon involved in the accident the accused replied something to the effect that he was driving a car that evening and had hit the curb but was not involved in the accident.

Cross-examination

I questioned him once about speeding.

R.P. 83 (b) complied with.

Defending Officers' Closing Address

On the second charge the main point is whether or not he is guilty of neglect. The defence by cross-examination has proved that he is not guilty. First this bend in the road was not properly marked. The accused was a victim of the blackout accident on hitting that curb. This accident at this point could happen to anyone. Capt Laffling testified that he was going between 20 - 25 m.p.h. at that point. This illusion of speed came from the noise of the engine in second gear. The vehicle could not go from 0 to 45 m.p.h. in 200 yards. There is no evidence before the court that the injured man was any other place but on a public road. The witness Moore stated at the time of the accident he was even with the red marker. 5 seconds before then at which time the vehicle would be 50 yds from the scene would bring Pte Moore back about 3 paces which would put him directly blocking the A.A. sign. All this evidence clearly brings out contributory neglect and no neglect on the part of the driver. On the last charge this man slowed down immediately after the accident and

100 yards from the accident stopped for what must have been three or four minutes. If this man felt guilty about an accident he would not have stopped for that time so close to the accident. He looked out the back window and assured himself that he had not hit any one. Any two strong minded men will not be led by a lot of women He had the situation under control in his own mind.

As a man is innocent until he is proven guilty and the prosecution have failed to prove him guilty I ask the court to find him not guilty on the second and third charges.

The Prosecuting Officers Closing Address

The evidence heard by the court fully justifies a finding of guilty on the 2 nd and 3 rd charges. There can be no doubt that the accused was driving negligently and that he knew he had struck the pedestrian and left without stopping to help.

In the opinion of the Court and the J.A. no summary up is required from the Judge Advocate.

Defending Officer in Mitigation

The accused has only one entry on his conduct sheet and that he tells me was once when he was ordered on a rush job.

I know this man to be a good soldier and I believe there are few men who would show up better in action. I ask the court to be lenient with him.

Exhibit "C" RJ

S.C.I.

SURREY JOINT POLICE FORCE

Division Reigate Borough

Station or Section Redhill

Date 15th Nov 1943

SUBJECT MATTER

Name William Loraine Davey
(In full—Block Letters)

Address 95 L.A.D. R.C.O.C. attached 8th Bdn. Field Park Coy, R.C.E.

Age 20 10/12 yrs. Occupation Private B 38475

"I have been cautioned that I need not say anything unless I wish to do so. I make this statement quite voluntarily knowing that it may be given in evidence
W L Davey

I left Camp about 6.30 pm on Friday, 12th November, 1943, proceeding to Godstone area for the purpose of delivering a Dispatch to Colonel Stiles of ~~the~~ C.R.E.M.E. I was driving a Ford Station Waggon No C.M. 4202718.

Upon arriving at Redhill I decided to go to the W.V.S. Canteen in the High Street and have tea.

On entering the Canteen I recognised Corpl. Roache of the R.C.A.F. whom I had not seen for over five years. Thinking it not any harm, I asked him if he would like to accompany me to South Godstone to deliver the Dispatch. It was 7 pm when I met him.

After having tea Cpl. Roache and a

(Continued overleaf)

Signature of Person making statement W L Davey

Witness to the above J. R. Bowles 7/Sgt 31

[illegible] Capt, RCOC

C.1200—7/80—8/2/43.

CONTINUATION.

friend who was with him also in the R.C.A.F. known as Bill accompanied me to Godstone, where I delivered the Dispatch.

After delivering the Dispatch we returned to Redhill, and went on to the Red Lion at Betchworth where we each bought a round of drinks consisting of three pints of beer. We then proceeded to the Barley mow where we had one round each of Bitters consisting of pints.

At this time the Pub was closing so I thinking there was a Dance at Betchworth Hall drove there, but found there was no Dance there.

Then we returned to Redhill, where I decided to take the two boys back to Nutfield Camp.

Driving out of Redhill towards Nutfield it was very misty, and the moon was very bright making the road glaney. At this time Opl Roache mentioned that it was very difficult to drive. The windscreen kept misting up both on the inside and outside.

I saw three A.T.S. girls walking towards Nutfield and decided to stop to enquire if I was on the correct road to Nutfield.

Upon stopping, the A.T.S. informed me I was on the correct road, and I asked them if they would like a lift and they said yes and entered the car.

Continued :-

M.F. Davey
J. Bowles 7/Sept 31

[illegible], Capt. [illegible]

CONTINUATION SHEET

3

I drove on, and by this time I was not seeing the road very clearly. My eyes were blurred and the heat of the car was affecting me. I was beginning to realise that the beer I had consumed was taking effect on me. On realising this I slowed the car down from 30 m.p.h to 20 m.p.h approx.

I was following the left kerb very closely, and on coming to a slight right hand bend I came to a break in the nearside kerb.

As I looked ahead I discovered that where the nearside kerb re-commenced, it was further out towards the centre of the road than the kerb I had just left. Upon discovering this I endeavoured to swing the car to the right of the road away from the kerb. At this time I noticed people on the nearside side-walk walking near the hedge.

Upon arriving at the spot where the kerb re-commenced I felt the car hit the kerb. As I did so the girls called out that I had hit someone, and on hearing this I slowed the car to nearly a stop and turned my head around and as near as I could see I thought that I could still see the two people walking. The Corporal suggested I should stop and I not thinking very clearly, I did not

P.S. or P.C.

W. J. Davey

Bowles 7/Sept. 31

CONTINUATION SHEET

3

I drove on, and by this time I was not seeing the road very clearly. My eyes were blurred and the heat of the car was affecting me. I was beginning to realise that the beer I had consumed was taking effect on me. On realising this I slowed the car down from 30 m.p.h. to 20 m.p.h. approx.

I was following the left kerb very closely, and on coming to a slight right hand bend. I came to a break in the nearside kerb.

As I looked ahead I discovered that where the nearside kerb re-commenced, it was further out towards the centre of the road than the kerb I had just left. Upon discovering this I endeavoured to swing the car to the right of the road away from the kerb. At this time I noticed people on the nearside side-walk walking near the hedge.

Upon arriving at the spot where the kerb re-commenced I felt the car hit the kerb. As I did so the girls called out that I had hit someone, and on hearing this I slowed the car to nearly a stop and turned my head around and as near as I could see I thought that I could still see the two people walking. The Corporal suggested I should stop and I not thinking very clearly, I did not

P.S. or P.C.

W. J. Davey
Bowles 21 Sept. 31

[illegible] Lindsay, Capt. R.A.C.

think it necessary, so I proceeded down the road another 200 yards approx. Here I let the girls out and proceeded to Nutfield, where I dropped "Bill" at his billet. I then drove on a short way to Bpl Roache's billet where I stopped and we talked about home for 10 minutes. Just before I decided to return to Camp, Bpl Roache was undecided as to whether I had hit somebody or not and suggested we should look at the car.

We looked at the left side of the car with matches, to see if I had dented a wheel or fender, but could find no evidence that I had done so.

We made arrangements to meet the following day at 1 pm at the W.V.S. Canteen in Redhill, and I then returned to Camp, taking a short cut from Nutfield to Merstham instead of returning via Redhill

This statement has been read over to me and is correct."

W L Davey
J Bowles 7/Sept 21
F P Lindley RCOC





List of Exhibits

Statement by No. R.152664 L.A/C. Franks, Walter RCAF	Exhibit "A"
Statement by No. W/231959 Pte. Chisholm, Joyce ATS	Exhibit "B"
Statement by No. 1465162 Pte. Moore, Edward James RE&E	Exhibit "C"
Statement by No. R.160020 A.C. 1 Minter, William Albert	Exhibit "D"
Statement by W/153158 L/Cpl. Laffling, Phyllis Hilda ATS	Exhibit "E"
Statement by W/36624 Cpl. Jenkins, Margaret ATS	Exhibit "F"
Diagram of Road Accident	Exhibit "G"
Statement by W/153166 Pte. Jennings, Eileen ATS	Exhibit "H"
Statement by Cpl. Roche, T.M., R.C.A.F.	Exhibit "I"
Work Ticket submitted by Capt. F.P. Findlay, O.C. 95 LAD	Exhibit "J"
Statement by the accused	Exhibit "K"

I do not desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

Signature of accused_____

I desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial

Signature of accused W. Davey

Exhibit J

Army Form G 3518
49P & S/400

TRANSPORT WORK TICKET

Make of Vehicle Ford Class S/W C11AS W.D. No. CM 4202711 Date 12 Nov 43 **No. U**

Unit 95 LAD, RCOC Section Driver's Name Capt F P Findlay, B 38475 Pte Drury W.L. Hour of Parade

For whom journey is performed. (1)	FULL Details of load and service. (2)	ROUTE From (3)	ROUTE To (4)	ROUTE Via (5)	Signature of person authorising journey. (6)	TIME TAKEN. From (7)	TIME TAKEN. To (8)	Miles run. (9)
95 LAD 12 Nov 43	To CRE.	Chipstead	Oxted & return		A F Findlay Capt	21621	21647	26
" "	CREME	Chipstead	S. Godstone & return		B F Findlay Capt	21647	21688	41
" 13 Nov 43	Unit Lines	Parsons Cottage	Priorsfield etc.		C F Findlay Capt.	21688	21697	9
					D			
					E			
					F			
					G			
					H			
					K			
							TOTAL	76

Speedometer Readings.

	Miles
(10) In	21697
(11) Out	21621
Mileage	76

Petrol.

	Galls.
(12) Held at Start	13
(13) *Add*—Amount drawn	0
(14) *Deduct*—Remains on completion	7
(15) Quantity Consumed	6

(16) Total hours out on duty

(17) *Signature of Driver* F Findlay Capt W L Drury

(18) *Countersigned* F Findlay

Rank Capt.

INSTRUCTIONS TO DRIVER FOR COMPLETING TRANSPORT WORK TICKET

Items (7) and (8) will be completed by the driver.

In the case of a number of details not requiring return to H.Q. until completion of the last detail, items (7) and (8) will be completed for each detail.

Item (9) will be completed by the driver after completion of each detail.

Items (10), (13), (14), (15), (16) and (17) will be completed by the driver after the last journey of the day.

Item (20) will be completed as necessary.

---

(19) Special instructions to driver.

---

(20) Driver's report on breakdowns, accidents, reasons for delay, alterations to route, running adjustments made, and anything which has appeared to him unusual in the running of the vehicle.

This is exhibit "J" referred to in the summary of evidence in the case of B38475 Pte Davey, W.L. taken before me this twenty second day of November nineteen forty three

(Signature of Officer taking summary)

---

(21) Reference to documentary authority (*e.g.*, Army Form F 756), &c., where such exists (see instructions for items 6 and 18).

A

B

C

D

E

F

G

H

K

It is strictly forbidden to employ any M.T. vehicle, other than a tank or dragon, without a Work Ticket, which is the only authority for journeys and must be shewn if demanded.

Exhibit "A"

Exhibit A -

SURREY JOINT POLICE FORCE.

STATEMENT.

Name: Walter FRANKS. Age: 24 years.

Address: 39 Wing H.Q., R.C.A.F., Redhill Aerodrome.

Occupation: L.A/C.No.R.152884.

who says:

About 10.25pm. on Friday 12th November 1943 I was walking along Nutfield Road with my lady friend, Private Eileen JENNINGS, of No.1 S.E.Command Holding Unit, Nutfield Priory, when we found a man lying on the footpath on the North side of the road with his feet in the roadway. He was lying on his back and being supported by another man. In consequence of what the man said, I remembered seeing an Army Ford Chad Car just previously passing us travelling towards Nutfield at about 45 to 50 m.p.h. I remarked to my friend at the time upon the speed of the car. The car had a rack on the top and was carrying luggage.

It was bright moonlight at the time, and the car was using side-lights.

I heard a car stop some distance behind us previous to the accident and the Ford was the only car which passed us.

Lee Franks W

(Signed) L.A/C. Franks, W.

(Witness) W.H.L. Beedell, Sergt.S

Wm H L Beedell

(Pocket Book Folio 39).

This is Exhibit "A" referred to in the summary of evidence in the case of B38475 Pte Davey, W.L. taken before me this twenty second day of November nineteen forty three:

[signature]

(Signature of Officer taking summary)

Exhibit "B"

SURREY JOINT POLICE FORCE.

S T A T E M E N T.

Name: Joyce CHISHOLM. 20 years.

Address: South Eastern Command Holding Unit, Hutfield Priory.

Occupation: Private No.W/231959 A.T.S.

who says:-

About 10.25pm. on Friday 12th November 1943 I was riding in a car at the time of accident. I had been picked up just West of Hillsbrow Gate and alighted at Priory Gate. I was in company with two other A.T.S.girls from the same Unit.

The car was driven by a soldier and two other men were in the front seat. The driver did not appear to know the road and asked the way to Hutfield. He drove very fast.

I saw two people on the footpath ahead of us at the bend. The car swerved and struck the nearside fence, but I did not notice what happened to the two people, but after we had passed I looked round and saw someone lying on the road.

I called to the driver to stop and told him he had knocked someone down, but he would not stop until we got to the Priory Gate. We three got out and the car went on towards Hutfield. I could not identify the driver.

J Chisholm

(Signed) J. Chisholm.

(Witness) [illegible] Sergt. S.

(Pocket Book Folio 41).

This is Exhibit "B" referred to in the summary of evidence in the case of B38475 Pte Davey, W.L. , taken before me this twenty- second day of November nineteen forty three:

(Signature of Officer taking summary)

Exhibit "C"

SURREY JOINT POLICE FORCE.

STATEMENT.

Name: Edward James MOORE, Age: 24 years.

Address: 34th Technical Training Group R.A.M.C., Bristol.

Occupation: Private Soldier No.1465162.

who says:-

At 10.5pm. on Friday 12th November 1943 I and my friend Hubert George MAYNARD left Redhill Railway Station and started to walk towards Bletchingley. We walked on the nearside footpath, myself on the inside and my friend on the outside, about two feet from the kerb. We walked past "Chart Lodge", Nutfield Road, and on reaching the entrance to Patteson Court (opposite Nutfield Lodge, Nutfield Road), I heard a thud. I realised that my friend had been struck by a motor vehicle. I saw the vehicle mount the footpath and continue along the footpath for a distance of approximately 26 yards. It continued on along the road towards Nutfield at a speed which I estimate at 45 m.p.h.

I then found that my friend was lying face downwards on the footpath, his head towards the inside of the footpath. He was unconscious and bleeding from the head, mouth and left ear. An R.A.F. man went into a house opposite and the Ambulance was sent for.

I think that the vehicle that struck my friend was of the heavy Army lorry type. I also noticed that a private car proceedings towards Redhill passed the scene of the accident shortly after the accident occurred.

The scene of the accident is on a right hand bend and the footpath broadens out to about eight feet in width.

(Signed) E. J. Moore.

(Witness [illegible] 43

(Pocket Book Folio 33/6).

This is Exhibit "C" referred to in the summary of evidence in the case of B30475 Pte Davey, W.L. taken before me this twenty second day of November, nineteen forty-three.

(Signature of Officer taking summary)

Exhibit "D"

SURREY JOINT POLICE FORCE.

12-11-43.

STATEMENT.

Name: William Albert MINTER, Age: 35 years.

Address: R.A.F.Station, Redhill, Surrey

Occupation: A.C.1 Electrician, R.C.A.F. No.R.160020.

who says:-

At roughly 9.0pm. on Friday 12th November 1943 I was in the W.V.S.Canteen in High Street, Redhill, when I met a Corporal from the Aerodrome and a Canadian despatch rider. The Canadian had a Canadian Staff Car with him and was on his way to deliver a despatch to his Colonel. He invited the R.A.F.Corporal and myself to accompany him, which we did. He went first and delivered his despatch, I have no idea of the roads he traversed except that we proceeded out of Redhill under the Railway Bridge and to the right, and I got the impression from the driver that we were going near Godstone.

He delivered the despatch and we then drove to a Public House which I understood was the "Red Lion" at Betchworth, and there we had three pints of beer each. On leaving this Public House we drove to another which I cannot name and we each had another three pints of beer there. We remained in the bar until time was called at 10.0pm.

When we re-entered the car both the Corporal and I considered the driver was driving too fast. We told him so and said we were in no hurry.

I am under the impression we passed through Redhill and then we pulled up and asked three A.T.S. girls if we were on the road to Nutfield. They said we were right and as they were going part way on that road we gave them a lift.

Very shortly after picking up the girls we struck something. At the time the car was travelling at an excessive rate of speed and it deviated to the left where there was a break in the kerb at the entrance to some private property. I am quite sure the car did not mount the kerb but we deviated and struck something in the opening.

We all immediately insisted upon him stopping and the girls demanded to get out. He then proceeded on for perhaps half a mile, then stopped and let the girls out.

Having set them down he asked where we wanted to go. I am a little hazy as to what was said about the accident and going back, as I was quite shocked at the time, but he didn't go back, but drove me to my Billet and then went on with the Corporal.

P.T.O.

Exhibit "E"

SURREY JOINT POLICE FORCE.

E

STATEMENT.

15-11-43.

Name: Phyllis Hilda LAFFLING. 23 years.

Address: A.T.S. Holding Unit, Nutfield Priory.

Occupation: Lance Corporal No.W/153198 A.T.S.

who says:-

At about 10.20 pm. on Friday 12th November 1943 I was walking along Nutfield Road with Corporal JENKINS and Private CHISHOLM of my Unit. We were walking towards Nutfield and were on the left-hand footpath. When we were near "Hillsbrow" a Military Station Wagon travelling in the same direction pulled up, and an airman who was sitting on the nearside front seat asked if that was the right way to Nutfield. The vehicle was being driven by a Canadian soldier, and there were two other men seated in front with him, one was an airman, but I really didnt notice who the second man was.

As we were going towards Nutfield they offered us a lift. We accepted and endeavoured to open the car nearside door. It appeared to be locked and the driver got out to assist us, but before he got around the vehicle I got the door open and we entered. As the driver got back into his seat I did notice in the moonlight that he had a flash on his shoulder which I believe was blue with light-coloured lettering.

As soon as we were seated the driver started off and the vehicle quickly gathered speed. By the time we got to the top of the rise it was travelling very fast and the driver didnt ease down, but appeared to accelerate. The car seemed to sway about the road and in my opinion it was travelling too fast to take a right hand bend which we were approaching.

As we reached the bend the driver appeared to hesitate and then instead of bearing right he went straight on and appeared to be going into the private drive of Patteson Court, which is on the nearside. At the last moment he appeared to realise his mistake and swung right, but it was too late. The vehicle mounted the footpath and I felt a bump as it mounted the kerb. At that moment I noticed two people on the footpath immediately in front of us. They appeared to be turning round, probably having heard us behind them. The car went a little way along the footpath and then hit the fence a glancing blow and swung back on to the road. I at first thought we had hit the fence and not the two people, but on looking back I saw that only one of the two people was standing and the other was lying on the ground.

The driver had braked when he realised he was entering the private drive, and had probably reduced his speed to 20 or 25 m.p.h. when he mounted the footpath.

P.T.O.

Exhibit "D"

SURREY JOINT POLICE FORCE.

12-11-43.

STATEMENT.

Name: William Albert MINTER, Age: 35 years.

Address: R.A.F.Station, Redhill, Surrey

Occupation: A.C.1 Electrician, R.C.A.F. No.R.160020.

who says:-

At roughly 9.0pm. on Friday 12th November 1943 I was in the W.V.S.Canteen in High Street, Redhill, when I met a Corporal from the Aerodrome and a Canadian despatch rider. The Canadian had a Canadian Staff Car with him and was on his way to deliver a despatch to his Colonel. He invited the R.A.F.Corporal and myself to accompany him, which we did. He went first and delivered his despatch, I have no idea of the roads he traversed except that we proceeded out of Redhill under the Railway Bridge and to the right, and I got the impression from the driver that we were going near Godstone.

He delivered the despatch and we then drove to a Public House which I understood was the "Red Lion" at Betchworth, and there we had three pints of beer each. On leaving this Public House we drove to another which I cannot name and we each had another three pints of beer there. We remained in the bar until time was called at 10.0pm.

When we re-entered the car both the Corporal and I considered the driver was driving too fast. We told him so and said we were in no hurry.

I am under the impression we passed through Redhill and then we pulled up and asked three A.T.S. girls if we were on the road to Nutfield. They said we were right and as they were going part way on that road we gave them a lift.

Very shortly after picking up the girls we struck something. At the time the car was travelling at an excessive rate of speed and it deviated to the left where there was a break in the kerb at the entrance to some private property. I am quite sure the car did not mount the kerb but we deviated and struck something in the opening.

We all immediately insisted upon him stopping and the girls demanded to get out. He then proceeded on for perhaps half a mile, then stopped and let the girls out.

Having set them down he asked where we wanted to go. I am a little hazy as to what was said about the accident and going back, as I was quite shocked at the time, but he didn't go back, but drove me to my Billet and then went on with the Corporal.

P.T.O.

(Continuation).

I imediately went andreported the facts to Corporal NOBLE, H, of the R.A.F.Police, who telephoned the Civil Police.

I do not know the Canadian, but his Christian name is Bill, and although he was not wearing any stripes he said he was a Lance-Corporal. He was wearing a Despatch Rider's badge. I think he said he was 21 or 22 and came from Hamilton. I wand to add that he was a fast driver as a result of knowing the roads well.

Wm. A. Minter

(Signed) Wm. A. Minter,

(Witness) H.A.Atkins, Insp.

H.A. Atkins

This is Exhibit "D" referred to in the summary of evidence in the case of B30477 Pte Davey, W.L. taken before me this twenty second day of November, nineteen forty-three:

(Signature of Officer taking summary)

Exhibit "E"

SURREY JOINT POLICE FORCE.

E

STATEMENT.

15-11-43.

Name: Phyllis Hilda LAFFLING. 23 years.

Address: A.T.S.C.Holding Unit, Nutfield Priory.

Occupation: Lance Corporal No.W/153198 A.T.S.

who says:-

At about 10.20 pm. on Friday 12th November 1943 I was walking along Nutfield Road with Corporal JENKINS and Private CHISHOLM of my Unit. We were walking towards Nutfield and were on the left-hand footpath. When we were near "Hillsbrow" a Military Station Waggon travelling in the same direction pulled up, and an airman who was sitting on the nearside front seat asked if that was the right way to Nutfield. The vehicle was being driven by a Canadian soldier, and there were two other men seated in front with him, one was an airman, but I really didnt notice who the second man was.

As we were going towards Nutfield they offered us a lift. We accepted and endeavoured to open the car nearside door. It appeared to be locked and the driver got out to assist us, but before he got around the vehicle I got the door open and we entered. As the driver got back into his seat I did notice in the moonlight that he had a flash on his shoulder which I believe was blue with light-coloured lettering.

As soon as we were seated the driver started off and the vehicle quickly gathered speed. By the time we got to the top of the rise it was travelling very fast and the driver didnt ease down, but appeared to accelerate. The car seemed to sway about the road and in my opinion it was travelling too fast to take a right hand bend which we were approaching.

As we reached the bend the driver appeared to hesitate and then instead of bearing right he went straight on and appeared to be going into the private drive of Patteson Court, which is on the nearside. At the last moment he appeared to realise his mistake and swung right, but it was too late. The vehicle mounted the footpath and I felt a bump as it mounted the kerb. At that moment I noticed two people on the footpath immediately in front of us. They appeared to be turning round, probably having heard us behind them. The car went a little way along the footpath and then hit the fence a glancing blow and swung back on to the road. I at first thought we had hit the fence and not the people, but on looking back I saw that only one of the two people was standing and the other was lying on the ground.

The driver had braked when he realised he was entering the private drive, and had probably reduced his speed to 20 or 25 m.p.h. when he mounted the footpath.

P.T.O.

(Continuation).

Immediately I noticed the man on the ground I said to the driver - "Stop, you've knocked someone down". He didnt answer, but seemed to hesitate so that I thought he was going to stop but then accelerated and drove on. He did not drive very fast after that, and we kept saying - "You must stop". He eventually stopped and put us down at the Priory entrance, which is approximately 200 yards from the point where the accident occurred. The car barely stopped and we simply tumbled out, and as we did so some soldiers attempted to get in. I dont know whether they were told to keep out but they left hurriedly. The car was already moving again as the soldiers attempted to get in, and it went away towards Mutfield at a fast speed.

I think we were all too upset and frightened to think about taking the number of the vehicle.

After a short discussion Corporal JENKINS and I went back to the injured man and did what we could for him pending the arrival of the Ambulance, but there were already other persons in attendance.

P. H. Laffling

(Signed) P. H. Laffling.

(Witness) H. A. Atkins, Inspector.

H. A. Atkins

This is Exhibit "B" referred to in the summary of evidence in the case of B38475 Pte D avey, W.L. taken before me this twenty secund day of November nineteen forty three.

Kenneth Lucas

Exhibit "F"

SURREY JOINT POLICE FORCE.

F

STATEMENT. 15-11-43.

Name: Margaret JENKINS. 30 years.

Address: S.E.C. Holding Unit, Nutfield Priory.

Occupation: Corporal No.W/356824 A.T.S.

who says:-

At 10.20 pm. on Friday 12th November 1943 I was walking along Nutfield Road with two members of my Unit towards Nutfield Priory. We were on the left hand footpath.

When we were near "Hillsbrow", a Military Station Truck which was going in the same direction pulled up beside us. There were two men beside the driver in the front seat, and the nearest one, who wore glasses, asked us the way to Nutfield. We said they were on the road and they asked if we were going that way and would we like a lift. We accepted and all got in the back. As we got into the vehicle I noticed that the driver was a soldier but the other two men were airmen.

The vehicle started away and while I would not say that it was going slowly I will not commit myself as it is difficult in a big, smooth-running vehicle to judge its speed.

When we had travelled a few hundred yards I noticed two men walking in the same direction as ourselves on the nearside footpath. We were just then by Patteson Court entrance, and I think the driver thought that was the road, and appeared to be going into it. He then corrected himself and swerved to the right and at the same time I felt the car strike something, and the car shook. I asked the driver to stop, but he did not answer and continued on his way. I looked through the rear window, but could see nothing.

We continued to ask the driver to stop, but he did not do so until we reached the Priory Gates, and then only because we told him we had to get out there. As soon as we got out of the car it went on towards Nutfield.

L/Cpl.LAWLISS and I went back to the spot where I had felt the car strike something and found a man badly injured. There was another civilian and an airman with him.

I could not identify the driver of the Military vehicle, and did not notice the markings on his uniform.

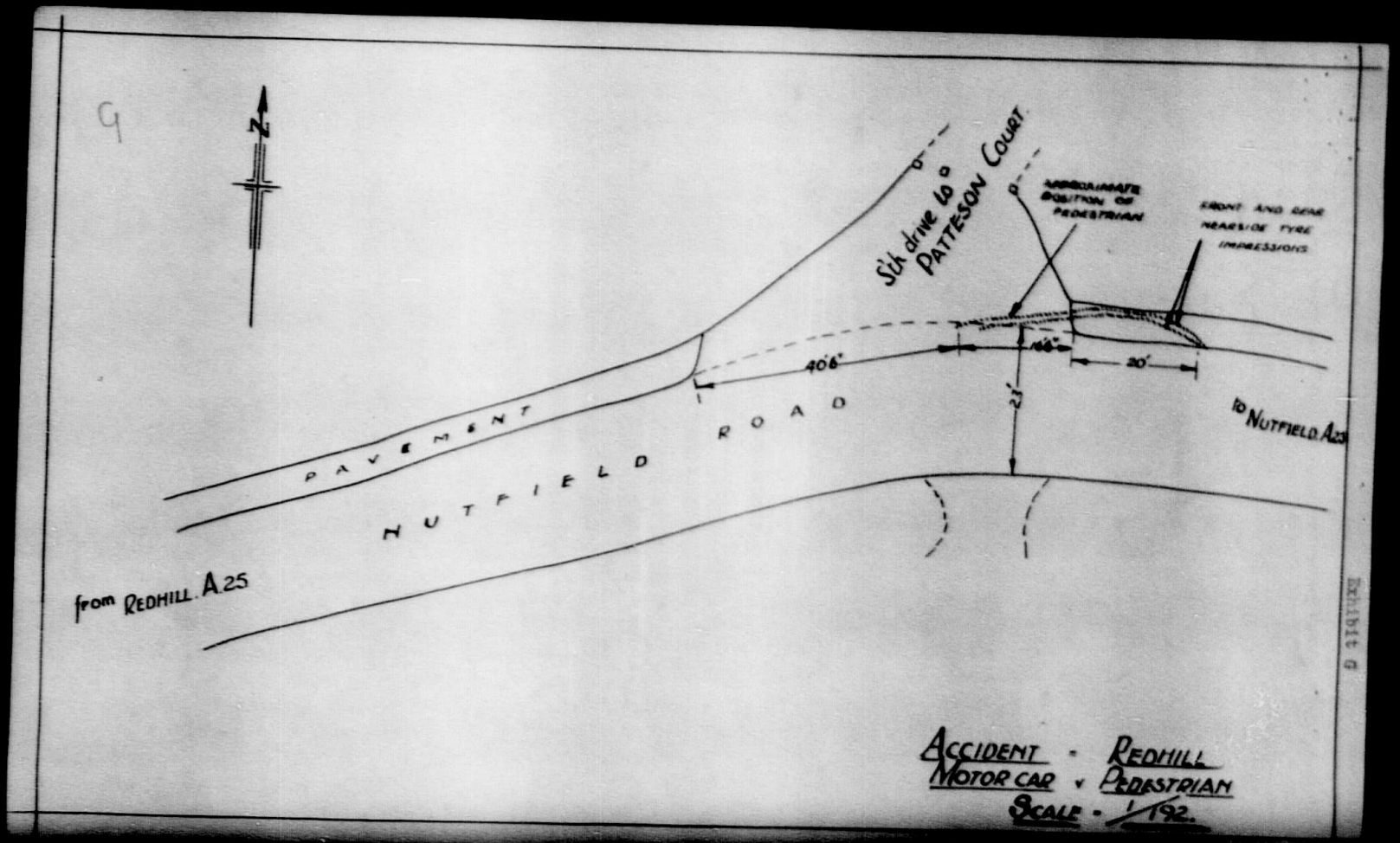
(Signed) M. Jenkins.

(Witness) H.A.Atkins, Inspector.

This is exhibit "F" referred to in the summary of evidence in the case of B38475 Pte Davey, H.L., taken before me this twenty second day of November, nineteen forty three.

(Signature of officer taking summary)

Exhibit G



9
N
S'th drive to PATTESON COURT
APPROXIMATE POSITION OF PEDESTRIAN
FRONT AND REAR NEARSIDE TYRE IMPRESSIONS
40'6"
16'6"
20'
23'
PAVEMENT
NUTFIELD ROAD
to NUTFIELD A23
from REDHILL. A25
ACCIDENT - REDHILL
MOTOR CAR v PEDESTRIAN
SCALE - 1/192.

This is Exhibit "C" referred to in the summary of evidence in the case of B38475 Pte Davey, W.L. taken before me this twenty second day of November nineteen forty three.

(Signature of Officer taking summary)

Exhibit "H"

SURREY JOINT POLICE FORCE.

E.F.H

STATEMENT.

15-11-43.

Name: Eileen JENNINGS. 21 years.

Address: S.E.C.Holding Unit, Nutfield Priory.

Occupation: Private No.W/52166 A.T.S.

who says:

At about 10.25ps. on Friday 12th November 1943 I was walking with an airman friend in Nutfield Road, Redhill. We had reached a point about 50 yards East of "Hillsbrow" when a Canadian Station Waggon overtook and passed us travelling towards Nutfield. I was attracted to the vehicle by its tremendous speed, it simply ripped past us.

I saw nothing more of the vehicle, but after we had walked about 200 yards we came across a man lying across the footpath being supported by another man.

In consequence of what I was told I went and telephoned for the Ambulance.

E Jennings

(Signed) E. Jennings.

(witness) H. A. Atkins, Inspector.

H. A. Atkins

This is Exhibit "H" refered to in the summary of evidence in the case of B18875 Pte Davey, WL. taken before me this twenty second day of November nineteen forty three.

(Signature of Officer taking summary)

Exhibit I

R.A.F. Redhill Surrey I

17 Nov 43

I have been cautioned by Sgt. Harrison of No 1 Special Investigation Section, First Canadian Army, that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence.

To show that I have read over and ~~[illegible]~~ understand this caution and that I am making this statement voluntarily, I sign my name here.

Witness: J. T. Harrison. T. M. Roche.

States:

My name is Terence Michael Roche and I am a Corporal Electrian, stationed at R.A.F. Station, Redhill Surrey. I am twenty-one years old. With regard to the statement that I made to the Red Hill civilian police, there are certain things now that I wish to clear up. This is actually what happened. On Friday 12 Nov 1943, I visited the W.V.S. Canteen in Redhill and in there I met A.C. Minter and a Canadian soldier whom I knew as a kid in Hamilton, Ontario. ~~[illegible]~~ "Bill".

Bill who stated he had a despatch to deliver invited Minter and I to go for a ride with him in the station wagon which he was driving. We accepted the invitation and left the Canteen, I should think somewhere after 8 o'clock. I am not familiar with the district and do not know where we went but gained the impression that he delivered his despatch to his colonel somewhere in the Godstone district. After he had delivered the despatch we drove quite a way to a Public House where we had ~~[illegible]~~ three ~~[illegible]~~ drinks. I had "bitters". On leaving this Public House we went to another not far away where we had another three or four apiece. We left this house at closing time. After leaving this Public House

T M Roche

Purely Col
Rec'd Police.

we drove back through Redhill on our way home. Bill was driving pretty fast at this time and Minter told him to not to drive so fast. On the way we picked up three A.T.S. girls and gave them a lift. Some five or six hundred yards after picking up the girls, it is my impression now that I saw two people walking either on the road or very close to the side of the road on the left hand side, proceeding in the same direction that we were going in. It was bright moonlight and the road was rather glary. Suddenly, I felt the car jerk, and I thought that we had hit the curb. At the time this happened, I wasn't paying any particular attention to the road but was looking down at the dashboard. The girls all screamed, and I think one of them called out, "You've hit somebody, or words to that effect. Minter also said something about "stop the car" Bill slowed the car down quite a bit, exclaiming "fuck" as he did so. Then he said, "I beg your pardon" referring to the girls. The girls insisted that they be allowed out of the car. By this time we were almost at their quarters, so he let them out. We started up again and Bill asked Minter and I if he was on the right road to Nutfield. We replied that he was and we proceeded to Nutfield. Minter was dropped off at his quarters and then Bill drove me up to my quarters which are situated a short distance from Minters. We got out of the car and examined it and neither of us noticed anything particularly wrong with the car. He asked me if I'd be around Saturday, and I said I'll meet you at the W.V.S. meaning the canteen in Red Hill. I met him there on Saturday, the day following, and we went out to his unit in a truck. I met him about one o'clock in the afternoon. He asked me if the police had been to see me and I told him that they had and that they had taken a statement from me

J. M. Hoche

F. Dearly Cpl
R.A.F. Police.

I also told him that he had critically injured a civilian. I do not remember his exact words, but he implied that I was to keep my mouth shut as far as the police were concerned. Later on that day, we went to Croydon, and as I still couldn't remember his name, I asked him what it was and he replied "Davey" meaning his surname and I asked him how he spelled it and I pointed to a sign on a store which spelled Davey and I asked him if it was spelled like that and he replied DAVIES spelling it out. We spent the entire afternoon and evening together and came back to Red Hill by train. Apart from the conversation concerning the accident we had early in the afternoon we did not discuss it further. On Sunday, when you and the police sgt. called the reason I did not tell you his name and the fact that he was in Royal Canadian Ordnance Corps was because I did not want him to feel that I was the means of having him arrested. It is just possible that I could have taken you to his unit location but I am not quite sure. I realize now that I have done a foolish thing in keeping back this information and am genuinely sorry that I did not cooperate fully with the police.

J. M. Locke

Witnesses:
A. T. Harrison
E. Pearley Cpl.
Red Hill, Surrey
17 Nov. 43.

This is Exhibit "I" referredto in the summary of evidence in the case of B38475 Pte Davey, W.L. taken before me this twenty second day of November, nineteen forty three.

(Signature of Officer taking summary)

Exhibit "K" 600

Exhibit K

SURREY JOINT POLICE FORCE.

STATEMENT.

15-11-43.

Name: William Lorraine DAVEY. 20 10/12 years.

Address: 95 L.A.D., R.C.O.C., attached 8th Canadian Field Park Coy. R.C.E.

Occupation: Private soldier No.B.36473.

Who says:-

I have been cautioned that I need not say anything unless I wish to do so. I make this statement quite voluntarily, knowing that it may be given in evidence.

W L Davey

(Signed) W.L.Davey.

I left camp about 5.30pm. on Friday 12th November 1943, proceeding to Godstone area for the purpose of delivering a despatch to Colonel STILES ~~of the~~ C.R.E.M.E. I was driving a Ford Station Waggon No.CM.4202716.

Upon arriving at Redhill I decided to go to the W.V.S.Canteen in the High Street and have tea. On entering the Canteen I recognised Corporal ROCHE of the R.C.A.F., whom I had not seen for five years. Thinking it not any harm, I asked him if he would like to accompany me to South Godstone to deliver the despatch. It was 7.0pm. when I met him.

After having tea, Corporal ROCHE and a friend who was with him, also in the R.C.A.F., known as Bill, accompanied me to Godstone, where I delivered the despatch.

After delivering the despatch we returned to Redhill and went on to the "Red Lion" at Betchworth, where we each bought a round of drinks, consisting of three pints of beer. We then proceeded to the "Barley Mow", where we had one round each of bitters, consisting of pints.

At this time the Pub. was closing, so I thinking that there was a Dance at Betchworth Hall, drove there, but found there was no dance there. Then we returned to Redhill, where I decided to take the two boys back to Nutfield Camp.

Driving out of Redhill towards Nutfield it was very misty and the moon was very bright, making the road glarey. At this time Corporal ROCHE mentioned that it was very difficult to drive. The windscreen kept misting up both on the inside and outside.

I saw three A.T.S.girls walking towards Nutfield and decided to stop to enquire if I was on the correct road to Nutfield. Upon stopping the A.T.S. informed me I was on the correct road, and I asked them if they would like a lift, and they said "Yes" and entered the car.

W L Davey

P.T.O.

(Continuation).

I drove on, and by this time I was not seeing the road very clearly. My eyes were blurred and the heat of the car was affecting me. I was beginning to realise that the beer I had consumed was taking effect on me. On realising this I slowed the car down from 30 m.p.h. to 20 m.p.h. approximately.

I was following the left kerb very closely, and on coming to a slight right hand bend I came to a break in the nearside kerb.

As I looked ahead I discovered that where the nearside kerb re-commenced it was further out towards the centre of the road than the kerb I had just left. Upon discovering this I endeavoured to swing the car to the right of the road away from the kerb. At this time I noticed people on the nearside side-walk walking near the hedge.

Upon arriving at the spot where the kerb re-commenced I felt the car hit the kerb. As I did so the girls called out that I had hit someone, and on hearing this I slowed the car to nearly a stop and turned my head around, and as near as I could see I thought that I could still see the two people walking. The Corporal suggested I should stop and I, not thinking very clearly, did not think it necessary, so I proceeded down the road another 800 yards approximately. Here I let the girls out and proceeded to Hatfield, where I dropped Hill at his billet. I then drove on a short way to Corporal ROCHE's billet, where I stopped and we talked about some for ten minutes. Just before I decided to return to Camp Corporal ROCHE was undecided as to whether I had hit somebody or not and suggested we should look at the car.

We looked at the left side of the car with matches to see if I had dented a wheel or fender, but could find no evidence that I had done so.

We made arrangements to meet the following day at 1 p.m. at the N.V.S. Canteen in Redhill, and I then returned to Camp, taking a short cut from Hatfield to Horsham instead of returning via Redhill.

This statement has been read over to me and is correct.

W L Davey

(Signed) W. L. Davey.

(Witness) J. Bowles, [illegible]
F.P. Findlay, [illegible]

J Bowles [illegible]

This is exhibit "K" referred to in the summary of evidence in the case of B28475 Pte Davey, W.L. taken before me this twenty second day of November, nineteen forty three.

[illegible]

SSignature of Officer taking summary

Exhibit "D"

SUMMARY OF EVIDENCE

Summary of evidence in the case of B38475 Pte Davey, William Loraine, R.C.O.C., 95 LAD, att'd 8 Cdn Fd Pk Coy, charged with:

1. Between 1800 hours and 2300 hours on 12 Nov 43 improperly and without authority using a Canadian Military vehicle, W.D. No CM-4202718 for private purposes.

2. About 2225 hours on 12 Nov 43 negligently driving Canadian Military vehicle W.D. No CM-4202718, thereby causing serious injury to one, Hubert George Maynard.

3. About 2225 hours on 12 Nov 43, after being involved in an accident, leaving the scene of the accident without leaving his particulars or taking steps to assist the injured person.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS:

William Francis Leonard Beedell, Police Sergeant No 3, Surrey Joint Police, Reigate Division, having been duly sworn, states:

At 10.35 P.M. on Friday 12 Nov 43, I was on duty at Centre Redhill. In consequence of information which I received I attended an accident in the Borrough Ambulance to a point near the entrance to Patteson Court, Nutfield Road, Redhill. Upon arrival I saw a civilian lying on the Northern footpath with his feet in the road and being supported by a second civilian.

I examined the patient and found that he had sustained injuries to the head and was bleeding from the mouth, nose and left ear. He was suffering also from shock. I rendered first aid and he was removed into the ambulance and conveyed to the East Surrey Hospital, where he was admitted and detained. Relatives informed.

I examined the scene of the accident and took measurements. Width of Nutfield Road was found to be twenty-two feet (22'). On the footpath where the patient had been lying, I found a denture and an artificial eye, which proved to be the property of the injured man. There were marks on the Roadway of tyre impressions commencing eight feet from the footpath, at the entrance to Patteson Court drive, and continuing over the footpath where the injured man was lying, for a further distance of twenty-five feet (25'), where the impression ceased on returning to the roadway. I also saw a mark on the fence two feet (2') from the ground, commencing at the second paling of the fence, and continuing for six feet (6') along the fence, apparently caused by something grazing the fence. At the end of this mark was what appeared to be a brownish coloured substance which I assumed to be paint from a vehicle.

I made inquiries and took statements from witnesses and circulated the description of a Ford V-8 vehicle wanted for failing to stop after an accident.

I made further inquiries at Nutfield Priory, where I interviewed three A.T.S., from one of whom I took a statement and made an appointment for the other two to attend Redhill Police Station the following morning. I hereby submit statements taken from (a) R152559 L/C Franks, Walter, R.C.A.F. (b) W/231959 Pte Chisholm, Joyce, A.T.S. and (c) 1465162 Pte Moore, E.J., R.E.M.E., Bristol. I hereby certify that the statements submitted herewith were given and signed in my presence by their respective makers.

The accused declines to cross-examine the witness.

W/S Beedell

(Signature of witness)

SECOND WITNESS:

R.152559 LA/C Franks, Walter R.C.A.F.

Documents purporting to be signed statement of the evidence of R155259 LA/C Franks, Walter R.C.A.F. was read over to the accused, marked "Exhibit A" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot be readily procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

THIRD WITNESS:

W/231959 Pte Chisholm, Joyce, A.T.S.

Documents purporting to be signed statement of evidence of W/231959 Pte Chisholm, Joyce, A.T.S. was read over to the accused, marked "Exhibit B" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

FOURTH WITNESS:

1465162 Pte Moore, Edward James, R.E.M.E.

Documents purporting to be signed statements of evidence of 1465162 Pte Moore, Edward James, R.E.M.E. was read over to the accused, marked "Exhibit C" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

R L Dorsey

(Signature of accused)

FIFTH WITNESS:

R160020 AC/1 Minter, William Albert, R.C.A.F.

Documents purporting to be signed statements of evidence of R160020 AC/1 Minter, William Albert, R.A.F. was read over to the accused, marked "Exhibit D" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

SIXTH WITNESS

W/153158 L/Cpl Laffling, Phyllis Hilda, A.T.S.

Documents purporting to be signed statements of evidence of W153158 L/Cpl Laffling, Phyllis Hilda A.T.S. was read over to the accused, marked "Exhibit E" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

SEVENTH WITNESS

W/36624 Cpl Jenkins, Margaret, A.T.S.

Documents purporting to be signed statements of evidence of W/36624 Cpl Jenkins, Margaret, A.T.S. was read to the accused , marked "Exhibit F" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

EIGHTH WITNESS: Ronald William Jones, Police Constable 27 Reigate Borough Division Surrey Joint Police, having been duly sworn, states:

At 1130 A.M. on Tues Nov 16, 1943, I accompanied Inspector Atkins to a point in Nutfield Road Redhill and on his instructions I took certain measurements and later produced a plan which I submit herewith.

R W Jones
(Signature of witness)

The plan referred to by the witness, produced, marked "Exhibit G" signed by me and attached hereto.

Roche Lieut
(Signature of Officer taking summary)

NINTH WITNESS: W/
W/53166 Pte Jennings, Eileen, A.T.S.

Documents purporting to be signed statements of W/53166 Pte Jennings, Eileen, A.T.S. was read over to the accused, marked "Exhibit H" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

Roche Lieut
(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

W F Davey
(Signature of accused)

TENTH WITNESS: R89565 Cpl Roche, T.M., R.A.F.

Documents purporting to be signed statements of R89565 Cpl Roche, T.M., R.A.F. was read to the accused, marked "Exhibit I" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

Roche Lieut
(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

W F Davey
(Signature of accused)

ELEVENTH WITNESS A/Capt. F.P. Findlay, 95 L.A.D. R.C.O.C. att'd 8 Cdn Fd Pk Coy, having been duly sworn states:

I am Officer Commanding 95 L.A.D. R.C.O.C. and still am. I am well acquainted with the accused, B38475 Pte Davey, W.L., who has been under my command for the period of approximately one year. I recognize him here as the accused.

At approximately 1800 hours 12 Nov 43, I instructed the accused to deliver a dispatch to H.Q. R.E.M.E. (RCOC) 2 Cdn Corps Troops, at South Godstone. He was to proceed in Ford Station Wagon, C11,A.S. W.D. No CM-4202718, and I wrote the journey on the work ticket, "Chipstead to South Godstone and return". The mileage was then shown to be 21647 miles. I did not see the station wagon again until after morning parade, on 13 Nov 43, at which time I wrote in the entry on the work ticket; the mileage then being 21688. I noticed nothing wrong with the station wagon at that time. At approximately 1745 hours 15 Nov 43, I returned to the unit and found Police Investigators inquiring for Pte Davey, W.L. I personally brought the accused to the Orderly Room, and for the first time learned of what he is now accused. I was present at the initial questioning. At the end of this that same evening, Sergeant Harrison, J.T. of No 1 Special Investigation Section, and Sergeant J.R. Bowles, Surrey Joint Police Force wished to examine the car. At that time it was very dark and both were not satisfied with the examination by torch light. Arrangements were made to view the car the following morning. Iwas reminded then to check the work tickets of the station wagon, W.D. No CM-4202718 for the previous week, and found that the total mileage of the trip on the night in question was 41 miles. From past experience the trip should not have exceeded 25 miles. I turned in the work ticket to Capt H.B. Ford, R.C.E. 8 Cdn Fd Pk Coy as evidence of an unauthorized journey made by B38475 Pte Davey, W.L. I hereby submit the Transport Work Ticket

The Work Ticket referred to by the witness produced marked "Exhibit J" signed by me and attached hereto.

(Signature of Officer taking summary

TWELVTH WITNESS: John Rideout Bowles, Sergeant No 31 Reigate Borrough Division, Surrey Joint Police Force, having been duly sworn, states:

At 5.30 P.M. on Monday Nov 15, 1943, at a Canadian Military Camp, Chipstead Surrey, I interviewed the accused, Pte Davey, W.L. in the presence of his commanding officer,Captain F.P. Findlay. I said to him," I am making inquiries respecting an accident which occurred on the Nutfield Road, Redhill, about 10.25 P.M. on Nov 12 , 1943, in which a man walking on the near side footpath toward Nutfield was knocked down and seriously injured by a vehhicle going toward Nutfield, which failed to stop".

It has been ascertained that the vehicle was a Cdn station wagon, and carried two airmen and three A.T.S. girls. "Were you the driver of the vehicle in question?" He answered,"Yes, I was". The girls said I had knocked somebody down, but I didn't think I had so didn't stop.

TWELVTH WITNESS: John Ridout Bowles (continued)

I said to him, "Do you care to make a statement? as to what occurred?" He sought the advice of Captain Findlay, and said; "Yes, I wish to make a statement" I thereupon cautioned him and took down at his dictation, a statement which he then made. On completion, I read the statement over to him and he signed it in my presence, and also did Captain Findlay. I hereby submit the statement of B38475 Pte Davey, W.L., 95 L.A.D. R.C.O.C.

At 11.00 A.M. on Tues Nov 16, 1943, I accompanied Sergeant Beedell to Nutfield Road, Redhill, where on the fence adjoining the entrance to Patteson Court, he pointed out to me various marks, one of which consisted of a horizontal mark, two feet from the pavement, made by paint of a brownish colour. At 11.15 A.M. Tuesday Nov 16, 1943, I went to Chipstead, where, in the presence of Captain Findlay and Pte Davey, I made an examination of a Canadian Military station wagon of Ford make, W.D. No CM-4202718. I found the mud-guards of this vehicle to be painted a brownish colour, and on the front near side, or front left hand mud-guard, I found several horizontal marks, caused by the vehicle coming into contact with some object. The paint was rubbed off at these marks. The marks varied in height from the ground, but I found one to be two feet from the ground which could have been caused by contact with the fence at Patteson Court.

Pte Davey informed me that the three A.T.S. girls he carried were sitting on the middle seat of the vehicle and the two Canadian airmen were sitting on the front seat next to him; the rear seat being vacant.

I caused three soldiers of fairly small stature to sit on the centre seat and two more to sit on the front seat to represent the airmen. I then sat in the driver's seat and on turning my head round, I found I could only see out of the rear window BETWEEN THE HEADS of the three men in the middle seat. The rear window measured four feet wide by eleven inches high. The view was very limited, and as Pte Davey is a much smaller man than myself, I formed the opinion that his view to the rear was also limited.

Signature of witness J. R. Bowles

The statement referred to by the witness, produced, read over to the accused, marked "Exhibit J", signed by me and attached hereto.

The accused does not wish to cross-examine this witness

(signature of Officer taking summary)

The accused was warned as follows:

"Do you wish to make any statement or to give evidence on oath?" You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused: "I do not."

(Signature of accused)

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this twenty-second day of November, ninteen forty three.

(Signature of officer taking summary)

Exhibit F

No. B38475 Name DAVEY, W.L. Sqn., Battery, or Company Corps R.C.O.C. Date of enlistment 18Mar42 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1210-20) H.Q. 1772-29-1602

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk Period not reckoning towards freedom from extra fine n/a Sheet No. One Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the field	6 Oct 1943	Pte		W.O.A.S. - Sec. 40 A.A. i.e. Speeding	Doc. Evid.	5 days pay	20Oct43	Capt H.B. Ford	5 days pay under FR&I 149(2)

Certified True Copy - 24 Nov 43.
OF THE ORIGINAL IN MY POSSESSION HOT
HB Ford Capt
RP

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Exhibit "E"

600

M.F.B. 155
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.38475	Pte	Davey, W.L.	95 LAD RCOC

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron Battery Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec 40 A.A.	1 times	Sec. 40 A.A.	1 times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court of summary awards under Section 47 of the Air Force Act and dispensations with trial under A.A.T. are set out in the [illegible] annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 13 days in ~~Air Force~~ military custody, making a total of 13 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 20 yrs 10 months. ~~attestation paper~~

6. The date of his ~~commission~~ attestation specified in his record of service is 18 Mar 42 ~~attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon [illegible] service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force decoration~~ military, or ~~air force~~ military reward ~~[illegible]~~ ~~possession of or entitled to) State any air force decoration or reward~~ ~~military~~

10. ~~If the accused is a warrant officer: The accused before he was made a warrant officer has held the regimental rank of~~ ~~Air Force~~

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ ~~Permanent Force~~ ~~unit~~ ~~dated~~ ~~and in his regiment (or corps), the rank of~~ ~~dated~~

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—~~

~~Date of promotion~~

~~In the rank of~~ ~~years~~

~~In the rank of~~ ~~years~~

~~In the rank of~~ ~~years~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Air Force

Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N. A.		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29th day of Nov 1943 [illegible] Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

RECORDED AT CMHQ RL AS 168

Certified true Copy
Lieutenant Capt
(R. CORDEAU)

MMM-167

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty second day of March, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for the convening of a superior qualified officer~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint~~
*~~(1) Three Officers to form the Court~~
*~~(2) A Field Officer as President~~
~~for the following reasons, namely~~

*Omit if not applicable.

"TGG"

"TGG"

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R J Orr	Cerlt & York R

Members.

Rank.	Name.	Regiment.
Capt	J M Bursey	Cerlt & York R
Capt	Y Dube	R 22e R
Capt	H Tellier	R 22e R

Waiting

*Signed "T.G. Gibson" Brigadier

"R.O" *Commanding* 3 Cdn Inf Bde.

Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.6205 Pte Blaise DAVID, R 22e R	First Charge Sec 12 (1)(a)	Not Guilty	Not Guilty	
	2nd Charge Sec 9(2)	Guilty	Guilty To undergo imprisonment with hard labour for a period of two (2) years. "R.J.C."	Confirmed "TGG"

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) "T.G. Gibson" Brigadier (*Signed*) "R.J. Orr" Major

Commanding 3 Can Inf Bde *President.*
Confirming Officer (d)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of March 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*3. ~~The Interpreter~~
"RJO" *(4. The officers under instruction)

were duly sworn.

Signed this 23rd day of March 1944.

"R.J. Orr" Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

"RJO" *President of the Court Martial.*

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further ordered.~~ "TGG"

Signed this 26 day of Mar 19 44

"T.G. Gibson" Brig.
Confirming Officer.

Promulgated and extracts taken in the case of B.6205 Pte. D. David

(*a*) (Dated) 1 Apr 44 (Signed) P.A. Tremblay Lieut.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(2847) Wt.46578/8300 50,000 2-43 A.A.& W.Ltd. Gp.499

CHARGE SHEET

The accused R.6205 Private Blaise DAVID, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service is charged with:-

1st Charge
A. Sec 12(1)(a)

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 15 Feb 1944, when under orders to proceed to the front line absented himself without leave from approximately 2230 hrs 15 Feb 44 until 1500 hrs on 17 Feb 44, with intent to avoid so proceeding.

2nd Charge
A. Sec 7(2)

WHEN ON ACTIVE SERVICE
DISOBEYING A LAWFUL COMMAND GIVEN
BY HIS SUPERIOR OFFICER

in that he

In the Field on 17 Mar 1944, when personally ordered by Capt. L. Gennon R.22e.R. to return to his coy in the field refused to do so saying "I will not go", and did not go.

"J.G. Charlebois"
(J.G. CHARLEBOIS)Major,
T/Commanding Royal 22e Regiment.

In the Field
17 Mar 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
19 Mar 44

"T.G. Gibson" Brigadier
(T G Gibson), Brigadier,
Commanding 3 Cdn Inf Bde.

"R.J. Orr" Major

MEDICAL OFFICERS CERTIFICATE

I certify that I have this morning examined No.E6205 Rank..Pte. Name..DAVID, B of Royal 22e Regiment and in my opinion he is fit to undergo Trial by Court Martial.

Station In the Field

Date 23 Mars 1944

"Undecipherable" Capt.
Medical Officer

"A.J. Orr" Major

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field

on the 23rd day of March 19 44 by order of

Brigadier T.G. Gibson

Commanding 3 Cdn Inf Bde.

dated the 22nd day of March 19 44

President.

Major R.J. Orr Carlt & York R

Members.

Capt. J.M. Bursey Carlt & York R

Capt. Y. Dube R 22e R.

Trial of* E.6205 Pte. Blaise DAVID R.22e R. ~~Judge Advocate~~

"R.J.O" The order convening the Court, the charge-sheet and the summary ~~[illegible]~~) of evidence are laid before the Court.

~~The Court satisfy themselves that [illegible]~~

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor† Lieut. J.A. Girolami R.22e R

Counsel‡ or defending officer† Lieut. F.R. de Saint Victor R.22e R.

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

"RJO"

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] Forms A 9.

B

The President, members and judge-advocate are duly sworn

The following officers under instruction are duly sworn.

Capt. H. Tellier R.22e R

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you which you have heard read ? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question*

Answer.

Guilty

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question*

Answer

N/A

Are you guilty or not guilty of the fourth charge against you, which you have heard read ? *Question*

N/A *Answer.*

R50 The accused having pleaded Guilty to the second charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge *Instructions*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. P.48791 Sgt. Careau, M

being duly sworn, is examined by the prosecutor.

Q.1 Will you identify the accused?
A.1 The accused is S.6205 Pte. DAVID Blaise

Q.2 Could you tell the court what you know about Pte. David with regard to the charge laid against him?
A.2 On the 15th of Feb. 1944, I was platoon Sgt of #16 Platoon. In the afternoon I warned my platoon that we were to go up to the frontline on that same night. We were to move at 2030 hrs. Pte. David who was then present, told me he would not go to the frontline because he was too nervous and afraid. When the time to move arrived I made a roll call Pte. David was not present. I haven't seen him until the other day when he told me he had reported at "B" echelon on the 17th of Feb.

Cross-examination by Defending Officer:

Q.1 Were the men of your platoon warned that if they absented themself they were to be considered as deserters?
A.1 There was no officer in the platoon at that time, and I was acting as Platoon Commander, My men had been warned before that if they went A.W.L. in such circumstances they were to be considered as deserters.

Q.2. On that particular day, did you warn your platoon that if one man absented himself he would be considered a deserter?
A.2 No, Sir, all the men had been warned to that effect a few days before.

Q.3 Was Pte David present when that warning was given a few days earlier?
A.3 I don't know.

"RJO"

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. No.

Question. Is he a witness as to character only? *Answer.* N/A

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

When we were in the line for 48 hours on the Sundan front I became "shell shock". It was around 1100 hrs when Major Gareau sent me to the R.A.P. accompanied by Pte. Bigres. I was a whole day in the R.A.P. without anything to eat, and without any treatment. When we arrived in a rear area the Doctor evacuated Bigres instead of me, When I saw that I went to see Major Gareau who told me he would give me a job in the rear. But they sent me up to the front line again. So I got discouraged and went away.

Defence Council asks for a dismissal on the grounds that the accused has been tried for this offence previously and awarded a sentence of three(3) days pay as shown on the AFA 6 of the accused.

Petition is granted and the finding of not guilty on the first charge is announced in open court.

"R.J. Orr" Major

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* **Instructions to the Court** *above.*)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been recorded with

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused E6205 Pte. Blaise David
is found guilty of the second charge as laid

"RJO"

†The summary ~~(or abstract)~~ of evidence is read, marked M
signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

No

Answer. The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

"RJO"

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

No

Answer.

Evidence as to character

"RJC"

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused E6205 Pte Blaise DAVID
not guilty of the first charge
Finding announced in open court.

"RJO"

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction *before Sentence.*

*The Court being re-opened, the accused is again brought before it.

Lieut. J.A. Girolami R22eR is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* N/A

Cross-examined by the accused. No

[Instruction.—If by reason of the nature of the service of the accused or a departmental error, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

"RJO"

F

Sentence.

The Court sentence the accused E.6205 Pte. ~~DAVID~~ Blaise DAVID Sentence.

to undergo imprisonment for a period of two years with hard labour.

"A.J. Orr" Major

RJO

SUMMARY OF EVIDENCE

In the case of E.6205 Private DAVID Blaise, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service

By direction of the Commanding Officer this Summary of Evidence was taken under oath.

1st Witness for Prosecution — P.48791 Sgt Careau M. Royal 22e Regiment, having been duly sworn states:-

" I am P.48791 Sgt Careau M. of R.22eR. posted to "D" Coy as pl sgt. On 15 Feb 44 I warned my platoon that we would be moving up to the front line at 2230 hrs that same day. E.6205 Pte David Blaise was a soldier in my platoon when I gave my men the warning E.6205 Pte. David Blaise said to me that he could not face the front line, that he was too nervous. When I called the roll prior to our moving at 2230 hrs on the 15 Feb 1944, Pte David was absent and I did not see him again until to-day the 17 Mar 1944, when he declared in my presence that he reported to "A" Echelon Royal 22e Regiment at 1500 hrs on 17 Feb 1944 and was placed under close arrest.

The accused declined to cross examine the witness.

"M. Careau" Sgt.

2nd Witness for Prosecution — E.4591 Sgt. Despres R.O. Royal 22e Regiment, having been duly sworn states:-

" I am E.4591 Sgt Despres R.O. of R.22e.R. posted to police Section as provost Sergeant. On the 17 Mar 1944, I heard Capt. L. Cannon, 2 i/c "D" Coy order E.6205 Pte. David Blaise to return to his Coy. E.6205 Pte. David Blaise refused to obey the order saying: "No, I will not go".

The accused declined to cross examine the witness.

"R.O. Despres" Sgt.

The accused having been duly cautioned in French in accordance with RO 1424 reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in the presence and hearing of the accused and that rules of procedure 4(c), (d), (e), (f) and (g) were duly complied with.

"L. Cannon" Capt.
Officer taking Summary.

In the Field
17 Mar 1944

"R.J. Orr"
Major

ADDITIONAL SUMMARY

3rd Witness for Prosecution

Captain L. Cannon, Royal 22e Regiment, having been duly sworn states:-

" I am Captain L. Cannon, of R.22e.R. posted as 2 i/c of "C" Coy.

On 17 Mar 1944, I ordered S.6205 Pte. David Blaise to proceed to his coy, saying to him "Pte David, I Order you to return to your coy in the field, to-day You understand that if you refuse that you will be charged". S.6205 Pte. David Blaise replied" I will not go", and he did not proceed to his coy, he was then placed in custody.

The accused declined to cross examine the witness.

L. Cannon" Capt.

The accused having been duly cautioned in French in accordance with KO 1424 reserves his defence.

I Certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in the presence and hearing of the accused and that rules of procedure 4(c), (d), (e), (f) and (g) were duly complied with.

"P.A. Trembley" Lieut.
Officer taking Summary.

In the Field
17 Mar 44.

"R.J. Orr"
Major

RECEIVED 5 JUN 1944 JAG BR. C.M.H.Q.

RECORDED AT CMHQ IN AB 160 MMM-107

Correspondence to be PINNED here.

Army Form A.3.

CANADIAN SECTION DISCIPLINE & PAY SECTION 6 APR 1944 G.O. 2nd ECHELON

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty second day of March, 19 44

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [~~[illegible]~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [~~[illegible]~~ :—

*(~~[illegible]~~)

*(~~[illegible]~~)

~~[illegible]~~]

PROCEEDINGS REVIEWED 6 June 44

H. C. Birch Lieut.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

122

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R J Orr	Carlt & York R

Members.

Rank.	Name.	Regiment.
Capt	J M Bursey	Carlt & York R
Capt	Y Dube	R 22e R
Capt ~~Lieut~~	H Tellier ~~A Fortin~~	R 22e R

waiting

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed Brigadier

Commanding 3 Cdn Inf Bde

Convening Officer.

F118

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E6205 Pte Blaise DAVID, R 22e R	First Charge Sec 12 (I) (a)	Not guilty	not guilty	
	2nd Charge Sec 9 (2)	guilty	guilty To undergo imprisonment with hard labour for a period of two (2) years A.F.W.	Confirmed A.F.W.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) Brigadier (Signed) Major
Commanding 3 Cdn Inf Bde President.
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of March 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

*Omit if not applicable. N.A.P.

were duly sworn.

Signed this 23rd day of March 1944

R.J.W. Bays
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (f) on page 782 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

N.A.P.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 26 day of Mar 1944

N.McLeod Brig
Confirming Officer.

Promulgated and extracts taken in the case of E 6205 Pte D. DAVID

(a) (Dated) 1 APR 44 (Signed) R.J.W. Bays

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20704) W1-47123-242 25,000 5/43 A.& E. W.,Ltd. Gp.A/4
(41780) W1-18099-1304 40,000 7/43 " "

CORRECTION

This document has been rephotographed to assure legibility

MMM-147

PTE DAVID B.

RECORDED AT CMHQ IN AB 160 MMM-107

RECEIVED 5 JUN 1944 JAG BRANCH C.M.H.Q.

Correspondence to be PINNED here.

Army Form A.3.

CANADIAN SECTION DISCIPLINE & PAY SECTION 8 APR 1944 G.H.Q. 2nd ECHELON

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty second day of March, 19 44

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [~~[illegible]~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [~~[illegible]~~ :—

*(~~[illegible]~~)

*(~~[illegible]~~)

~~[illegible]~~]

PROCEEDINGS REVIEWED 6 June 44

W. C. Darch Lieut.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

123

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R J Orr	Carlt & York R

Members.

Rank.	Name.	Regiment.
Capt	J M Bursey	Carlt & York R
Capt	Y Dube	R 22e R
Capt	H Tellier	
Waiting Lieut	~~A Fortin~~	R 22e R

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding 3 Cdn Inf Bde

Convening Officer.

F118

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E6205 Pte Blaise DAVID, R 22e R	First Charge Sec I2 (I) (a)	Not guilty	not guilty	
	2nd Charge Sec 9 (2)	guilty	guilty To undergo imprisonment with hard labour for a period of two (2) years R.J.Dr.	Confirmed

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [signature] Brigadier (Signed) [signature] Major

Commanding 3 Cdn Inf Bde
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 23rd day of March 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

were duly sworn.

Signed this 23rd day of March 1944.

[signature] Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 767 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

[signature]

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 26 day of Mar 1944.

[signature] Brig
Confirming Officer.

Promulgated and extracts taken in the case of E 6205 PTE. B. DAVID

(a) (Dated) 1 APR 44 (Signed) [signature]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

ADDITIONAL SUMMARY

3rd Witness for Prosecution

Captain L. Cannon, Royal 22e Regiment, having been duly sworn states:-

" I am Captain L. Cannon, of R.22e.R. posted as 2 i/c of "C" Coy.

On 17 Mar 1944, I ordered E.6205 Pte. David Blaise to proceed to his coy, saying to him "Pte David, I order you to return to your coy in the field, to-day You understand that if you refuse that you will be charged". E.6205 Pte. David Blaise replied" I will not go", and he did not proceed to his coy, he was then placed in custody.

The accused declined to cross examine the witness.

L. Cannon" Capt.

The accused having been duly cautioned in French in accordance with KO 1424 reserves his defence.

I Certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in the presence and hearing of the accused and that rules of procedure 4(c), (d), (e), (f) and (g) were duly complied with.

"P.A. Tremblay" Lieut.
Officer taking Summary.

In the Field
17 Mar 44.

"R.J. Orr"
Major

SUMMARY OF EVIDENCE

In the case of E.6205 Private DAVID Blaise, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service

By direction of the Commanding Officer this Summary of Evidence was taken under oath.

1st Witness for Prosecution

P.48791 Sgt Careau M. Royal 22e Regiment, having been duly sworn states:-

" I am P.48791 Sgt Careau M. of R.22eR. posted to "D" Coy as pl sgt. On 15 Feb 44 I warned my platoon that we would be moving up to the front line at 2230 hrs that same day. E.6205 Pte David Blaise was a soldier in my platoon when I gave my men the warning E.6205 Pte. David Blaise said to me that he could not face the front line, that he was too nervous. When I called the roll prior to our moving at 2230 hrs on the 15 Feb 1944, Pte David was absent and I did not see him again until to-day the 17 Mar 1944, when he declared in my presence that he reported to "A" Echelon Royal 22e Regiment at 1500 hrs on 17 Feb 1944 and was placed under close arrest.

The accused declined to cross examine the witness.

"M. Careau" Sgt.

2nd Witness For Prosecution

E.4591 Sgt. Despres R.O. Royal 22e Regiment, having been duly sworn states:-

" I am E.4591 Sgt Despres R.O. of R.22e.R. posted to police section as provost Sergeant. On the 17 Mar 1944, I heard Capt. L. Cannon, 2 i/c "D" Coy order E.6205 Pte. David Blaise to return to his Coy. E.6205 Pte. David Blaise refused to obey the order saying: "No, I will not go".

The accused declined to cross examine the witness.

"R.O. Despres" Sgt.

The accused having been duly cautioned in French in accordance with RO 1424 reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in the presence and hearing of the accused and that rules of procedure 4(c), (d), (e), (f) and (g) were duly complied with.

"L. Cannon" Capt.
Officer taking Summary.

In the Field
17 Mar 1944

"R.W. Orr"
Major

E

Finding.*

**To be struck out except in cases where trial has taken place on a plea of "Not Guilty."*

The Court is closed for the consideration of the finding.

The Court find that the accused E6205 Pte Blaise DAVID
not guilty of the first charge
Finding announced in open court.

"RJO"

Proceedings on Conviction *before Sentence.*

**When the Court is already open this sentence will be struck out.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut. J.A. Girolami R22eR is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. N/A

Cross-examined by the accused. No

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

"RJO"

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been recorded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again:]

The accused E6205 Pte. Blaise David

is found guilty of the second charge as laid

"RJO"

†The summary (or abstract) of evidence is read, marked M

signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No

The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

"RJO"

Instruction. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused E6205 Pte Blaise DAVID not guilty of the first charge
Finding announced in open court.

"RJO"

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut. J.A. Girolami R22eR is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. N/A

Cross-examined by the accused. No

[Instruction.—If by reason of the nature of the service of the accused in a departmental service, or otherwise, the finding of the Court renders him liable to any recognized punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must require into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

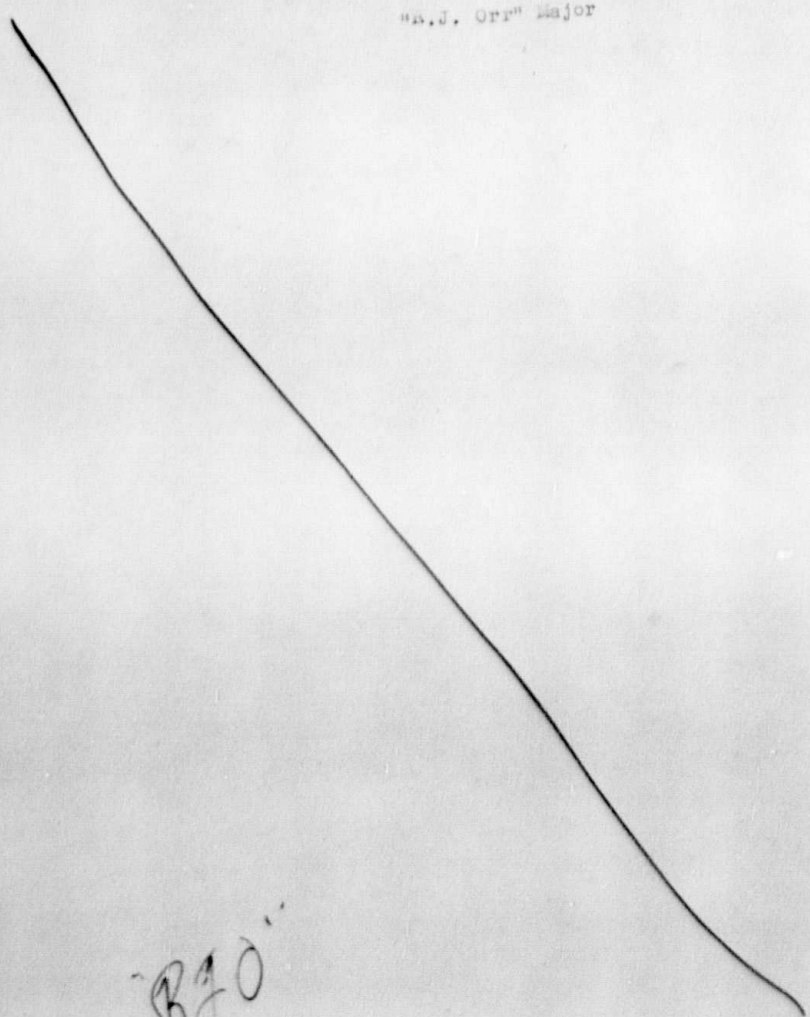
"RJO"

F

Sentence.

The Court sentence the accused E.6205 Pte. ~~DAVID~~ Blaise DAVID Sentence.
to undergo imprisonment for a period of two years with hard labour.

"A.J. Orr" Major



RJO

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused 36205 Pte. Blaise David

is found guilty of the second charge as laid

"RJO"

[The summary (or abstract) of evidence is read, marked M signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

No

Answer. The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

"RJO"

Instruction. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

No

Answer.

Evidence as to character.

"RJO"

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. No.

Question. Is he a witness as to character only? *Answer.* N/A

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

When we were in the line for 48 hours on the ~~[illegible]~~ Indian front I became "shell shock". It was around 1100 hrs when Major Gereau sent me to the R.A.P. accompanied by Pte. Bigres. I was a whole day in the R.A.P. without anything to eat, and without any treatment. When we arrived in a rear area the Doctor evacuated Bigres instead of me, When I saw that I went to see Major Gereau who told me he would give me a job in the rear. But they sent me up to the front line again. So I got discouraged and went away.

Defence Council asks for a dismissal on the grounds that the accused has been tried for this offence previously and awarded a sentence of three(3) days pay as shown on the AFW 6 of the accused.

Petition is granted and the finding of not guilty on the first charge is announced in open court.

"R.J. Orr" Major

Instruction

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

C

Proceedings on Plea of Not Guilty.

*Instruction (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address ~~hands in a written address~~ which is read, marked , signed by the President, and attached to the proceedings.

The prosecutor proceeds to call witnesses.

First witness for prosecution. P.48791 Sgt. Careau, M

being duly sworn, is examined by the prosecutor.

Q.1 Will you identify the accused?
A.1 The accused is M.6205 Pte. DAVID Blaise

Q.2 Could you tell the court what you know about Pte. David with regard to the charge laid against him?
A.2 On the 15th of Feb. 1944, I was platoon Sgt of #16 Platoon. In the afternoon I warned my platoon that we were to go up to the frontline on that same night. We were to move at 2030 hrs. Pte. David who was then present, told me he would not go to the front line because he was too nervous and afraid. When the time to move arrived I made a roll call Pte. David was not present. I havent seen him until the other day when he told me he had reported at "B" echelon on the 17th of Feb.

Cross-examination by Defending Officer:

Q.1 Were the men of your platoon warned that if they absented themself they were to be considered as deserters?
A.1 There was no officer in the platoon at that time, and I was acting as Platoon Commander. My men had been warned before that if they went A.W.O.L. in such circumstances they were to be considered as deserters.

Q.2. On that particular day, did you warn your platoon that if one man absented himself he would be considered a deserter?
A.2 No, Sir, all the men had been warned to that effect a few days before.

Q.3 Was Pte David present when that warning was given a few days earlier?
A.3 I don't know.

"RJO"

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field

on the 23rd day of March 19 44 by order of

Brigadier T.G. Gibson

Commanding 3 Cdn Inf Bde.

dated the 22nd day of March 19 44

President.

Major R.J. Orr Carlt & York R

Members.

Capt. J.M. Bursey Carlt & York R

Capt. Y. Dube R 22e R.

Trial of* C.6205 Pte. Blaise DAVID R.22e R.

The order convening the Court, the charge-sheet and the summary "R.J.O" of evidence are laid before the Court

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor† Lieut. J.A. Girolami R.22e R

Counsel‡ or defending officer† Lieut. F.R. de Saint Victor R.22e R.

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

"RJO"

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Capt. H. Tellier R.22e R

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.*

N/A *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read ? *Question.*

N/A *Answer.*

R50

The accused having pleaded Guilty to the second charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

MEDICAL OFFICERS CERTIFICATE

I certify that I have this morning examined No.E6205 Rank..Pte. Name..DAVID, B of Royal 22e Regiment and in my opinion he is fit to undergo Trial by Court Martial.

Station In the Field

Date 23 Mars 1944

"Undecipherable" Capt.
Medical Officer

"A.J. Orr" Major

MEDICAL OFFICERS CERTIFICATE

I certify that I have this morning examined No.E6205 Rank..Lte. Name..DAVID, B of Royal 22e Regiment and in my opinion he is fit to undergo Trial by Court Martial.

Station In the Field

Date 23 Mars 1944

"Undecipherable" Capt.
Medical Officer

"A.J. Orr" Major

CHARGE SHEET

The accused E.6205 Private Blaise DAVID, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service is charged with:-

1st Charge
NDA Sec 12(1)(a)

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 15 Feb 1944, when under orders to proceed to the front line absented himself without leave from approximately 2030 hrs 15 Feb 44 until 1500 hrs on 17 Feb 44, with intent to avoid so proceeding.

2nd Charge
NDA Sec 9(2)

WHEN ON ACTIVE SERVICE
DISOBEYING A LAWFUL COMMAND GIVEN
BY HIS SUPERIOR OFFICER

in that he

In the Field on 17 Mar 1944, when personally ordered by Capt. L. Cannon R.22e.R. to return to his coy in the field refused to do so saying "I will not go", and did not go.

"J.G. Charlebois"
(J.G. CHARLEBOIS)Major,
T/Commanding Royal 22e Regiment.

In the Field
17 Mar 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
19 Mar 44

"T.G. Gibson" Brigadier
(T G Gibson), Brigadier,
Commanding 3 Can Inf Bde.

"R.J. Orr" Major

RECORDED AT CMHQ IN AB 160

MMM-107

Certified true Copy
Squadron Lieut Capt
& (R. CORDEAU)

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty second day of March, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ "TGG"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*I am unable to appoint~~
~~*Three Officers to form the Court.)~~
~~*A Field Officer as President.)~~
~~for the following reasons, namely:~~ "TGG"

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R J Orr	Carlt & York R

Members.

Rank.	Name.	Regiment.
Capt	Z M Bursey	Carlt & York R
Capt	Y Dube	R 22e R
Capt	H Tellier	R 22e R

Waiting

*Signed "T.G. Gibson" Brigadier

*Commanding 3 Cdn Inf Bde.
Convening Officer.

"RJO"

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E6205 Pte Blaise DAVID, R 22e R	First Charge Sec 12 (I)(a)	Not Guilty	Not Guilty	
	2nd Charge Sec 9(2)	Guilty	Guilty To undergo imprisonment with hard labour for a period of two (2) years. "R.J.O."	Confirmed "TGG"

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) "T.G. Gibson" Brigadier (Signed) "R.J. Orr" Major

Commanding 3 Cdn Inf Bde *President.*
Convening Officer (d)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of March 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~
"RJO" *(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 23rd day of March 1944.

"R.J. Orr" Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~

*See footnote (b) on page 762 M.M.L. 1929.

"RJO"

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further ordered.~~

"TGG"

Signed this 26 day of Mar 1944

"T.G. Gibson" Brig.
Confirming Officer.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of E.6205 Pte. B. David

(a) (Dated) 1 Apr 44 (Signed) "P.A. Tremblay Lieut."

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

Exhibit "E"

600

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.38475	Pte	Davey, W.L.	95 LAD RCOC

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec 40 A.A.	1 times	Sec. 40 A.A.	1 times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act and dispensations with trial under A.A. 77 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 13 days in ~~Air Force~~ military custody, making a total of 13 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 20 yrs 10 months. ~~attestation paper is~~

6. The date of his ~~commission~~ attestation specified in his record of service is 18 Mar 42 ~~attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon ..... service for the purpose of determining his pension as~~

9. The accused is in possession of or entitled to no ~~air force decoration~~ military, or ~~air force~~ military reward ~~(or is in possession of or entitled to). State any air force decoration or reward military~~

10. ~~If the accused is a warrant officer: The accused before he was made a warrant officer has held the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force ..... unit ..... date ..... , and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.— ..... Date of promotion

In the rank of ..... years

In the rank of ..... years

In the rank of ..... years

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit ..... Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		N. A.		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29th day of Nov 1943 [illegible] Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Exhibit F

No. B38475 Name DAVEY, W.L. Sqn., Battery, or Company Corps R.C.O.C. Date of enlistment 18Mar42 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1219-20) H.Q. 1772-30-1682

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk Period not reckoning towards freedom from extra fine n/a Sheet No. One Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the field	6 Oct 1943	Pte		W.O.A.S. - Sec. 40 A.A. i.e. Speeding	Doc. Evid.	5 days pay	20Oct43	Capt H.B. Ford	5 days pay under FR&I 149(2)

Certified True Copy - 24 Nov 43.
OF THE ORIGINAL IN MY POSSESSION NOT
HB Ford Capt
RP

(P.T.O.)

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this twenty-second day of November, ninteen forty three.

Richard Hunt

(Signature of Officer taking summary)

TWELVTH WITNESS: John Ridout Bowles (continued)

I said to him, "Do you care to make a statement? as to what occurred?" He sought the advice of Captain Findlay, and said; "Yes, I wish to make a statement" I thereupon cautioned him and took down at his dictation, a statement which he then made. On completion, I read the statement over to him and he signed it in my presence, and also did Captain Findlay. I hereby submit the statement of B38475 Pte Davey, W.L., 95 L.A.D. R.C.O.C.

At 11.00 A.M. on Tues Nov 16, 1943, I accompanied Sergeant Beedell to Nutfield Road, Redhill, where on the fence adjoining the entrance to Patteson Court, he pointed out to me various marks, one of which consisted of a horizontal mark, two feet from the pavement, made by paint of a brownish colour. At 11.15 A.M. Tuesday Nov 16, 1943, I went to Chipstead, where, in the presence of Captain Findlay and Pte Davey, I made an examination of a Canadian Military station wagon of Ford make, W.D. No CM-4202718. I found the mud-guards of this vehicle to be painted a brownish colour, and on the front near side, or front left hand mud-guard, I found several horizontal marks, caused by the vehicle coming into contact with some object. The paint was rubbed off at these marks. The marks varied in height from the ground, but I found one to be two feet from the ground which could have been caused by contact with the fence at Patteson Court.

Pte Davey informed me that the three A.T.S. girls he carried were sitting on the middle seat of the vehicle and the two Canadian airmen were sitting on the front seat next to him; the rear seat being vacant.

I caused three soldiers of fairly small stature to sit on the centre seat and two more to sit on the front seat to represent the airmen. I then sat in the driver's seat and on turning my head round, I found I could only see out of the rear window BETWEEN THE HEADS of the three men in the middle seat. The rear window measured four feet wide by eleven inches high. The view was very limited, and as Pte Davey is a much smaller man than myself, I formed the opinion that his view to the rear was also limited.

Signature of witness J. R. Bowles

The statement referred to by the witness, produced, read over to the accused, marked "Exhibit J", signed by me and attached hereto.

The accused does not wish to cross-examine this witness

(signature of Officer taking summary)

The accused was warned as follows:

"Do you wish to make any statement or to give evidence on oath?" You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused: "I do not."

(Signature of accused)

ELEVENTH WITNESS

A/Capt. F.P. Findlay, 95 L.A.D. R.C.O.C. att'd 8 Cdn Fd Pk Coy, having been duly sworn states:

I am Officer Commanding 95 L.A.D. R.C.O.C. and still am. I am well acquainted with the accused, B38475 Pte Davey, W.L., who has been under my command for the period of approximately one year. I recognize him here as the accused.

At approximately 1800 hours 12 Nov 43, I instructed the accused to deliver a dispatch to H.Q. R.E.M.E. (RCOC) 2 Cdn Corps Troops, at South Godstone. He was to proceed in Ford Station Wagon, C11,A.S. W.D. No CM-4202718, and I wrote the journey on the work ticket, "Chipstead to South Godstone and return" The mileage was then shown to be 21647 miles. I did not see the station wagon again until after morning parade, on 13 Nov 43, at which time I wrote in the entry on the work ticket; the mileage then being 21688. I noticed nothing wrong with the station wagon at that time. At approximately 1745 hours 15 Nov 43, I returned to the unit and found Police Investigators inquiring for Pte Davey, W.L. I personally brought the accused to the Orderly Room, and for the first time learned of what he is now accused. I was present at the initial questioning. At the end of this that same evening, Sergeant Harrison, J.T. of No 1 Special Investigation Section, and Sergeant J.R. Bowles, Surrey Joint Police Force wished to examine the car. At that time it was very dark and both were not satisfied with the examination by torch light. Arrangements were made to view the car the following morning. Iwas reminded then to check the work tickets of the station wagon, W.D. No CM-4202718 for the previous week, and found that the total mileage of the trip on the night in question was 41 miles. From past experience the trip should not have exceeded 25 miles. I turned in the work ticket to Capt H.B. Ford, R.C.E. 8 Cdn Fd Pk Coy as evidence of an unauthorized journey made by B38475 Pte Davey, W.L. I hereby submit the [illegible]

The Work Ticket referred to by the witness produced marked "Exhibit J" signed by me and attached hereto.

(Signature of Officer taking summary

TWELVTH WITNESS:

John Rideout Bowles, Sergeant No 31 Reigate Borrough Division, Surrey Joint Police Force, having been duly sworn, states:

At 5.30 P.M. on Monday Nov 15, 1943, at a Canadian Military Camp, Chipstead Surrey, I interviewed the accused, Pte Davey, W.L. in the presence of his commanding officer,Captain F.P. Findlay. I said to him," I am making inquiries respecting an accident which occurred on the Nutfield Road, Redhill, about 10.25 P.M. on Nov 12 , 1943, in which a man walking on the near side footpath toward Nutfield was knocked down and seriously injured by a vehhicle going toward Nutfield, which failed to stop".

It has been ascertained that the vehicle was a Cdn station wagon, and carried two airmen and three A.T.S. girls. "Were you the driver of the vehicle in question?" He answered,"Yes, I was". The girls said I had knocked somebody down, but I didn't think I had so didn't stop.

Exhibit "D"

SUMMARY OF EVIDENCE

Summary of evidence in the case of B38475 Pte Davey, William Loraine, R.C.O.C., 95 LAD, att'd 8 Cdn Fd Pk Coy, charged with:

1. Between 1800 hours and 2300 hours on 12 Nov 43 improperly and without authority using a Canadian Military vehicle, W.D. No CM-4202718 for private purposes.

2. About 2225 hours on 12 Nov 43 negligently driving Canadian Military vehicle W.D. No CM-4202718, thereby causing serious injury to one, Hubert George Maynard.

3. About 2225 hours on 12 Nov 43, after being involved in an accident, leaving the scene of the accident without leaving his particulars or taking steps to assist the injured person.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS:

William Francis Leonard Beedell, Police Sergeant No 3, Surrey Joint Police, Reigate Division, having been duly sworn, states:

At 10.35 P.M. on Friday 12 Nov 43, I was on duty at Centre Redhill. In consequence of information which I received I attended an accident in the Borrough Ambulance to a point near the entrance to Patteson Court, Nutfield Road, Redhill. Upon arrival I saw a civilian lying on the Northern footpath with his feet in the road and being supported by a second civilian.

I examined the patient and found that he had sustained injuries to the head and was bleeding from the mouth, nose and left ear. He was suffering also from shock. I rendered first aid and he was removed into the ambulance and conveyed to the East Surrey Hospital, where he was admitted and detained. Relatives informed.

I examined the scene of the accident and took measurements. Width of Nutfield Road was found to be twenty-two feet (22'). On the footpath where the patient had been lying, I found a denture and an artificial eye, which proved to be the property of the injured man. There were marks on the Roadway of tyre impressions commencing eight feet from the footpath, at the entrance to Patteson Court drive, and continuing over the footpath where the injured man was lying, for a further distance of twenty-five feet (25'), where the impression ceased on returning to the roadway. I also saw a mark on the fence two feet (2') from the ground, commencing at the second paling of the fence, and continuing for six feet (6') along the fence, apparently caused by something grazing the fence. At the end of this mark was what appeared to be a brownish coloured substance which I assumed to be paint from a vehicle.

I made inquiries and took statements from witnesses and circulated the description of a Ford V-8 vehicle wanted for failing to stop after an accident.

I made further inquiries at Nutfield Priory, where I interviewed three A.T.S., from one of whom I took a statement and made an appointment for the other two to attend Redhill Police Station the following morning. I hereby submit statements taken from (a) R152559 LA/C Franks, Walter, R.C.A.F. (b) W/231959 Pte Chisholm, Joyce, A.T.S. and (c) 1465162 Pte Moore, E.J., R.M.M.E., Bristol. I hereby certify that the statements submitted herewith were given and signed in my presence by their respective makers.

The accused declines to cross-examine the witness.

W. F. Beedell

(Signature of witness)

SECOND WITNESS: R.152557 LA/C Franks, Walter R.C.A.F.

Documents purporting to be signed statement of the evidence of R155259 LA/C Franks, Walter R.C.A.F. was read over to the accused, marked "Exhibit A" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot be readily procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

THIRD WITNESS: W/231959 Pte Chisholm, Joyce, A.T.S.

Documents purporting to be signed statement of evidence of W/231959 Pte Chisholm, Joyce, A.T.S. was read over to the accused, marked "Exhibit B" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

FOURTH WITNESS: 1465162 Pte Moore, Edward James, R.E.M.E.

Documents purporting to be signed statements of evidence of 1465162 Pte Moore, Edward James, R.E.M.E. was read over to the accused, marked "Exhibit C" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

W L Davey
(Signature of accused)

FIFTH WITNESS: R160020 AC/1 Minter, William Albert, RCA.F.

Documents purporting to be signed statements of evidence of R160020 AC/1 Minter, William Albert, R.A.F. was read over to the accused, marked "Exhibit D" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

SIXTH WITNESS W/153158 L/Cpl Laffling, Phyllis Hilda, A.T.S.

Documents purporting to be signed statements of evidence of W153158 L/Cpl Laffling, Phyllis Hilda A.T.S. was read over to the accused, marked "Exhibit E" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

SEVENTH WITNESS W/36624 Cpl Jenkins, Margaret, A.T.S.

Documents purporting to be signed statements of evidence of W/36624 Cpl Jenkins, Margaret, A.T.S. was read to the accused , marked "Exhibit F" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

(Signature of accused)

EIGHTH WITNESS:

Ronald William Jones, Police Constable 27 Reigate Borough Division Surrey Joint Police, having been duly sworn, states:

At 1130 A.M. on Tues Nov 16, 1943, I accompanied Inspector Atkins to a point in Nutfield Road Redhill and on his instructions I took certain measurements and later produced a plan which I submit herewith.

R W Jones
(Signature of witness)

The plan referred to by the witness, produced, marked "Exhibit G" signed by me and attached hereto.

Roche Lieut
(Signature of Officer taking summary)

NINTH WITNESS:

W/
W/93166 Pte Jennings, Eileen, A.T.S.

Documents purporting to be signed statements of W/93166 Pte Jennings, Eileen, A.T.S. was read over to the accused, marked "Exhibit H" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

Roche Lieut
(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

W Davey
(Signature of accused)

TENTH WITNESS:

R89565 Cpl Roche, T.M., R.A.F.

Documents purporting to be signed statements of R89565 Cpl Roche, T.M., R.A.F. was read to the accused, marked "Exhibit I" and attached hereto.

I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

Roche Lieut
(Signature of Officer taking summary)

The accused does not require the attendance of this witness for cross-examination.

W Davey
(Signature of accused)

TWELVTH WITNESS: John Ridout Bowles (continued)

I said to him, "Do you care to make a statement? as to what occurred?" He sought the advice of Captain Findlay, and said; "Yes, I wish to make a statement" I thereupon cautioned him and took down at his dictation, a statement which he then made. On completion, I read the statement over to him and he signed it in my presence, and also did Captain Findlay. I hereby submit the statement of B38475 Pte Davey, W.L., 95 L.A.D. R.C.O.C.

At 11.00 A.M. on Tues Nov 16, 1943, I accompanied Sergeant Beedell to Nutfield Road, Redhill, where on the fence adjoining the entrance to Patteson Court, he pointed out to me various marks, one of which consisted of a horizontal mark, two feet from the pavement, made by paint of a brownish colour. At 11.15 A.M. Tuesday Nov 16, 1943, I went to Chipstead, where, in the presence of Captain Findlay and Pte Davey, I made an examination of a Canadian Military station wagon of Ford make, W.D. No CM-4202718. I found the mud-guards of this vehicle to be painted a brownish colour, and on the front near side, or front left hand mud-guard, I found several horizontal marks, caused by the vehicle coming into contact with some object. The paint was rubbed off at these marks. The marks varied in height from the ground, but I found one to be two feet from the ground which could have been caused by contact with the fence at Patteson Court.

Pte Davey informed me that the three A.T.S. girls he carried were sitting on the middle seat of the vehicle and the two Canadian airmen were sitting on the front seat next to him; the rear seat being vacant.

I caused three soldiers of fairly small stature to sit on the centre seat and two more to sit on the front seat to represent the airmen. I then sat in the driver's seat and on turning my head round, I found I could only see out of the rear window BETWEEN THE HEADS of the three men in the middle seat. The rear window measured four feet wide by eleven inches high. The view was very limited, and as Pte Davey is a much smaller man than myself, I formed the opinion that his view to the rear was also limited.

Signature of witness J R Bowles

The statement referred to by the witness, produced, read over to the accused, marked "Exhibit J", signed by me and attached hereto.

The accused does not wish to cross-examine this witness

(signature of Officer taking summary)

The accused was warned as follows:

"Do you wish to make any statement or to give evidence on oath?" You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused: "I do not."

(Signature of accused)

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this twenty-second day of November, ninteen forty three.

(Signature of Officer taking summary)

ELEVENTH WITNESS

A/Capt. F.P. Findlay, 95 L.A.D. R.C.O.C. att'd 8 Cdn Fd Pk Coy, having been duly sworn states:

I am Officer Commanding 95 L.A.D. R.C.O.C. and still am. I am well acquainted with the accused, B38475 Pte Davey, W.L., who has been under my command for the period of approximately one year. I recognize him here as the accused.

At approximately 1800 hours 12 Nov 43, I instructed the accused to deliver a dispatch to H.Q. R.E.M.E. (RCOC) 2 Cdn Corps Troops, at South Godstone. He was to proceed in Ford Station Wagon, C11,A.S. W.D. No CM-4202718, and I wrote the journey on the work ticket, "Chipstead to South Godstone and return" The mileage was then shown to be 21647 miles. I did not see the station wagon again until after morning parade, on 13 Nov 43, at which time I wrote in the entry on the work ticket; the mileage then being 21688. I noticed nothing wrong with the station wagon at that time. At approximately 1745 hours 15 Nov 43, I returned to the unit and found Police Investigators inquiring for Pte Davey, W.L. I personally brought the accused to the Orderly Room, and for the first time learned of what he is now accused. I was present at the initial questioning. At the end of this that same evening, Sergeant Harrison, J.T. of No 1 Special Investigation Section, and Sergeant J.R. Bowles, Surrey Joint Police Force wished to examine the car. At that time it was very dark and both were not satisfied with the examination by torch light. Arrangements were made to view the car the following morning. I was reminded then to check the work tickets of the station wagon, W.D. No CM-4202718 for the previous week, and found that the total mileage of the trip on the night in question was 41 miles. From past experience the trip should not have exceeded 25 miles. I turned in the work ticket to Capt H.B. Ford, R.C.E. 8 Cdn Fd Pk Coy as evidence of an unauthorized journey made by B38475 Pte Davey, W.L. I hereby submit the Transport Work Ticket used by Pte Davey, W.L. the

The Work Ticket referred to by the witness produced marked "Exhibit J" signed by me and attached hereto.

(Signature of Officer taking summary

TWELVTH WITNESS:

John Rideout Bowles, Sergeant No 31 Reigate Borrough Division, Surrey Joint Police Force, having been duly sworn, states:

At 5.30 P.M. on Monday Nov 15, 1943, at a Canadian Military Camp, Chipstead Surrey, I interviewed the accused, Pte Davey, W.L. in the presence of his commanding officer, Captain F.P. Findlay. I said to him," I am making inquiries respecting an accident which occurred on the Nutfield Road, Redhill, about 10.25 P.M. on Nov 12 , 1943, in which a man walking on the near side footpath toward Nutfield was knocked down and seriously injured by a vehhicle going toward Nutfield, which failed to stop".

It has been ascertained that the vehicle was a Cdn station wagon, and carried two airmen and three A.T.S. girls. "Were you the driver of the vehicle in question?" He answered,"Yes, I was" The girls said I had knocked somebody down, but I didn't think I had so didn't stop.

Exhibit "K" #

SURREY JOINT POLICE FORCE.

STATEMENT.

15-11-43.

Name: William Lorraine DAVEY. Age 19/12 years.

Address: 98 L.A.D., R.C.O.C., attached 8th Canadian Field Park Coy. R.C.E.

Occupation: Private soldier No.B.30475.

who says:-

I have been cautioned that I need not say anything unless I wish to do so. I make this statement quite voluntarily, knowing that it may be given in evidence.

(Signed) W.L.Davey.

I left camp about 6.30pm. on Friday 12th November 1943, proceeding to Godstone area for the purpose of delivering a despatch to Colonel [redacted] C.B.E.M.C. I was driving a Ford Station Waggon No.CM.4302716.

Upon arriving at Redhill I decided to go to the S.V.S.Canteen in the High Street and have tea. On entering the Canteen I recognised Corporal ROCHE of the R.C.A.F., whom I had not seen for five years. Thinking it not any harm, I asked him if he would like to accompany me to Goth Godstone to deliver the despatch. It was 7.0pm. when I met him.

After having tea, Corporal ROCHE and a friend who was with him, also in the R.C.A.F., known as Bill, accompanied me to Godstone, where I delivered the despatch.

After delivering the despatch we returned to Redhill and went on to the "Red Lion" at Betchworth, where we each bought a round of drinks, consisting of three pints of beer. We then proceeded to the "Barley Mow", where we had one round each of bitters, consisting of pints.

At this time the Pub. was closing, so I thinking that there was a Dance at Betchworth Hall, drove there, but found there was no dance there. Then we returned to Redhill, where I decided to take the two boys back to Nutfield Camp.

Driving out of Redhill towards Nutfield it was very misty and the moon was very bright, making the road glary. At this time Corporal ROCHE mentioned that it was very difficult to drive. The windscreen kept misting up both on the inside and outside.

I saw three A.T.S.girls walking towards Nutfield and decided to stop to enquire if I was on the correct road to Nutfield. Upon stopping the A.T.S. informed me I was on the correct road, and I asked them if they would like a lift, and they said "Yes" and entered the car.

W.L.Davey

P.C.

Exhibit I

R.A.F. Redhill Surrey I

17 Nov 43

I have been cautioned by Sgt. Harrison of No 1 Special Investigation Section, First Canadian Army, that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence.

To show that I have read over and ~~[illegible]~~ understand this caution and that I am making this statement voluntarily, I sign my name here.

Witness: J. T. Harrison. T. M. Roche.

States:

My name is Terence Michael Roche and I am a Corporal Electrian, stationed at R.A.F. Station, Redhill Surrey. I am twenty-one years old. With regard to the statement that I made to the Red Hill civilian police, there are certain things now that I wish to clear up. This is actually what happened. On Friday 12 Nov 1943, I visited the W. V. S. Canteen in Redhill and in there I met A. C. Minter and a Canadian soldier whom I knew as a kid in Hamilton, Ontario. ~~[illegible]~~

Bill who stated he had a despatch to deliver invited Minter and I to go for a ride with him in the station wagon which he was driving. We accepted the invitation and left the Canteen, I should think somewhere after 8 o'clock. I am not familiar with the district and do not know where we went but gained the impression that he delivered his despatch to his colonel somewhere in the Godstone district. After he had delivered the despatch we drove quite a way to a Public House where we had ~~[illegible]~~ three drinks. I had "bitters". On leaving this Public House we went to another not far away where we had another three or four apiece. We left this house at closing time. After leaving this Public House

T M Roche

Purely Cal
R.A.F. Police.

we drove back through Redhill on our way home. Bill was driving pretty fast at this time and Minter told him to not to drive so fast. On the way we picked up three A.T.S. girls and gave them a lift. Some five or six hundred yards after picking up the girls, it is my impression now that I saw two people walking either on the road or very close to the side of the road on the left hand side, proceeding in the same direction that we were going in. It was bright moonlight and the road was rather glary. Suddenly, I felt the car jerk, and I thought that we had hit the curb. At the time this happened, I wasn't paying any particular attention to the road but was looking down at the dashboard. The girls all screamed, and I think one of them called out, "You've hit somebody, or words to that effect. Minter also said something about "stop the car" Bill slowed the car down quite a bit, exclaiming "fuck" as he did so. Then he said, "I beg your pardon" referring to the girls. The girls insisted that they be allowed out of the car. By this time we were almost at their quarters, so he let them out. We started up again and Bill asked Minter and I if he was on the right road to Nutfield. We replied that he was and we proceeded to Nutfield. Minter was dropped off at his quarters and then Bill drove me up to my quarters which are situated a short distance from Minters. We got out of the car and examined it and neither of us noticed anything particularly wrong with the car. He asked me if I'd be around Saturday, and I said I'll meet you at the W.V.S. meaning the canteen in Red Hill. I met him there on Saturday, the day following, and we went out to his unit in a truck. I met him about one o'clock in the afternoon. He asked me if the police had been to see me and I told him that they had and that they had taken a statement from me

F Dearly Cpl
R.A.C. Police.

T.M. Poole

I also told him that he had critically injured a civilian. I do not remember his exact words, but he implied that I was to keep my mouth shut as far as the police were concerned. Later on that day, we went to Croydon, and as I still couldn't remember his name, I asked him what it was and he replied "Davey" meaning his surname and I asked him how he spelled it and I pointed to a sign on a store which spelled Davy and I asked him if it was spelled like that and he replied DAVIES spelling it out. We spent the entire afternoon and evening together and came back to Red Hill by train. Apart from the conversation concerning the accident we had early in the afternoon we did not discuss it further. On Sunday, when you and the police sgt. called the reason I did not tell you his name and the fact that he was in Royal Canadian Ordnance Corps was because I did not want him to feel that I was the means of having him arrested. It is just possible that I could have taken you to his unit location but I am not quite sure. I realize now that I have done a foolish thing in keeping back this information and am genuinely sorry that I did not cooperate fully with the police.

T. M. Roche

Witnesses:
J. T. Harrison
G. Dearley Cpl.
Red Hill, Surrey
17 Nov. 43.

This is Exhibit "I" referredto in the summary of evidence in the case of B38475 Pte Davey, W.L. taken before me this twenty second day of November, nineteen forty three.

[signature]
(Signature of Officer taking summary)

E.F.H

Exhibit "H"

SURREY JOINT POLICE FORCE.

STATEMENT.

15-11-43.

Name: Eileen JENNINGS. 21 years.

Address: S.E.C.Holding Unit, Nutfield Priory.

Occupation: Private No.W/52166 A.T.S.

who says:

At about 10.25ps. on Friday 12th November 1943 I was walking with an airman friend in Nutfield Road, Redhill. We had reached a point about 50 yards East of "Hillsbrow" when a Canadian Station Waggon overtook and passed us travelling towards Nutfield. I was attracted to the vehicle by its tremendous speed, it simply ripped past us.

I saw nothing more of the vehicle, but after we had walked about 200 yards we came across a man lying across the footpath being supported by another man.

In consequence of what I was told I went and telephoned for the Ambulance.

E. Jennings

(Signed) E. Jennings.

(Witness) H. A. Atkins, Inspector.

H. A. Atkins

This is Exhibit "H" refered to in the summary of evidence in the case of B38875 Pte Davey, W.L. taken before me this twenty second day of November nineteen forty three.

(Signature of Officer taking summary)

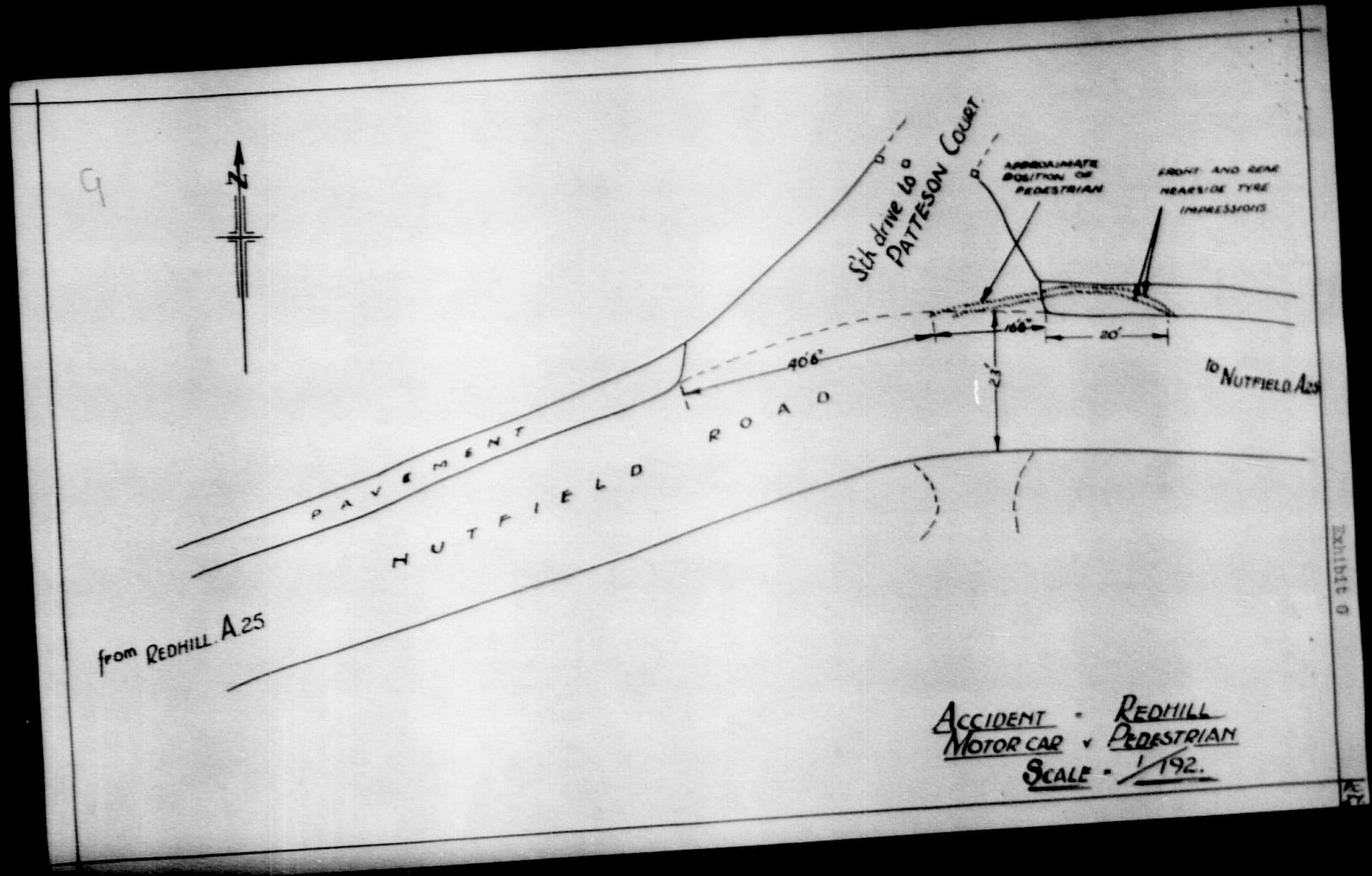

G
N
5th drive to PATTESON COURT
APPROXIMATE POSITION OF PEDESTRIAN
FRONT AND REAR NEARSIDE TYRE IMPRESSIONS
406'
168'
20'
23'
to NUTFIELD A25
PAVEMENT
NUTFIELD ROAD
from REDHILL A.25
ACCIDENT - REDHILL
MOTOR CAR v PEDESTRIAN
SCALE - 1/192.
Exhibit G

Exhibit "A"

SURREY JOINT POLICE FORCE.

STATEMENT.

Name: Walter FRANKS. Age: 24 years.

Address: 30 Wing H.Q., R.C.A.F., Redhill Aerodrome.

Occupation: L.A/C.No.R.152864.

who says:

About 10.30p.m. on Friday 12th November 1943 I was walking along Nutfield Road with my lady friend, Private Eileen JENKINS, of No.1 A.A.Command Holding Unit, Nutfield Priory, when we found a man lying on the footpath on the North side of the road with his feet in the roadway. He was lying on his back and being supported by another man. In consequence of what the man said, I remembered seeing an Army Ford Chad Car just previously passing us travelling towards Nutfield at about 45 to 50 m.p.h. I remarked to my friend at the time upon the speed of the car. The car had a rack on the top and was carrying luggage.

It was bright moonlight at the time, and the car was using side-lights.

I heard a car stop some distance behind us previous to the accident and the Ford was the only car which passed us.

(Signed) L.A/C. Franks, R.

(Witness) [illegible]edell, Sergt.S

(Pocket Book Folio 29).

This is Exhibit "A" referred to in the summary of evidence in the case of B38475 Pte Davey, W.L. taken before me this twenty second day of November nineteen forty three:

(Signature of officer taking summary)

Exhibit "B"

SURREY JOINT POLICE FORCE.

S T A T E M E N T.

Name: Joyce CHISHOLM. 20 years.

Address: South Eastern Command Holding Unit, Nutfield Priory.

Occupation: Private No.W/251959 A.T.S.

who says:-

About 10.45pm. on Friday 19th November 1943 I was riding in a car at the time of accident. I had been picked up just West of Hillsbrow Gate and alighted at Priory Gate. I was in company with two other A.T.S.girls from the same Unit.

The car was driven by a soldier and two other men were in the front seat. The driver did not appear to know the road and asked the way to Nutfield. He drove very fast.

I saw two people on the footpath ahead of us at the bend. The car swerved and struck the nearside fence, but I did not notice what happened to the two people, but after we had passed I looked round and saw someone lying on the road.

I called to the driver to stop and told him he had knocked someone down, but he would not stop until we got to the Priory Gate. We three got out and the car went on towards Nutfield. I could not identify the driver.

J Chisholm

(Signed) J. Chisholm.

(Witness) [illegible] Sergt. 3.

(Pocket Book Folio 41).

This is Exhibit "B" referred to in the summary of evidence in the case of B38475 Pte Davey, W.L. , taken before me this twenty- second day of November nineteen forty three:

[illegible]

(Signature of Officer taking summary)

Exhibit "C"

SURREY JOINT POLICE FORCE.

S T A T E M E N T.

Name: Edward James MOORE, Age: 24 years.

Address: 34th Technical Training Group R.A.M.C., Bristol.

Occupation: Private Soldier No.1465162.

who says:-

At 10.8pm. on Friday 12th November 1943 I and my friend Hubert George MAYNARD left Redhill Railway Station and started to walk towards Bletchingley. We walked on the nearside footpath, myself on the inside and my friend on the outside, about two feet from the kerb. We walked past "Chart Lodge", Nutfield Road, and on reaching the entrance to Patteson Court (opposite Nutfield Lodge, Nutfield Road), I heard a thud. I realised that my friend had been struck by a motor vehicle. I saw the vehicle mount the footpath and continue along the footpath for a distance of approximately 26 yards. It continued on along the road towards Nutfield at a speed which I estimate at 45 m.p.h.

I then found that my friend was lying face downwards on the footpath, his head towards the inside of the footpath. He was unconscious and bleeding from the head, mouth and left ear. An R.A.F. man went into a house opposite and the Ambulance was sent for.

I think that the vehicle that struck my friend was of the heavy Army lorry type. I also noticed that a private car proceeding towards Redhill passed the scene of the accident shortly after the accident occurred.

The scene of the accident is on a right hand bend and the footpath broadens out to about eight feet in width.

(Signed) E. J. Moore.

(Witness) [illegible] 22.11.43

(Pocket Book Folio 33/6).

This is Exhibit "C" referred to in the summary of evidence in the case of 838475 Pte Davey, W.L. taken before me this twenty second day of November, nineteen forty-three.

(Signature of Officer taking summary)

(Continuation).

I immediately went and reported the facts to Corporal NOBLE, H. of the R.A.F.Police, who telephoned the Civil Police.

I do not know the Canadian, but his Christian name is Bill, and although he was not wearing any stripes he said he was a Lance-Corporal. He was wearing a Despatch Rider's badge. I think he said he was 21 or 22 and came from Hamilton. I wand to add that he was a fast driver as a result of knowing the roads well.

(Signed) Wm. A. Winter,

(Witness) H.A.Atkins, Insp.

H.A. Atkins

This is Exhibit "D" referred to in the summary of evidence in the case of BJ0475 Pte Davey, W.L. taken before me this twenty second day of November, nineteen forty-three:

(signature of officer taking summary)

Exhibit "D"

SURREY JOINT POLICE FORCE.

12-11-43.

STATEMENT.

Name: William Albert MINTER, Age: 35 years.

Address: R.A.F.Station, Redhill, Surrey

Occupation: A.C.1 Electrician, R.C.A.F. No.R.160020.

who says:-

At roughly 9.0pm. on Friday 12th November 1943 I was in the W.V.S.Canteen in High Street, Redhill, when I met a Corporal from the Aerodrome and a Canadian despatch rider. The Canadian had a Canadian Staff Car with him and was on his way to deliver a despatch to his Colonel. He invited the R.A.F.Corporal and myself to accompany him, which we did. He went first and delivered his despatch, I have no idea of the roads he traversed except that we proceeded out of Redhill under the Railway Bridge and to the right, and I got the impression from the driver that we were going near Godstone.

He delivered the despatch and we then drove to a Public House which I understood was the "Red Lion" at Betchworth, and there we had three pints of beer each. On leaving this Public House we drove to another which I cannot name and we each had another three pints of beer there. We remained in the bar until time was called at 10.0pm.

When we re-entered the car both the Corporal and I considered the driver was driving too fast. We told him so and said we were in no hurry.

I am under the impression we passed through Redhill and then we pulled up and asked three A.T.S. girls if we were on the road to Nutfield. They said we were right and as they were going part way on that road we gave them a lift.

Very shortly after picking up the girls we struck something. At the time the car was travelling at an excessive rate of speed and it deviated to the left where there was a break in the kerb at the entrance to some private property. I am quite sure the car did not mount the kerb but we deviated and struck something in the opening.

We all immediately insisted upon him stopping and the girls demanded to get out. He then proceeded on for perhaps half a mile, then stopped and let the girls out.

Having set them down he asked where we wanted to go. I am a little hazy as to what was said about the accident and going back, as I was quite sobered at the time, but he didn't go back, but drove me to my Billet and then went on with the Corporal.

P.T.O.

(Continuation).

I mediately went andreported the facts to Corporal NOBLE, H, of the R.A.F.Police, who telephoned the Civil Police.

I do not know the Canadian, but his Christian name is Bill, and although he was not wearing any stripes he said he was a Lance-Corporal. He was wearing a Despatch Rider's badge. I think he said he was 21 or 22 and came from Hamilton. I wand to add that he was a fast driver as a result of knowing the roads well.

W A Minter

(Signed) Wm. A. Minter,

(Witness) H.A.Atkins, Insp.

H.A. Atkins

This is Exhibit "D" referred to in the summary of evidence in the case of B30475 Pte Davey, W.L. taken before me this twenty second day of November, nineteen forty-three:

(Signature of Officer taking summary)

(Continuation).

Immediately I noticed the man on the ground I said to the driver - "Stop, you've knocked someone down". He didnt answer, but seemed to hesitate so that I thought he was going to stop but then accelerated and drove on. He did not drive very fast after that, and we kept saying - "You must stop". He eventually stopped and put us down at the Priory entrance, which is approximately 200 yards from the point where the accident occurred. The car barely stopped and we simply tumbled out, and as we did so some soldiers attempted to get in. I dont know whether they were told to keep out but they left hurriedly. The car was already moving again as the soldiers attempted to get in, and it went away towards Nutfield at a fast speed.

I think we were all too upset and frightened to think about taking the number of the vehicle.

After a short discussion Corporal JENKINS and I went back to the injured man and did what we could for him pending the arrival of the Ambulance, but there were already other persons in attendance.

P. H. Laffling

(Signed) P. H. Laffling.

(Witness) H. A. Atkins, Inspector.

H. A. Atkins

This is Exhibit "E" referred to in the summary of evidence in the case of B38475 Pte D avey, W.L. taken before me this twenty second day of November nineteen forty three.

Humphrey Lieut

Exhibit "E"

SURREY JOINT POLICE FORCE.

EXHIBIT E

STATEMENT.

15-11-43.

Name: Phyllis Hilda LAFFLING. 23 years.

Address: S.E.C.Holding Unit, Nutfield Priory.

Occupation: Lance Corporal No.W/153198 A.T.S.

who says:-

At about 10.20 p.m. on Friday 12th November 1943 I was walking along Nutfield Road with Corporal JENKINS and Private CHISHOLM of my Unit. We were walking towards Nutfield and were on the left-hand footpath. When we were near "Hillsbrow" a Military Station Waggon travelling in the same direction pulled up, and an airman who was sitting on the nearside front seat asked if that was the right way to Nutfield. The vehicle was being driven by a Canadian soldier, and there were two other men seated in front with him, one was an airman, but I really didnt notice who the second man was.

As we were going towards Nutfield they offered us a lift. We accepted and endeavoured to open the car nearside door. It appeared to be locked and the driver got out to assist us, but before he got around the vehicle I got the door open and we entered. As the driver got back into his seat I did notice in the moonlight that he had a flash on his shoulder which I believe was blue with light-coloured lettering.

As soon as we were seated the driver started off and the vehicle quickly gathered speed. By the time we got to the top of the rise it was travelling very fast and the driver didnt ease down, but appeared to accelerate. The car seemed to sway about the road and in my opinion it was travelling too fast to take a right hand bend which we were approaching.

As we reached the bend the driver appeared to hesitate and then instead of bearing right he went straight on and appeared to be going into the private drive of Patteson Court, which is on the nearside. At the last moment he appeared to realise his mistake and swung right, but it was too late. The vehicle mounted the footpath and I felt a bump as it mounted the kerb. At that moment I noticed two people on the footpath immediately in front of us. They appeared to be turning round, probably having heard us behind them. The car went a little way along the footpath and then hit the fence a glancing blow and swung back on to the road. I at first thought we had hit the fence and not the two people, but on looking back I saw that only one of the two people was standing and the other was lying on the ground.

The driver had braked when he realised he was entering the private drive, and had probably reduced his speed to 20 or 25 m.p.h. when he mounted the footpath.

P.T.O.

(Continuation).

Immediately I noticed the man on the ground I said to the driver - "stop a, you've knocked someone down". He didnt answer, but seemed to hesitate so that I thought he was going to stop but then accelerated and drove on. He did not drive very fast after that, and we kept saying - "You must stop". He eventually stopped and put us down at the Priory entrance, which is approximately 200 yards from the point where the accident occurred. The car barely stopped and we simply tumbled out, and as we did so some soldiers attempted to get in. I dont know whether they were told to keep out but they left hurriedly. The car was already moving again as the soldiers attempted to get in, and it went away towards Mutfield at a fast speed.

I think we were all too upset and frightened to think about taking the number of the vehicle.

After a short discussion Corporal JENKINS and I went back to the injured man and did what we could for him pending the arrival of the Ambulance, but there were already other persons in attendance.

(Signed) P. H. Lafling

(Witness) H. A. Atkins, Inspector.

H A Atkins

This is Exhibit "B" referred to in the summary of evidence in the case of B38475 Pte D avey, W.L. taken before me this twenty second day of November nineteen forty three.

Exhibit "F"

SURREY JOINT POLICE FORCE.

F

STATEMENT.

13-11-43.

Name: Margaret JENKINS, 30 years.

Address: S.E.C. Holding Unit, Nutfield Priory.

Occupation: Corporal No.W/36624 A.T.S.

who says:-

At 10.20 pm. on Friday 12th November 1943 I was walking along Nutfield Road with two members of my Unit towards Nutfield Priory. We were on the left hand footpath.

When we were near "Hillsbrow", a Military Station Truck which was going in the same direction pulled up beside us. There were two men beside the driver in the front seat, and the nearest one, who wore glasses, asked us the way to Nutfield. We said they were on the road and they asked if we were going that way and would we like a lift. We accepted and all got in the back. As we got into the vehicle I noticed that the driver was a soldier but the other two men were airmen.

The vehicle started away and while I would not say that it was going slowly I will not commit myself as it is difficult in a big, smooth-running vehicle to judge its speed.

When we had travelled a fewhundred yards I noticed two men walking in the same direction as ourselves on the nearside footpath. One was carrying a suit-case. We were just then by Patteson Court entrance, and I think the driver thought that was the road, and appeared to be going into it. He then corrected himself and swerved to the right and at the same time I felt the car strike something, and the car shook. I asked the driver to stop, but he did not answer and continued on his way. I looked through the rear window, but could see nothing.

We continued to ask the driver to stop, but he did not do so until we reached the Priory Gates, and then only because we told him we had to get out there. As soon as we got out of the car it went on towards Nutfield.

L/Cpl.LAFFLING and I went back to the spot where I had felt the car strike something and found a man badly injured. There was another civilian and an airman with him.

I could not identify the driver of the Military vehicle, and did not notice the markings on his uniform.

H. Jenkins

(Signed) M. Jenkins.

(Witness) H.A.Atkins, Inspector.

H.A. Atkins

This is exhibit "F" referred to in the summary of evidence in the case of B38475 Pte Davey, W.L., taken before me this twenty second day of November, nineteen forty three.

Bruce Lunt

(Signature of Officer taking summary)

Exhibit J

Army Form G 3518
(WF & S/400)

TRANSPORT WORK TICKET

Make of Vehicle Fow Class S/W CIIAS W.D. No. CM 42-2718 Date 12 Nov 43 No. U

Unit 95 LAD, RCOC Section Driver's Name Capt F P Findlay, D 38475 Pte Davey W.L. Hour of Parade

For whom journey is performed. (1)	FULL Details of load and service. (2)	ROUTE From (3)	ROUTE To (4)	ROUTE Via (5)	Signature of person authorising journey. (6)	TIME TAKEN. From (7)	TIME TAKEN. To (8)	Miles run. (9)
95 LAD 12 Nov 43	To CRE.	Chipstead	Oxted & returns		A Findlay Capt	21621	21647	26
" "	CREME	Chipstead	S. Godstone & return		B Findlay Capt	21647	21688	41
" 13 Nov 43	Unit Lines	Parsons Cottage	Priorsfield etc.		C Findlay Capt	21688	21697	9
					D			
					E			
					F			
					G			
					H			
					K			
							TOTAL	76

SPEEDOMETER READINGS.

		Miles
(10)	In	21697
(11)	Out	21621
	Mileage	76

PETROL.

		Galls.
(12)	Held at Start	13
(13)	*Add*—Amount drawn	0
(14)	*Deduct*—Remains on completion	7
(15)	Quantity Consumed	6

(16) TOTAL hours out on duty

(17) *Signature of Driver* F Findlay Capt M Davey

(18) *Countersigned* F Findlay

Rank Capt.



List of Exhibits

Statement by No. R.152664 L.A/C. Franks, Walter RCAF	Exhibit "A"
Statement by No. W/231959 Pte. Chisholm, Joyce ATS	Exhibit "B"
Statement by No. 1465162 Pte. Moore, Edward James REME	Exhibit "C"
Statement by No. R.160020 A.C. 1 Minter, William Albert	Exhibit "D"
Statement by W/153158 L/Cpl. Laffling, Phyllis Hilda ATS	Exhibit "E"
Statement by W/36624 Cpl. Jenkins, Margaret ATS	Exhibit "F"
Diagram of Road Accident	Exhibit "G"
Statement by W/153166 Pte. Jennings, Eileen ATS	Exhibit "H"
Statement by Cpl. Roche, T.M., R.C.A.F.	Exhibit "I"
Work Ticket submitted by Capt. F.P. Findlay, O.C. 95 LAD	Exhibit "J"
Statement by the accused	Exhibit "K"

I do not desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

Signature of accused_____

I desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial

Signature of accused W L Davey

Exhibit "C" R.L.

S.C.J.

SURREY JOINT POLICE FORCE

Division Reigate Borough

Station or Section Redhill

Date 15th Nov. 1943

SUBJECT MATTER

Name William Loraine Davey
(In full—Block Letters)

Address 95 L.A.D. R.C.O.C. attached 8th Bdn. Field Park Coy, R.C.E.

Age 20 10/12 yrs. Occupation Private B 38475

"I have been cautioned that I need not say anything unless I wish to do so. I make this statement quite voluntarily knowing that it may be given in evidence.
W.L. Davey

I left Camp about 6.30 pm on Friday, 12th November, 1943, proceeding to Godstone area for the purpose of delivering a Dispatch to Colonel Stiles of ~~the~~ C.R.E.M.E. I was driving a Ford Station Waggon No C.M. 4202718.

Upon arriving at Redhill I decided to go to the W.V.S. Canteen in the High Street and have tea.

On entering the Canteen I recognised Corpl. Roache of the R.C.A.F., whom I had not seen for over five years. Thinking it not any harm, I asked him if he would like to accompany me to South Godstone to deliver the Dispatch. It was 7 pm when I met him.

After having tea Cpl. Roache and a

(Continued overleaf)

Signature of Person making statement W.L. Davey

Witness to the above J. R. Bowles Wgt 31

[illegible] Capt, RCOC

C.1299—1,000—4/2/43

CONTINUATION.

friend who was with him also in the R.C.A.F. known as Bill accompanied me to Godstone, where I delivered the Dispatch.

After delivering the Dispatch we returned to Redhill, and went on to the Red Lion at Betchworth where we each bought a round of drinks consisting of three pints of beer. We then proceeded to the Barley mow where we had one round each of Bitters consisting of pints.

At this time the Pub was closing so I thinking there was a Dance at Betchworth Hall drove there, but found there was no Dance there.

Then we returned to Redhill, where I decided to take the two boys back to Nutfield Camp.

Driving out of Redhill towards Nutfield it was very misty, and the moon was very bright making the road glaney. At this time Opl Roache mentioned that it was very difficult to drive. The windscreen kept misting up both on the inside and outside.

I saw three A.T.S. girls walking towards Nutfield and decided to stop to enquire if I was on the correct road to Nutfield.

Upon stopping, the A.T.S informed me I was on the correct road, and I asked them if they would like a lift and they said yes and entered the car.

Continued :-

W.J. Davey
Bowles 7 Sept 31

[illegible], Capt. Bloc.

CONTINUATION SHEET

3

I drove on, and by this time I was not seeing the road very clearly. My eyes were blurred and the heat of the car was affecting me. I was beginning to realise that the beer I had consumed was taking effect on me. On realising this I slowed the car down from 30 m.p.h. to 20 m.p.h. approx.

I was following the left kerb very closely, and on coming to a slight right hand bend, I came to a break in the nearside kerb.

As I looked ahead I discovered that where the nearside kerb re-commenced, it was further out towards the centre of the road than the kerb I had just left. Upon discovering this I endeavoured to swing the car to the right of the road away from the kerb. At this time I noticed people on the nearside side-walk walking near the hedge.

Upon arriving at the spot where the kerb re-commenced I felt the car hit the kerb. As I did so the girls called out that I had hit someone, and on hearing this I slowed the car to nearly a stop and turned my head around and as near as I could see I thought that I could still see the two people walking. The Corporal suggested I should stop and I not thinking very clearly, I did not

P.S. or P.C.

W. J. Davey

[illegible] Bowles 7/Sept. 31

think it necessary, so I proceeded down the road another 200 yards approx. Here I let the girls out and proceeded to Nutfield, where I dropped "Bill" at his billet. I then drove on a short way to Bpl Roache's billet where I stopped and we talked about home for 10 minutes. Just before I decided to return to Camp, Bpl Roache was undecided as to whether I had hit somebody or not and suggested we should look at the car.

We looked at the left side of the car with matches, to see if I had dented a wheel or fender, but could find no evidence that I had done so.

We made arrangements to meet the following day at 1 pm at the W.V.S. Canteen in Redhill, and I then returned to Camp, taking a short cut from Nutfield to Merstham instead of returning via Redhill

"This statement has been read over to me and is correct."

W J Davey
J Bowles 7/Sqt 81
F P Findley RCOC

Prosecution

1 of 11 states.

W. F. L. Beedell, Police Sgt # 3, Surrey Joint Police, sworn, states

On 12 Jan 43 I was on duty. At 10.35 in consequence of a telephone call I attended at the Borough Ambulance Depot on Nutfield Road, Redhill. It was a bright moonlight night. On arrival at the scene of the accident which was near the entrance to Patteson Court I found a civilian lying on the northern footpath with his feet in the road. He was being supported by a second civilian. The injured man was bleeding from the nose, mouth and left ear and was unconscious. First aid was rendered and he was conveyed to the East Surrey Hospital in Redhill in the ambulance.

I took statements and measurements of the road. On the footpath adjacent to where the man was lying I found a dented and an artificial leg.

The width of the road was 20'. There was a tyre impression commencing 9" West of the edge of the footpath which terminated at the entrance to Patteson Court. The tyre impression continued for 25' on the footpath where it went onto the road. I also found a mark on the fence 2' from the ground commencing from the second paling of the fence and continuing eastward for 6' where some part of a vehicle had grazed the fence. Brown paint was at the commencement and at the end of the mark.

In consequence of statements taken I caused the description of a military station waggon to be circulated within the County. I made further enquiries and contacted witnesses from whom I took statements.

Cross-examination

I can't say whether or not the injured man was moved before I got there.

There was only a scrape on the fence. It was a fresh scratch. There were no old scratches on the fence. The paint was right at the beginning and at the end of the scrape which was 6'. You cannot tell whether there were one or two tyre impressions.

I made this plan on the scene of the accident.

Plan presented and marked Exhibit "A"

The Tyre impression was too wide for a lorry tyre. It was about 10" wide. I should say it was only one wheel. There was no sign of any brake being used.

I recognise this picture as the scene ~~of the Gt.~~ approaching from the West i.e. from the direction of Redhill.

Picture accepted and marked Exhibit "B"

The tyre impression was about 10" from the base of the fence.

Re-examined

I am familiar with this road. The photograph shows the directional points, the white line, and cats' eyes. There is an A.A. sign on an iron post at the end of the fence, facing west, indicating a danger point.

~~By the Court~~ Gt.

R.P. 83(b) Complied with.

2nd Witness

R 1525 64 LAC Franks, W. RCAF sworn, states

On 12 Nov 43 I left Redhill accompanied by P.C. Jennings at about 2200 hrs. As we were approaching Hilbrows School on the Lodston Road. I heard a vehicle stop behind me. ~~Coming~~ After we had passed Hilsbrow School at a bend in the road we found a man sitting on the sidewalk with ~~another man~~ Gt. an injured man in his lap. The injured man's feet were on the road.

The vehicle that stopped behind us passed us going at a pretty fast clip - about 45 to 50 m.p.h. It didn't look like an English vehicle couldn't tell exact type of vehicle. Thought there was a luggage rack on top. Would say it was a ford from the sound of the engine.

~~No other vehicle passed~~. I did not see any other vehicle on the road between the time the vehicle I have described passed us and the time I found the injured man.

As the vehicle passed it seemed to me it had a luggage rack on the top with something in it but I wouldn't say for sure. It seemed to have a square back. It was a covered vehicle ~~the same as a~~ Gt. something the same as a sedan or a chad.

It was a moonlight night.

It was on its own side of the road when it passed me.

Cross-examination

I did not see the accident. I couldn't see the scene of the accident. I wasn't very far away when I heard the cries. When we came to the bend we cut over to the middle of the road. Then we heard the cries and went over to the injured man. I couldn't see the man from the centre of the road.

It was only making the usual amount of engine noise that any car would make

By the Court

I was a couple of hundred yards from the scene of the accident when the vehicle passed me. It is a couple of minutes walk. I did not hear any brakes being applied, nor any crash. nor any colony until I got to the scene.

R.P. § 3 (b) complied with.

3rd Witness.

W-S 3166 PC Jennings, Eileen, A.T.S. sworn states

I was walking up the road from Redhill with L.A.C. Franks when we got to Hillsbrow School. We were about 20 yards past Hillsbrow School when a car passed us. We walked on down the road to Pattenden Corner when someone shouted to us. We went over and saw a man was hurt. I went and phoned the police. I think it was a staff car. The vehicle was travelling fast. Definitely faster than cars do travel on the road.

I did not see any other vehicle pass us ~~from the to the time I arrived~~ to the time I arrived at the scene of the accident. There was only one other vehicle passed us ~~the~~ from the time we left Redhill.

I did not hear any voice at all.

No Cross-examination

By the Court

The first vehicle that passed us was going towards Maidstone I think it was about twenty minutes before the second vehicle which passed us.

R.P. § 3 (b) complied with.

4th Witness

R-160020 AC/1 Minter, W.A. - R.D.F. sworn states.

At 9.0 o'clock on 12 Nov. 43 Spl Roach, the accused and myself left the W.T.S. Canteen in Redhill to deliver a despatch. After delivering the despatch we went to a pub some distance from Redhill where we had three beers each - pints. We went to another pub which again was some distance away. We had 3 pts of beer each again. By that time it was closing time and we left. The driver, said he would take us home. On the way we stopped to ask 3 A.T.S. girls the direction of the cut-off from Maidstone to South Maidstone. As they were going along the same road they were invited to ride along with us to their quarters

Shortly after we picked the girls up we came to a bend in the road. We were driving quite fast. I don't know exactly how fast. It was a moonlight night. At the bend in the road there appeared to be a break in the sidewalk which might be taken for a continuation of the road in the glare of the moonlight. As we came to this spot we swerved out and as we swerved we hit someone. I heard someone yell. I felt two impacts and told the driver to stop. We continued on to where the girls lived which was approximately 1/2 mile down the road. The driver then proceeded on to take us to our billets. I got out first and the driver and Cpl Roach went on. I reported the accident to the service police. The day following the accident in the afternoon I went out with the police to try and locate the driver.

Cross-examination

I did not actually see the man and vehicle come together.

To my impression it was a staff car. The car did not slow down to any appreciable extent when approaching the curve in the road. I don't remember whether he slowed down ~~at all~~ or not. It was my impression that the car just ~~glazed~~ grazed the curb. I was on the left hand side in the front seat. When I first saw the man he was between the breaks in the sidewalk. ~~It was an end~~ He was walking across the entrance to a property which made a break in the sidewalk.

By the Court

The car went over the edge of the road. I saw a man there. I felt two impacts and heard a man yell. After this yell we all told him to stop. I don't remember him saying anything. I recognise the driver (the accused) R.P. 83(b) complied with.

5th Witness

R - 89565 Cpl Roche, T.M. - RAF sworn states.

On 12 Nov 43 after the accused delivered his despatch we went to a pub. I had three pints of bitter. We each bought a round. We went to another pub further down the road where ~~we~~ each had three pints. It was closing time. The accused was going to drive. Mintern and myself to our billets.

We proceeded in the direction of Nutfield. We stopped to enquire how to get to Nutfield. We asked 3 ATS girls to get in and we would drive them home which was only a little way down.

On the way we hit the curb. The girls screamed. There were quite a few people walking along the footpath. I saw two people on the left hand

side of the road. The vehicle just seemed to hit the curb. I couldn't see whether it went over the curb or not.

The girls screamed ~~and saw~~ Mintern asked the driver to stop. The girls said ~~you~~ hit somebody. The driver swore and started up the car. I think it stopped. I'm not exactly sure. We dropped off the A.T.S. girls then we proceeded to Nutfield and dropped off Mintern then he took me to my billets.

He was going about 40 before the accident. He slowed down after he had been told he hit someone.

I had made a date with him to see at the W.V.S. at Rehill. ~~I~~ Yes next day. I met him and told him I had been told that someone had been badly injured on Nutfield Road. I told him the police had been down to get a statement ~~He said to keep quiet about it.~~ Yes ~~Later that day I~~

I knew his name was Clavies. He spelt it out but I don't know whether he said Clavey or Clavies.

I ~~sig~~ recognise the driver of the vehicle here in court.

~~I didn't~~ Once I told Clavey that he should slow down. and Mintern told the driver he was going too fast ~~just~~ about 5 or ten minutes after we came out of the second pub. We had gone approximately 5 miles. I said "you'd better slow down a little"

The girls screamed and one of them said "you've hit somebody." The driver said "fuck" then said "excuse me" to the girls then he either slowed down or stopped I'm not sure which. I'm not sure whether we were stopped or not.

Cross-examination

The police took a statement from me the night of the accident. I can't remember whether he slowed up or not before he got to the curve.

By the Court

I was sitting in the front seat in the centre between Mintern and the driver. The car was going over 30 m.p.h. just before the girls screamed. I think the headlights were on. I didn't see any one in front of the car. As we came around the bend it gave me the impression that it hit the curb. The girls screamed one of them said you have hit someone. The driver changed gears.

~~R.P. 8 3 (a) complied with.~~ Yes

R.P. 8 3 (a) complied with.

6th Witness

14650162 Pte. Moore, E.J. sworn states.

Mr Maynard and I were walking in the direction of Nutfield. We reached the west entrance of Patterson Court. All I remember is a vehicle came up behind I heard a thud and the next thing I saw Mr Maynard lying on the pavement. The vehicle ~~went~~ was up on the footpath. I heard it graze the fence. I couldn't see what sort of vehicle it was owing to the speed of it. which I estimate to be 40 to 45 miles an hour. It failed to stop. It drove straight on. I went to Mr Maynard and waited until help came.

Cross-examination

I did not see the vehicle hit Mr Maynard. The pavement breaks to make way for the drive to Patterson Court. We were just stepping onto the pavement on the Nutfield side of the break. I was on the inside.

We were just about level with the A.A. reflector. It was on our left. At a rough estimate the reflector is about 3'6" from the ground. We would not interfere with the occupants any vehicle coming from Redhill seeing the reflector.

By the Court

~~I did not see the from~~ G.T.

I did not have a front view of the car. It had a tail light on. A red light. The R.A.F. man and A.T.S. girl were the first to arrive at the scene ~~of the~~ G.T. I heard a definite thud. The sound of the vehicle scraping on the fence. R.P. 83 (b) complied with.

7th Witness

W/153158 L/Cpl Laffling, P.H. A.T.S. sworn states

After we got into the car we travelled about 200 to 300 yds we were travelling between 30 and 40 m.p.h. We came to a bend just at the entrance of Patterson Court. It was a very bright moonlight night and I think the driver thought the entrance was a continuation of the road. It does give that impression. The vehicle mounted the pavement. I was sitting just behind the driver. For a split second I saw two people on the path. Then we hit the fence and swerved back onto the road. I looked back and saw one of the men lying on the pavement. I told the driver to stop. I thought he was going to stop. He seemed to slow down. But he didn't and continued until we got to the Priory Gates. We got out there. The car then continued

straight on. I would not recognise the driver if I saw him again. The Priory Gate is about 100 yards beyond the entrance to Patterson Court.

Cross-examination

When the vehicle hit the fence I would estimate its speed at from 20 to 25 m.p.h.

By the Court

I was sitting right behind the driver on the right hand side. There were three members of the A.T.S. in the rear seat. The driver and two men were in the front seat. After we had hit the fence and got back onto the road again we all asked him to stop.

After we got out of the vehicle I went back and found the man lying in the same position as when I saw him from the car. His feet were hanging over the edge of the Pavement. Cpl. Jenkins went back with me. To my mind the driver seemed quite capable of driving the vehicle. They all seemed quite all right. The other two were laughing and talking but they weren't boisterous or anything like that. It was a station waggon.

R.P. § 3(b) complied with.

8th Witness

W/36624 Cpl. Jenkins, M. A.T.S. sworn, states

We hadn't been the car very long before we got to the entrance of Patterson Court and I was under the impression that the driver thought the entrance was a continuation of the road because he made for it but saw his mistake and swerved quickly to the right. I did not notice that he struck the fence. I felt the car strike something. Just as he swerved I saw two men on the pavement. Then I felt an impact. I told the driver to stop that we had hit somebody. He didn't stop. He carried on. We kept on asking him to stop but he did not until we got to the Priory when we told him we would have to get off then. We got out. L/Cpl Laffling and I went back and found a man lying on the pavement. It was a station waggon.

No cross examination

By the Court

The injured man was lying on his back. His feet up to the calf of his legs were on the road. I was on the left side of the car. ~~The~~ ~~side the~~ I did not see the man hit. I looked around but the car obscured my vision and I couldn't see anything. I felt only one lump. The driver did not brake. He seemed to take his foot off the throttle then put it back on again. He did not stop until he got to the Priory.

R.P. § 3(b) complied with

9th Witness

W/X 31959 Pte Chisholm, J. A.T.S. sworn, states

When we got to Patterson Court the driver ~~turned~~ did not appear to know the road. We didn't see the people on the footpath until we were right on top of them.

We mounted the footpath went into the fence and went straight on. I turned around and saw someone lying partly on the footpath and partly on the road. I told the driver to stop. I told him he had knocked someone over. But he drove straight on. He did not slow down after he struck the fence. I think it was a station waggon.

No Cross-examination

By the Court

I was sitting in the back seat in the centre. I had no trouble seeing out of the station waggon. I felt two bumps. He didn't actually slow down until we got to the Priory gates. We grazed the fence.

RP. 83(b) complied with.

10th Witness

Police Sergeant Bowles, John Ridewut # 31 Reigate Borrough Division. sworn, states

On Mon 15 Nov 43 about 5.30 PM. I saw the defendant Pte Blaney at a Cdn. Mil. establishment at Chipstead Surrey. In the presence of his C.O. Capt Findlay. Also present was Sgt Harrison of the Cdn S.I.S. I said to Pte Blaney "I am making enquiries respecting an accident which occurred on the Nutfield Road Red hill. about 10.25 PM on Fri Nov 12, 1943. in which a man walking on the near side footpath towards Nutfield was knocked down and seriously injured by a vehicle going towards Nutfield which failed to stop. It has been ascertained that the vehicle was a Cdn Station waggon and carried two airmen and 3 A.T.S. girls were you the driver of the vehicle? He replied "yes I was" The girls said I had knocked somebody down but I didn't think I had so didn't stop." I then said to him do you care to make any statement as to what occurred. He sought advice of Capt Findlay and then said "yes I wish to make a statement. At this stage I cautioned him explaining exactly what was meant by it. I also made it plain to him that the statement was entirely voluntary. I then took down in writing at the dictation of the defendant a statement which was read over to him after which he signed

The Judge Advocate explains to the defending officer his right to cross-examine the witness, and to call witnesses, including the accused on the issue as to whether or not the statement was voluntary.

Cross-examined by Defending Officer

Q. Did you tell the accused that it would be easier for him at the trial if he made the statement

A. Definitely not

Q. Did you hear any other person say it would be easier for him if he made a statement.

A. No. Sir. I would like to add that I did tell the accused that if he saw fit to make a statement it would be beneficial to him and to the police in so far that both sides of the story could be reviewed.

Defending Officer

This particular statement by the sargent is an inducement to the accused to make a statement.

Prosecuting Officer

The statement was voluntary.

The court is closed to consider the submission.

The court is re-opened.

The President announces that the statement is admissable.

The witness reads the statement which is accepted by the Court and marked

Exhibit "C"

Examination in Chief - Continued

At 11.00 AM the following morning I went to the scene of the accident with Sgt Beddell who pointed out to me various marks on the fence. One such mark consisted of a horizontal mark about 6" long made by paint of a brownish colour. This mark was 2 feet above the footpath. At 11.15 AM I went to the mil. camp at Chipstead where in the presence of the accused and Capt Findlay I made an examination of Canadian Ford Military Station Waggon # CM4202718. I found the mudgards were painted a brownish colour. On the front near side of the mudguard I found several horizontal marks where the paint had been rubbed off apparently due to the vehicle coming into contact with something hard. These marks were various heights from the ground but one was 2 feet above the ground and could have been caused by striking the fence at the scene of the accident. The accused informed me that the three ATS girls sat on the centre seat of the vehicle and that the two airmen sat on the front seat next to him, the rear seat being vacant. In view of the reference in his statement to his turning his head around to see if an accident had occurred I decided to test his view I accordingly caused three soldiers of small stature to sit on the

centre seat and two more to sit on the front seat to represent the airmen I found the rear window of the vehicle to measure 4 feet wide by 11 inches high. I then sat in the driving seat and turned my head around and looked out of the rear window. I found that the only view I had was between the heads of the three persons on the centre seat. My view was very limited and I formed the opinion that as the accused is a much shorter man than myself his view would ~~[illegible]~~ have been more limited.

No. Cross-examination

R.P. § 3 (h) complied with.

Defence

1st Witness. B-38475 Pte Davey, W.L. sworn, states

After leaving Redhill I proceeded on the road to Nutfield. On arriving at the top of the hill I was beginning to wonder if I was on the correct road to Nutfield. After driving some distance I observed 3 A.T.S. I stopped and asked if I was on the correct road to Nutfield. They answered yes. I asked them if they were going that way. They got into the car. I started off down the road. At this time I mentioned to Cpl Roche that the moon was very bright and made the road glaring. After saying this I looked up and found I was approaching a dark object in front of me so I slowed down from 30 to 20 miles an hour approximately. Coming to a break in the left hand curb I was not sure whether the road continued to the left or swung to the right. After seeing a gate in the left side I looked over to the right and saw where the road and sidewalk continued. I then slowed down and endeavoured to swing the vehicle to the right. ~~[illegible]~~ Upon arriving at the break in the road I looked up and saw two men walking straight ahead of me. It looked to me as though the man on the outside was walking with one foot on the main roadway and one on the driveway to this private lane. By then the two people had left the glare of my headlights. Arriving where the curb re-commenced I found that it was out several yards to the centre of the road than the one I had left. Arriving at this point I felt the car hit the curb and the car started to sway after this the three A.T.S. in the back all started screaming and hollering at once that I had hit something. I then put my foot on the clutch and the brake taking the car out of gear and slowing the vehicle down I then looked around between the two ATS on the right hand side of the vehicle whose heads were turned around. I could see two people walking out of the rear window so I decided the girls were just frightened of being in a swaying vehicle so I put the car into low gear and started on down the

road. The vehicle did not come to a dead stop. After driving down the road a hundred yards or so I stopped and let out the three A.T.S. After they got out an English soldier came to the car door and asked if I was going to Godstone. I replied that I was not so he closed the rear left door and I proceeded on down to the air force billets. Upon arriving at the billets I let out the fellow I knew by the name of Bell. I then drove to Cpl Roche's billets. There I stopped the vehicle and we talked about home for several minutes - between 10 and 15 minutes. As I decided to return to camp Cpl Roche suggested that it would be a good idea if we looked the car over to see if we had dented a fender or wheel when I presume we had hit the curb. I could not find no marks on the vehicle that I had not seen before. I then told Cpl Roche that I would see him the following day at 1 O'clock at the W.V.S. canteen at Redhill. I then returned to camp across the shortcut from Nutfield to Merstham instead of going back via Redhill which was farther and I knew it was getting late and I wanted to get the vehicle back to the parking lot. The following day at 1 P.M. I met Cpl Roche in the W.V.S. canteen I told him that I was still on duty. That I had a 60 cwt Chev. G.S. with some supplies on it to take back to camp. Cpl Roche did not say anything to me about the questioning by the police. I was told that later by Mgt Bowles. We did not talk about the accident at all. I was sitting on a bolster when I was driving the car. The bolster is between 4 and 5 inches high. I was using the curb as a guide line. There was not a red glare at that corner. If there was a sign there there was something between my vehicle and it. I think now it was the men. When I looked over to the right I saw eight or nine cats eyes in the centre of the road. If I had noticed any new marks on the fender I would have gone back to the scene of the accident. On finding no marks on the car I was convinced that I had not hit any one. I forgot all about it until I was questioned by the police. My answer to the police question was "That I had had a military vehicle on that road on the said night and that I had hit the curb and the girls had said that I had hit someone but I, believing in my own mind, that I did not do so I had forgot about the matter"

Cross-examination

I had the impression at the time that the vehicle had just bumped against the curb. It had not mounted it to my knowledge. The two men were standing directly in line with the sign. Driving down the road I was keeping about four feet from the curb. As soon as the break came in the curb I swung the wheel to the right. I couldn't swing it fast because there were three in the front seat. The centre seat is a partial seat. One A.T.S. was only half on the seat. I could see between the two that were on the same side

of the car as I was. As regards the part of my statement where I said the amount of beer had taken effect on me. I was feeling warm. It had not affected my ability to see or think.

By the Court

When I looked back the car was on kerb road. I knew the road up to Redhill but I had not been on the road past there more than twice. I have driven in England a year.

R.P. § 3 (b) complied with.

2nd Witness Capt F. P. Pindlay, sworn states

I recognise the accused. He has been driving in the unit for 1 year and two months. He has never had an accident. He recently drove me on a long trip in a Ford Station waggon. I had no fault with the way he was driving. The seat is moveable. He was a bit taller. I was present when Sgt Bowles was questioning the accused. To the question by the police were you the driving the station waggon involved in the accident the accused replied something to the effect that he was driving a car that evening and had hit the curb but was not involved in the accident.

Cross-examination

I questioned him once about speeding.

R.P. § 3 (b) complied with.

Defending Officers closing address

On the second charge the main point is whether or not he is guilty of neglect. The defence by cross-examination has proved that he is not guilty. Apart this kerb in the road was not properly marked. The accused was a victim of the blackout accident in hitting that curb. This accident at this point could happen to anyone. Capt Appleby testified that he was going between 20 - 25 m.p.h. at that point. This illusion of speed came from the noise of the engine in second gear. The vehicle could not go from 0 to 45 m.p.h. in 200 yards. There is no evidence before the court that the injured man was any other place but on a public road. The witness Moore stated at the time of the accident he was even with the red marker. 5 seconds before then at which time the vehicle would be 60 yds from the scene would bring 16 Moore back about 3 paces which would put him directly blocking the A.A. sight. All this evidence clearly brings out contributory neglect and no neglect on the part of the driver. On the last charge this man slowed down immediately after the accident and

100 yards from the accident stopped for what must have been three or four minutes. If this man felt guilty about an accident he would not have stopped for that time so close to the accident. He looked out the back window and assured himself that he had not hit any one. Any 65 storey middle man will not be led by a lot of women He had the situation under control in his own mind.

As a man is innocent until he is proven guilty and the prosecution have failed to prove him guilty I ask the court to find him not guilty on the second and third charges.

~~The~~ Prosecuting Officers Closing Address

The evidence heard by the court fully justifies a finding of guilty on the 2 nd and 3 rd charges. There can be no doubt that the accused was driving negligently and that he knew he had struck the pedestrian and left without stopping to help.

In the opinion of the Court and the J.A. no summery up is required from the Judge Advocate.

Defending Officer in Mitigation

The accused has only one entry on his conduct sheet and that he tells me was once when he was ordered on a mob job.

I know this man to be a good soldier and I believe there are few men who would show up better in action. I ask the court to be lenient with him.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/P&S/1697 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B38475	Private		William Loraine	DAVEY	95 L.A.D. RCOC Attached to 8 Cdn Fd Pk Coy

RB

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet (~~s~~) attached and on (*date*) 30 NOV 43 endorsed by me, (~~or by an offr of my staff for me~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified~~ [illegible])

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R.J. Smallian	30 Cdn Fd Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	W.D. Hungerford	46 Cdn Gen Tpt Coy
Lt	H.C. Lane	30 Cdn Fd Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	To be detailed by	31 Cdn Fd Coy

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	G.H. Jermyn	HQ 2 Cdn Corps

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (D.K. Black) Lt-Col (Rank.)

Date 30 NOV 43

Commanding CRE 2 Cdn Corps Tps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(E)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 86(E), KR Can 562(e).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex 5, Ex 6, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of registered books see AA 162 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can) Para 557

I certify that I have this morning examined No. B38475, Pte. Davey, W.L., of the 95 L.A.D., R.C.O.C., and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station Field

Date 2 Dec 43

J.W. Wendock Capt.
(Medical Officer)

600

CHARGE SHEET

The accused B38475 Pte William Loraine Davey, 95 L.A.D. R.C.C.C. attached 8 Cdn Fd Pk Coy, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Army Act
Section 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field between 1800 hours and 2300 hours on 12 Nov 43 improperly and without authority used Canadian Military Vehicle, W.D. No CM-4202718 for privare purposes.

Second Charge
Army Act
Section 40

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field at about 2225 hours on 12 Nov 43, negligently drove Canadian Military Vehicle W.D. No CM-4202718 thereby seriously injuring one, Hubert George Maynard.

Third Charge
Army Act
Section 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field at about 2225 hours on 12 Nov 43 after being involved in an accident did leave the scene of the accident without leaving his particulars or taking steps to assist the injured person.

In the Field,
19 Nov 43

(Signed:) A. Webster, Major RCE
Commanding,
8 Cdn Fd Pk Coy

To be tried by Field General Court Martial.

(D.K. Black) Lt-Col
CRE 2 Cdn Corps Tps

In the Field
29 NOV 43

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA2) G.P.A.S. 11656 (3604)

Convened by Order of Lt-Col D.K. Black CRE 2 Cdn Corps Tps Comd dated 30 NOV 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B38475	Private	William Loraine	DAVEY	95 L.A.D. RCOC attached to 8 Cdn Fd Pk Coy

Proceedings Reviewed

16 Dec 43

Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 2 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for paths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet[1] attached thereto.[2] The Court is satisfied that it is properly convened and constituted[2], accused is ~~not~~ amenable to military law, and each charge discloses an offence.[3]

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.[2]

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.[2]~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to as interpreter? Ans~~

~~The interpreter is sworn.[1] Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.[1]~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.[1] President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.[2]

(1. RP 108. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.[1] The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.J. Smallman	30 Cdn Fd Coy RCE
Member	Capt	W.D. Kingsford	46 Cdn Base Tpt Coy RCASC
Member	Lt	N.C. Lane	30 Cdn Fd Coy RCE
Judge-Advocate	Capt	J.H. Jernegan	HQ 2 Cdn Corps [illegible]
Prosecutor	Lt	R.R. McKee	8 Cdn Fd Pk Coy
Defending Offr	Lt	L.R. Kingston	31 Cdn Fd Coy

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO [2]

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (2) and fn 2 were not followed. See Dig p 33)

A8. The accused before arraignment make(s) (no) [1] plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AS each and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~severally~~ on all charges in the charge sheet.[1] The accused does not object to any charge.[2] There is no amendment to be made to the Charge Sheet.[3] The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. RP 32, RP 33. If otherwise, delete and ~~where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A24 to record proceedings.~~ make appropriate record per Notes.)

A10. The Court ~~re-considers~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form ~~B~~ C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-38475 Pte Davey, W.L. 95 LAD. attd 8 Cdn Fd Pk Coy

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd	NOT GUILTY	GUILTY	
3rd	NOT GUILTY	GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ [1]

~~a term of~~ [illegible] (date) ~~.~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which 0 days were spent in hospital.[1]

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for (8) eight months

(Sgd) Gordon H. Jernegan 2 Dec 43 (Sgd) R.F. Smallman Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 66(6), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ [1]

(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Lt Col

Date 8 Dec 43 Commanding HQ RCE 2 Cdn Corps Tps Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 573, 577.)

Accused.	Date.	Signature of Offr.
B 38475 Pte Davey W.L.	9 Dec. 43	[illegible] Major RCE

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO SIR.(5)
(1. *RP 37(E).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (~~again~~) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO SIR.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (his) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. I will give my evidence on oath. Do you intend to call witnesses on your behalf? Ans. I do. Are they witnesses as to character only? Ans. No.
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the 2nd and 3rd charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2).~~
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO SIR.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)
(1. *AFB 255 or AFB 296.* 2. *Ibid 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment?(1) Ans. Yes Sir.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything hors or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) REPTILE
(1. *When several accused tried separately see RP-[illegible]. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 48-52, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2322, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 64(3), 66(1), KR Can 564.* 2. *RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field on the 23rd day of March 1944 by order of Brigadier L G Gibson

Commanding 3 Cdn Inf Bde dated the 22nd day of March 1944

President.

Major R J Ore Cart & York R

Members.

Capt J M Bussey Cart & York R

Capt J Dube R22eR

, ~~Judge Advocate~~

Trial of* E 6205 Pte Blaise David, R22eR

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

~~The Court~~ satisfy themselves that _____ is not available to serve owing to _____, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut J A Gerolami R22eR

Counsel‡ or defending officer† Lieut Fr de Saint Victor R22eR

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked _____ signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16820/78. 25,000 sets. 6/43. K. & H., Ltd. G687/11. Form A 9/55.

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Capt H Tellier R22eR.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to the ~~first~~ second charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

"B2"

CHARGE SHEET

The accused E.6205 Private Blaise DAVID, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service is charged with:-

1st Charge
AA Sec 12 (1) (a)

WHEN ON ACTIVE SERVICE
DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 15 Feb 1944, when under orders to proceed to the front line absented himself without leeve from approximately 2230 hrs 15 Feb 44 until 1500 hrs on 17 Feb 44, with intent to avoid so proceeding.

2nd Charge
AA Sec 9 (2)

WHEN ON ACTIVE SERVICE
DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

In the Field on 17 Mar 1944, when personally ordered by Capt. L. Cannon R.22e.R. to return to his coy in the field refused to do so saying " I will not go ", and did not go.

(J.G. CHARLEBOIS) Major,
T/Commanding Royal 22e Regiment

In the Field
17 Mar 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(T G Gibson), Brigadier,
Commanding 3 Cdn Inf Bde.

In the Field
19 Mar 44

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No. F 6205

Rank Pte. Name David B. of Royal 22c Regiment

and in my opinion he is fit/~~unfit~~ to undergo Trial by Court Martial.

Station. In the Field

Date. 23 Mars 1944

[signature] Major

[signature] Capt.

Medical Officer.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. } P. 48741 Sgt Carson RA.

being duly sworn, is examined by the prosecutor.

Q1 - Will you Identify the accused?
A1 - The accused is E-6233 PC David Black
Q2 - Could you tell the Court what you know about PC David with regard to the charge laid against him?
A2. On the 15th of Feb 1944 I was platoon Sgt of #16 Platoon. On the afternoon I warned my platoon that we were to go up to the front line on that same night. We were to move at 2030 hrs. PC David who was then present, told me he could not go to the front line because he was too nervous and afraid. When the time to move arrived I made a roll call and PC David was not present. I have not seen him until the following day when he told me he had reported at "D" Echelon on the 17th of Feb.

Cross-examination by Defending Officer:
Q1 - Were the men of your platoon warned that if they absented themself they were

to be considered as deserters?

A1- There was no officer in the platoon at that time, and I was acting as platoon commander. My men had been warned before that if they went A.W.L. in such circumstances they were to be considered as deserters.

Q2- On that particular day, did you warn your platoon that if one man absented himself he should be considered a deserter?

A2- No, Sir, all the men had been warned to that effect a few days before.

Q3- Was the Signal present when that warning was given a few days earlier?

A3- I don't know.

RJT

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. Is he a witness as to character only? *Answer.* N/A

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

When we were in the line for 48 hours on the Indian front. I became "Shell shock". It was around 1100 hrs when ~~Sgt~~ Major Garcean sent me to the R.A.P. accompanied by Pte Bigras. I was a whole day in the R.A.P. without anything to eat, and without any treatment. When we arrived in a rear area the Doctor examined Bigras instead of me. When I saw that I went

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

to see Major Garcan who told me he would give me a job in the rear. But they sent me up to the front line again. So I got discouraged and went away.

Defence council asks for a dismissal on the grounds that the accused has been tried ~~on~~ R.F.D. for this offence previously and awarded a sentence of three (3) days pay as shown on the M.F.M. 6 of the accused.

Petition is granted and the finding of not guilty on the first charge is announced in open court.

R.J. [illegible] Major

R.J.D.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused is found guilty of K6205 Pte Blaine David the second charge as laid 9/3/19.

†The summary (~~or abstract~~) of evidence is read, marked , signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

No

Answer. The accused in mitigation of punishment says:—

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused E 6205 Pte Blaise David not guilty of the first Charge. Finding announced in open Court.

R.J.D.

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction before Sentence.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it. Lieut J A Bicolami R220R is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* N/A

Cross-examined by the accused. No

(*Instruction.—If by reason of the nature of the service of the accused in a departmental corps or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.*)

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

R.J.D.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused is found guilty of 46205 Pte Blaine David the second charge as laid 9.9.17.

†The summary (~~or abstract~~) of evidence is read, marked , signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

No

Answer. The accused in mitigation of punishment says:—

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

No

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused E 6205 Pte Blaise David not guilty of the first Charge E. Finding announced in open Court

R.J.D.

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction before Sentence.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut J A Guiolami R22eR is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* N/A

Cross-examined by the accused. No

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

R.J.D.

F

Sentence.

The Court sentence the accused ~~No~~ 6205 Pte Sentence.
Blaise David to undergo imprisonment for
a period of two years with hard labour.

R.J. Goff Maj

LIST OF WITNESSES FOR THE PROSECUTION

in the case of

R.6205 Private DAVID BLaise , Royal 22e Regiment

FOR THE PROSECUTION

F.48791 Sgt Careau M.

R.4591 Sgt Despres R.

FOR THE DEFENCE

Capt. L. Cannon

N I L

I hereby acknowledge the receipt of a true copy of the summary of evidence taken prior to my trial by FGCM. I furthermore acknowledge the receipt of a true copy of a charge sheet upon which I am being brought into Court-Martial.

I desire the services of an officer to represent me at my trial.

I desire the services of Lieut Leclerc

if he is available.

In the Field
17 Mar 1944

David pte

17 Mar.

LIST OF WITNESSES FOR THE PROSECUTION

in the case of

E.6205 Private DAVID BLaise , Royal 22e Regiment

FOR THE PROSECUTION

P.48791 Sgt Careau M.

E.4591 Sgt Despres R.

Capt. L. Cannon

FOR THE DEFENCE

N I L

I hereby acknowledge the receipt of a true copy of the Summary of Evidence taken prior to my trial by FGCM. I furthermore acknowledge the receipt of a true copy of a charge sheet upon which I am being brought into Court-Martial.

I desire the services of an officer to represent me at my trial.

I desire the services of Lieut Leclerc

if he is available.

David B pte

In the Field
17 Mar 1944

R.J.Dc.

SUMMARY OF EVIDENCE

In the case of E.6205 Private DAVID Blaise , a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service.

By direction of the Commanding Officer this Summary of Evidence was taken under oath.

1st Witness For Prosecution P.48791 Sgt Careau M. Royal 22e Regiment, having been duly sworn states:-

" I am P.48791 Sgt Careau M. of R.22e.R. posted to "D" Coy. as pl sgt. On 15 Feb 1944 I warned my platoon that we would be moving up to the front line at 2230 hrs that same day. E.6205 Pte David BLAISE was a soldier in my platoon when I gave my men the warning. E.6205 Pte David BLAISE said to me that he could not face the front line, that he was too nervous. When I called the roll prior to our moving at 2230 hrs on the 15 Feb 1944, Pte David was absent and I did not see him again until to-day the 17 Mar 1944, when he declared in my presence that he reported to "A" Echelon Royal 22e Regiment at 1500 hrs on 17 Feb 1944 and was placed under close arrest.

The accused declined to cross examine the witness.

M. Careau Sgt.

2nd Witness For Prosecution E.4591 Sgt Despres R.O. Royal 22e Regiment, having been duly sworn states:-

" I am E.4591 Sgt Despres R.O. of R.22e.R. posted to police Section as Provost Sergeant. On the 17 Mar 1944, I heard Capt L. Cannon, 2 i/c "D" Coy order E.6205 Pte David BLAISE to return to his coy. E.6205 Pte David BLAISE refused to obey the order saying: " No, I will not go ".

The accused declined to cross examine the witness.

R Despres Sgt

The accused having been duly cautioned in French in accordance with RO 1424 reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e), (f) and (g) were duly complied with.

L. Cannon Capt

Officer taking Summary

In the Field
17 Mar 1944

ADDITIONAL SUMMARY

3rd. Witness for Prosecution

Captain L. Cannon, Royal 22e Regiment, having been duly sworn states:-

" I am Captain L. Cannon, of R.22e.R. posted as 2 i/c of "C" Coy.

On 17 Mar 1944, I ordered E.6205 Pte David BLAISE to proceed to his coy, saying to him " Pte David, I order you to return to your coy in the field, to-day. You understand that if you refuse that you will be charged ". E.6205 Pte David BLAISE replied " I will not go ", and he did not proceed to his coy, he was then placed in custody.

The accused declined to cross examine the witness.

L. Cannon Capt.

The accused having been duly cautioned in French in accordance with Ro 1424 reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e), (f) and (g) were duly complied with.

Officer taking Summary

In the Field
17 Mar 44

Major

No. E6205 Name David, S. Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 16/1/42 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /B136 (2966)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15/2/44	Sk.		A.A. 15 (1) A.W.L. 2015 hrs 15/2/44 until 1500 hrs 17/2/44 (1 day 17 hrs. 45 mins)	Lt. Carean	3 Day Pay	18/2/44	Major Charlesson	

L. Carean Capt

Certified true copy
17 Mar 44

[illegible] Major

(P.T.O.)

B

...TEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

Number [illegible] Rank Pte Name David Blaise Regiment 22 Bn

The following is a fair and true summary of the entries in the ...imental and squadron, battery or company conduct sheets of the ...used, exclusive of convictions by a court martial or a civil cou... summary awards under section 47 of the Army Act, and of cases in ...h trial has been dispensed with:-

	Within last 12 months	Since Enlistment
FOR	AA Dec 1940 / Time	AA Dec 1940 / Time
FOR	Time	Time
FOR	Time	Time
FOR	Time	Time

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

The accused has not been previously convicted, or,

...evious convictions of the accused by a court martial or a civil ...ilitary awards under section 47 of the Army Act, and dispensations ...ith trial under section 71 of the Army Act, are set out in the ...chedule annexed to this statement.

The accused is not under sentence at the present time, or The ...used at the present time is under sentence for

N.D. beginning on the _____ day of N/A

The accused has been in confinement awaiting trial on the ...esent charges for, [illegible] days in civil custody and _____ ... military custody, making a total of N/A _____ which [illegible] days were spent in hospital.

The present age of the accused according to his record of serv... 27

The date of his attestation specified in his record of service 26-1-43

The service which the accused is claimed to reckon towards ...charge or transfer to the service is _____

The accused is entitled to deferred [illegible] in respect ... service.

The accused is entitled to reckon N.A. service for the ...rpose of determining his pension, etc.

10. The accused is-possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or award).

11. (If the accused is a warrant officer) The position before he was made a warrant officer last held the regimental rank of .....

12. (In the case of an officer) The accused holds in the Army the rank of _____ dated _____ and in his regiment (or corps or department) the rank of _____ dated _____

Certified true extract from Records
30 Mar 44 [illegible]

40-22

Pte. David E.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E.30709 Pte Edmund John, David.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

All previous sentences set out in "LNC" ~~XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans yes (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his [redacted] plea[redacted] of Guilty to Not Guilty on 1st2nd&3rd charge(s). [redacted] charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex F, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 50 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D5.
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 1-3.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 4(*C*). *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note as to further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA* 54(2) (*e*), *RP* 45, 120(*A*). *2. AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans no
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 6, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement[redacted] as to Character and Particulars of Service(1), and certified true copy [redacted] of Conduct Sheet[redacted](2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier[redacted]) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex G and Ex H respectively.(3)
(*1. MFB* 255 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement[redacted] and Conduct Sheet[redacted], and in mitigation of punishment ?(1) Ans Plea in Mitigation (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its promise, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 1323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET "INC"

The accused, E.30709, Pte Edmund John David,

1 Canadian Infantry Base Reinforcement Battalion, 1 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act.

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0600 hrs, 4 May 1944, absented himself without leave until surrendering himself at about 0001 hrs, 22 June 1944 (Absent, 48 days, 18 hours).

SECOND CHARGE
Sec 15(1)
Army Act.

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 1900 hrs, 26 June 1944, absented himself without leave until apprehended at about 1300 hrs, 11 July 1944. (Absent, 14 days, 18 hours.).

THIRD CHARGE
Sec 15(1)
Army Act.

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 1000 hrs, 18 July 1944, absented himself without leave until apprehended at about 1540 hrs, 24 Jan. 1945 (Absent, 190 days, 5 hours, 40 minutes).

"Vincent McKenna" Lt Col
(Vincent McKenna) OfficerCommanding,
1 Cdn Inf Base Rft Bn, 1 CBRGp.

In the Field,
14 Feb 1945.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
in Italy
17 Feb 45

"T.G. Gibson"
(T.G. Gibson) Brigadier
Comd, 1 Cdn Base Rft Gp.

"LNC"

FIELD GENERAL COURT-MARTIAL

CF.A.60 (In lieu of AFA3)
40/PAM/1697 (29048)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E.30709	Pte	Edmund John	DAVID	1CdnInfBase RftBn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (~~XXXX~~ committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 17 Feb 45 endorsed by me, (~~XXXX

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 1*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(D)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than* in *mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 9-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to *facts*, whether any evidence as to his character has been given or not. (*When accused charged jointly, see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(B), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy or item of original see KR Can 580. As to certified copies of regimental books see AA 163 (3) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 *after* minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 758.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE "LNC"
(KR (Can) 557

I certify that I have this morning examined No. F.30709 Rank Pte Name David E.L. of H.P.E. 1 Bn and in my opinion he is fit to undergo trial by Court Martial.

In the Field
Date 20-2-45

"[redacted] Capt"
(Medical Officer)

For Mitigation of punishment "LNC"

When you consider this case gentlemen, I would request that you pay attention to this man's age. He enlisted four yrs ago when he was just over 16. He was quite young and is still very young. The man knows that he has committed a serious crime and also knows that he must pay for it. He has had several petty offences in his unit but has never committed any serious offence until now. He is sincere in his desire to go with his unit and his crime was committed while in a depressed state of morale when he was taken off draft to that unit. The type of offences that have been committed by this youth show in my mind a great deal of boyish prank - caused by immatured feelings, easily persuated by others. Your job is to decide how to punish this chap for the offence for which he is on trial today. A long term in prison is no punishment for him. It will

show him that he is being punished for a serious offence, yes but it will also prejudice him against the army and start him off on a career that will make him no good to the Army or the country. He has enlisted perhaps with a spirit of adventure, but with a decided desire to fight for his country and so gentlemen, I ask you to give him that chance to get back with his unit in order to do the job he wants to do.

SUMMARY OF EVIDENCE Exhibit "F" "LNC"
in the case of

E.30709 Pte David Edmund John, 1 Canadian Infantry Base Reinforcement Battalion, 1 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

First Witness for Prosecution.

F.34621 Cpl MacDonald B.L., Orderly Room Clerk, 1 Canadian Infantry Base Reinforcement Battalion, 1 Canadian Base Reinforcement Group, having been duly sworn states:-

I am F.34621 Cpl MacDonald, B.L., Orderly Room Clerk, 1 Bn., 1 CBRGp. I produce "X" List Hastings and Prince Edward Regiment Part II Orders No 57 dated 15 July 44 issued by Canadian Section GHQ., 2nd Echelon AAI. which shows E.30709 Pte David E.J. taken on strength X 3 List from desertion 22nd June 44 on admittance to 1 CGH (hours unknown) Presented as Exhibit "A".

I also submit "X" List Hastings and Prince Edward Regiment Part II Order No. 61 dated 26 July 1944 issued by Canadian Section, GHQ, 2nd Echelon, AAI which

ont'd Summary of Evidence.

shows E.30709 Pte David E.J. as being absent without leave from 1900 hrs 26 June 44, still absent 1900 hrs 4 July 44 (8th day). apprehended by Canadian Provost Corps 1300 hrs 11 July 44 Presented as Exhibit "B".

I further submit "X" List Hastings and Prince Edward Regiment Part II Order No. 72 dated 19 Aug 44 issued by Canadian Section, GHQ, 2nd Echelon AAI which shows E.30709 Pte David E.J. SOS X 3 List as a deserter 16 Aug 44, ~~xxxxxxxx~~ declared by a Court of Inquiry to be illegally absent from 1000 hrs 18 July 44, deficiencies in kit unknown. Presented as Exhibit "C".

I further submit a Certificate in accordance with the Army Act Sec 163 (i) (jj) in which it shows E.30709 Pte David E.J. Hastings and Prince Edward Regiment of Canada attached 1 C.B.R.D. was arrested at Rome at 1540 hrs 24 January 1945. The certificate is signed by Officer Commanding "T Provost Coy C.M. Police and which is dated 25 January 1945. Presented as exhibit "D".

I also submit a certified true copy of a record of a Declaration of a Court of Inquiry assembled in the Field on the 26th day of May 1944 for the purpose of

investigating and recording the absence without leave from his duty and deficiency if any in kit of E.30709 Pte David E.J. The declaration reads ~~x~~ that E.30709 Pte David E.J. illegally absented himself without leave from 3 Bn 1 C.B.R.D. at 0600 hrs 4 May 44, that on the 26th day of May 1944, is still absent and that on the 4th of May 44 he was deficient to the amount of $28.17. The declaration is signed in the Field on the 26th day of May 1944

"B.L. MacDonald.

The accused declines to cross-examine the witness.

The X List Hastings and Prince Edward Regiment Part II orders No. 57 dated 15 July 44, ~~xxxxxxxxx~~ No. 61 dated 26 July 1944, No. 72 dated 19 Aug 44, certificate of apprehension dated 25th January 1945 and certified true copy of record of the Declaration of a Court of Inquiry referred to by the witness, produced, read over, shown to the accused, marked exhibits A,B, C, D and E respectively and attached to the summary.

"W. Jas Rinn Lieut."
Officer taking Summary of Evidence.

Question to the accused.

Do you wish to make a statement or

GIVE EVIDENCE UNDER oath. You are not obliged to do so but any evidence you may give or any statement you may make will be taken down in writing and may be given as evidence.

Answer by the accused

I reserve my defence.

I certify that the foregoing Summary of Evidence consisting of four (4) pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

"W.Jas Rinn Lieut"
Officer taking Summary of Evidence

In the Field
13 Feb 45

This is Exhibit "A" referred to in the Summary of Evidence in the case of E-30709 Pte David E.J. taken before me this 13th day of February 1945.

"W. Jas Rinn Lieut"
Signature of Officer taking Summary of Evidence.

"INC"

Last Order No. 56 14 Jul 44 — X-LIST HASTINGS AND PRINCE EDWARD REGIMENT Part II Order Issued by CANADIAN SECTION, G.H.Q. 2nd ECHELON A.A.I. — THIS Order No. 57 15 Jul 44

"B" OTHER RANKS

2. STRENGTH INCREASE

(d) T.O.S. X-3 List from desertion 22 Jun 44 on adm to 1 CGH (hrs unknown)
B.30709 Pte David, E.J.

"J.E. Campbell"
(J.E. Campbell) Captain
for Officer i/c
Canadian Section, GHQ 2nd Echelon AAI.

JAF

Certified true copy.
"W. Jas Rinn Lieut"
Officer having Custody of Regt'l Books.

This is Exhibit "B" referred to in the Summary of Evidence in the case of E.30709 Pte David E.J. taken before me this 13th day of February 1945.

"W.Jas Rinn Lieut"
Signature of Officer taking Summary of Evidence.

"INC"

Last Order No. 60 22 Jul 44. — X-LIST HASTINGS AND PRINCE EDWARD REGIMENT Part II Order Issued by CANADIAN SECTION, G.H.Q. 2nd ECHELON A.A.I. — This Order No. 61 26 Jul 44

"B" OTHER RANKS

Page 3

8. ABSENT WITHOUT LEAVE
(a) AWL from 1900 hrs 26 Jun 44 Still absent 1900 hrs 4 Jul 44 (8)th day) Apprehended by C Prov C 1300 hrs 11 Jul 44.
E.30709 Pte David. E.J.

"J.E. Campbell"
(J.E. Campbell) Captain
for Officer i/c
Cdn Sec GHQ 2nd ECHELON AAI

JAF

Certified true copy.

"W. Jas Rinn Lieut"
Officer having Custody of Regt'l Books.

This is exhibit "C" referred to in the Summary of Evidence in the case of E.30709 Pte David E.J. taken before me this 13th day of February 1945.

"W. Jas Rinn Lieut"
Signature of Officer taking Summary.

"LNC"

Last Order No.71 18 Aug 44 — X-LIST HASTINGS AND PRINCE EDWARD REGIMENT Part II Order Issued by CANADIAN SECTION, G.H.Q. 2nd ECHELON A.A.I. — This Order No. 72 19 Aug 44.

"B" OTHER RANKS

Page 2

4 ABSENT WITHOUT LEAVE

(a) AWL from 1000 hrs 18 Jul 44. Still absent 1000 hrs 9 Aug 44 (22nd day).
E.30709 Pte David , E.J.

".J.E. Campbell"
(J.E. Campbell) Captain
for Officer i/c
CANADIAN SECTION, GHQ 2nd Echelon AAI.

JAF

Certified true copy "W. Jas Rinn" Lieut " Officer having custody of Regt'l Books.

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163 (1) (JJ) "LNC"

No. E. 30709 Rank PRIVATE Name DAVID E. J.

of the Hastings & Prince Edward Regt of Canada, att 1st CBRD

was arrested at ROME at 1540 hrs.

on the 24th day of January 1945.

"G. Wigginton"
Rank Captain

S
w
t.

Appointment (if any) O.C.

Commanding "T" Provost Coy, C.M. Police.

dated 25th January 1945

"This is Exhibit "D" referred to in the summary of evidence in the case of E.30709 Pte David E.J. taken before me this 13th day of February 1945.

"W. Jas Rinn Lieut"
Officer Making Summary of Evidence.

CERTIFIED TRUE COPY "LNC"

Record of the Declaration of a Court of Inquiry assembled at In the Field on the 26th day of May 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. E.30709 Pte David E.J.

DECLARATION

The Court declare that No. E.30709 Pte David E.J.

illegally absented himself without leave from 3 Bn 1 CERD at 0600 hrs 4 May 44 on the 26th day of May 44 and that on the 4 May 44 he was deficient, and that he is still deficient of the following articles.

Articles		Value 75¢	Articles		Value 75¢
Anklets web	1 pr	.75	Mug drinking	1	.09
Boots Ankle	2 Prs	8.19	Socks	3	.78
Drawers Cell shorts	2 pr	.63			$28.17
Drawers Wooleen	1 Pr	.90			
Gloves knitted drab	1 Pr	.33			
Great Coat drab	1	8.64			
Jersey Pullover	1	1.35			
Shirts Angola	2	3.03			
Vests Woollen	2	1.80			
Braces Prs	1	.21			
Cap Comforter	1	.24			
Discs Identity sets	1	.03			
Knife clasp	1	.63			
Vests cotton Gym	2	.57			

This is Exhibit E referred to in the Summary of Evidence in the case of E-30709 Pte David E.J. taken before me this 13th day of February 1945.

"W. Jas Rinn Lieut"
Officer taking Summary of Evidence.

Signed at In the Field

This 26 day of May 1944.

Capt "G.A Henderson " President
Lieut "L.I. Little" Member
Lieut M.L. Young " Member

Signature of Commanding Officer Sgd(J.W. Ritchie) Lt Col

I certify that this is a true copy of the original document in my custody.

"A.W. Roy" Capt. Adjutant
3 Bn 1 Cdn Base Reinforcement Depot.

Exhibit "G" "WJR" ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be)
E.30709	Pte	David E.J.	1 CIBR Bn., 1 CBRGp.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For	AA Sec 20(2)	1 times.
For	AA Sec 19	1 times.
For	AA Sec 15(1)	5 times.
For	AA Sec 40	4 times.
For	AA Sec 10 (4	3 times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. [redacted] "WJR" [redacted] "WJR" [redacted]

*Strike out if not applicable.

*3. The accused at the present time is not under sentence for [redacted] "WJR" [redacted]

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 27 days in military custody, i.e., ... days in open arrest, ... days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 20 years

6. The date of his attestation is 24-4-41

[redacted] "WJR" [redacted] "WJR" [redacted]

State the military decorations (if any) held by accused.

8. The accused is in possession of [redacted]

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

[redacted] "WJR" [redacted]

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. (34578/2847) 20,500 3/44 H&S 432 T.Ltd. Forms/B.296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
xnxnxnx	xnxnxnxnx	xnxnxnxnxnxnxnxnxnxnxnxnxnxnxnxnxnx"WJR"xnxnxnxnxnxnxnxnxnxnxnxnxnxnxnxnx

Exhibit "H" "LNC"

NÆ.30709 Name David E.J. Sqn. Battery or Company "O" Corps Can Inf Corps Date of enlistment 24 Apr 4[illegible] Service or Proficiency Pay n/a MFM 6 (AFH 122) 40/PAS/136 (2438)

Date of last entry in Company Conduct Sheet | No stid date of last drunk (1) 4/11/41 | Period not reckoning towards freedom from extra fine n/a | Sheet No 2 | Signature OC Company, etc "Lorne C. Power" Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEET DESTROYED 6 Sep 42					
Montmagny	4-7-41	Pte		Whilst on duty 4-7-41 and wilfully or without reasonable excuse has allowed to escape a prisoner committed to his charge whom prisoner it was his duty to keep or guard AA 20(2)	Sgt Rousseau Sgt Voiselle	168hrs detention	19-11-41	Capt Dumas P.E. (Adj)	
Montmagny Citadel P.Q.	4-11-41 to 19-2-42	Pte Rfn	(1)	Drunkenness AWL from 2200 hrs 19 Feb42 until 0020hrs 20Feb42(absent 2hrs 20min) (2) Breaking out of Barracks (3) Conduct to the prejudice in that he was disorderly AA 40.	Pte Soucy MP Cpl Murphy Cpl Scott Sgt King Rfn Gore.	Severely Reprimanded 7 days C.B.	5-11-41 to 20-2-42	Maj Boulanger Maj Routh	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CitadelPQ	9-3-42	Rfn		AWL from2200hrs 9-3-42 until 0130 hrs 10-3-42(3hrs 30min)AA15(1) (2)AWL from2200hrs 10-3-42 until 2350hrs 10-3-42 (1hr50mins)AA15(1) (3) Breaking out of barracks whilst ttenting Hospital AA10(4).	L/Cpl Scott Cpl May Cpl Coney	7days C.B.	11Mar42	Major Routh	XXX R.F.R.
Vernon BC	9May42	Rfn		AWL - Absented himself from duty as camp piquet from 1800 hrs to 1810 hrs 9-5-42 AA 15(1)	Cpl Beck Sgt Wallace	2 Extra piquets	11May 42	Major Routh	AF of one(1)days pay by FR &I R.F.R.
Field	31May43	Pte		AWL from 2200 hrs 31 May 43 till 0630 hrs 1 June 43.Total absence 8 hours 30 minutes. AA Sec 15(1)	Sgt Heath	4 Days F.P. 4 days pay FRI 149(1)(b)	1 June43	[illegible] Lt-Col	Forfeits 1 days pay FRI 149(1)(a)
Field	28 June 43	Pte		AA Sec 40 An Act to the prejudice in possession of a false MBM Pt 1	Document	7 days C.B.	3 July 43	Capt C.F. O'Neil	

MFM 6
(AFB 122)
40/P&S/136 (3438)

No E.30709 Name David E.J. | Sqn, Battery or Company | Corps Inf | Date of enlistment 24Apr41 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk 4 Nov41 | Period not reckoning towards freedom from extra fine n/a | Sheet No 3 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14 July 43	Pte		AA 40 Conduct to the prejudice good order etc Disobeying an order, and threatening an N.C.O.		21 days F.P. 21 " Pay/4-9(2)	14 Jul43	Lt-Col W.R. Bristowe	
Field	22 Jul 43	Pte		AA 40 Conduct to the prejudice of good order etc. was found to have Ration of tea in his possession.	CQMS Newland	28 dayspay 149 (2)	22Jul43	Lt Col W.R. Bristowe	

CERTIFIED TRUE COPY FROM REGIMENTAL BOOKS IN MY CUSTODY
"W. Jas Rinn Lieut"
Officer in custody of Regimental Books.

(PTO)

RR-96
L/CPL DAVID F.R.

RR-98 "A"

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

Lieut Graham Capt JAG

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 11th day of June, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Corps R.C.A.M.C., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*I am unable to appoint—~~

~~*(1 Three Officers to form the Court.)~~

~~*(2 A Field Officer as President.)~~

~~for the following reason, namely—~~

Judge Advocate: Capt G.M. Graham, A.D.J.A. 1 Cdn Corps

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	G. Gibb	47 Cdn Gen Tpt Coy, RCASC.

Members.

Rank.	Name.	Regiment.
Captain	P.E. Fairbank	RCAPC att HQ 1 Cdn Corps

A Captain to be detailed by C.C. 1 Cdn Corps Ord Fd Pk, RCOC.

Captain

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (K.A.McCusker) Brigadier
Commanding D.D.M.S. 1 Cdn Corps
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-21078 L/Cpl David Forsyth RIDDELL No 2 Coy, Sigs 1 Cdn Corps	First Charge Section 41 Army Act	Not Guilty	Not Guilty	
	Second Charge Section 22 Army Act	Not Guilty	Not Guilty	
	Third Charge Section 41 Army Act	Not Guilty	Not Guilty	
	Fourth Charge (Alternative to Third Charge) Section 40 Army Act	Not Guilty	Not Guilty	
	(As per charge sheet attached)			

16 June 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) E.A. McCusker (Signed)
(E.A.McCusker) Brigadier
Commanding D.D.M.S. 1 Cdn Corps
Convening Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of June 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

*Omit if not applicable.

~~3. The Interpreter~~

*(4. The officers under instruction)

were duly sworn.

Signed this 16th day of June 1943.

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] A.S.E.W.Ltd. Gp.686

"B2"

CHARGE SHEET

The accused, D-21078 LCpl David Forsyth Riddell, No.2 Coy, Sigs 1 Cdn Corps, a soldier of the Canadian Army Overseas, is charged with, when on active service: -

FIRST CHARGE

Sec 41 Army Act

Committing a civil offence, that is to say, assaulting a civilian police officer in the execution of his duty

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, did assault Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, by striking him on the chest, when the said Frank Beavis was in the execution of his duty in attempting to quell a disturbance in or near said Trafalgar Square.

SECOND CHARGE

Sec 22 Army Act

When in arrest escaping

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, after being placed in arrest by Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, escaped.

THIRD CHARGE

Sec 41 Army Act

Committing a civil offence, that is to say, using threatening words, whereby a breach of the peace might be occasioned

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, did say to Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, "You're asking for fucking trouble, get out of it. Come on boys, smash him up", or words to that effect.

FOURTH CHARGE

Sec 40 Army Act (Alternative to Third Charge)

Conduct to the prejudice of good order and military discipline

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, did use threatening language to Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, by saying, "You're asking for fucking trouble, get out of it. Come on boys, smash him up", or words to that effect.

In the field,
10 Jun 43.

(A.E. Wrinch) Lt-Col.,
Comd Sigs 1 Cdn Corps.

To be tried by Field General Court-Martial

(E.A.McCusker) Brigadier
D.D.M.S. 1 Cdn Corps

FIELD,
11 JUN 43

MEDICAL CERTIFICATE (K.R. (Can) 557)

I certify that I have this morning examined No. D-21078

A L Cpl Riddell, D.F. of Sigs 1 Cdn Corps and, in my opinion,

he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station Field

Date 16 Jun 43

(H.C. Johnson) Capt,
R.C.A.M.C.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at the Field on the 16th day of June 1943 by order of Brigadier C. A. McCusker

Commanding D. D. M. S. 1 Cdn. Corps.

dated the 11th day of June 1943

President.

Major G. Gibb
1 Cdn. Gen. Tpt. Coy. R.C.A.S.C.

Members.

Captain R. C. Fairbank
R.C.A.P.C. Att. HQ 1 Cdn. Corps

Captain B. W. Ingram
1 Cdn. Corps & Army Troops Sub. Parks R.C.O.C.

Capt. G. M. Graham, A.D.J.A. 1 Cdn. Corps, Judge Advocate.

Trial of* D 21078 L/Cpl. David Forsyth Riddell
No. 2 Coy. Sigs. 1 Cdn Corps.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. W. S. Smith 1 Cdn. Corps Sigs.

Counsel‡ or defending officer† Lieut. M. J. Friedman 33 Cdn. Corps Troops Coy. R.C.A.S.C.

At 1915 ~~o'clock~~ hours the Trial commences. Due to service exigencies (R.P.6.1) Lt. Graham Capt. A.D.J.A.

The order convening the Court is read, and is marked A1, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q6276. WLW 10620-78. 25,000 sets. 1-43. K. & H., Ltd. G657/11. Forms A 9/25.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Lt. R.A. Forrester 14th Cdn Army Field Coy R.C.E.
Lt. R.L. Gowe 32 Cdn Corps Troops Coy R.C.A.S.C.
Lt. J.F. Leatherer 44 Cdn Gen Trans Coy R.C.A.S.C.
Lt. N.W. Bunnin 1 Cdn Corps Ord Field Park R.C.O.C.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

No sir

~~The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]~~

The prosecutor proceeds to call witnesses.

First witness for prosecution.

Frank Beavis, Police Sgt. 40.
'A' Division Metro. Police.

being duly sworn, is examined by the prosecutor.

I recognize the accused. I first saw the accused on 6 Jan. 43 at about 9.55 pm & the second time in this area ~~[illegible]~~ 9 Jan. 43 at an identification parade.
At 9.55 pm 6th June I was on duty in Trafalgar Sq. I saw some bodies soldiers about 11 or 12 in number crossing the roadway from Northumberland Ave. towards the S.E. corner of the square. They were in line abreast & shouting - caused traffic proceeding from Morley's Hill across the Strand to stop suddenly. One of the remarks passed was "Your rotten country" they approached me at the S.E. corner of the square & when they had almost reached me I was almost face to face with the accused & asked them to behave

(2)

themselves & be a little quieter. This L/Cpl. said "You're asking for fucking trouble. Get out of it. Come on boys smash him up". When he said that the others came round me & as they did so the accused punched me in the chest. I at once took hold of him & told him I was taking him into custody for using insulting behaviour & assaulting me. I then received a number of blows from there around me. One of them got on my back & was holding me with his arm around my throat. In the ensuing melee the prisoner was wrenched from my grasp. On Wednesday the 9th Jan 43 in the area ~~[illegible]~~ I attended an identification parade of men of the R.C.C.S. about thirty-five in number & I immediately picked out L/Cpl. Riddell as the man referred to in my evidence.

The accused made no effort to surrender himself at any time between then & when I identified him on the 9th Jan. 43. It was due to his own & the efforts of his comrades that he was able to escape. A minute elapsed from the time I first saw them until they were close to me. I watched them closely all the way across, the accused was in the centre. During the struggle he was face to face with me. The blow was not a heavy one.

Davis: C3

Cross examined by the Defence: The date of the identification parade was probably the 4 Jan. 43 & not 8 Jan. 43. They were all in battle dress. There were two sergeants amongst them & two corporals & at least one lance corporal probably more. Just as he was pulled away from me I received a punch in the stomach. From the time I took hold of him until he escaped would be about two minutes. I identified him on the parade from what I saw of him during this time. I had hold of him with both arms directly in front of me & I was backing up at the same time & trying to dodge several blows. There may have been some soldiers on the identification parade who were in the fracas. The accused was on the right of the parade in the front rank. He was not the only L/Cpl. on parade but was the first one I came to. I was looking for a face to recognize not a lance corporal. I knew that it was a L/Cpl. who had attacked me. If other witnesses say that the accused was not in Trafalgar Sq. that evening I would say that they were committing perjury.

Questioned by the Court:

I had one man in the square when the trouble started. Later there were more. From the corner they started from to the point where I was standing was approximately 110 feet.

Re-examined by defence:

Const. Toyer arrived just at the moment the accused escaped.

Gmb

D

The prosecution is closed.

Ref. P. 40 Footnote 2 is complied with.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. Yes.

Question. Is he a witness as to character only? *Answer.* No.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

~~*Question to the accused.* Have you anything to say in your defence?~~

~~*Answer.* The accused in his defence says†~~

~~[hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First Witness for the Defence - the accused D21078 L/Cpl. Riddell, D.F. No. 2 Coy. 1 Cdn. Corps Sig's having been duly sworn states:

I was in London on 6 Jun. 43 with other members of my D.R. section to play baseball. The last game finished at 17.00 hrs. Sigmn. Garrells & myself met two girls in Hyde Park during the game we made a date to meet them at 19.00 hrs. We left the park with the rest of the team & went to C.M.F.R. sig's garage & got washed & cleaned up. From there Sigmn. Garrels & myself with other members of our ball team had supper in a restaurant. The two of us left the rest & went to Hyde Park to meet the girls we left at about 18.30 hrs. We stayed in Hyde Park with the girls until about 21.30 hrs. We then caught a bus & went to Victoria Sta. & the girls accompanied us we got there at 21.59 hrs. I was checking train times & as I did so I saw Sigmn. Conway, Sgt. Conway & Sigmn. Passfield. I waved to them & Garrells & myself went through the gate & onto the train. Sgt Ward met us at Three Bridges Sta with a truck & brought us back to billets.

I was not the L/Cpl. the police sergeant described nor was I doing any of the things he says.

Cross examined by the prosecutor:

There were about six others with me at the restaurant. There were three at my table. We told the rest of them that we were going to meet the girls. Signm. Drury & Cpl. Brooks were at the next table to us. We went directly back to Hyde Park after our meal. We went by bus & reached the park about 19.00 hrs. We did not leave the park. There were about ten soldiers of this company got into the truck at Three Bridges. The restaurant is about 3 minutes walk from the C.M.R. garage. I did not go through Trafalgar Sq. at all that evening.

Questioned by the J.A.

The identification parade was in charge of Major Peck. C.S.M. Best called me out to be a marker. I don't know how many other L/Cpls. were on the parade. The police officers had to come from the back of the parade. I moved from the right in the front rank to 2nd or 3rd from left in our rank. I think the parade was quite fair. We spent no money when we were with the girls & we did not go to a pub. I first heard of the trouble on the truck on the way back from Three Bridges. The first thing that was said was "I wonder if ~~every~~ body got away alright" I didn't see Sgt. Conway on the train. I discussed the trouble with Sgt. Conway & Cpl. McKenzie next morning. This was the first time I had seen Cpl. McKenzie since we had supper in the restaurant. I had had nothing to drink neither had Garrells. The bus we travelled on was a number 16 to Victoria. Garrells

Dd

2nd Witness for the defence - D 21077 Sigmn. Gardiello, W. R. No. 2 Reg. 1 Cdn Corps Sigs. having been duly sworn states:

I was in London on the 8 Jan 1943 with the company baseball team. After the game we went to C. M. H. Q. Garage washed up & the ate in a restaurant & went back to Hyde Park to meet two girls with whom we had made a date. We walked around for a while sat on a bench. L/Cpl. Riddell & his girl sat on another near the ball - diamond. We stayed there untill 21.30 hours & then caught a bus from Marble Arch to Victoria Stn. arriving there at about ten o'clock. I know this as I saw the station clock. We said goodbye to the girls at the station. Riddell did not leave me at any time.

Cross-examined by the prosecutor:

We met the girls at the second game of ball. I was coaching at a base. We made a date at the finish of the game. L/Cpl. Riddell & I left the ball park together. We went directly back to the garage. L/Cpl. Riddell & I went alone to the restaurant we sat alone at a table. There were other members of the team there & some D.R.'s from C.M.H.Q. We returned to Hyde Park directly by bus. We met them on the ball diamond. We did not pay for the bench. I did not lie on the grass at all. I have a watch to which I referred to be sure to catch the train. I have had the watch for a year. At 21.30 hours I said we should go for the train

Hcpl. Riddell was some way from me I could not hear what he & his girl were saying. A civilian told us what bus to get to Victoria. I checked the time at the station by the large station clock. I checked the departure board to see what time & from what platform the train left. We saw Sgt. Conway & his brother near the departure board. We got on the train immediately. There were no other sigs. personell get in my carriage. Sigmn. Johnson had a truck waiting & I got in the back of it. I did not see Sgt. Wash. I was never actually in Trafalgar Square that day. Hcpl. Riddell did not leave me at any time.

Questioned by the J.A.

Hcpl. Riddell asked me the time on several occasions. Cpl. Brooks from C.M.H.Q. was at the table behind us at the restaurant.

3rd Witness for the defence B33100 Sigmn. Parsfield A.L. of No. 2 Cy. Cdn Corps Sigs having been duly sworn states:

I was in London on 6 Jan 43 attending a best game I was in Victoria station at ten o'clock that evening. I saw the accused & Sigmn Gerrell's at that time & they waved to us. I was with Sgt. Conway & Sigmn. Conway.

Cross examined by the prosecutor:

After the game we went to C.M.H.Q. garage & then to supper. After that we visited

some pubs. I was not in the ~~[illegible]~~ Q. Nereon pub. I was not in Trafalgar Sq. itself that evening: I saw no other R.C.C.S. personell that evening until train time.

Re-examined by the defence:

I got on the train 5 or 10 minutes after I had seen the accused. We left a pub at about ten minutes to ten not far from the station.

Questioned by the J.A.

We went to several pubs & drank about five or six half pints of beer.

4th Witness for the defence B33144 Sigmn Conway J. 1 & 2 Cy. 1 Bdn. Corps Sigs. having been duly sworn states:

I was in London on the 4th Jan 43. at a baseball game. I went out afterwards with my brother & Sigmn Cassfield. We reached Victoria Stn at about ten o'clock. I saw the accused & Sigmn Carrells in the station at that time - they waved to me. We left a pub about three blocks away about a quarter to ten.

Cross examined by the prosecutor:

In fact that we left the pub at a quarter to ten in conjunction with the distance we walked to the station is what I base the time on.

D7

Questioned by the J.A.

We went to eat after the ball game. After that we went around some pubs. ~~[illegible]~~ & had about five half pints of beer, one in each pub. I first heard of the trouble from Sgt. Wortes on the train. I couldn't say whether Riddell & Gerrells were on the truck or not.

5th Witness for the Defence A34863 Cpl.

Mac Kenzie, A.M. No. 2 Coy Sigs. 1 Cdn. Corps H.Q. having been duly sworn states:

I was in London on 6 Jan. 43 at a baseball game, after that we went to C.M.H.Q. prayer & then to a restaurant to eat. We went to two pubs after & came out of the last one & walked across Trafalgar Sq. There were about twelve of us. I was in front with a L/Cpl. & on other rank. The lads were singing. At the other side of the square was a Police Sgt. who told us to stop singing. The Police sergeant took hold of the sigmn. and told him to stop singing. The lance corporal told the sergeant he didn't have to take hold of the signalman's tunic. The L/Cpl. tried to pull the police sergeant's arm away. The police sergeant tightened his hold the ~~[illegible]~~ L/Cpl pulled harder the sergeant would not let go & then the L/Cpl. hit the

police sergeant. The L/Cpl stepped back & got into the crowd. Later ~~the~~ I saw the police sergeant holding on to the L/Cpl. wrist. Two soldiers were pulling on the L/Cpl. to get him away from the police sergeant & the L/Cpl got away. This n.c.o. was not from my unit. The accused was not ~~[illegible]~~ the one ~~the~~ police sergeant had held of. I did not see the accused that evening. It was not L/Cpl. Riddell who hit the policeman but the one from CMHQ. Cross-examined by the prosecutor.

There were about seven with me when I went to eat at the restaurant. I did not see L/Cpl Riddell or Sigmn. Gerrells in the restaurant. I did not see the accused from the time we left the hall game until the identity parade. He is in the same [illegible] as me.

Questioned by the J.A.

Sigmn. Drury was not in the restaurant. I believe that Cpl. Brooks was there. There were about 5 or six of the twelve men out of this company. I only know one is a lance-corporal. There were one sergeant, two L/corporals & two signmn from M.H.Q. I did not see the sergeant during the scuffle. I saw none of our sergeants there. The crowd was big & the sergeant could have been there but I did not see him.

D9

I was busy all the time trying to stop the trouble - I could name the lance corporal and four or five of the ball team who were in the fracas. I did not see the sergeant after it was all over. I walked back with the lance corporal. I do not know the sigmn. who was with me & the lance corporal. I do know the lance-corporal & he belongs to C. M. W. Q. Sigs.

I took the 10.28 to Shoe Bridges there was one signalman with me. I was senior W.C.O. of this unit present at the scuffle & told the sergeants about it when I got back. Lieut. Smith is my section officer.

The Defence is closed.

The court calls Sergeant Conway to give evidence.

B33099 Sergt. Conway, J. of No. 2 Coy. 1 Cdn. Corps. Sigs. having been duly sworn states:

I was in London on 6 Jan. 43 to see a ball game. I had a meal with my brother & Sgmn. Parsfield at the canteen in St. Martin's In the Field. We washed at C.M.W.Q. garage before we ate. I think we left the canteen at about 19.00 hrs & went to the Grapes' a pub. in the Strand & then from there to Piccadilly & visited about five or six. The last one was close to the station. We washed the station at about 22.00 hrs. I saw L/Cpl. Riddell at the station &

D10

had been there only a few minutes before he came into view. We took a bus from Picadilly to the Victoria Stn. area. ~~[illegible]~~ Sgt. Worters & myself were the only Sergeants who went to London. I did not see Cpl. McKenzie, Signer. Drury or Ely that evening.

The defending officer makes his closing address:

The prosecution must prove beyond a reasonable doubt that the offence occurred & that the accused committed the offence. The only witness was Sgt. Beavis who parked him outside the Wednesday morning. I consider that Sgt. Beavis had made a mistake. He was having set upon & being struck & pulled at the time he says he saw the accused. The discrepancies of the defence witnesses are small. But the substance of their movements is corroborative in all cases. The basis for estimating the time of arrival at the station is normal. The accused was seen at Victoria Station at 2200 hrs. & the trouble started at Trafalgar Square at 2105 hrs. Lieut. McKenzie was an eye witness who saw a L/Cpl. assault a police Sgt. who was not the accused but someone else whom he knows.

Guilty

The prosecuting officer says:

The police-sergeant's evidence was
steadfast in spite of gruelling cross-examination.
During cross-examinations of the defence
many discrepancies appeared. It is only
a few minutes by cab from Trafalgar
Square to Victoria Station.

Summary of Evidence in the case of D 21078
L/Cpl Riddell BF, No 2 Coy. Sig 1 Cdn Corps.

The commanding Officer directs that the evidence shall be taken on oath this 9th day of June 43

First Witness

Police Sgt 40 Frank Denis, "A" Division of Metropolitan Police having been duly sworn states.

At about 1955 hrs on 6 June 43 I was on duty at Trafalgar Square when I saw 11 or 12 Canadian soldiers crossing the roadway from Northumberland Ave towards the South East corner of the Square. They were strung out in line abreast, shouting and caused oncoming traffic from Morley's Hill to stop. Amongst the things shouted was "Your rotten country" apparently to a bus driver whose bus had been stopped. They continued over towards me & when they reached the corner I stepped in front of them & asked them as they were in uniform to behave themselves & keep a little quieter. L/Cpl Riddell thrust himself toward me & said "You're asking me for fucking trouble Come on boys smash him up". With that they

all came round me and L Cpl Riddell then half punched me in the chest. I at once caught on to him + told him that I was arresting him for using insulting behaviour + assaulting me. The others got around me and I received a rain of blows from various directions. Sigma Drury (afterwards recognized) climbed on my back with his arm around my neck. By his efforts + others I was finally forced to let go of Riddell. To-day I attended an identification parade and recognized D 21078 L/Cpl Riddell D.F.

Frank Beaver B4 [illegible]

Q. How do you come to recognize me.
A. By your features which I had plainly before me for several minutes.
Q. At what time was I last seen at the scene.
A. The exact time I cannot say but approx 1000 o'clock at night.
Q. Approx how many other NCO's did you see
A. There were 2 Sgts. 1 Cpl + 1 L/Cpl of which I am definitely sure.

Q. The accused has no further questions to ask the witness.

The accused was cautioned as follows in accordance with Rules of Procedure 4 E.
"Do you wish to make any statement or give evidence on oath; you are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or call any witnesses for the defense.

I certify that the foregoing summary of evidence consisting of 2 pages was taken down me in writing in the presence of the accused and rules of procedure 4 C D E & F have been complied with

W. S. Smith
Capt.
Adjt. Sigs 1 Can Coups.

In the Field
9 Jun 43.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused D 21078 L/Cpl David Forsyth Riddell of No. 2 Coy., 1 Cdn. Corps Sigs. is Not Guilty of all charges.

Accused so advised in open Court Gmt

In the Field
15 Jan. 43

[signature]

President
G M Graham Capt
Ga

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

Gmt

Summary of evidence in the case of D-21078 LCpl Riddell, D.F, No.2 Coy Sigs 1 Cdn Corps. The Commanding Officer directs that the evidence be taken on oath this 9th day of June 1943.

FIRST WITNESS

Police Sgt 40 - Frank Beavis, "A" Division of Metropolitan Police, having been duly sworn states: -

At about 9.55 pm on 6 Jun 43, I was on duty at Trafalgar Square when I saw 11 or 12 Canadian soldiers crossing the roadway from Northumberland Ave., towards the south-east corner of the Square. They were strung out in line abreast, shouting and caused oncoming traffic from Morley's Hill to stop. Amongst the things they shouted was "Your rotten country" apparently to a bus driver whose bus had been stopped. They continued over towards me and when they reached the corner I stepped in front of them and asked them as they were in uniform, to behave themselves and keep a little quieter. LCPL Riddell thrust himself toward me and said "You're asking for fucking trouble, come on boys, smash him up". With that they all came round me and LCpl Riddell then half punched me in the chest. I at once caught on to him and told him that I was arresting him for using insulting language and assaulting me. The others got around me and I received a rain of blows from various directions. Sigmn Drury (afterwards recognized) climbed on my back with his arms around my neck. By his efforts and others I was finally forced to let go of Riddell. Today I attended an identification parade and recognized D-21078 LCpl Riddell, D.F.

(Sgd) Frank Beavis PS 40 "A" Div

Q - How do you come to recognize me?
A - By your features which I had plainly before me for several minutes.
Q - At what time was I last seen at the scene?
A - The exact time xxx I cannot say, but approx 1000 o'clock at night.
Q - Approx how many other NCOs did you see?
A - There were 2 Sgts, 1 Cpl and 1 LCpl of which I am definitely sure.

The accused has no further questions to ask the witness.

The accused was cautioned as follows in accordance with Rules of Procedure 4 E: - "Do you wish to make any statement or give evidence on oath; you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused declines to make any statement or call any witnesses for the defence.

I certify that the foregoing summary of evidence, consisting of one page was taken down by me in writing in the presence of the accused and rules of procedure 4 C, D, E, and F, have been complied with.

W.S. Smith

In the field,
9 Jun 43.

(W.S. Smith) Capt.,
Sigs 1 Cdn Corps.

COPY

RR-98

"A"

(Sgd) G. Gibb, Major

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

(Sgd) G.M.Graham Capt J.A.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 11th day of June, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Corps R.C.A.M.C., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~;

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

*~~I am unable to appoint~~ ~~—~~

*~~(a) Three Officers to form the Court;~~

*~~(b) A Field Officer as President;~~

~~for the following reasons, namely—~~

Proceedings Reviewed (sgd) A.E. Hall, Major for Reviewing Officer (J.A.G.) C.M.H.Q. 22 Jun 43

Judge Advocate: Capt G.M. Graham, A.D.J.A. 1 Cdn Corps

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	G. Gibb	47 Cdn Gen Tpt Coy, RCASC.

Members.

Rank.	Name.	Regiment.
Captain	P.E. Fairbank	RCAPC att HQ 1 Cdn Corps
A Captain to be detailed by C.C. 1 Cdn Corps Grd Pd Pk, RCOC.		
Captain	B.W. Ingram	1 Cdn Corps & Army Tps Sub-Park R.C.O.C.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

**Signed* E.A. McCusker.
(E.A.McCusker) Brigadier
Commanding D.D.M.S. 1 Cdn Corps
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-21078 L/Cpl David Forsyth RIDDELL No 2 Coy, Sigs 1 Cdn Corps	First Charge Section 41 Army Act	Not Guilty	Not Guilty	
	Second Charge Section 22 Army Act	Not Guilty	Not Guilty	
	Third Charge Section 41 Army Act	Not Guilty	Not Guilty	
	Fourth Charge (Alternative to Third Charge) Section 40 Army Act	Not Guilty	Not Guilty	
	(As per charge sheet attached)		In the Field. 16 Jun. 43 (Sgd) G. Gibb Major (Sgd) G.M. Graham Capt J.A.	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No sir (Sgd) G. Gibb, Major

(Signed) E.A. McCusker. (Signed) G.M. Graham, Capt J.A.
(E.A.McCusker) Brigadier
Commanding D.D.M.S. 1 Cdn Corps
Commanding Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of Jun 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*3. ~~The Interpreter~~
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable. G.O.

Signed this 16th day of June 1943.

(Sgd) G. Gibb, Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 782 M.M.L. 1929. I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension. *(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23179) W. 4417/8/43 50,000 1/43 A.& E.W. Ltd. Gp. 679

"B2"

COPY

(Sgd) G. Gibb, Major

CHARGE SHEET

(Sgd)C.M. Graham, Capt J.A.

The accused, D-21078 LCpl David Forsyth Riddell, No. 2 Coy, Sigs 1 Cdn Corps, a soldier of the Canadian Army Overseas, is charged with, when on active service: -

FIRST CHARGE
Sec 41
Army Act

Committing a civil offence, that is to say, assaulting a civilian police officer in the execution of his duty

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, did assault Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, by striking him on the chest, when the said Frank Beavis was in the execution of his duty in attempting to quell a disturbance in or near said Trafalgar Square.

SECOND CHARGE
Sec 22
Army Act

When in arrest escaping

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, after being placed in arrest by Frank Beavis Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, escaped

THIRD CHARGE
Sec 41
Army Act

Committing a civil offence, that is to say, using threatening words, whereby a breach of the peace might be occasioned

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, did say to Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, "You're asking for fucking trouble, get out of it. Come on boys, smash him up", or words to that effect.

FOURTH CHARGE
Sec 40
Army Act
(Alternative to Third Charge)

Conduct to the prejudice of good order and military discipline

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, did use threatening language to Frank Beavis Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, by saying "You're asking for fucking trouble, get out of it. Come on boys, smash him up", or words to that effect.

(Sgd) A.E. Wrinch

(A.E. Wrinch) Lt-Col.,
Comd Sigs 1 Cdn Corps.

In the field,
10 Jun 43.

To be tried by Field General Court-Martial

(Sgd) E.A. McCusker.
(E.A.McCusker) Brigadier
D.D.M.S. 1 Cdn Corps

FIELD,
11 JUN 43

"X"

COPY

(Sgd) G. Gibb, Major
G.M. Graham, Capt.
J.A.

MEDICAL CERTIFICATE (K.R. (Can) 557)

I certify that I have this morning examined No. D-21078 A L Cpl Riddell, D.F. of Sigs 1 Cdn Corps and, in my opinion, he is fit to undergo trial by Court-Martial.

Station Field

Date 16 Jun 43

(Sgd) G.C. Bowes Capt
~~(Hr.S.-Jamesen)~~ Capt,
R.C.A.M.C.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at the Field

on the 18th day of June 1943 by order of
G.M.G.

Brigadier E.A. McCusker

Commanding D.D.M.S. 1 Cdn Corps

dated the 11th day of June 1943

President.

Major G. Gibb
#47 Cdn Gen Tpt Coy R.C.A.S.C.

Members.

Captain F.E. Fairbank
R.C.A.P.C. Att H.Q. 1 Cdn Corps

Captain B.W. Ingram
1 Cdn Corps & Army Troops Sub-Park R.C.O.C.

Capt G.M. Graham, A.D.J.A.
1 Cdn Corps , ~~Judge-Advocate~~
G.G.

Trial of*
D-21079 L/Cpl. David Forsyth Riddell
No. 2. Coy., Sigs. 1 Cdn Corps.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~
G.G. ~~to serve owing to~~
G.G. ~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt W.S. Smith 1 Cdn Corps Sigs.

Counsel‡ or defending officer† Lieut M.I. Friedman
Hours 33 Cdn Corps Troops Coy
At 19.15 ~~o'clock~~ the Trial commences. R.C.A.S.C.
Due to Service exigencies (R.P. 67) G.M. Graham
The order convening the Court is read, and is marked "A" Capt.,
signed by the President, and attached to the proceedings. J.A.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4276. W4.W.(6650/3)B. 35,000 pds. 1/43. K. & S., Ltd. (4427/1). Forms A 9/5.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Lt R.A. Forrester - 14th Cdn Army Field Coy R.C.E.S.S.
Lt R.L. Gowe - 32 Cdn Corps Troops Coy. R.C.A.S.C.
Lt J.F. Letheren - 44 Cdn Gen Trans. Coy. R.C.A.S.C.
Lt N.W. Bunnin - 1 Cdn Corps Grd. Field Park R.C.O.C.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 86 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

C.G. ~~The accused having pleaded Guilty to ---------- charge -, the provisions of Rule of Procedure 35 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No sir

~~--The prosecutor makes an opening address. Hands in a written address which is read, marked ----------, signed by the President, and attached to the proceedings.~~ G.G.

The prosecutor proceeds to call witnesses.

First witness for prosecution. Frank Beavis, Police Sgt. 40. 'A' Division Metro. Police.

being duly sworn, is examined by the prosecutor.

I recognize the accused. I first saw the accused on 6 Jun 43 in this area G.G. at about 9.55 p.m. and the second time at ~~Highbury Manor~~, 8 Jun 43 at an identification parade. At 9.55 p.m. 6th June I was on duty In Trafalgar Sq. I saw some Can. soldiers about 11 or 12 in number crossing the roadway from Northumberland Ave. towards the S.E. corner of the square. They were in line abreast and shouting and caused traffic proceeding from Morley's Hill across the Strand to stop suddenly. One of the remarks passed was "Your rotten country". They approached me at the S.E. corner of the square and when they had almost reached me I was almost face to face with the accused and I asked them to behave themselves and be a

GMG.

little quieter. This L/Cpl said "You're asking for fucking trouble. Get out of it. Come on boys smash him up". When he said that the others came round me and as they did so the accused punched me in the chest. I at once took hold of him and told him I was taking him into custody for using insulting behaviour and assaulting me. I then received a number of blows from those around me. One of them got on my back and was holding me with his arm around my throat. In the ensuing melee the prisoner was wrenched from my grasp. On Wednesday the G.C. 9 Jun 43 in this area of Highbury Manor I attended an identification parade of men of the H.G.C.S. about thirty-five in number and I immediately picked out L/Cpl Riddell as the man referred to in my evidence.

The accused made no effort to surrender himself at anytime between then and when I identified him on the G.C. 9 Jun 43. It was due to his own and the efforts of his comrades that he was able to escape. A minute elapsed from the time I first saw them until they were close to me. I watched them closely all the way across, the accused was in the centre. During the struggle he was face to face with me. The blow was not a heavy one.

COPY

C3

Beavis

Cross-examined by the Defence: The date of the identification parade was probably the 9 Jun 43 and not 8 Jun 43. They were all in battledress. There were two sergeants amongst them and two corporals and at least one Lance/Corporal probably more. Just as he was pulled away from me I received a punch in the stomach. From the time I took hold of him until he escaped would be about two minutes. I identified him on the parade from what I saw of him during this time. I had hold of him with both arms directly in front of me and I was backing up at the same time and trying to dodge several blows. There may have been some soldiers on the identification parade who were in the fracas. The accused was on the right of the parade in the front rank. He was not the only L/Cpl on parade but was the first one I came to. I was looking for a face to recognize not a lance corporal. I knew that it was a L/Cpl. who had attacked me. If other witnesses say that the accused was not in Trafalgar Sq. that evening I would say that they were committing perjury.

Questioned by the court:

I had one man in the Square when the trouble started. Later there were more. From the corner they started from to the point where I was standing was approximately 210 feet.

Re-examined by defence:

Const. Toger arrived just at the moment the accused escaped.

CMG.

COPY

D

The prosecution is closed.

H. of P.40 Footnote 2 is complied with.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness ?

Answer. Yes.

Question. Do you intend to call any other witness in your defence ?

Answer. Yes.

Question. Is he a witness as to character only ? *Answer.* No.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. ~~Have you anything to say in your defence ?~~

D.G. *Answer.* ~~The accused in his defence says†~~

~~[hands in a written address which is read, marked , signed by the President and attached to the proceedings.]~~

Instructions.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D.G.

COPY

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First Witness for the Defence - the accused

D-21078 L/Cpl. Riddell, D.F. No. 2 Coy. 1 Cdn Corps Sigs having been duly sworn states:

I was in London on 6 Jun 43 with the members of my D.R. section to play baseball. The last game finished at 17.00 hrs. Sigmn. Carrels and myself met two girls in Hyde Park during the game we made a date to meet them at 19.00 hrs. We left the park with the rest of the team and went to R.M.C.S. sigs garage and got washed and cleaned up. From there Sigmn. Carrels and myself with other members of our ball team had supper in a restaurant. The two of us left the rest and went to Hyde Park to meet the girls we left at about 18.30 hrs. We stayed in Hyde Park with the girls until about 21.30 hrs. We then caught a bus and went to Victoria Stn. and the girls accompanied us we got there at 21.59 hrs. I was checking train times and as I did so I saw Sigmn. Conway, Sgt. Conway and Sigmn. Passfield. I waved to them and Carrells and myself went through the gate and onto the train. Sgt Ward met us at Three Bridges Stn with a truck and brought us back to billets.

I was not the L/Cpl. the police sergeant described nor was I doing any of the things he says.

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D5

Cross-examined by the prosecutor:

There were about six others with me at the restaurant. There were three at my table. We told the rest of them that we were going to meet the girls. Sigmn. Drury and Cpl. Brooks were at the next table to us. We went directly back to Hyde Park after our meal. We went by bus and reached the park about 19.00 hrs. We did not leave the park. There were about ten soldiers of this company got into the truck at Three Bridges. The restaurant is about 5 minutes walk from the C.M.H.Q. garage. I did not go through Trafalgar Sq. at all that evening.

Questioned by the J.A.

As The identification parade was in charge of Major Peck. C.S.M. Best called me out to be a marker. I don't know how many other L/Cpls. were on the parade. The police officers had to come from the back of the parade. I moved from the right in the front rank to 2nd or 3rd from left in rear rank. I think the parade was quite fair. We spent no money when we were with the girls and we did not go to a pub.

I first heard of the trouble on the truck on the way back from Three Bridges. The first thing that was said was "I wonder if everybody got away allright" I didn't see Sgt. Conway on the train. I discussed the trouble with Sgt Conway and Cpl. McKenzie next morning. This was the first time I had seen Cpl. McKenzie since we had supper in the restaurant. I had had nothing to drink neither had Garrells. The bus we travelled on was a number 16 to Victoria.

GMO.

COPY

Beavis

Cross-examined by the Defence: The date of the identification parade was probably the 9 Jun 43 and not 8 Jun 43. They were all in battledress. There were two sergeants amongst them and two corporals and at least one Lance/Corporal probably more. Just as he was pulled away from me I received a punch in the stomach. From the time I took hold of him until he escaped would be about two minutes. I identified him on the parade from what I saw of him during this time. I had hold of him with both arms directly in front of me and I was backing up at the same time and trying to dodge several blows. There may have been some soldiers on the identification parade who were in the fracas. The accused was on the right of the parade in the front rank. He was not the only L/Cpl on parade but was the first one I came to. I was looking for a face to recognize not a lance corporal. I knew that it was a L/Cpl. who had attacked me. If other witnesses say that the accused was not in Trafalgar Sq. that evening I would say that they were committing perjury.

Questioned by the court:

I had one man in the Square when the trouble started. Later there were more. From the corner they started from to the point where I was standing was approximately 110 feet.

Re-examined by defence:

Const. Toger arrived just at the moment the accused escaped.

UMG.

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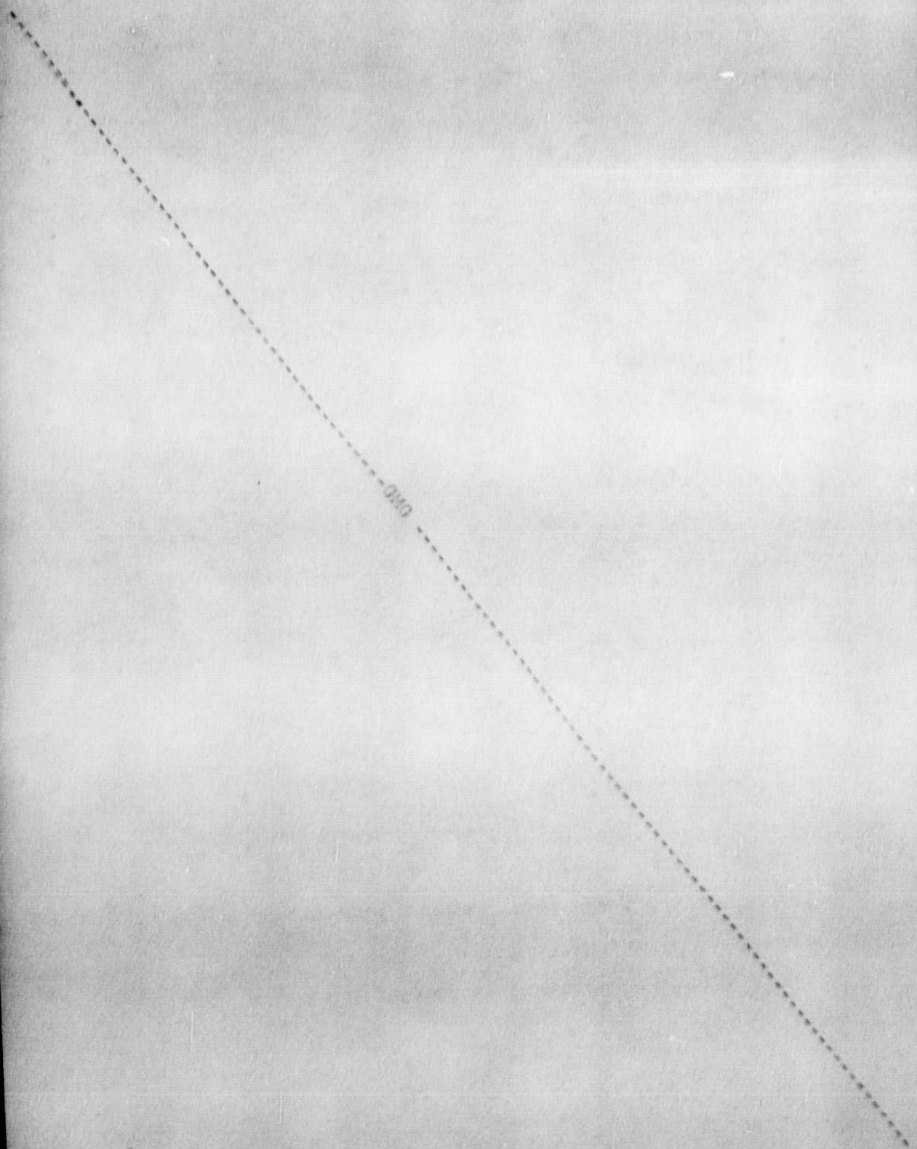

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D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First Witness for the Defence - the accused

D-21078 L/Cpl. Riddell, D.F. No. 2 Coy. 1 Cdn Corps Sigs having been duly sworn states:

I was in London on 6 Jun 43 with the members of my D.R. section to play baseball. The last game finished at 17.00 hrs. Signn. Carrels and myself met two girls in Hyde Park during the game we made a date to meet them at 19.00 hrs. We left the park with the rest of the team and went to 2.W.H.Q. sigs garage and got washed and cleaned up. From there Signn. Carrels and myself with other members of our ball team had supper in a restaurant. The two of us left the rest and went to Hyde Park to meet the girls we left at about 18.30 hrs. We stayed in Hyde Park with the girls until about 21.30 hrs. We then caught a bus and went to Victoria Stn. and the girls accompanied us we got there at 21.59 hrs. I was checking train times and as I did so I saw Signn. Conway, Sgt. Conway and Signn. Passfield, I waved to them and Carrells and myself went through the gate and onto the train. Sgt Ward met us at Three Bridges Stn with a truck and brought us back to billets.

I was not the L/Cpl. the police sergeant described nor was I doing any of the things he says.

COPY

D

The prosecution is closed.

R. of P.40 Footnote 2 is complied with.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. Yes.

Question. Is he a witness as to character only? *Answer.* No.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

~~*Question to the accused.* ---- Have you anything to say in your defence?~~

~~*Answer* ---------- The accused in his defence says:~~

~~[hands in a written address which is read, marked~~

~~- signed by the President and attached to the proceedings.]~~

O.C.

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

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D4

2nd Witness for the defence - # D-21077 Sigmn Garrells, W.R. No. 2 Coy. 1 Cdn Corps Sigs. having been duly sworn states:

I was in London on the 6 Jun 1943 with the company baseball team. After the game we went to C.M.H.Q. Garage washed up and the ate in a restaurant and went back to Hyde Park to meet two girls with whom we had made a date. We walked around for a while, sat on a bench. Cpl Riddell and his girl say on another near the ball diamond. We stayed there untill 2130 hours and then caught a bus from Marble Arch to Victoria Stn. arriving there at about ten oclock. I know this as I saw the station clock. We said goodbye to the girls at the station. Riddell did not leave me at any time.

Cross-examined by the prosecution:

We met the girls at the second game of ball. I was coaching at a base. We made a date at the finish of the game. L/Cpl. Riddell and I left the ball park together. We went directly back to the garage. L/Cpl. Riddell and I went alone to the restaurant we sat alone at a table. There were other members of the team there and some D.H's. from C.M.H.Q. We returned to Hyde Park directly by bus. We met them on the ball diamond. We did not pay for the bench. I did not lie on the grass at all. I have a watch to which I referred to be sure to catch the train. I have had the watch for a year. At 21.30 hours I said we should go for the train.

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D3

Cross-examined by the prosecutor:

There were about six others with me at the restaurant. There were three at my table. We told the rest of them that we were going to meet the girls. Sigmn. Drury and Cpl. Brooks were at the next table to us. We went directly back to Hyde Park after our meal. We went by bus and reached the park about 19.00 hrs. We did not leave the park. There were about ten soldiers of this company got into the truck at Three Bridges. The restaurant is about 3 minutes walk from the G.M.R.A. garage. I did not go through Trafalgar Sq. at all that evening.

Questioned by the J.A.

At The identification parade was in charge of Major Peck. C.S.M. Best called me out to be a marker. I don't know how many other L/Cpls. were on the parade. The police officers had to come from the back of the parade. I moved from the right in the front rank to 2nd or 3rd from left in rear rank. I think the parade was quite fair. We spent no money when we were with the girls and we did not go to a pub.

I first heard of the trouble on the truck on the way back from Three Bridges. The first thing that was said was "I wonder if everybody got away allright" I didn't see Sgt. Conway on the train. I discussed the trouble with Sgt Conway and Cpl. McKenzie next morning. This was the first time I had seen Cpl. McKenzie since we had supper in the restaurant. I had had nothing to drink neither had Garrells. The bus we travelled on was a number 16 to Victoria.

CMM.

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D5

L/Cpl Riddell was some way from me. I could not hear what he and his girl were saying. A civilian told us what bus to get to Victoria. I checked the time at the station by the large station clock. I checked the departure board to see what time and from what platform the train left. We saw Sgt. Conway and his brother near the departure board. We got on the train immediately. There were no other sigs. personnel get in my carriage. Signn. Johnson had a truck waiting and I got in the back of it. I did not see Sgt. Ward. I was never actually in Trafalgar Square that day. L/Cpl. Riddell did not leave me at any time.

Questioned by the J.A.

L/Cpl. Riddell asked me the time on several occasions. Cpl. Brooks from C.M.H.Q. was at the table behind us at the restaurant.

3rd Witness for the defence B23100 Signn Passfield, A.L. of No. 2 Coy. 1 Can Corps Sigs having been duly sworn states:

I was in London on 6 Jun 43 attending a ball game I was in Victoria Station at ten o'clock that evening. I saw the accused and Signn Carrells at that time and they waved to us. I was with Sgt. Conway and Signn. Conway.

Crossexamined by the prosecution:

After the game we went to C.M.H.Q. garage and then to supper. After that we visited

GNG

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D6.

some pubs. I was not in the ~~pub where~~ G.G. Nereon pub. I was not in Trafalgar Sq itself that evening. I saw no other R.C.C.S. personell that evening until train time.

Re-examined by the defence:

I got on the train 5 or 10 minutes after I had seen the accused. We left a pub at about ten minutes to ten not far from the station.

Questioned by the J.A.

We went to several pubs and drank about five or six half pints of beer.

4th Witness for the defence B22144 Signm Conway J

No. 2 Coy. 1 Cdn Corps Sigs having been duly sworn states:

I was in London on the 6 Jun 43 at a baseball game. I went out afterwards with my brother and Signm Rossfield. We reached Victoria Stn at about ten o'clock. I saw the accused and Signm Garrells in the station at that time. They waved to me. We left a pub about three blocks away about a quarter to ten.

Cross examined by the prosecution:

The fact that we left the pub at a quarter to ten in conjunction with the distance we walked to the station is what I base the time on.

GMC

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D7

Questioned by the J.A.

We went to eat after the ball game. After that we went around some pubs. We and had about five half G.G. pints of beer, one in each pub. I first heard of the trouble from Sgt. Worters on the train. I couldn't say whether Riddell and Carrells were on the truck or not.

5th Witness for the Defence A-34867 Cpl. MacKenzie, A.M. No. 2 Coy Sigs. 1 Cdn Corps H.Q. having been duly sworn states :

I was in London on 6 Jun 43 at a baseball game, after that we went to C.M.H.Q. Garage and then to a restaurant to eat. We went to two pubs after and came out of the last one and walked across Trafalgar Sq. There were about twelve of us. I was in front with a L/Cpl. and an other rank. The lads were singing. At the other side of the square was a Police Sgt. who told us to stop singing. The Police sergeant took hold of the signm. and told him to stop singing. The lance corporal told the sergeant he didn't have to take hold of the signalman's tunic. The L/cpl. tried to pull the police sergeant's arm away. The police sergeant tightened his hold the signalman L/Cpl pulled harder the sergeant would not let go and then the L/Cpl. hit the

CMG.

COPY

police sergeant. The L/Cpl stepped back and got into the crowd. Later on I saw the police sergeant holding on to the L/Cpls. wrists. Two soldiers were pulling on the L/Cpl. to get him away from the police sergeant and the L/Cpl got away. This M.P.C.C. was not from my unit. The accused was not the-b-sp the one the police sergeant had hold of. I did not see the accused that evening. It was not L/Cpl. Riddell who hit the policeman but the one from C.M.H.Q.

Cross-examined by the prosecution;

There were about seven with me when I went to eat at the restaurant. I did not see L/Cpl Riddell or Sigmn. Darrells in the restaurant. I did not see the accused from the time we left the hall dance until the identity parade. He is in the same billet as me.

Questioned by the J.A.

Sigmn. Drury was not in the restaurant. I believe that Cpl. Brooks was there. There were about 5 six of the twelve men not of this company. I only one he is a lance-corporal. There were one sergeant, corporals and two sigmn from C.M.H.Q. I did not sergeant during the scuffle. I saw none of our there. The crowd was big and the sergeant could there but I did not see him.

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D7

Questioned by the J.A.

We went to eat after the ball game. After that we went around some pubs. We and had about five half pints of beer, one in each pub. I first heard of the trouble from Sgt. Werters on the train. I couldn't say whether Riddell and Garrells were on the truck or not.

8th Witness for the Defence A-34863 Cpl. MacKenzie, A.M. No. 2 Coy Sigs. 1 Cdn Corps H.Q. having been duly sworn states :

I was in London on 6 Jun 43 at a baseball game, after that we went to C.M.H.Q. Garage and then to a restaurant to eat. We went to two pubs after and came out of the last one and walked across Trafalger Sq. There were about twelve of us. I was in front with a L/Cpl. and an other rank. The lads were singing. At the other side of the square was a Police Sgt. who told us to stop singing. The Police sergeant took hold of the signm. and told him to stop singing. The lance corporal told the sergeant he didn't have to take hold of the signalman's tunic. The l/cpl. tried to pull the police sergeant's arm away. The police sergeant tightened his hold the signalman L/Cpl pulled harder the sergeant would not let go and then the l/Cpl. hit the

CMG.

police sergeant. The 1/Cpl stepped back and got into the crowd. Later we I saw the police sergeant holding on to the 1/Cpls. wrists. Two soldiers were pulling on the L/Cpl. to get him away from the police sergeant and the L/Cpl got away. This N.C.O. was not from my unit. G.G. The accused was not ~~the L-Sy~~ the one the police sergeant had hold of. I did not see the accused that evening. It was not L/Cpl. Riddell who hit the policeman but the one from G.H.Q.

Cross-examined by the prosecution:

There were about seven with me when I went to eat at the restaurant. I did not see L/Cpl Riddell or Signn. Garrells in the restaurant. I did not see the accused from the time we left the ball game until the identity parade. He is in the same billet as me.

Questioned by the J.A.

Signn. Drury was not in the restaurant. I believe that Cpl. Brooks was there. There were about 5 or six of the twelve men not of this company. I only know one he is a lance-corporal. There were one sergeant, two L/corporals and two signn from G.H.Q. I did not see the sergeant during the scuffle. I saw none of our sergeants there. The crowd was big and the sergeant could have been there but I did not see him.

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D9

I was busy all the time trying to stop the trouble - I could name the lance-corporal and four or five of the ball team who were in the fracas. I did not see the sergeant after it was all over. I walked back with the lance corporal. I do not know the signm. who was with me and the lance corporal. I do know the lance-corporal and he belongs to C.M.H.Q. Sigs.

I took the 10.28 to Three Bridges there was one signalman with me. I was senior N.C.O. of this unit present at the scuffle and told the 4 sergeants about it when I got back. Lieut. Smith is my section officer.

The Defence is closed.

The court calls Sergeant Conway to give evidence.

<u>933099 Sergt. Conway, J.</u> of No. 2 Coy. I Can Corps Sigs. having been duly sworn states.

I was in London on 6 Jun. 43 to see a ball game. I had a meal with my brother and Signm. Passfield at the canteen in St. Martin's in the Field. We washed at C.M.H.Q. garage before we ate. I think we left the canteen at about 19.30 hrs and went to the "Grapes" a pub. in the Strand and then from there to Piccadilly and visited about five or six. The last one was close to the station. We reached the station at about 22.00 hrs. I saw L/Cpl. Riddell at the station and

GMG

COPY

D10

had been there only a few minutes before he came into view. We took a bus from Piccadilly to the Victoria Stn. area. ~~There was only~~ Sgt. Worters and myself were the only sergeants who went to London. I did not see Cpl. McKenzie, Sigmn. Drury or Kly that evening.

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The defending officer makes his closing address.

The prosecution must prove belong a reasonable doubt that the offences occurred and that the accused committed the offences. His only witness was Sgt. Beavis who picked him out on the Wednesday morning. I consider that Sgt. Beavis had made a mistake. He was being set upon and being struck and pulled at the time he says he saw the accused. The discrepancies of the defence witnesses are small, but the substance of their movements is ---- D.C. corroborative in all cases. The basis for estimating the time of arrival at the station is normal. The accused was seen at Victoria Station at 22.00 hrs. and the trouble started at Trafalgar Square at 21.55 hrs. Cpl. Mc"enzie was an eye witness who saw a L/Cpl. assault a police Sgt. who was not the accused but someone else whom he knows.

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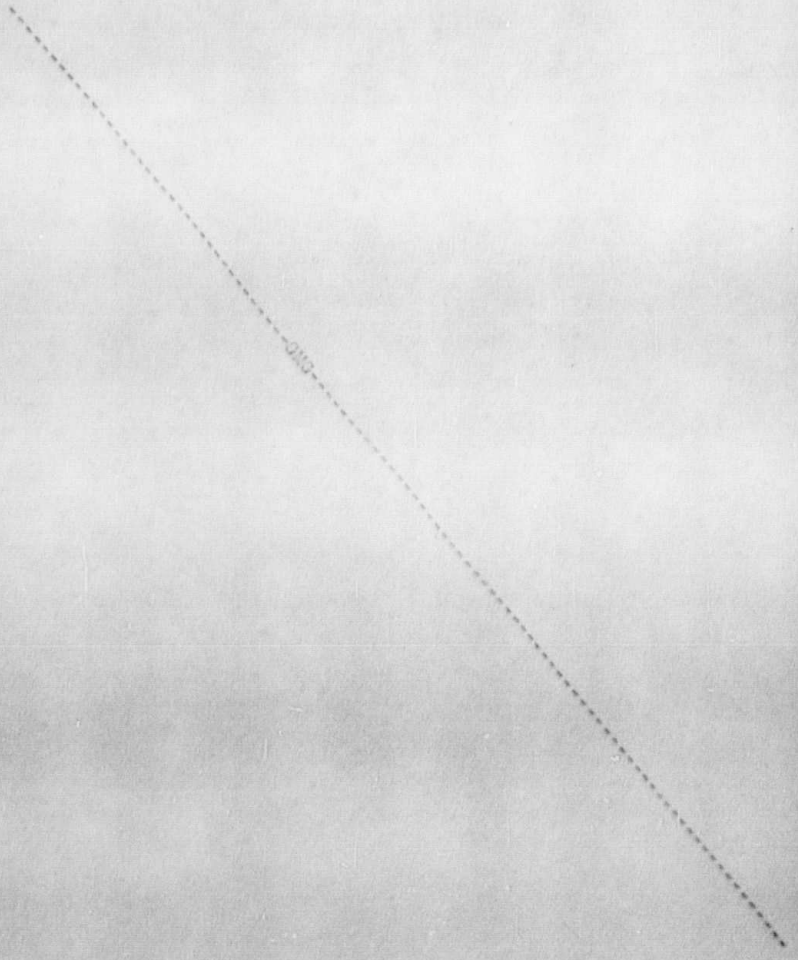
The prosecuting officer says:

The police sergeant's evidence was steadfast in spite of gruelling cross-examination. During cross-examinations of the defence many discrepancies appeared. It is only a few minutes by cab from Trafalgar Square to Victoria Station.



COPY

Summary of Evidence in the case of D21078 LCpl Riddell D F, No 2 Coy. Sigs 1 Cdn Corps.

The commanding officer directs that the evidence shall be taken on oath this 9th day of June 43

First Witness

Police Sgt 40 Frank Bevis, "A" Division of Metropolitan Police having been duly sworn states.

At about .9.55 pm on 6 June 43 I was on duty at Trafalgar Square when I saw 11 or 12 Canadian soldiers crossing the roadway from Northumberland Ave towards the South East corner of the Square. They were strung out in line abreast, shouting and caused oncoming traffic from Morley's Hill to stop. Amongst the things shouted was "Your rotten country" apparently to a bus driver whose bus had been stopped. They continued over towards me and when they reached the corner I stepped in front of them and asked them as they were in uniform to behave themselves and keep a little quieter. L/Cpl Riddell thrust himself toward me and said "You're asking me for fucking trouble Come on boys smash him up". With that they

COPY

2

all came round me and LCpl Riddell then half punched me in the chest. I at once caught on to him and told him that I was arresting him for using insulting behaviour and assaulting me. The others got around me and I received a rain of blows from various directions. Signm Drury (afterwards recognized) climbed on my back with his arm around my neck. By his efforts and others I was finally forced to let go of Riddell. To-day I attended an identification parade and recognized D21078 L/Cpl Riddell D.F.

(sgd) Frank Beavis PS40A Div.

Q. How do you come to recognize me.

A. By ~~his~~ your features which I had plainly before me for several minutes.

Q. At what time was I last seen at the scene.

A. The exact time I cannot say but approx. 1000 o'clock at night.

Q. Approx how many other R.C.Ms did you see

A. There were 2 Sgts. 1 Cpl and 1 L/Cpl of which I am definitely sure.

Q. The accused has no further questions to ask the witness.

The accused was cautioned as follows in accordance with Rules of Procedure 4 E.

"Do you wish to make any statement or give evidence on oath; you are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or call any witnesses for the defense.

I certify that the foregoing summary of evidence consisting of 2 pages was taken down me in writing in the presence of the accused and rules of procedure A C D E & F have been complied with.

(Sgd) W.S. Smith

Capt.

Adjt. Sigs 1 Cdn Corps.

In the Field

9 Jun 43.

COPY

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused D21078 L/Cpl David Forsyth Riddell of No. 2 Coy., 1 Cdn Corps Sigs. is Not Guilty of all charges.

Accused so advised in open Court

GMG

In the Field
15 Jun 43

(Sgd) G.G. Gibbs
Major
President.

(Sgd) G.M. Graham Capt
J.A.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

[Instruction.—If by reason of the nature of the service of the accused on a disciplinary corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

GMG

COPY

Summary of evidence in the case of D-21078 LCpl Riddell, D.F. No. 2 Coy Sigs 1 Cdn Corps. The Commanding Officer directs that the evidence be taken on oath this 9th day of June 1943.

FIRST WITNESS

Police Sgt 40 - Frank Beavis, "A" Division of Metropolitan Police, having been duly sworn states:-

At about 9.55 pm on 6 Jun 43, I was on duty at Trafalgar Square when I saw 11 or 12 Canadian soldiers crossing the roadway from Northumberland Ave., towards the south-east corner of the Square. They were strung out in line abreast, shouting and caused oncoming traffic from Morley's Hill to stop. Amongst the things they shouted was "Your rotten country" apparently to a bus driver whose bus had been stopped. They continued over towards me and when they reached the corner I stepped in front of them and asked them as they were in uniform, to behave themselves and keep a little quieter. LCPL Riddell thrust himself toward me and said "You're asking for fucking trouble, come on boys, smash him up". With that they all came round me and LCpl Riddell then half punched me in the chest. I at once caught on to him and told him that I was arresting him for using insulting language and assaulting me. The others got around me and I received a rain of blows from various directions. Sigmn Drury (afterwards recognized) climbed on my back with his arms around my neck. By his efforts and others I was finally forced to let go of Riddell. Today I attended an identification parade and recognized D-21078 LCpl Riddell, D.F.

(Sgd) Frank Beavis PS 40 "A" Div

Q - How do you come to recognize me?
A - By your features which I had plainly before me for several minutes.
Q - At what time was I last seen at the scene?
A - The exact time ~~was~~ I cannot say, but approx 1000 o'clock at night.
Q - Approx how many other NCOs did you see?
A - There were 2 Sgts, 1 Cpl and 1 LCpl of which I am definitely sure.

The accused has no further questions to ask the witness.

The accused was cautioned as follows in accordance with Rules of Procedure 4 E: - "Do you wish to make any statement or give evidence on oath; you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused declines to make any statement or call any witnesses for the defence.

I certify that the foregoing summary of evidence, consisting of one page was taken down by me in writing in the presence of the accused and rules of procedure 4 C, D, E. and F, have been complied with.

(Sgd) W.S. Smith

(W.S. Smith) Capt.,
Sigs 1 Cdn Corps.

In the field,
9 Jun 43.

SS-148,

A-28461- Gm. David, H.T.

55-148

FIELD GENERAL COURT-MARTIAL

(CPA86 (to sect of AFA3) 40/P & S 1658 (2804))

Convened by Order of Maj Gen E L M Burns Comd 2 Cdn Div dated 7 Oct 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A28461	Gnr	Cecil Harold Isaac David		2 Cdn A/T Regt RCA

Proceedings Reviewed 31 Oct 43, G.W. Graham Capt Reviewing Officer (J.A.G.'s Branch)

PROCEEDINGS OF TRIAL.

Held at the Field (country) Italy on (date(s)) 5 Oct 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the (Unit).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~The President to accused: Do you object to as interpreter? Ans~~
~~The interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 72, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E P Thompson	Cameron C
Member	Capt	K R England	S Sask R
Member	Lieut	L G Normandin	Fus MR
Judge-Advocate	Capt	W M W Shaw	HQ 2 Cdn Div
Prosecutor	Lieut	G C Andrews	24/T Regt RCA
Defending Offr	Lieut	H F McCullough	24/T Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. ~~The accused~~ ~~before arraignment make(s) (no) (a) plea~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 182, RP 27), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in RE rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A28461 Gnr Cecil Harold Isaac David, 24/T Regt RCA

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Guilty	Guilty	C.
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn b.)

~~To undergo detention~~ ~~Imprisonment under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for 120 days.

(Sgd) W M W Shaw Judge-Advocate, if any. 5 Oct 43 Date awarded. (Sgd) E P Thompson Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. ~~MINUTE WHERE CONFIRMATION RESERVED.~~ (AA 54(3), RP 120(F), MML p 760.)

~~Date~~ ~~(Sgd)~~ ~~(Commanding)~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn b, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) E L M Burns Maj-Gen Comd 2 Cdn Div

Date 7 - OCT 1943 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr
A28461 Gnr David C.H.I.	8 Oct 43	A Bruce, Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Yes, Sir. See B2 (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form* E. *5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (they) (adheres) (adhere) to his (their) plea(s) of Guilty to the charge(s). Part I of the Schedule or amended proceedings.(2)
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B5, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive of Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 144, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*F*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and for it will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*a*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(*3*) (*b*), *RP* 45, 120(*A*). *2. AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form* B *or* C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No, Sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(i) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E2 and Ex E2 respectively.(3)
(*1. MFB* 285 *or MFB* 294. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes Sir, my letter offer (see E3 attached) (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its provisos, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-56, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2313, *MML p* 90, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A28461 Gnr. Cecil Harold Isaac David 2 Cdn Anti-Tank Regt., R.C.A., a soldier of the Canadian Army (Active) is charged with

~~FIRST CHARGE~~
~~A.A. Sec. 15 (4) WOAS breaking out of barracks~~

~~in that he~~

~~at 1800 hrs on 1 Sep 43 did~~
~~break out of barracks while~~
~~undergoing [illegible] Field Punishment~~

WMWS

~~SECOND~~ CHARGE
A.A. Sec 15 (1) WOAS Absenting himself without leave

in that he

at RADGELAND WOOD CAMP die absent himself without leave from 1800 hrs 1 Sep 43 until 2330 hrs 20 Sep 43. Time absent 19 days 5 hrs 30 minutes.

H E Murray
(H.E. Murray) Lt-Col RCA
C.O. 2 Cdn Anti-Tank Regt., RCA

23 day of Sept 43

In the Field

XXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXX

XXXXXXXXXX
XXXXXXXXXXXXXXXXX

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

E L M Burns
(E.L.M.Burns)Maj.Gen.
Comd. 2 Cdn Div.

4 Oct 43

WMWS Show Capt

FIELD GENERAL COURT-MARTIAL

CFA90 (In lieu of AFA81)
40(P&R)/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see NAML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
A28461	Gnr	Cecil Harold Isaac	DAVID	2 Adn A/T Regt, R.C.A.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~xxx~~ committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 4 Oct 43 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~xxxx

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jun 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by J.A, *if any.* (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., *if any.* RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for clemency will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 118(C), MML p 759.*)

4. The President or J.A, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL CERTIFICATE (K.R.(CAN.)557)

I certify that I have this morning examined No.A-28461 Gnr.
~~XXXXX~~ Harold Issac Davis of 2nd.Anti-Tank Reg't.and in my opinion
he is FIT TO ~~UNDERGO~~ UNDERGO trial by Court Martial.

STATION in the field
DATE 5 Oct 43.

R.H. Stewart Major
Medical Officer

B2

about 1 yr + 7 mos ago 2 was sent back to H U as Bde 2nd Lieut being under age. 2 met 2 girls both had children + both their husbands were living at the time. One of the girls had a baby which was mine + shortly after her husband died in the East. 2 made up mind to marry her. When 2 went for blood test (2 had two) the results were unsatisfactory. MO told me it could only mean one thing. Worry got the best of me. 2 went back to see the 2 girls & tell them about it. It means that if there is anything wrong with my blood all my pals 2nd in-laws with, the 2 girls + the children's health is endangered

E3

David unable to get leave to go + see the girls because all leaves were cancelled due to Harlequin scheme

W M Shaw Capt

SUMMARY OF EVIDENCE IN THE CASE OF NO. A28461

GUNNER DAVID C.H.I. 108th A.TA. BATTERY

2nd CDN. A.TK. REGIMENT R.C.A.

WITNESS NO. 1 FOR THE PROSECUTION:
G.C. Tompkins Lieutenant, Rear Party Officer 2 Cdn. A.Tk. Regt. R.C.A., being duly sworn states:

"As Rear Party Officer 2nd Cdn. A.Tk. Regiment R.C.A., on 1 September 1943 I ordered M182 Sgt. McLean T., to have Gunner David report to me at 1800 hours, 1900 hours, 2000 hours, and 2100 hours on that day. At 1800 hours Gnr. David failed to report. At approximately 1830 hours I ordered Sgt. McLean to find Gunner David. He reported to me that he could not be found in camp.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

Glenn C. Tompkins Lieut.
(G.C. Tompkins) Lieutenant
Rear Party Officer, 2nd Cdn.
A.Tk. Regt. R.C.A.

.....

WITNESS NO. 2 FOR THE PROSECUTION:
M182 Sgt. McLean T., R.H.Q. 2 Cdn. A.Tk. Regt. R.C.A., being duly sworn states:

"On the 1st September 1943 on the 1330 hour parade I ordered Gunner David that he was to report to the R.H.Q. Orderly Room at 1800 hours. At approximately 1830 hours that evening Lieutenant G.C. Tompkins informed me that Gnr. David had not reported at the Orderly Room. I went down to the tent lines and looked in his tent to see if he was there. He was not there. On calling the roll next morning at 0830 hours, he was still absent. He was absent until the morning of 10 September 1943, when the 108th A.Tk. Battery came back from Exercise Harlequin. I reported to Sgt. Johnson who was acting R.S.M., that Gunner David was absent."

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

T. McLean Sgt.
(T. McLean) Sgt.
R.H.Q. 2nd Cdn. A.Tk. Regt. RCA

.....

WITNESS NO 3 FOR THE PROSECUTION:
D6088 L/Bdr. Harkness W.R.N., being duly sworn states:

"On 20 September 1943, I was Guard Commander. Gnr. David reported in to the guard tent at 2330 hours and was placed under close arrest, and was in perfect condition."

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

W.R.N. Harkness
(W.R.N. Harkness) L/Bdr.

The accused having been duly cautioned in accordance with the Rule of Procedure 4 (E), reserves his defence.

Certified the Rule of Procedure 4 (C) (D) (E) (F) (G) have been compiled with.

Taken down by me in the presence and hearing of the accused this twenty-second day of September 1943, In The Field.

.....
(G.C. Andrews) Lieutenant
108 Gdn. A.Tk. Bty. R.C.A.

B5
WMWS

(Substitute for A.F.R. 296)
or M.F.R. 385

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

NO. A20461 NAME David, C.H.I., (Gnr.) UNIT 2 Cdn A Tk Regt RCA

AGE 19 MARRIED OR SINGLE single NO. OF DEPENDENTS Nil

DATE OF ATTESTATION 21 Feb 41

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL — MILITARY 15 HOSPITAL nil TOTAL 15

DATES OF PROMOTIONS, APPOINTMENTS, AND CONFIRMATION OF RANK, IF ANY

A/L/Bdr. 15 Dec 42, daily orders #2 CABU 319 d/24 Dec 42

A/Bdr. 5 Apr 43, daily orders #2 CABU 90 d/6 Apr 43

Reverted to Gnr. 12 Jun 43 - daily orders #2 CABU 145 d/14 Jun 43

A CERTIFIED TRUE COPY OF M.F.R. 6 MUST ACCOMPANY THIS NOTE

(Officer i/c Records)

C. Andrews Lt Unit.
108 Bty
2 A Tk Regt RCA

Dated In the Field
this 5 day of Oct 1943
(To be dated and signed as of date of trial)

E 2
W.M.W. Shaw
capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19-7-43	Gnr	from	Sec 15(1) A.A. A.W.O.S. A.W.L. 0830 hrs 19-7-43 to 2130 hrs 20-7-43 (Absent 1dy 13hrs.	L/Bdr Hill.T Sgt Meldrum	7 dys C.B.	21-7-43	Major R. Peabody	Forfeits 2 dys pay FRI 149 149.1a
Field	14-8-43	Gnr		Sec 15(1) A.A. Absenting himself without leavefrom 1830 hrs 14 Aug 43 until 2300 hrs 21 Aug 43. (Time absent 7 dys 5hrs 30min.	Sgt L.W. Seath L/Bdr Kirton R.D.	10 dys F.P.2 and forfeits 10 dys pay	23 Aug43	Lt.Col H.M. Murray	Forfeits 10 dys pay FRI 149(2) 8 dys pay FRI 149(1
Field	28-8-43	Gnr		Sec 40 A.A. W.O.A.S. Neglect to the prejidice of good order and military dicipline in that he at 1600 hrs on the 28 Aug after being duly warned by M182 Sgt McLean to parade with piquet at 1600 hrs, neglected to do so	Sgt McLean L/Bdr Rosen	7 dys F.P. and forfeits 7 dys pay FRI 149.1a	30 Aug 43	Lieut. G.C. Tompkins	Award remitted to 7 dys C.B. without forfeiture of pay in accordance with KR(CAN) 477(a)
								(H.E. Murray) Lt.Col.RCA. C.O. 2 Can Anti-Tank Regt RCA	

Certified true copy

[signature] Capt RCA

Adj. 2nd Anti-Tank Regt RCA, CAN

E2

[illegible] Capt

No. A28461 Name DAVID C.H.I. | Sqn., Battery or Company | Corps R.C.A. | Date of enlistment 22Feb41 | G.C. Badges | Service or Proficiency Pay N/A

MFM 6 (A F B 111) 30204—5-43—(53) H.Q. 1777-44-18

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 1	Dec41	Gnr	Nil	A.A.Sec 1(1)W.C.A.S. A.W.L.from Sgt Rafton 0800hrs 1 Dec41 until 1100hrs 1 Dec41 Time absent 3 hrs.	J.R. Duplicate	Forfeits 2dys pay FRI 14B.2	2 Dec41	Lt. Col - - - C.E. Gould	
Field 18	May 42	Gnr	Nil	A.A.Sec 18(1) W.C.A.S. A.W.L. from Bdr Watt 1800hrs 18 May 42 until 1030hrs 19 May 42. Time absent 16hrs 30 mins.	Bdr. Watt J.A. 1/4th Dupl.	Forfeits 2dys pay FRI 14B.2 & 2 dys C.B.	20 May 42	Major S.W. Williams	Forfeits 1dys pay FRI 14B.1a
Field 11	Nov42	Gnr	Nil	A.A. Sec 18(1)W.C.A.S. A.W.L. from 0815hrs 11 Nov42 until 0230hrs 11 Nov 42. Absent 14hrs 45 Mins.	Bdr. Miller J.A. Bdr. Winter R.	7 Dys C.B.	12 Nov42	Lt.Col. C.E. DeFrenier	Forfeits 1 dys pay FRI 14B.1a
Field 8	June 43	A/Bdr	Nil	W.C.A.S. A.W.L. from 0815hrs 8 June 43 until 0815hrs 12 June 43(Absent 4 dys. Sec 18(1) A.A.	Sgt R.D. Fryce Documentary	Reduced to rank of Gnr.	12 June 43	Lt.Col. C.E. DeFrenier	Forfeits 4 dys pay FRI 14B.1a

(P.T.O.)

COUNTER NUMBER 539289

HOUR 12.25

OPERATOR'S INITIALS RD

RELIEVING OPERATOR SG

CC-38

TPR DAVID J.J.

CC-58 A2.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

F.T. Ward Mjr
W. B. Bate Capt
Judge Advocate

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this FOURTH day of APRIL, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Army Tank Bde., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[redacted]

Proceedings Reviewed
H. H. Haugh Cpt
for Reviewing Officer
24 Apr 43

59

President.

Rank.	Name.	Regiment.
Major	F.T. WARD ~~B. A. McLeod~~	14 CDN ARMY TANK REGT. ~~2 Cdn Lt Fd Amb, RCAMC~~

Members.

Rank.	Name.	Regiment.
Capt	W. R. Hoag	1 Cdn Army Tank Bde Coy (83 Coy) RCASC
Capt	W. D. Schofield	- 1 Cdn Tank Bde Workshops

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

JUDGE ADVOCATE
Capt W. B. Bate,
A.D.J.A., 1 Cdn Corps.

*Signed R. A. Wyman
(R. A. Wyman) Brigadier,
Commanding 1 Cdn Army Tank Bde.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B60959 Tpr DAVID, James, Johnston. 11 Cdn Army Tank Regt.	FIRST CHARGE A.A. Sec 18 (4) For particulars see attached Charge Sheet.	GUILTY	GUILTY	
	SECOND CHARGE A.A. Sec 41 For particulars see attached Charge Sheet.	NOT GUILTY	GUILTY To undergo detention for six (6) months and to be put under stoppages of pay until he has made good the sum of £2.15.6 in respect of wine obtained by fraud from Day's Wine Stores Ltd. 9 Apr. 43	Finding and sentence confirmed. To be promulgated on as strong a parade as possible. I hereby [signature] BRIGADIER COMD'G 1st CAN. ARMY TANK BDE.

F. G. Ward Mjr

W. B. Bate Capt
Judge Advocate

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— no sir.

(Signed) [signature] (R. A. Wyman) Brigadier, Commanding 1 Cdn Army Tank Bde. Convening Officer (e)

(Signed) F. G. Ward Mjr ~~(B. A. McLeod) Major, 8 Cdn Lt Fd Amb, RCAMC.~~ W. B. Bate Capt Judge Advocate President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~ Judge Advocate [initials]
*(4. ~~The officers under instruction~~ [initials]

were duly sworn.

* Omit if not applicable.

Signed this 9th day of April 1943.

W. B. Bate Capt.
Judge Advocate

F. G. Ward Mjr
President of the Court Martial.
~~(B. A. McLeod) Major, 8 Cdn Lt Fd Amb, RCAMC.~~

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 579 of 1918 have been complied with.

* See footnote (b) on page 761 M.M.L. 1929.

Signed this day of 19

[signature]
President of the Court Martial.
~~(B. A. McLeod) Major, 8 Cdn Lt Fd Amb, RCAMC.~~

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 12 day of April 1943

[signature]
Confirming Officer.
(R. A. Wyman) Brigadier,
Comd., 1 Cdn Army Tank Bde.

Promulgated and extracts taken in the case of B60959 Tpr DAVID, James Johnston, 11 Cdn Army Tank Regt.

(a) (Dated) 12 Apr 43 (Signed) [signature]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2

CHARGE SHEET

The accused, B60959 Tpr James Johnston DAVID, 11th Canadian Army Tank Regiment, a soldier of the Canadian Army Overseas, is charged with, when on Active Service,

In the Field,

1st CHARGE:
Sec 18(4) A.A.

Fraudulently misapplying property belonging to a person subject to military law, in that he, on or about 10 Mar 43, sold a Darwin Portable Radio, on charge to Capt. E.F. Falle, entrusted to him in his capacity as Officers' Mess steward.

2nd CHARGE:
Sec 41 A.A.

Committing a civil offence, that is to say, forgery, in that he, in the field, on or about the 5th day of March, 1943, with intent to defraud, forged the name of Major H.R. Schell, President of the Mess Committee, Officers' Mess, 11th Cdn Army Tank Regiment, to an authority addressed to Days' Wine Stores Ltd., Brighton, Sussex, to purchase liquors for the account of the said Officers' Mess and thereby obtained from said Days' Wine Stores, Ltd., Two bottles of Sherry and one bottle of Port, to a total value of two pounds fifteen shillings and sixpence (£2-15-6)

M.P. Johnston

(M.P. Johnston) Lt. Col.,
Cmdg. 11 Cdn Army Tank Regiment.

FIELD/GFH

To be tried by F.G.C.M.

H. Williamson Staff Capt
for (R. A. Wyman)
Brigadier,
Comd., 1 Cdn Army Tank Bde.

In the Field
4 Apr 43.

MEDICAL OFFICER'S REPORT

I certify that No. B60959 Tpr. David J.J.

of 11th Cdn. A.T.R. is in a good state of health,

and fit to undergo Trial by Court martial.

J Brook Capt.
Medical Officer

RCAMC

Station Field, England.

Date 9 Apr 43.

X.
D Ward mj
W. B. Bates capt
Judge Advocate

M. F. B. 246
25M—6-41 (792)
H.Q. 1772-39 480

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held ~~at~~ in the Field

on the 9th day of April 1943 by order of

Brigadier R. A. Wiseman E.D.

Commanding 1 Eden Army Tank Bde

dated the 5th day of April 1943

President.

Major F. T. Ward 11th Eden Army Tank Regt.

Members.

Captain W.R. Hoag 1 Eden Army Tank Bde Coy (83 Coy) RCASC

Captain W.D. Schofield 1 Eden Tank Bde W/Shops RCOC.

Capt. L.R. Kate ADJA 1 Eden Corps, Judge Advocate.

Trial of* B.60959 Pte. James Johnston David. 11 Eden Army Tank Regt.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

WBR ~~The Court satisfy themselves that~~ ~~is not available~~

WBR ~~to serve owing to~~

WBR ~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut D. MacNicholl 11 Eden Army Tank Regt.

Counsel‡ or defending officer† Capt D.M. Irwin 11 Eden Army Tank Regt.

WBR At 1000 ~~hours~~ the Trial commences.

The order convening the Court is read, and is marked A2. signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).

† Here state Rank and Name, and Regiment (if any).

‡ Qualification to be stated.

B

The President, members and judge-advocate are duly sworn,

RHB ~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Guilty, sir. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

not guilty, sir. *Answer.*

RHB ~~Are you guilty or not guilty of the third charge against you, which you have heard read~~ ? *Question.*

Answer.

RHB ~~Are you guilty or not guilty of the fourth charge against you, which you have heard read ?~~ *Question.*

Answer.

The accused having pleaded Guilty to ~~the first~~ charge , the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked , signed by the President, and attached to the proceedings.)~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. Major H. R. Schedl, 11 Coln Army Tank Regt.

being duly sworn, is examined by the prosecutor.

I am P.M.C. of the Officers Mess of the 11 Coln Army Tank Regt. I recognise the accused, who was employed in the Officers Mess as a steward for which he was paid £1.0.0 a month over and above his army pay. On 9th April 43 when the accused was left in charge of the Officers Mess as the rest of the unit was on Exercise "Spartan". The mess was not open at that time, there not being sufficient officers left in the rear party to warrant it being left open. As P.M.C. I would write letters to institutions from which liquor could be purchased authorising such firms to sell to the bearer - usually the mess corporal - liquor for the Officers Mess. These letters of authority were signed by me. Business had been done with Dags Wine Stores Ltd. Brighton. The accused had been entrusted to purchase liquor in the manner mentioned when he was mess corporal, previous to Dec. 1942. Sometime after my return to the regimental area from Spartan, Cpl. Phillips presented me with a letter written to Mr Taylor of Dags Wine Stores Ltd. I produce this document (Exhibit 93) The signature is not mine: my rank is incorrectly spelled and the handwriting is not mine.

The accused had no authority to make out chitty like this one (Exhibit G). No one was authorised to purchase liquor for the mess on or about 5 Mar 43. I produce a statement of Days Wine Stores Ltd (Exhibit H) and an itemized account in connection therewith. (Exhibit I). These were given to me by Cpl. Phillips shortly after I received the authority (Exhibit G). To my knowledge the Officers' Mess has never received the 2 bottles of sherry and the bottle of port referred to in the account (Exhibit I). From 5 Mar 43 until I returned from Exercise 'Spartan' the Mess received no liquors from Days Wine Stores Ltd. The Mess has not received from Days Wine Stores Ltd any wines since Spartan said to be the wines listed on this bill (Exhibit I). The bill has not been paid or honoured by the mess.

No cross examination.

WBB. By the ~~Court~~ Judge Advocate.

No arrangement has been made by the Mess with Days Wine Stores Ltd. whereby the account of £ 2.15.6. against the Mess has been cancelled. As far as I know that firm may still have it on its books as an account receivable. I am fairly familiar with the handwriting of the accused. The word "David" in the document (Exhibit G) seems to me to be in his handwriting.

R.P. 83(B) complied with.

Second Witness for the Prosecution { Lieut. D. Mc Nichol, 11 Cdn Army Tank Regt.

Being duly sworn states,-

I was detailed by Lt-col. Johnston, O.C. 11 Cdn Army Tank Regt to take a summary of evidence in the case of the accused whom I recognise. On or about 3 Apr 43 I ~~[illegible]~~ cautioned the accused in accordance with R.P. 4(E) and asked him if he wished to give a statement or evidence under oath. This occurred at the conclusion of taking the witnesses' evidence. The accused said he desired to give evidence under oath. He made the following statement (Exhibit J). The typed statement was read to the accused. He approved of it and then signed it in my presence.

No cross examination.

R.P. 83(B) complied with.

Third Witness for the Prosecution } William Taylor, 61 St. George's Road, Brighton.

Being duly sworn is examined by the Prosecutor.

I recognise the accused. On or about 5 Mar 43 the accused came into Days Wine Stores Ltd, Brighton where I am employed as manager with a letter (Exhibit G). enclosed in the attached envelope. I had heard of Maj. Schell though I did not know him personally. The accused had been in the shop before I considered the letter (Exhibit G) to be genuine. I gave the accused 2 bottles of sherry and one of port in fulfillment of this order, of a total value of £ 2.15.6. I identify the bills (Exhibits H and I). I had no spirits so on my suggestion the accused accepted wine instead. The accused has not offered to pay me the £ 2.15.6.

Cross examined:

Purchases now are on a cash basis.

No re-examination.

By the Court:

The orderly room stamp is stamped on letters of authority I get from some units but not from this unit. The accused told me that although the unit was away there were a few left behind in Worthing.

By the Judge Advocate:

Other purchases made by the accused were paid for by him. Most of my previous dealings were by personal contacts with officers of the 11 Cdn Army Tank Regt and their batmen. The account of £ 2.15.6 is on the firm's books as an account receivable. It has not been paid. If it is not paid I will have to make it good myself.

R.P. 83 (B) complied with.

Fourth Witness for the Prosecution } B. 61084 Cpl. Phillips G.W. 11 Cdn Army Tank Regt.

being duly sworn is examined by the Prosecutor.

I recognise the accused. I am Mess steward of the Officers' Mess of the 11 Cdn. Army Tank Regt. I identify the letter (Exhibit H) which I received from Days Wine Stores Ltd. I am fairly familiar with the accused's handwriting. The handwriting on this letter (Exhibit H) is similar to his handwriting. I know nothing about the account (Exhibit I). The statement (Exhibit H) was shown to me by Major Schell. The mess has not received the liquor itemized on the statement (Exhibit I). Days Wine Stores Ltd. have not delivered to the mess any goods covering the statement (Exhibit H). I did not authorise the accused to purchase any liquor for the mess on or about 5 Mar 43.

Cross examined:

Letters of authority to wine merchants, are signed by members of the Mess Committee only, except on one occasion when Mr. Harold signed one. The accused has frequently seen me get various officers to sign these letters of authority or slips. Sometimes I have had them signed in advance of using, but only made out in my name. During Spartan, if there were any signed ones lying around they were made out to me.

No re-examination.

By the Court:

~~[illegible]~~ We do not use letters of authority to purchase at Days Wine Stores Ltd. We only use them at two places and then they bear the orderly room stamp.

R.P. 83 (B) complied with.

The Court adjourned at 1200 hours.

D

The prosecution is closed.

The Court re-opened at 1315 hours.

Defence.

R.P. 40(A) COMPLIED WITH

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes sir

Question. Do you intend to call any other witness in your defence?

Answer. Yes sir

Question. Is he a witness as to character only? *Answer.* No.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked and signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First Witness for the Defence } B. 60959 Tpr. David. J. J., the accused.

being duly sworn is examined by the Defending Officer -

When I made out the letter of authority (Exhibit G) I had no ready money. I wanted the spirits but I intended to pay the bill sometime before "Spartan" was over. I am aware of the system in the Officers Mess. The bills when received are double checked by the Mess corporal and a member of the Mess Committee. If a bill was paid and no spirits were received it would show up at the end of the month on stock taking. I was unable to pay this bill, because 'Spartan' ended sooner than we expected and everyone in the rear party was C.B when it was discovered things were missing from the barracks. I told Tpr. Burney one night at supper that I had an unpaid wine bill in Brighton and that I had to get in to pay it.

Cross examined:

I knew I had no authority to make out the letter (Exhibit G). I had something over £1.0.0. at the time. I paid back 11/- which I owed: the rest was spent before I was C.B. The next pay day after the time I made out the letter ~~was~~ (Exhibit G) was 15 Mar 43. I did not tell Tpr. ~~Burney~~ Irvine that I had forged Major Shell's name to the letter (Exhibit G).

No re examination.

By the Court:

Every two weeks I get between £2.10.0 and £3.0.0. At the end of the month I get £1.0.0 from the mess. ~~[illegible]~~ The writing on the letter (Exhibit G) is ~~[illegible]~~ my hand writing. The wine I procured was used for my own pleasure, that evening in Brighton.

By the Judge Advocate:

Mr. Taylor took it for granted that the sale was for the Officers Mess. I did not tell him so or that the purchase was for myself.

M.P. 53(B) complied with.

D. 3.

Second Witness for the Defence. { B. 61099 Tpr. Kirnie J.D., 11 Cdn. Army Tank Regt.

Being duly sworn is examined by the Defending Officer -

I recognize the accused. On or about 15 Mar 43 I had a conversation with the accused respecting his finances. He said he wished he was "free" so he could go into Brighton and settle a wine bill. He said he had got some wine and wanted to pay the bill.

Cross examined:

The conversation took place on the day the rear party was confined to barracks.

No re-examination.

By the Court:

We were paid on 15 Mar 43 after 1.30 P.M. I have known the accused about a year. The accused is employed in the Officers Mess. I am a batman. I have never been sent by my Officer to buy spirits.

R.P. 83(B) complied with.

Third Witness for the Defence { Major H. R. Schell. 11 Cdn. Army Tank Regt.

Already sworn is examined by the Defending Officer.

I recognize the accused. I have known him since he came into the regiment in Sept. 1939. Up until the time that this incident occurred I considered that he was a very trustworthy and honest soldier. At the same time I am of the opinion that he could be easily influenced by a person of a more dominating character. I think this incident was caused by an influence of an outside source. I.E. outside the regiment.

No cross examination.

R.P. 83(B) complied with.

The Defending Officer, addressing the Court, stated that the accused had no intention of defrauding anyone when he made out and used the letter of authority. He was familiar with the accounting system in the mess. He fully intended to pay the bill. The accused did not realize the enormity of what he was doing. He did not realize it was forgery. He point out that in the letter of authority Major Ball is described not as P.M.C. of the Officers Mess but 2 i/c 11 Coy. Army Tk. Regt.

The Prosecutor, in reply, reviewed the evidence and contended that the prosecution had proved the charge against the accused.

The Judge Advocate in summing up referred the Court to para 68, MML p. 125 and that the prosecution must prove the charge against the accused beyond a reasonable doubt.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~

The accused B.60959 Gnr. David S.

is found guilty of the first charge.

†The summary (or abstract) of evidence is read, marked K, signed by the President, and attached to the proceedings.

Question to the accused. ~~Do you wish to make any statement in mitigation of punishment?~~

Answer. ~~The accused in mitigation of punishment says:—~~

~~(or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.)~~

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused guilty of the second charge.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut. D. McNichol already ~~is duly~~ sworn. WBP

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* I produce MFB 355 and a certified true copy of the accused's MFMs.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked L.M., signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* I have

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. - None.

[Announcement—to be aware of the nature of the service of the accused in a departmental corps, or whereby the finding of the Court renders him liable to any inexpedient punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* By any Defending Officer - see D.F.

The Court is closed for the consideration of the sentence.

F

~~Sentence.~~ [illegible]

~~The Court sentence the accused~~ [illegible] Sentence [illegible]

The Defending Officer, in mitigation of sentence stated the accused has a fairly good record. It is not the record of a criminal. He joined up at the very beginning of the war. He was for a time batman to Lt. Col. Pearson - for about four months, until Col. Pearson left the unit. He was made a bar steward because he was a good reliable soldier, and except for three months when he was Mess Corporal he has remained in that employ. The accused is not good at figures and ceased to be Mess Corporal for that reason. But he still remained as bar steward. The present incident seems to be a sudden going wrong probably caused by outside influences. The accused having no duties at the time was under more than usual temptation. He is not at heart a criminal. He was silly and stupid but he did not deliberately in cold blood intend to cheat anybody.

In the Field
9 Apr. 43.

E. B. Bate Capt
Judge Advocate.

F. J. Ward
Mjr.

SUMMARY OF EVIDENCE "K"

In The Case Of

B60959 - TPR DAVID J.J.
11 Cdn Ay Tk Regiment.

At the direction of the Commanding Officer, the evidence is taken on oath.

1ST WITNESS FOR THE PROSECUTION

Capt. E.J. Falls, Cdn Auxiliary Services, having been duly sworn states:

"I can positively identify Darwin Radio, marked on the inside with G.A. 1719 in crayon and labelled exhibit "A", as radio which I loaned to the Officers' Mess of the 11th Cdn Ay Tk Regiment for their use, and left in the care of Cpl Phillips, the Mess Steward. The radio is on my charge from the Salvation Army, War Services Committee and I am held personally responsible for it."

The accused declines to cross-examine the witness.

E.J. Falls, Capt.,
Cdn Auxiliary Services.

2ND WITNESS FOR THE PROSECUTION

B61084 A/Cpl Phillips G.W., 11 Cdn Ay Tk Regiment, having been duly sworn states:

"I am Mess Cpl of the Officers' Mess and the accused was assistant our steward for which he was paid the sum of one pound (£ 1) per month. The radio in question, which I now positively identify as the one marked exhibit "A", was lent to us by Capt. Falls. It was last seen by me on the night of 28 Feb 45, the night I left with the Unit on Exercise SPARTAN. It was on the mantle over the fire place in the mess. On return on 13 Mar 45 the radio was missing. Tpr David was placed in charge of all Mess equipment while I was away on scheme. Tpr David has been my assistant since I became Mess Cpl and has been in charge in my absence.

The accused declines to cross-examine the witness.

B61084 A/Cpl Phillips G.W.
11 Cdn Army Tank Regiment.

WITNESS FOR THE PROSECUTION

K67455 Sgt Cochrane E.E., No.4 Coy Cdn Prov. Corps.

I certify that in my opinion the attendance of this witness is, owing to this NCO being employed on special duty not reasonably procurable, and a written statement of his evidence, signed by him, has been sent to the accused and is attached hereto as Exhibit "B"

D MacNichol, Lieutenant
11 Cdn Army Tank Regt.

SUMMARY OF EVIDENCE - Cont'd

I do not require the attendance of this witness for the purpose of cross-examination.

J David

B60959 Tpr David, J.J.
11 Cdn Army Tank Regt.

4th WITNESS FOR THE PROSECUTION

Mr. Hilton, A.H. of Page & Miles Radio Store, 17 Chapel Road, Worthing, having been duly sworn states:-

"Tpr David J.J., whom I recognize, entered my store on the 10th March afternoon and offered the radio for sale. I can positively identify this radio. He said to me he would take what I had to offer and he told me that one valve was missing. I said under the circumstances I would offer him one pound (£1); he said he would accept it. I gave him £1-0-0 and took the radio from him. No transaction is shown in the books of my company. A Police Inspector and two M.Ps took the radio from my store 20th March."

The accused declines to cross-examine the witness.

A H Hilton

Mr. Hilton, A.H.

SUMMARY OF EVIDENCE

th WITNESS FOR
HE PROSECUTION

William Taylor of Day's Wine Stores, Ltd., 81 St. George's Road, Brighton, having been duly sworn states:

"On or about 5 Mar 43 Tpr David brought the document marked Exhibit "D" into my store. He wanted 3 bottles of spirits, I had none so he made a purchase of two bottles of Port and one bottle of Sherry. The total price of these was £2-15-6. I charged this to Officers' Mess, 11 Cdn Army Tank Regiment, relying on the note labelled Exhibit "D" as authority. Exhibits "E" and "F" - statements of an account rendered by me to Officers' Mess, 11 Cdn Army Tank Regiment, for the above mentioned wines. Due to an error the itemized bill read two bottles of Sherry and one bottle of Port. This should be 1 bottle of Sherry and two bottles of Port. The total price is the same.
The account has not been paid or honoured.
Tpr David has been here many times shopping. Cpl Phillips had often been here with notes from Major Schell. I would not have sold the liquor if it had not been for the alleged note from Major Schell.

The accused declines to cross-examine the witness.

William Taylor

W. Taylor,
Day's Wines Stores, Ltd.,
Brighton, Sussex.

5th WITNESS FOR THE PROSECUTION

Major Herbert Robson SCHELL, 11 Cdn Army Tank Regiment, having been duly sworn states:

"I am President of the Mess Committee, Officers' Mess, 11 Cdn Army Tank Regiment. The method of purchasing liquor for the mess was for me to sign a chit requesting that all consideration be given the bearer of the note. These chits are now given to Cpl Phillips. In the past Tpr David had been authorized to purchase liquor. Tpr David was barman in the officers' Mess, for which he was paid £1-0-0 per month.
On and about 5 Mar 43 all officers who had authority to authorize the purchase of liquor were away on Exercise "Spartan". Tpr David was left in charge of the property of the Mess which was left behind in WORTHING. There were only three officers left, and I ordered that the bar be closed.
Shortly after our return from "Spartan", Cpl Phillips presented me with this note to Mr. Taylor of Days' Wine Stores, Ltd., Brighton, Sussex, in an envelope, both of which are labelled exhibit "D" and which I here produce(attached to summary as exhibit "D") It is a request that Tpr David be provided with three bottles of spirits and is presumably signed by myself. The handwriting and signature are not mine.
I produce a bill from Days' Wine Stores, Ltd., marked Exhibit "E" and an itemized account marked exhibit "F"(both attached to summary). Since Corporal Phillips became Mess Cpl., Tpr David had never had authority to purchase liquor. To my knowledge, the Officers' Mess has never received any of the liquor referred to in Exhibits "D", "E" and "F". The bill has not been paid or honoured by the mess.

The accused declines to cross-examine the witness.

H.R. Schell

(H.R. Schell) Major,
11 Cdn Army Tank Regt.

SUMMARY OF EVIDENCE - (Cont'd)

2nd WITNESS FOR THE PROSECUTION (RECALLED)

B61084 Cpl Phillips G.W., 11th Cdn Army Tank Regiment, having been duly sworn states:

I recognize the document labelled Exhibit "D". Mr. Taylor of Days' Wine Stores Ltd., Brighton gave me that on Saturday 27 Mar 43. The handwriting is similar to Tpr David's. I gave this to Major Schell. The Mess has not received the articles purchased under this authority. During the time covered by the account in Exhibit "B", the Mess purchased no liquor from Days' Wine Stores."

The accused declines to cross-examine the witness.

G W Phillips

B61084 Cpl Phillips G.W.
11 Cdn Army Tank Regiment.

EXHIBIT "B"

STATEMENT OF

K67135 - SGT COCHRANE, E.K., No.4 COY, Canadian Provost Corps.

K67135 Sgt Cochrane E.K. of No.4 Coy Cdn Provost Corps, having been duly sworn states:

"On or about 19th of Mar 43 I was detailed to conduct an investigation within 11 Cdn Army Tank Regiment involving various thefts which took place during Exercise "Spartan". As a result of inquiries made, B60959 Tpr DAVID, J.J. of 11 Cdn Army Tank Regt. was suspected of being involved. I interrogated and cautioned him. He made a statement in which he admitted removing from the Officers' Mess a battery Radio Set, and disposing of same. I recovered the radio in the store of the firm Page and Miles, Ltd., Worthing. I identify the radio as the one marked Exhibit "A". It is a Darwin Portable Radio, numbered on the inside SA 1719.

I produce the document marked exhibit "C", which is attached to this summary, which I certify is a true copy of Tpr David's original statement. The original must be kept in our files until the convening of a Court Martial, or other disposition of the case.

E. K. Cochrane Sgt

K67135 Sgt Cochrane E.K.,
No. 4 Coy, Cdn Provost Corps.

S 60959 Sgt. DAVID. J. J. of 18/3
11th Can. Tank Regiment.
After being duly cautioned
by Sgt Cochrane I make
the following statement
voluntary :-

On or about the 10th day
of March 1943 while this
Unit was on exercise
"Spartan" I stole from the
Officers Mess one battery
model Radio, as supplied
by one of the Auxiliary Services
About 1420 hours on the
same day I carried the
radio to a radio store in
Worthing and sold same
for £10.0. I dont know
the name of the store but
I can identify same
About the 10th or 11th March
I also sold about 10 packets
of Camel cigarettes to a woman

known to me a "Ma" and
residing at 19 Ditchling Rd.
Brighton Sx. This woman
paid me 15/- for the cigarettes.
Tpr. Mc Clury owed me
10/- and gave me the
Camel cigarettes in payment
I know Tpr. Mc Clury stole
the cigarettes.

J David

Having been warned by Lt. D. McNichol, 11th Cdn Army Tank Regiment, that I am entitled to be represented by a lawyer, I hereby request that I be represented by, Capt. A. J. Whitelaw, 11 Cdn Army Tk Regt as Defending Officer at my pending trial by Court Martial.

B60959 Tpr David J.J.,
11 Cdn Army Tank Regiment.

Field/Unit
1 Apr 45

Having been warned that I am entitled to be represented by a lawyer, I request that CAPT. D.M. IRWIN 11th Cdn Army Tank Regt. be appointed as my Defending Officer, being aware that he does not possess legal qualifications.

David

B60959, Tpr. David, J.J.
11th Cdn Army Tank Regt.

Date of Signature. 5 .....Apr 43.
Time of Signature. 1120...hrs.

Field /JWF
5 April 43

STATEMENT

March 5 1943

Mr Taylor

Days Wine Store

In a/c With Brighton

TERMS

Dear Sir

Please if possible give bearer Tpr. David (3) three bottles of Spirits on our account

Thanking you

D. G. Shale Maj.

21C. 11 Cdn Amoy Tk Regt.

Exhibit G

F. Ward Dep

W. L. Lake Capt

Judge advocate

DAY'S WINE STORES LTD.

61, ST. GEORGE'S ROAD

BRIGHTON, 7.

D. c/o Tpr David J

Mr Taylor

Days Wine Store

Brighton

Exhibit "E"



M Officers Mess 27.3.1943

Bought of DAY'S WINE STORES LTD.,
Wine, Spirit and Bottled Beer Merchants,
61 ST. GEORGE'S ROAD,
BRIGHTON 7

Tel.—Brighton 1030.

Michie Goods.	£	2	15	6

Exhibit H.
Sward Sup
W. B. Bate Capt
Judge Advocate

No 25

Ask for Full List of the Attleborough brands, all of which are guaranteed to be
MADE FROM ENGLISH APPLES ONLY

Exhibit "F"

If it's

TRUMAN

it is **BEER!**

M Officers Mess. 11th C T Regt. Mch 6th 1943

3

Phone—BRIGHTON 1030

Bought of

DAY'S WINE STORES LTD.,

Wine, Spirit and Bottled Beer Merchants,

61 ST. GEORGE'S ROAD, BRIGHTON, 7

2 Bottles Sherry Amontillado	1	19	0
1 Bot Port Wine		16	6
£2 = 15 6			

EXHIBIT I

D Ward Capt

W. B. Bate Capt
Judge Advocate

SUMMARY OF EVIDENCE (Cont'd)

STATEMENT OF THE ACCUSED

The accused having been cautioned in accordance with Rules of Procedure 4 (e) elects to give evidence as follows:

B60959 Tpr David J.J.(The Accused), 11 Cdn Army Tank Regiment, having been duly sworn states:-

"On or about the 10th day of March 1943, while my Unit was on Exercise "Spartan", I took from the Officers' Mess, One Battery Radio as supplied by one of the Auxiliary Services. I took it to Page & Miles Radio Store and sold it to the Store for £1-0-0".

EXHIBIT J.

On 5 Mar 43 I made out an authority from Major H.R. Schell, P.M.C., 11 C.T.R., and forged his name to it. I took this to Day's Wine Stores, Ltd., Brighton and obtained three bottles of wine by showing it to Mr. Taylor of Day's Wine Stores. The amount was to be charged to account of Officers' Mess. The wine was consumed at various places in Brighton. I intended to pay the bill, but was unable to do so, being confined to barracks.

B60959 Tpr David J.J.
11 Cdn Army Tank Regt.

The accused declines to call any witnesses in his defence.

Certified that the foregoing Summary of Evidence, consisting of six sheets, was taken down by me in the presence of the accused, this 1 Day of April, 1943, in the Field.

Certified that the Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

D. McNichol, Lieut.,
11 Cdn Army Tank Regt.

Field/CFA
1 Apr. 43

Exhibit "C"

STATEMENT OF: B-60959 Tpr DAVID, J.J.
11 Cdn Tank Regt.

After being duly cautioned by Sgt. COCHRANE I ma
statement voluntarily:

1. "On or about the 10th day of March 1943, while this unit was on exercise "SPARTAN", I stole from the Officers' Mess one battery mod Model Radio, as supplied by one of the Auxilliary Services. About 1420 hrs on the same day I carried the radio to a radio store in WORTHING and sold same for £1.0.0. I don't know the name of the store but I can identify same.

2. About the 10th or 11th of March I also sold about 10 packets of CAMEL CIGARETTES to a woman known to me as "Ma" and residing at 19 DITCHLING ROAD, BRIGHTON, SX. This woman paid me 15/- for the cigarettes. Tpr. McCLEERY owed me 10/- and gave me the CAMEL Cigarettes in payment. I knew Tpr McCLEERY stole the cigarettes."

(Signed) J David.

LIST OF WITNESSES

FOR THE PROSECUTION:

Superviser E.J. Falle - Auxiliary Services

B61084 Cpl Phillips G.W.- 11 C.A.T.R.

K67135 Sgt Cochrane E.K. - No.4 Coy, C.P.C.

Mr. A.H. Hilton - Page & Miles Radio Store
17 Chapel Road, Worthing.

Major H.R. Schell - 11 C.A.T.R.

~~Major J.T.P. Orr - 11 C.A.T.R.~~ D. Pte H.

William Taylor - Day's Wines Stores, Ltd.,
61 St. George's Road, Brighton

FOR THE DEFENCE: NIL

LIST OF EXHIBITS

Exhibit "A"	Radio Darwin, portable, battery type
Exhibit "B"	Statement of K67135 Sgt Cochrane E.K. of No.4 Coy, Cdn Provost Corps.
Exhibit "C"	Statement of B60959 Tpr David J.J., 11 C.A.T.R.
Exhibit "D"	Note addressed to Mr. Taylor - Day's Wine Stores requesting the bearer be provided with spirits and also the envelope.
Exhibit "E"	Statement No.25 from Day's Wines Stores, Ltd., Brighton to Officers' Mess 11 C.A.T.R. d/27 Mar 43.
Exhibit "F"	Itemized bill from Day's Wines Stores, Ltd. Br. to Officers' Mess, 11 C.A.T.R. d/6 Mar 43.

I

F Seward
[illegible]
[illegible]

M.F.B. 386
40/P & S/673

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B60959	Trooper	DAVID J.J.	11 Cdn Ay Tk Regt.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	Sec 15 (1) A.A.-AWL 2 times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused. N/A

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted N/A

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N/A beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 16 days in military custody, making a total of 16 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper is~~ 33 yrs.

6. The date of his commission specified in his record of service is attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (~~or in possession of or entitled to~~). State any ~~air force~~ military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Army

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29 day of Apr 43

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No. B60959 Name DAVID, James Johnson Sqn., Battery, or Company HQ Corps Cdn Arm'd Corps Date of enlistment 21 Sep 39 G.C. Badges 22 Dec 41 Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra line N/A Sheet No. No.3 Signature O.C. Company, etc. J.T.F. Orr, Chaplain

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Previous Sheet destroyed on completion of 2 years service Revised C.R.O. 2084					J.T.F. Orr, Major			
Wield	17-12-42	Tpr		A.A. Sec 15(1) W.O.A.S. A.W.L. in that he was absent at 2359 hrs 17-12-42 and did not report until 2230 hrs 19-12-42 [Absent 1 day 22 hrs 31 min]	Cpl Phillips Cpl Osborne Sgt Bastien	14 days C.B.	21 Dec 42	Lt. Col Forf. 2 M.P. Johnston days ?	
Wield	14 Mar 43	Tpr		Sec. 15 (1) A.A. W.O.A.S. AWL from 2359 hrs 14 Mar 43 to 0530 hrs 15 Mar 43	Sgt Ingram Cpl Mansfield J.G.	7 Days C.B.	15 Mar 43	J.T.F. Orr, Major	

CERTIFIED TRUE COPY ..... J.T.F. Orr, Major .....

(F.T.O.)

A.A:3

S/SGT. DAVID L.

O. H. M. S.

Offence charged	Plea	Finding and if Convicted, Sentence	
Eighth Charge Sec 25 (I) A.A. (See Charge sheet attached)	NOT Guilty	Guilty	
Ninth Charge Sec 25 (I) A.A. (See Charge sheet attached)	NOT Guilty	Guilty	
Tenth Charge Sec 25 (I) A.A. (See Charge sheet attached)	NOT Guilty	Guilty	
Eleventh Charge Sec 25 (I) A.A. (See Charge sheet attached)	NOT Guilty	Guilty	
Twelfth Charge Sec 15 (I) A.A. (See Charge sheet attached)	Guilty	Guilty	
Thirteenth Charge Sec 40. A.A. (See Charge sheet attached)	NOT Guilty	Guilty	

A.A.3

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 9th day of February, 1943

Whereas it appears to me, the undersigned, an officer in Command of Canadian Military Headquarters, on active service, that the persons named in the annexed Schedule, being subject to Military Law, ~~have~~ has committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer;~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ appointed or detailed hereunder

~~*I am unable to appoint:—~~

~~*(1. Three Officers to form the Court;)~~

~~*(2. A Field Officer as President;)~~

~~*(3. Three Officers having more than one year's service;)~~

~~for the following reasons, namely:—}~~

Proceedings Reviewed

Reviewing Officer (J.A.G.) C.M.H.Q.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

No illegalities or irregularities such would warrant withholding confirmation.

(W.A.I. Inglin) Colonel
D.J.A.G., C.M.H.Q.

President.

Rank.	Name.	Regiment.
Major	H.W. McManus	Queens York Rangers C.M.H.Q.

Members.

Rank.	Name.	Regiment.
Captain	C.P. Lailey	R.C.A., C.M.H.Q.
Lieut.	B.E. Willan	Q.O.R., C.M.H.Q.
Waiting member Captain	F.H. Rowland	R.C.A.P.C., C.M.H.Q.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (P.J. Montague) Major General
Senior Officer
Canadian Military Headquarters
Convening Officer.

Commanding Officer

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.93685 S/Sgt DAVID, Lloyd Royal Canadian Army Medical Corps, Canadian Military Head-quarters.	First Charge Sec 18 (4) Army Act. (See Charge Sheet attached)	NOT Guilty	NOT Guilty	I confirm the finding with exclusion of the words "and to undergo detention" I remit the detention for 40 days
	Second Charge Sec 18 (4) Army Act. (See Charge sheet attached)	NOT Guilty	NOT Guilty	
	Third Charge Sec 25 (1) Army Act. (See Charge sheet attached)	NOT Guilty	Guilty	
	Fourth Charge Sec 25 (1) Army Act (See Charge sheet attached)	NOT Guilty	Guilty	
	Fifth Charge Sec 25 (1) Army Act (See Charge sheet attached)	NOT Guilty	Guilty	To be Reduced To the Ranks and To Undergo Detention for a period of Six Months
	Sixth Charge Sec. 25 (1) Army Act (See Charge sheet attached)	Not Guilty	Guilty	
	Seventh Charge Sec 25 (1) Army Act (See Charge sheet attached)	Not Guilty	Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 30 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" [See page 9]
Answer to be recorded on separate sheet if necessary) :—

(Signed) P.J. Montague Major General
Senior Officer
Commanding Canadian Military Headquarters

(Signed) [illegible]
Convening Officer

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the —15th— day of February 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. — B. Certificate of President as to proceedings.

I also certify that :—
1. The members of the Court
2. The witnesses
* ~~(3. The interpreter)~~ (2)
* ~~(4. The officers under instruction)~~ (N)
were duly sworn.

* Omit if not applicable.

Signed this —15th— day of February 1943

[signature]
President of the Court Martial

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of s.24 (a) (b) s.25 of 1918 have been~~ complied with." — C. Certificate in case of death sentences.

~~Signed this day of 19~~

~~President of the Court Martial~~

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

Signed this 20th day of March 1943

[signature]
Confirming Officer
(P. J. Montague) Major-General
Senior Officer
Canadian Military Headquarters

Promulgated and extracts taken in the case of B93685 PTE DAVID, L., RCAMC

(a) (Dated) 22 MAR 43 (Signed) [signature]

R. J. WILLIAMS Major,
Camp Commandant,
Canadian Military Headquarters.
20 MAR 1943

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Proceedings of a FIELD GENERAL COURT MARTIAL held at Canadian Military Headquarters, London on MONDAY the 15TH. day of FEBRUARY 1943, in the case of No.B.93585 STAFF SERGEANT DAVID Lloyd, Royal Canadian Army Medical Corps, C.M.H.Q.

President:- Major H.W. McManus, (QYR) C.M.H.Q.

Members:- Capt. C.P.Lailey, (RCA) C.M.H.Q.

Member:- Lieut. B.E. Willan, (QOR) C.M.H.Q.

Waiting Member:- Capt.F.H.Rowland, (RCAPC) C.M.H.Q.

Prosecuting Officer:- Capt.W.G.Elder, C.M.H.Q.

Defending Officer:- Capt.C.Rapp, (RCAMC) C.M.H.Q.

Court Stenographer:- Sergt. J.F. Warren, JAG Sch. CMHQ.

The order convening the Court, the charge sheet and the Summary of Evidence are laid before the Court.

The Court satisfy themselves that Lieut.B.E. Willan is not available to serve owing to illness.

Capt. F.H. Rowland, Waiting Member takes his place as a member of the Court.

The Court satisfy themselves as provided by R.P.22 & 23.

The accused is brought before the Court.

The Trial commences at 0945 hours.

The order convening the Court, (marked "A") is read by the President. The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q.1. Do you object to be tried by me as President, or by any of the Officers whose names you have heard read over?

A.1. No Sir.

Q.2. Do you object to Sergt. Warren J.F. as Shorthand Writer?

A.2. No Sir.

President, members of the Court and shorthand writer are duly sworn.

The Charge Sheet is signed by the President, marked "B" and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

CHARGE SHEET.

The Accused B-93685 S/Sgt. Lloyd, David, Royal Canadian Army Medical Corps, attached Canadian Military Headquarters, a soldier of the Canadian Army Overseas, is charged with, when on Active Service:

First Charge
Sec 18 (4)
Army Act.

FRAUDULENTLY MISAPPLYING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

at London on 4 Jan 43 when concerned in the care of money belonging to Lieut.-Col. K.C. Gray, R.C.A.M.C., a person subject to military law, applied the sum of 6/6½ to his own use with intent to defraud.

Second Charge
Sec 18 (4)
Army Act.

FRAUDULENTLY MISAPPLYING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

at London on 4 Jan 43 when concerned in the care of money belonging to Major J.P. LaPlante, R.C.A.M.C., a person subject to military law, applied the sum of 4/- to his own use with intent to defraud.

Third Charge
Sec 25 (1)
Army Act.

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he

at London on 30 Jul 42 signed a certificate to the effect that he had no outstanding debts for living expenses incurred more than two weeks prior to the date of signing said certificate well knowing that he had such outstanding debts.

Fourth Charge
Sec 25 (1)
Army Act.

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he

at London on 31 Aug 42 signed a certificate to the effect that he had no outstanding debts for living expenses incurred more than two weeks prior to the date of signing said certificate well knowing that he had such outstanding debts.

Fifth Charge
Sec 25 (1)
Army Act.

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he

at London on 15 Sep 42 signed a certificate to the effect that he had no outstanding debts for living expenses incurred more than two weeks prior to the date of signing said certificate well knowing that he had such outstanding debts.

Sixth Charge
Sec 25 (1)
Army Act.

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he

at London on 30 Sep 42 signed a certificate to the effect that he had no outstanding debts for living expenses incurred more than two weeks prior to the date of signing said certificate well knowing that he had such outstanding debts.

enth Charge
25 (1)
r Act.

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he

at London on 14 Oct 42 signed a certificate to the effect that he had no outstanding debts for living expenses incurred more than two weeks prior to the date of signing said certificate well knowing that he had such outstanding debts.

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Eighth Charge
Sec 25 (1)
Army Act.

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he

at London on 29 Oct 42 signed a certificate to the effect that he had outstanding debts for living expenses incurred more than two weeks prior to the date of signing said certificate well knowing that he had such outstanding debts.

Ninth Charge
Sec 25 (1)
Army Act.

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he

at London on 30 Nov 42 signed a certificate to the effect that he had no outstanding debts for living expenses incurred more than two weeks prior to the date of signing said certificate well knowing that he had such outstanding debts.

Tenth Charge
Sec 25 (1)
Army Act.

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he

at London on 14 Dec 42 signed a certificate to the effect that he had no outstanding debts for living expenses incurred more than two weeks prior to the date of signing said certificate well knowing that he had such outstanding debts.

Eleventh Charge
Sec 25 (1)
Army Act.

IN A CERTIFICATE SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT

in that he

at London on 29 Dec 42 signed a certificate to the effect that he had no outstanding debts for living expenses incurred more than two weeks prior to the date of signing said certificate well knowing that he had such outstanding debts.

Twelfth Charge
Sec 15 (1)
Army Act.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

at London on 4 Jan 43 absented himself without leave from 0900 hours 4 Jan 43 until apprehended by the Canadian Military Police London at 1815 hours 15 Jan 43. Total time absent - 11 days 9 hours 15 minutes.

Thirteenth Charge
Sec 40.
Army Act.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at London during the month of December 1942 did borrow money from subordinates amounting to £1.10.0. as follows:

The sum of 10/- from C-29055 Sgt. Kiefer, D.E. R.C.A.M.C.
The sum of 20/- from R-91702 Pte. Prince, J.D. R.C.A.M.C.

R.J. Williams Major,
Dep Commandant,
Canadian Military Headquarters.

22 Jan 43.
London.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(P.J. Montague) Major-General,
Senior Officer,
Canadian Military Headquarters.

President FGCM
15 Feb 43

9 3 43
~~22 Jan 43.~~
London.

I certify that I have this date examined B-93685
S/Sgt Lloyd David, R.C.A.M.C, attached C.M.H.Q. and
find him fit to undergo trial by Court Martial.
~~unfit~~

Dated this 16th day of February 1943.

Glen F Hamilton
Medical Officer.
Capt.

Pres F.G.C.M.

Q.3. Are you Guilty or Not Guilty of the FIRST CHARGE against you which you have heard read?
A.3. NOT GUILTY SIR.

Q.4. Are you Guilty or Not Guilty of the SECOND CHARGE against you which you have heard read?
A.4. NOT GUILTY SIR.

Q.5. Are you Guilty or Not Guilty of the THIRD CHARGE against you which you have heard read?
A.5. NOT GUILTY SIR.

Q.6. Are you Guilty or Not Guilty of the FOURTH CHARGE against you which you have heard read?
A.6. NOT GUILTY SIR.

Q.7. Are you Guilty or Not Guilty of the FIFTH CHARGE against you which you have heard read?
A.7. NOT GUILTY SIR.

Q.8. Are you Guilty or Not Guilty of the SIXTH CHARGE against you which you have heard read?
A.8. NOT GUILTY SIR.

Q.9. Are you Guilty or Not Guilty of the SEVENTH CHARGE against you which you have heard read?
A.9. NOT GUILTY SIR.

Q.10. Are you Guilty or Not Guilty of the EIGHTH CHARGE against you which you have heard read?
A.10. NOT GUILTY SIR.

Q.11. Are you Guilty or Not Guilty of the NINTH CHARGE against you which you have heard read?
A.11. NOT GUILTY SIR.

Q.12. Are you Guilty or Not Guilty of the TENTH CHARGE against you which you have heard read?
A.12. NOT GUILTY SIR.

Q.13. Are you Guilty or Not Guilty of the ELEVENTH CHARGE against you which you have heard read?
A.13. NOT GUILTY SIR.

Q.14. Are you Guilty or Not Guilty of the TWELFTH CHARGE against you which you have heard read?
A.14. GUILTY SIR.

Q.15. Are you Guilty or Not Guilty of the THIRTEENTH CHARGE against you which you have heard read?
A.15. NOT GUILTY SIR.

Q.16. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not be complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A.16. No Sir.

Def: May I suggest Sir, that it might help the Court if these charges were put into three Groups, Charges 1 and 2 in Block "A", Charges 3 to 11 in Block "B" and Charges 12 and 13 in Block "C".

Pros: I do not clearly understand, Do I understand that all the evidence will be heard at one time?

Def: No Sir.
Pros: But they will not be separate trials?
Def: No Sir.

Pres: Q.17. You have pleaded guilty to the Twelfth charge and under R.P.35(B) it is my duty to inform you that on that charge no evidence will be taken and that your plea of guilty will be recorded as the finding of the Court. On that particular charge merely the Summary of evidence will be read and no witness called, do you understand that?

A.17. Yes Sir.

Opening address of the Prosecution:-

Mr. President, it will be observed that the accused is charged on thirteen different charges and he has pleaded not guilty to all but one. I do not propose to be very long but with your permission I will give you a brief outline of the case.
The first two charges relate to Petty Cash, the first one in which it is alleged that Lieut. Col. Gray gave the accused certain monies from time to time with which to pay expenditures such as stamps etc. and in the second charge it is alleged that certain monies were supplied in the same way and for the same purpose by Major LePlante now Lieut. Colonel. Evidence will be produced by the introduction of a certain document found in the cash box showing that certain sums were owing to these gentlemen and the evidence will be given on that point by Sergeant Major Moore.
Charges three to eleven pertain to the signing of a certain document. It is the custom that when other ranks receive their pay they sign a certificate to the effect that they have no debts. These certificates will be produced in evidence and they will attempt to prove that the accused signed each of these certificates when in fact he did owe certain monies.
He has pleaded guilty to the twelfth charge and therefore there is no need to mention it.
The last charge deals with borrowing money from subordinates and they will give evidence on this. It is understood by the accused that this money was borrowed by the accused and has not been repaid. In respect to the first and second charges no accounting of the funds has been made.

1st. Witness Prosecution. Lieut. Col.K.G. Gray, R.C.A.M.C. (A.M.D.1.) having been duly sworn is examined by the Prosecution:-

Q.18. Will you please give your Rank Name and appointment to the Court?
A.18. Lieutenant Colonel K.G. Gray, R.C.A.M.C., A.M.D.1.
Q.19. And you are attached where?
A.19. Posted to D.M.S. staff.
Q.20. Do you know the accused Staff Sergeant David?
A.20. Yes Sir I do.
Q.21. Will you indicate him to the Court?
A.21. I recognise Staff Sergt. David as the accused.
Q.22. Did you on any occasion ever give any monies to the accused?
A.22. Yes, he was Chief Clerk in my office and I used to leave small amounts of cash with him to pay any personal accounts - things like stamps and so on.
Q.23. Do you mean personal accounts of yours?
A.23. Yes of mine.
Q.24. What would these sums amount to?
A.24. Very petty, four or five shillings.
Q.25. When you gave it to him do you know how much it would be?
A.25. Never more than five or ten shillings.
Q.26. And you gave him this from time to time?
A.26. Yes.
Q.27. To pay certain small bills?
A.27. Yes.

Q.28. Do you recall an occasion when the accused did not come into the Office?

A.28. Yes.

Q.29. Do you recall what date that was?

A.29. No I do not recall the date, I know it was Monday morning.

Q.30. On that occasion did you find any document at the office?

A.30. Yes there was a document on my desk.

Q.31. I produce to you a certain document, can you identify it?

A.31. I recognise that as the document that was on my desk on the Monday morning in question.

Q.32. Do you know in whose hand writting it is?

A.32. I would say it was Staff Sergeant David's.

Q.33. Are you familiar with his hand writing?

A.33. Yes.

(Document read by the Prosecution, Marked EXHIBIT "A")

Q.34. On the occasion that you received that document was there any money owing from this Petty Cash of yours?

A.34. Yes there was.

Q.35. Do you know how much was owing at that time?

A.35. No I do not.

Q.36. You did not keep any record of it?

A.36. No.

Q.37. Did you know where this Petty Cash was kept?

A.37. No, but I understand it was kept in the drawer of his desk.

Q.38. But that would be hearsay evidence?

A.38. Yes Sir.

Q.38. Can you tell us how much you thought was owing to you at that time?

A.39. The only knowledge I have of the amount is that I know I never gave him more than five or ten shillings.

Q.40. What I want to get on the record very clearly is, do you or do you not know whether there was any money owing to you at that particular time?

A.40. I would not have any idea.

Q.41. Since that day has the accused paid you any sum of money?

A.41. No.

Witness cross-examined by the Defence.

Q.42. Colonel Gray, the accused I understand was Senior Clerk in your Department and in that capacity he looked after your personal affairs, sending letters, getting tea etc.

A.42. Yes.

Q.43. You were in the habit of giving him small sums at indefinite or irregular intervals?

A.43. Yes.

Q.44. You did not think to ask him for an accounting?

A.44. No, I did not, I had every confidence in him and if there had been any loss it would be my loss.

Q.45. The accused having been in your Department over a period of months his conduct has been above reproach at all times?

A.45. I do not know of anything adverse in his conduct.

Q.46. Were there any instructions that the accused must keep your personal things in a particular place?

A.46. No Sir I gave no instructions.

Q.47. So you do not know where he kept the money?

A.47. No Sir, until this trouble I had no idea.

Q.48. Now Colonel, there was a box in the accused's drawer which was known as the petty cash box, that was in the drawer long with other articles and since that box was there in the accused's custody, it might be quite natural for him to carry these small sums in his pocket?

A.48. I would have raised no objection.

Q.49. And the accused has done fairly well, promoted twice and it would be fair to assume that if this trouble had not arisen he would have been in line for promotion to W.O.2.?
A.49. Yes.

Witness questioned by the Court.

Q.50. When you are referring to Petty Cash are you referring to personal cash or Government Funds?
A.50. Entirely personal, there was no Government money there, Sir.
Q.51. Was that box locked?
A.51. As I say I do not know, I did not know there was a box, it may sound a little careless but it is true.

In the opinion of the Court it is not necessary to comply with R.P.83(B).

The witness withdraws.

2nd.Witness Prosecution. Lieut. Col. J. Paul LaPlante, R.C.A.M.C. having been duly sworn is examined by the Prosecution:-

Q.52. Will you give your Rank, Name and unit to the Court please?
A.52. Lieut. Colonel J. Paul LaPlante, R.C.A.M.C.
Q.53. Do you know the accused Staff Sergeant David?
A.53. Yes Sir I recognise him.
Q.54. Was he employed in the A.M.D.'s Office.
A.54. Yes A.M.D.1.
Q.55. And that in or about the month of January this year?
A.55. Yes.
Q.56. And at that time also you were attached to that Branch?
A.56. Yes, I was Assistant to Colonel Gray.
Q.57. During the time you were there did you have occasion to give the accused certain sums of money?
A.57. Yes from September I gave him small sums of money to pay for petty personal expenses.
Q.58. And what would these small sums amount to?
A.58. I would never give him more than ten shillings.
Q.59. Did you ever receive from the accused an accounting as to how this money was expended?
A.59. No, I used to ask him once in a while if he had enough or if he wanted more.
Q.60. And you subsequently learned that the accused went AWL?
A.60. Yes.
Q.61. At the time that the accused went absent were you able to say whether there were any monies owing to you from these sums?
A.61. I cannot say definitely but I would judge there would be a few shillings.
Q.62. Do you actually know whether or not any money was owing to you at that time?
A.62. No I am not.
Q.63. Has any money been paid back to you?
A.63. No.
Q.64. Have you received an accounting from the accused?
A.64. No Sir.

Witness cross-examined by the Defence.

Q.65. Colonel LaPlante you were in the habit, like Colonel Gray, of giving the accused small funds to look after your personal affairs?
A.65. Yes.
Q.66. And when he required more money you gave it to him?
A.66. Yes.

(2)

Q.67. You never asked him to give you an acccunting?
A.67. No Sir.
Q.68. You said in the Summary of Evidence that the amount never exceeded ten shillings?
A.68. Yes.
Q.69. Do you recall on 10th. of November last you despatched a parcel to Halifax to a party named Mollison?
A.69. Yes, that happened more than once and I gave him the money.
Q.70. At that time then did you give him £1.0.0?
A.70. I do not remember the amount but it would be more than ten shillings.
Q.71. And I suggest that this loose arrangement was on account of your confidence in him?
A.71. Yes.
Q.72. It had nothing to do with Department affairs?
A.72. No Sir.
Q.73. Did you know that this money was kept in a box?
A.73. I have heard two or three times that it was kept in a box but I did not know, it might have been kept in his pocket.
Q.74. You have never asked him where he kept that money?
A.74. No, I cannot recall ever asking him.
Q.75. Then you agree that he might well be safeguarding your personal money and that of Col. Gray in keeping it on his person rather than in a box?
A.75. Yes.

In the opinion of the Court it is not necessary to comply with R.P.83(B)

The witness withdraws.

3rd. Witness Prosecution.

No.P.30312 A/QMS Moore, B.C.K., R.C.A.M.C. having been duly sworn is examined by the Prosecution:-

Q.76. Will you give the Court your number rank, name and unit please?
A.76. No.P.30312 Acting Q.M.S., Moore, B.C.K., R.C.A.M.C.
Q.77. And your Branch?
A.77. D.M.S. Branch.
Q.78. Do you know Staff Sergeant David?
A.78. Yes Sir.
Q.79. Were you employed in the same office?
A.79. Yes Sir.
Q.80. In Seniority are you superior to the accused?
A.80. Yes Sir.
Q.81. Do you remember on one occasion that the accused failed to report for duty?
A.81. Yes Sir.
Q.82. Do you recall what date that was, do you remember the month?
A.82. Around November or December.
Q.83. Did you subsequently learn that the accused was absent without leave?
A.83. Yes Sir.
Q.84. When was that?
A.84. I cannot say the date, it was November or December.
Q.85. I am suggesting to you it might be on the 4th. of January?
A.85. Yes Sir.
Q.86. On the occasion that he went AWL did you refer to the cash box?
A.86. Yes Sir.
Q.87. Did you personally refer to the Cash Box?
A.87. Colonel Gray asked me for some money from the Cash box.

Q.88. Did you produce the Cash Box?
A.88. I did.
Q.89. Did you find any document in that box?
A.89. Yes Sir.
Q.90. I show you a document can you identify that?
A.90. Yes Sir that is the document. EXHIBIT "B"
Q.91.. Are you familiar with the accused's handwriting?
A.91. Yes Sir.
Q.92. Do you know his signature?
A.92. Yes Sir.
Q.93. I am producing documents for the dates, 6th. June 1942 until 29th. December 1942 being fortnightly Pay Certificates, will you look over these certificates and tell us if you can identify any signatures?
A.93. (After examining the certificates) Yes Sir.
Q.94. Can you identify his signature on each one of the certificates?
A.94. Yes Sir. EXHIBITS C.1. to C.12.
Q.95. Coming back to the Cash Box, when it was produced for inspection by Colonel Gray, were there any monies in the box?
A.95. No Sir.
Q.96. None whatever?
A.96. None whatever Sir.

Witness cross-examined by the Defence.

Q.97. Sergeant Major Moore, I understand that Staff Sergeant David was in your Department about seventeen months?
A.97. Yes Sir.
Q.98. July 1941 until January this year?
A.98. Yes Sir.
Q.99. What was his rank when he came to you?
A.99 Corporal.
Q.100. And he was subsequently promoted to Staff Sergeant?
A.100. Yes Sir.
Q.101. During the latter part of his service under you were you not aware that he was working under a mental strain?
A.101. Yes I knew he was worried Sir.
Q.102. Did he ever mention to you or as a result of enquiry did he refer to his trouble?
A.102. Yes Sir.
Q.103. Can you recall anything he told you regarding his obligations?
A.103. He told me that he was contributing to his mother and sister.
Q.104. Were you aware that his father was deceased?
A.104. Yes Sir.
Q.105. Do you know anything regarding his sister?
A.105. I know she is an invalid.
Q.106. In your Summary you refer to his signature on the Pay Roll, there seems to be a little confusion between Pay Roll and Debt Roll?
A.106. (No answer by the witness)

Member to Court. That is not a Pay Roll, these documents are required by C.M.H.Q. part 1. Order to determine the financial status of the personnel who are on Subsistence.

Def: Q.107. You said that you recognised the signatures on these certificates, on what basis do you recognise these signatures?
A.107. I recognise the hand writing?
Q.108. But you would not say that you are a handwriting expert?
A.108. No Sir.
Q.109. Then are you prepared to swear that you recognise those signatures?
A.109. I can identify the signature of the accused on the certificates for the past few months, yes Sir.

Def:- I would suggest that the witness is an expert Sir if he can swear to that.

Q.110. You say that there was no money in the box?
A.110. Yes Sir.
Q.111. Who was the witness that was with you when you looked into that box.
A.111. Corporal Barnett.
Q.112. There is no mention of that in the Summary of Evidence?
A.112.

Pros: Mr. President, the Defending Officer will have to follow that up.

Def: Q.113. You say that you did not disclose that in the Summary of Evidence?
A.113. Yes Sir.
Q.114. Were you asked?
A.114. No Sir.

In the opinion of the Court it is not necessary to comply with R.P.83(B)

The witness withdraws.

4th. Witness Prosecution. Lieut. J.A. Handley, 11th. Field Ambulance, R.C.A.M.C. having been duly sworn is examined by the Prosecution:

Q.115. Will you give your full name, rank and Unit to the Court please?
A.115. Lieutenant, John Albert Handley, 11th. Canadian Field Ambulance, R.C.A.M.C.
Q.116. Were you formerly Stationed in London?
A.116. Yes Sir.
Q.117. And attached where?
A.117. D.M.S. Branch.
Q.118. Do you know the accused Staff Sergeant David?
A.118. I do Sir.

Pros: Mr. President, I should point out that this witness was not at the Summary of Evidence and notice should have been given to the Defence.

Def: I have no objection Sir.

Q.119. I am producing to you certain documents Exhibits C.1. to C.12 for identification do you recognise the signature at the bottom?
A.119. That is my signature, on No.1,2,3,4,5,8, and 11.
Q.120. Then your answer is that you identify all documents with the exception of No.6,7,9,10 and 12?
A.120. Yes Sir the remainder are my signature.

Witness cross-examined by the Defence.

Q.121. Were you present at the time of the alleged signing of these documents?
A.121. I was.
Q.122. Did you see the accused sign these Debt Certificates?
A.122. I would not like to make that statement Sir but I was on duty at the time of the Pay Parades and I stood by the Paymaster and the men signed the certificate at the end of the counter and any time that my signature appears on that sheet I was present, but for me to say that I saw any individual sign it would not be correct.

Pres: Q.123. Well then these certificates are not correct?
A.123. Well I have witnessed those signatures but I cannot say that I saw each and every individual sign it.

Pros: Q.124. Would it be that you cannot recall each man that signed?
A.124. Yes.

(B)

Def: Q.125. Would it be right to say that some of the personnel are not always there at the signing of the Debt Certificate, there have been occasions when certain men are paid at subsequent times at C.M.H.Q. and are paid when you are not present and these certificates are then returned and you sign them?

A.125. No Sir, any personnel that are not on that Pay Parade, if there are no signatures on that list it is their responsibility not mine.

Q.126. Therefore you were not present when any personnel were paid at C.M.H.Q.

A.126. No, I witnessed the signatures of the personnel of the Medical Branch that were on Pay Parade.

Q.127. And therefore the accused might not have been paid on that parade on occasions?

A.127. Yes Sir, if they were there I have witnessed their signatures if they were not there I did not. It is obvious, you may have forty men and some of them may be on leave and if they are not there, it is the responsibility of the Paymaster.

Q.128. We are concerned with the Debt Certificate not the Pay Rolls, and there have been occasions when men have not signed it and it has been returned to be completed.

A.128. There may have been men who were not on the Pay Parade, for instance, if they call the Pay Parade for Eleven o'clock and the men were not there and they went over to C.M.H.Q. at Twelve o'clock to be paid, now if they at C.M.H.Q. allowed those men to sign over my signature it is not my responsibility, if they are not on the regular Pay Parade.

Pres: What you mean to say is that a blank would be left on the certificate and subsequently they would sign it when Mr. Handley was not present?

Def: That is right Sir.

Pres: Q.129. Just to clarify that, on these certificates, would it be possible that where the signature of the accused appears it had not been witnessed by you?

Wit. A.129. It would be possible, yes, it would be possible for David to be absent from the Pay Parade and later to be paid at C.M.H.Q. and sign that document later.

Pres: Q.130. It would be possible for blanks to be left on that certificate?

A.130. Yes Sir is has happened.

Q.131. Do you know David's signature?

A.131. Yes Sir I do.

Q.132. Will you look over these certificates and see if you are able to identify the signature of the accused?

A.132. (Certificates examined by the witness) They appear to be David's signature Sir.

Q.133. On each and every one of those certificates?

A.133. Yes Sir.

Def: Q.134. Since you have just examined those documents are you now prepared to swear that it is the accused's signature?

A.134. They appear to be Sir and that is based on knowing it for sometime past, but I would not swear to it.

Q.135. And you are no handwriting expert?

A.135. No Sir.

Q.136. Inasmuch as you say that you are no handwriting expert and the accused is in a different position when he signs that document, you cannot definitely say that he signed it? that is in your presence?

A.136. I cannot say that.

Q.137. And when the personnel sign that document you are some ten or twelve feet from the end of the table?

A.137. Yes Sir.

In the opinion of the Court it is not necessary to comply with R.P.83(B). The witness withdraws.

5th. Witness Prosecution. Mrs. Doris Meakin, 117 Fellows Road, Hampstead, N.W.3. having been duly sworn is examined by the Prosecution:-

Q.138. Mrs. Meakin, you live at 117 Fellows Road, Hampstead N.W.3?
A.138. Yes.
Q.139. Do you know Staff Sergeant David?
A.139. Yes.
Q.140. Did he at any time have lodgings at your place?
A.140. Yes.
Q.141. Will you tell the Court when he first went to take up residence there?
A.141. June 12th. or 17th. 1942.
Q.142. What arrangements did you have with him with respect to Board?
A.142. Bed, Breakfast and dinner each day with three meals on Saturday and Sunday for £1.17.6 per week.
Q.143. And how long did he continue to stay with you?
A.143. I think it was about December 12th. or 13th. the last time I saw him.
Q.144. And in the intervening time was he there continuously?
A.144. Yes.
Q.145. That was his private lodging?
A.145. Yes.
Q.146. And how much money did you receive from Staff Sergeant David altogether?
A.146. Eight pounds altogether.
Q.147. Do you recall how that was paid Mrs. Meakin.
A.147. The first fortnight he paid me £3.15.0 and then £3.0.0 in August and then I asked him to get me some theatre tickets, he paid for them himself and they came to £1.5.0.
Q.148. So that he paid you £8.0.0 altogether?
A.148. Yes.
Q.149. Do you know how much money he owed you when he left?
A.149. I have only got it roughly I loaned him thirty shillings, £42.7.0 including the 30/-.
Q.150. That is over and above the £8.0.0?
A.150. Yes.

Pres: What are you attempting to establish?
Pres: That he had money owing.

Q.151. So that he owed you some /42.0.0? that is for Board and Lodging?
A.151. Yes.
Q.152. Was there any other money?
A.152. My brother lent him £10.0.0, and the day came to pay it back and it was not paid. My brother wanted it to pay his Income Tax, and I had to pay it, and I wrote to the Colonel about it.
Q.153. Has any of that money been paid back by Staff Sergeant David?
A.153. No Sir.
Q.154. So that the full amount is owing?
A.154. Yes Sir.

Witness cross-examined by the Defence.

Q.155. Mrs. Meakin, David was a friend of your two sons in the Royal Navy?
A.155. Yes Sir.
Q.156. He was taken into your Home as a friend?
A.156. Yes.
Q.157. So that he was taken in as one of the family?
A.157. Oh no Sir.
Q.158. Your two sons knew him and you let him have the room and board for £1.17.6?
A.158. Yes.
Q.159. And he paid you £6.15.0?
A.159. Yes.
Q.160. To August?
A.160. Yes.

Q.161. And then he paid £1.5.0 for you for theatre tickets?
A.161. Yes, I offered him the money and he refused it, he said take it from my account and I did.
Q.162. Prior to that he did not know that you were going to take it from his account?
A.162. Yes Sir.
Q.163. Then later you wrote to him and advised him that he should not run up debts?
A.163. Yes Sir.
Q.164. And then one day David found a note in his hat?
A.164. I never had the chance to speak to him privately, my husband and family did not know that he owed me the money, I could not get a chance to speak to him alone.
Q.165. Surely there was some chance to speak to him?
A.165. No there was not if he did not come in until late, it is a boarding house, and I had no opportunity of speaking to him alone. If he knew I was going to speak to him he would not come home.
Q.166. Well it seems strange to me that a man could stay at your place for some months and yet you cannot speak to him?
A.166. Oh yes I have spoken to him, but I thought I was helping him because he said he wanted to send money to Canada.
Q.167. Anddid it not occur to you to tell him that he had to pay, will we say give him three months to pay?
A.167. I did, I asked him from time to time.
Q.168. Then you must agree it was a very poor policy?
A.168. Yes Sir I know now it was.

Pres: This is not very clear to me, there seems to be some confusion about this money?
Pros: Mrs. Meakin says that the accused went there about the middle of June 1942 and paid her £3.15.0 about the end of June 1942 and he paid her £3.0.0 in August and then he paid £1.5.0 for theatre tickets for her.
Pres. Q.169. When was that Mrs. Meakin?
A.169. Sometime in October.
Q.170. So that by the end of July he owed you the entire month of July?
A.170. Yes Sir and in the meantime I lent him ten shillings.
Q.171. At any time after the end of July would he be free of debt to you?
A.171. No Sir, that is all he paid me.

In the opinion of the Court is it not necessary to comply with R.P.83(D).

The witness withdraws.

Ch. Witness Prosecution. No.C.29055 Sergt. D.H.Kiefer, R.C.A.M.C. having been duly sworn is examined by the Prosecution:-

Q.172. Do you know Staff Sergeant David the accused?
A.172. Yes Sir.
Q.173. Did you at any time ever advance him money?
A.173. Not more than once or twice.
Q.174. Did you ever lend him any money?
A.174. Yes Sir.
Q.175. When was that?
A.175. The first part of December.
Q.176. How much?
A.176. Ten shillings.
Q.177. Has he paid that back?
A.177. He paid me two shillings.
Q.178. That left eight shillings?
A.178. Yes Sir.
Q.179. Has that been paid?
A.179. No Sir.
Q.180. Have you ever asked for it?
A.180. No Sir, I believe it would have been paid, I went on leave and I think it would have been paid.

Witness cross-examined by the Defence.

Q.181. Sergeant Kiefer you have known Staff Sergeant David some time?
A.181. Yes Sir.
Q.182. In fact very good friends?
A.182. Yes Sir.
Q.183. And as such you and David have associated very much with one another?
A.183. Yes Sir.
Q.184. And in the course of that association you would lend one another money?
A.184. Yes Sir.
Q.185. And you did not demand any repayment?
A.185. No Sir.
Q.186. Is it true that you were not anxious to appear to give evidence in this case?
A.186. Yes Sir I would rather have let it drop.

Pros: Q.187. At the time you lent him money were you subordinate to him?
A.187. Yes Sir.

Pres: Q.188. The money was lent?
A.188. Yes Sir.

In the opinion of the Court it is not necessary to comply with R.P.83(b)

The witness withdraws.

7th. Witness Prosecution. No.B.91702 Pte. Prince, R.C.A.M.C. having been duly sworn is examined by the Prosecution:-

Q.189. In or about the month of December last where were you stationed?
A.189. C.M.H.Q.
Q.190. Do you know Staff Sergeant David?
A.190. Yes Sir.
Q.191. Were you in the same place at that time?
A.191. Yes Sir.
Q.192. In or about December 1942 did you lend any money to David?
A.192. Yes Sir, I lent him £1.0.0.
Q.193. At that time were you subordinate in rank to him?
A.193. Yes Sir.
Q.194. And of that Pound has he repaid you any sums?
A.194. No Sir.
Q.195. It is still due and owing to you?
A.195. Yes Sir.
Q.196. Did you at any time ever ask him for the repayment of it?
A.196. No Sir.

Witness cross-examined by the Defence.

Q.197. You worked with Staff Sergeant David?
A.197. Yes Sir.
Q.198. Not only did you work with him but you dined with him and you went to social functions together?
A.198. Yes Sir.
Q.199. And you lent him a Pound?
A.199. Yes Sir.
Q.200; And you did it as a friend?
A.200. Yes Sir.
Q.201. One friend to another?
A.201. Yes Sir
Q. 202. Did you deem that it should be repaid by a certain time?
A.202. No Sir.

(2)

Q.203. And he being a good friend of your he would have in due course repaid you?
A.203. Yes Sir.
Q.204. And this transaction took place just before Christmas?
A.204. Yes Sir.
Q.205. And so far as you were concerned it was just a loan between friends?
A.205. Yes Sir.

In the opinion of the Court it is not necessary to comply with R.P.83(B)

The witness withdraws.

8th. Witness Prosecution. No.C.42000 Staff Sergeant Gibbs L. Canadian Provost Corps, having been duly sworn is examined byt the Prosecution:-

Pros: Mr. President, this witness did not appear at the Summary of Evidence. He will give evidence of the statement given to him by the accused and the accused was notified that it was the intention of the Prosecution to call him as a witness at the trial.

Def: I have no objection Sir.

Q.206. Will you give you number, rank, name and unit to the Court?
A.206. No.C.42000 Staff Sergeant Gibbs L.A. Canadian Provost Corps,
Q.207. Attached to C.M.H.Q?
A.207. Yes Sir.
Q.208. Stationed in London?
A.208. Yes Sir.
Q.209. Do you know the accused Staff Sergt. David?
A.209. Yes Sir.
Q.210. As a result of certain instructions you made some enquiries?
A.210. Yes Sir.
Q.211. And as a result of those enquiries did you have occasion to interview the accused?
A.211. Yes Sir.
Q.212. Did he at any time give you a statement?
A.212. Yes Sir on the 16th. of January 1943.
Q.213. Was that statement verbal or written?
A.213. Written.
Q.214. In whose hand writing?
A.214. In my hand writing.
Q.215. How?
A.215. He made a voluntary statement.
Q.216. Was any caution given by you to the accused before that statement was taken?
A.216. Yes Sir.
Q.217. Did he sign as having received that caution?
A.217. Yes Sir.
Q.218. Was that statement obtained by you as a result of any inducement held out by you?
A.218. No Sir.
Q.219. Was any threat made to him?
A.219. No Sir.
Q.220. Was he under arrest at that time?
A.220. Yes Sir.
Q.221. Did he know with what he was being charged?
A.221. I would not say that Sir except A.W.L.
Q.222. There was no threat made by you to him in getting that statement?
A.222. No Sir.
Q.223. Have you that statement?
A.223. Yes Sir.

Q.224. Can you identify his signature at the end of the statement?
A.224. Yes Sir.
Q.225. Is that your signature as a witness?
A.225. Yes Sir.
Q.226. Will you read that statement to the Court?
A.226. Statement read by the witness.

Pros: I tender that statement as an Exhibit Sir. EXHIBIT "D"

The Defence declines to cross-examine the witness

Pros: Q.227 I see there is an addition to this statement?
A.227. Yes Sir.
Q.228. Is that in your hand writing?
A.228. That is in my hand writing Sir.

Pros: That is the case for the Prosecution Sir.

D E F E N C E.

Presi- Q.229. Under R.P.40 I am to draw your attention to the fact that you do not have to give evidence under oath unless you wish to do so. If you do not give evidence under oath you may if you wish, just make a statement, if you give evidence under oath you are liable to be questioned by the Court and cross-examined by the Prosecutor, if you merely make a statement you cannot be questioned on it either by the Court of the Prosecutor. Evidence given under oath will naturally carry more weight than if you just make a statement, do you understand that?

Accused: A.229. Yes Sir.

Q.230. Do you apply to give evidence yourself as a witness?

A.230. No Sir.

Q.231. Do you intend to call any other witnesses in your Defence?

A.231. Yes Sir.

Q.232. Is he a witness as to character only?

A.232. Yes Sir.

1st. Witness Defence. Character.

Colonel F.H. Van Nostrand, R.C.A.M.C. having been sworn is examined by the Defence.

Q.233. You are a Consulting Neurologist and Physician in the Canadian Army?

A.233. I am.

Q.234. You I believe came over with the 15th. Canadian General Hospital?

A.234. Yes.

Q.235. And Staff Sergeant David came over with the same Unit?

A.235. Yes.

Q.236. Would you please Sir tell the Court what you know of the accused?

A.236. Sir, I first met Staff Sergeant David in the Fall of 1939 when I was enlistment Officer. I knew him more intimately when he was with the 15th. General Hospital under Colonel Urquhart. I was Medical Officer and I was in daily contact with him until May 1941. He was given the rank of Corporal and selected for special duties which I understand he carried out very well. From May 1941 until June 1942 I did not see him much but since that time we have been in the British Columbia house and in all the time I have known him he has been most reliable and trustworthy, and I was very surprised to hear that he was on charge at all.

In the opinion of the Court it is not necessary to comply with R.P.83(B).

The witness withdraws

2nd. Witness Defence. Character.

Lieut. Colonel. R.C. Montgomery, R.C.A.M.C. having been duly sworn is examined by the Defence.

Q.237. I believe Colonel that you came over with the 15th. General Hospital?

A.237. That is right.

Q.238. And you were at the 15th. General Hospital prior to being transferred to No.1. Neurological Hospital?

A.238. Yes.

Q.239. While you were at the 15th. General Hospital you had an opportunity of becoming acquainted with the accused?

A.239. Yes.

Q.240. Will you tell the Court what you know as to the character of the accused?

A.240. I was with the 15th. General Hospital in Toronto

A.240. Staff Sergeant David enlisted very early I do not remember much of him there, he became a clerk at that time and went right through. We opened the hospital at Bramshott on the 1st. of July 1940 and he stayed there a little over a year and during that time he was promoted to Corporal he did his work with initiative and did very well. He was not the type of lad that did his work in spurts and he was a very useful lad to have around and it was not my idea that he should transfer to Headquarters, I would have kept him. So far as I know I never had him before me at all, he was a very useful lad.

In the opinion of the Court it is not necessary to comply with R.P.83(B)

The witness withdraws.

3rd.Witness Defence. Characher.

Lieut. Colonel R. Dickson, R.C.A.M.C. having been duly sworn is examined bythe Defence:-

Q.241. Colonel Dickson do you recognise the accused?
A.241. Yes.
Q.242. I believe you have known the accused for some time, you know the family and you knew him while you were at the Hospital?
A.242. Yes.
Q.243. And while you were at the 15th. General Hospital did you find his Services satisfactory?
A.243. Very satisfactory.
Q.244. Will you tell us what you know about his general character?
A.244. I have known the accused quite well since the formation of the 15th. General Hospital in 1939 and I knew him better after the formation of the 16th. General Hospital at Bramshott. Early on he had work to do with the Medical Boards and during that time he did a very good job, conscientious, willing and did not mind working late hours and we all very much regretted his transfer from the Unit.
Q.245. He left the Unit of his own free will?
A.245. Yes.
Q.246. And you were at all times struck with the manner in which he conducted his duties?
A.246. Yes.
Q.247. Anything further?
A.247. Nothing, except that while he was with the 15th. General hospital his character was always exemplary he was a very good influence to have around.

Closing address of the Defence.

Mr. President, you have heard the evidence on these charges and I should like, first of all to make a few remarks relating to the 1st. and 2nd. charges, Fraudulently misapplying propert belonging to a person subject to Military Law, these charges in part state, "Applied the sums of 6/6½ and 4/- to his own use with intent to defraud". Now if you analyse the phrase, "intent to defraud" fully I do not think from the evidence in this case, that intention to defraud has been proved by the Prosecution. It must be agreed that the accused did not fraudulently misapply that money, it was merely safeguarding the funds of his Superior Officers, they trusted him and they say that they had no objection to his carrying that money around in his poeket and therefore I move that the charges one and two laid under Section 18(4) be dismissed as no prima facie case has been established by the Prosecution.

We will now consider charges 3 to eleven the wording of the charge is as follows:- In a Certificate signed by him knowingly making a false statement", Gentlemen, the act of making nine separate charges out of one act might well be challenged by any legal mind in the country, it has been done in order to make a drab looking picture against the accused, and I know the Court will not be hypnotised by the fact that the thirteen charges might well be put into one.
We next move to the A.W.L. charge to which the accused has pleaded guilty and all I can say regarding this is that the accused has been under a great mental strain even on the verge of Anxiety Neurosis, for some months, he had been pondering over his difficulties and attempting to solve his financial difficulties, trying to be a breadwinner to his Mother and Sister pooling funds with his brother. This was too much for him and he was mentally fatigued and it was necessary for him that he went A.W.L. fully realizing the seriousness as shown by the letter which he left to Colonel Gray, he clearly realized that he was committing an offense before going A.W.L. and this letter clearly shows the state of mind of the accused and shows the obvious need of a change of environment to change his equilibrium, and he came back of his own free will.
Now with reference to charge thirteen, the wording of the charge is correct but it gives a very wrong impression of the circumstances. The accused was a personal friend of both Sergeant Kiefer and Private Prince and I suggest there is found a spirit-de-corps in the Medical Corps, and especially in the D.M.S. branch, there is close relationship in the staff both in their duties and socially, and with David, Kiefer and Primes it was even more so, they dined together and spent their time together and if one of them was in need of a little money they lent it to one another it was lent as friend to friend and the last thought in their mind would be rank.

Closing address of the Prosecution.

Mr. President, I have just a few observations to make, the first is regarding the nine charges which the defence says should be grouped as one. It was not the intention to make the picture look black but that it is the only way it can be done, each one is a separate and distinct act. I point that out because there was no alternative. Now with regard to the first and second charges. Now the Defence is right when he says that there must be intention, the absence of intention is to show that he is not guilty. The intention is the circumstances surrounding the particular act, the intention to what is formed in his own mind. You have a situation here that Petty Cash was advanced by Colonel Gray for the purpose of making small purchases. From their personal point of view it was not very significant. I do not think these two charges are really bad it is just prejudical to Military Discipline the charges came to light and they had to be laid. You have before you the slip of paper showing figures indicating that he owes so much and so on, you have the whole transaction before you, and it is not a great sum of money, but the money was not there at the time and he could not pay it. That money was entrusted to him and it has not been paid since and the Court will have to take all that into consideration. I do not want to be unfair to the accused I am only trying to enable you to come to the conclusion as to whether or not their was the intention, and in coming to that conclusion one

must have regard for his ability to pay and whether he intended to return that money. Could it be paid? and if there is any doubt about it the accused should have the benefit of that doubt. The other charges as suggested can be grouped, if the accused did sign these certificates to say that he had no debts, it is for you to decide from the evidence as to whether he did in fact have debts. The evidence is quite clear. It was wrong and he knew it was wrong and he knew he had certified that he did not owe any money. You have the evidence of Mrs. Meaking that he paid the first two weeks and from that time he owed her money and had no ability to pay her. The signing of that certificate is laid down as a military rule it is done as a matter of policy, it is a good thing that it is done, it was within the sphere of Military ruling to make it and if broken it becomes an offence and the accused knew all this. The accused has pleaded guilty on the Charge of A.W.L. and therefore I have no need to say anything about it. As far as the 13th. charge is concerned, borrowing from two other soldiers it is true that there is a spirit-de-Corps, a desire to help one another, it is rather nice that it does exist but it is a breach of discipline, it is a law and that law is that an N.C.O. should not borrow from his subordinates and it is within the confines of that law that he must not borrow money from subordinates. Now the accused has brought before this Court witnesses as to character, it has been splendid and you will have to take that into consideration and I have no comments on that I made no attempt by cross-examination or by calling witnesses to the contrary and you have to accept it as such. You will have to deliberate as to the finding and the evidence on all the charges is before you and I think there is evidence that the accused is guilty. If there is anything I can do to assist you I will be only too pleased.

The Court is closed for the consideration of the finding.

The Court is re-opened, and the accused is brought before the Court.

Q.248. Have you any evidence to produce as to the character and particulars of Service of the accused?

Capt. W.G. Elder, Prosecuting Officer is duly sworn.

A.248. I produce A.F.B. 296 and M.F.M.6 relating to the accused.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "P", signed by the President, and annexed to the proceedings.

Q.249. Is the accused the person named in the statement which you have heard read?

A.249. Yes Sir.

Q.250. Have you compared the contents of the above statement with the regimental books?

A.250. Yes Sir.

Q.251. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A.251. Yes Sir.

Q.252. Do you wish to cross-examine the witness?

Def: A.252. No Sir.

Q.253. Do you wish to address the Court?

A.253. Yes Sir, (See overleaf)

Address by the Defending Officer in mitigation of punishment.

Mr. President and members of the Court, I wish to make a few remarks relating to this case in mitigation of punishment. Staff Sergeant David enlisted on the 8th. of September 1939, on the 5th. day subsequent to the declaration of war. He had a position in Toronto from which he resigned to enlist. He left a modest home in which he lived with his mother, and a sister who at 36 years of age cannot walk without assistance and of which home he and his brother are the only support. You have heard the avidence as to his character. Six months after coming to this country he was a corporal, and as you have heard, if it had not been for these difficulties he would have been a W.O.2. In spite of this rapid rise, never forgetting his obligations to his mother and sister he assigned $25.00 per month for about eleven months, he received promotion and his first thought was home and he increased his assignment to $35.00 per month and that was for 14 months and then he increased his assighment again to $49.00 per month and that is about $1400.00 that the accused has sent home and you must agree that this is no mean sum. He was transfered to his prrsent branch in 1941 and he became Chief Clerk in this Branch and the next thing was that he received word that his mother was seriously ill with cancer, in spite of this he carried on. We have evidence that his Chief Clerk knew that he was carrying on under a terrific mental strain and he became exhausted and as I said before was on the verge of anxiety neurosis and there was only one way out, to have a rest and then return, and as he stated to Colonel Gray he intended to return and take his punishment. As we look at that letter we can see it is no ordinary case of A.W.L. He went to his relatives in the country and the change in environment certainly resulted in him regaining his composure, and, having taken hold of himself, he returned to London with two things in his mind first to make a clean breast of his immediate past and to make restitution. He had a true friend in London who drew £75.0.0 from the bank and said to him here go and pay your debts and we can talk afterwards. The mere fact that this friend would draw that amount of money from the bank is a sign of the esteem in which the accused was held. These obligations would all have been paid had it not been for the intervention of the Camp Commandant who felt that he should intervene and it was decided that these debts should be left in obeyance and Mrs. Meakin with whom the accused had had his home ultimately agreed that the arrangement was the better plan. When this arrangement was first being made to pay this money in Miss Whitehead's office and the plans changed he asked her to call the Provost and gave himself up. This man was not picked up by the police he gave himself up. Immediately the accused was taken into custody it was his desire to make a clean breast of it and he told everything he knew, and goodness knows he really told everything. He had been in custody four days when he volunteered to help the Provost Company, and it was agreed that in view of his past he should be allowed to work at certain duties and he has worked under the Assistant D.P.M. for the past 31 days. I ask you gentlemen to take a fair view of this case for while this man is being punished so are others of his family, his mother and sister who are invalids, and his brother who is in the Forces and I make an earnest plea for a lenient sentence.

Pros. F.G.C.M.

The Court is closed for the consideration of the Sentence.

(2)

Exhibit "A" (2)

Col. Gray:

The contents of this note disturbs me very much. Of late it has affected me and my efficiency very much.

I have not been a success in any way since I came to London and especially I have failed to keep above water financially.

Details re this can be had from Lieut. Handley and also from Mrs. R. Meakin,
117 Fellows Road
Primrose 5217.

Before I face up I

2 have
feel that I must a
few days rest, although
I fully realise this
is an additional charge.
as I am going to go
away and will report
to you personally on
my return.

I give you my
word of honour I will
return

I am extremely
sorry to have ended all
chances of making a
successful life in this
manner but after I pay
just punishment I will
try to really make a
worthwhile citizen

Floyd Hand.

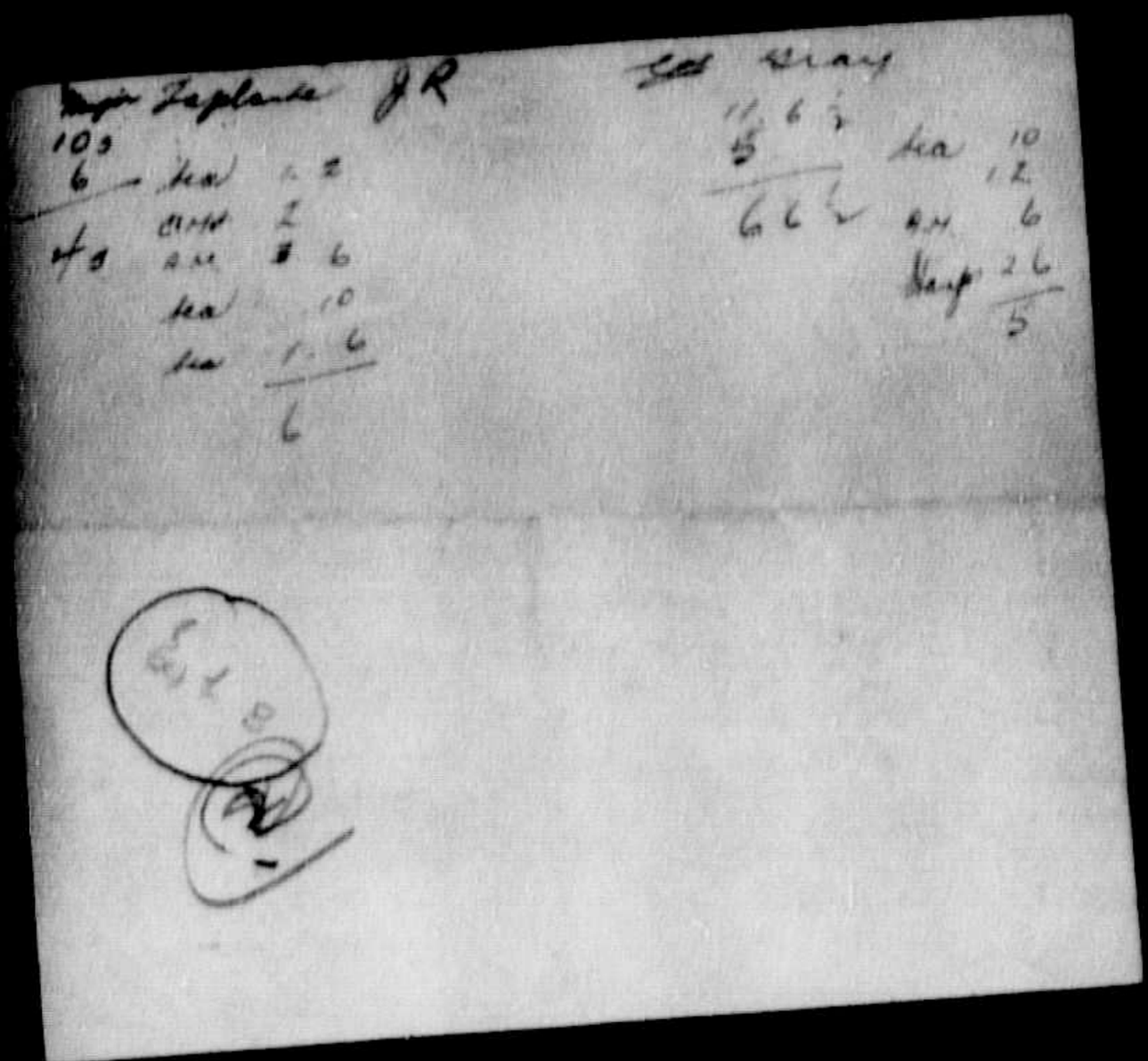

Exhibit "B" Summary of
Evidence R 93585 S/Sgt David, Lloyd
Taken this 22 Jany 1943.

[signature]
Appears detailed to 10140
Summary of Evidence

Exhibit (C.1) 29-12-42 ~~31 Dec 42.~~

I certify that I am aware of the provisions of C.M.H.Q. Part 1 Order No. 37 d/lo Sep 41 and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to this date.

MEDICALS				C.M.H.Q. DETAILS
B85984	Pte	H Wellman		H Wellman
B94018	Sgt	McBornie J.L.		J L McBornie
H33040	Cpl	ARMSTRONG	J.	J Armstrong
L17281	PTE	BARRY	C.R.	C R Barry
D95170	PTE	BECIGNEUL	P.E.	S.O.S. IN HOSPITAL
C29043	CPL	BULGIN	F.G.	F G Bulgin
M25887	CPL	CHAUSSE	E.A.	E A Chausse
B89110	PTE	CLANCY	H.	H Clancy
B93585	S/SGT	DAVID	L.	David
B93706	PTE	GRIMSLEY	S.H.	[illegible]
M16137	SGT	HIDSON	A.J.	[illegible]
M25844	CPL	HORNBY	P.E.	P E Horney
B93698	SGT	HOUSE	D.A.	D A House
B94020	CPL	JOHNSTON	A.M.	A M Johnston
B93748	QMS	JOHNSON	H.T.	H T John
C92055	SGT	KIEFER	D.H.	[illegible]
A17092	PTE	LITTLETON	R.C.	R C Littleton
D95685	PTE	MACKAY	D.B.	D B Mackay
H35732	CPL	McLACHLAN	D.A.	[illegible]
P30312	S.M.	MOORE	B.C.K.	B C Moore
C29017	PTE	O'SHEA	S.T.	S.T. O'Shea
B91702	PTE	PRINCE	L.D.E.	L D Prince
M16852	PTE	QUINN	G.M.	G M Quinn
B91440	PTE	REID	W.V.	W. Reid
D91989	PTE	ROACH	P.	P Roach
B93896	CPL	SILVER	J.	[illegible]
H33067	SGT	STADNYK	J.	[illegible]
B93705	S/SGT	TOMKINS	F.T.	F. T. Tomkins
C93027	SGT	TOMLINSON	W.R.	W Tomlinson
H33123	PTE	WALKER	R.M.	R M Walker
C969	GNR	YOUNG	O.J.	O J Young

I hereby certify that I have witnessed the above signatures.

J C Handle, Lieut
for Dms Cmdt

Date 14-12-42

I certify that I am aware of the provisions of C.M.H.Q. Part I Order No.37 d/10 Sep 41 and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to this date.

	Medicals		C.M.H.Q. Details
		Exhibit "C"	
M.33040	Cpl	ARMSTRONG, J.	
L.17281	Pte	BARRY, C.R.	C R Barry
D.95170	Pte	BECIGNEUL, P.E.	
D.95909	Cpl	BENSON, J.E.	
C.29043	Cpl	BULGIN, F.G.	
M.25887	Cpl	CHAUSSE, E.A.	
B.93585	S/Sgt	DAVID, L.	
D.95191	Pte	DE LEDICQ, H.	
B.93706	Pte	GRIMSLEY, S.H.	
M.16137	Sgt.	HIDSON, A.J.	
H.25874	Sgt.	HOOPER, L.S.	
M.25844	Cpl	HORNBY, F.E.	
B.93698	Sgt.	HOUSE, D.A.	
U.1528	S/Sgt	JELKS, G.W.	
B.94020	Cpl	JOHNSTON, A.M.	
B.93748	QMS	JOHNSON, H.T.	
C.29055	Sgt.	KIEFER, D.H.	
B.94018	Sgt.	McBURNIE, J.L.	
H.35732	Cpl	McLACHLAN, D.A.	
P.30312	S.M.	MOORE, B.C.K.	
C.29017	Pte	O'SHEA, S.T.	
B.91702	Pte	PRINCE, L.S.	
M.16852	Pte	QUINN, G.N.	
B.89806	Pte	REID, E.W.	
B.91440	Pte	REID, W.V.	
D.91989	Pte	ROACH, P.	
B.93896	Cpl	SILVER, J.	
M.33067	Sgt.	STADNYK, J.	
L.17012	Pte	STILLMAN, D.E.	
B.93705	S/Sgt	TOMKINS, F.T.	

I hereby certify that I witnessed the above signatures

Date 14-12-42

I certify that I am aware of the provisions of C.M.H.Q. Part I Order No.37 d/10 Sep 41 and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to this date.

Medicals

C.M.H.Q. Details

(8)

C.93027	Sgt.	TOMLINSON, W.S.	W Tomlinson
M.33123	Pte	WALKER, R.M.	R.M. Walker
B.85984	Pte	WILLIAMS, H.	H Williams

I hereby certify that I witnessed the above signatures

15 Dec 42 J.H. Handley Lieut Capt.

C.M.H.Q. Details

I certify that I am aware of the provisions of C.M.H.Q. Daily Order Part L No.37, dated 10 Sep 41, and that I have no outstanding debts for living expenses which were incurred more than 2 weeks prior to the date of signing this certificate.

DATE 30-11-42

MEDICALS. C.M.H.Q.DETAILS.

Exhibit (C3)

H.33040	CPL.	ARMSTRONG	J.	J Armstrong
L.17201	PTE.	BARRY	C.R.	C R Barry.
D.95170	PTE.	BECIGNEUL	P.E.	P E Becigneul
D.95000	CPL.	BENSON	J.E.	J Benson.
C.29045	CPL.	BULGIN	F.G.	F G Bulgin
M.25007	CPL.	CHAUSSE	E.A.	E. A. Chausse
B.89110	PTE.	CLANCY	H.	Hugh Clancy
B.93503	S/SGT.	DAVID	L.	[illegible]
D.95191	PTE.	DE LEDIOQ	H.	H Deledioq
L.17126	SGT.	GLOVER	D.L.	D L Glover
B.93706	PTE.	GRIMSBY	S.H.	[illegible]
H.16137	SGT.	HIDSON	A.J.	[illegible]
H.25074	SGT.	HOOPER	L.S.	L Hooper
M.25044	CPL.	HONNEY	P.E.	P. E. Honey.
B.93690	SGT.	HOUSE	D.A.	D. A. House
B.37418	CPL.	JAMES	T.E.	T James.
U.1528	S/SGT.	JELES	G.W.	[illegible]
B.93740	QMS.	JOHNSON	H.T.	H Johnson
B.53710	PTE.	JOHNSTON	S.	S. Johnston
C.29055	SGT.	KIEFER	D.H.	D H Kiefer
A.17040	PTE.	LITTLETON	R.O.	IN HOSPITAL
B.94018	SGT.	MCBURNIE	J.L.	J L McBurnie
H.55738	CPL.	MCLACHLAN	D.A.	[illegible]
P.30512	SM.	MOORE	B.C.K.	B C K Moore
C.29017	PTE.	O'SHEA	S.T.	S.T. O'Shea
B.91708	PTE.	PRINCE	L.D.	L.D. Prince
B.89000	PTE.	REID	E.W.	[illegible]
B.91440	PTE.	REID	W.V.	W. Reid
H.33067	SGT.	STADNYK	J.	J Stadnyk
L.17012	PTE.	STILLMAN	D.E.	D. E. Stillman

This is to certify that I was present and witnessed the above signatures.

J A Handley Lt. [illegible]

I certify that I am aware of the provisions of C.M.H.Q. Daily Order Part L No.37, dated 10 Sep 41, and that I have no outstanding debts for living expenses which were incurred more than 2 weeks prior to the date of signing this certificate.

DATE 30-11-42

MEDICALS. C.M.H.Q. DETAILS.

B.93705	S/SGT.	TOMKINS	F.T.	F.T. Tomkins
M.35123	PTE.	WALKER	R.M.	R.M. Walker
B.85964	PTE.	WILLIAMS	H.	H. Williams

This is to certify that I was present and witnessed the above signatures.

30 Nov 42. C.M.H.Q.Details. ..... Captain.

DATE...29.10.42...

I certify that I am aware of the provisions of C.M.H.Q. Daily Order Part 1 No.37, dated 10 Sep 41, and that I have no outstanding debts for living expenses which were incurred more than 2 weeks prior to the date of signing this certificate.

MEDICALS C.M.H.Q. C.M.H.Q. DETAILS.

Exhibit C

H.33040	PTE.	ARMSTRONG	J.	
L.17281	PTE.	BARRY	C.R.	C R Barry
D.95170	PTE.	BECIGNEUL	P.E.	Becigneul P.E.
D.95909	CPL.	BENSON	J.E.	J.E. Benson
C.29043	CPL.	BULGIN	F.G.	F.G. Bulgin
M.25887	PTE.	CHAUSSE ✓	E.A.	
B.89110	PTE.	CLANCY	H.	Hugh Clancy
B.93585	S/SGT.	DAVID	L.	[illegible]
D.95191	PTE.	DE LEDICQ	H.	H. Delcaix
L.17126	SGT.	GLOMER	D.L.	[illegible]
B.93706	PTE.	GRIMSLEY	S.H.	[illegible]
M.16137	SGT.	HIDSON	A.J.	[illegible]
H.25874	SGT.	HOOPER	L.S.	L. Hooper
M.25844	PTE.	HORNEY	P.E.	P.E. Horney
B.93698	SGT.	HOUSE	D.A.	D.A. House
B.37418	PTE.	JAMES	T.E.	T. James
U.1528	S/SGT.	JELKS	G.W.	[illegible]
B.94020	CPL.	JOHNSTON	A.M.	[illegible]
B.93748	QMS.	JOHNSON	H.T.	H.T. Johnson
C.29055	SGT.	KIEFER	D.H.	[illegible]
A.17042	PTE.	LITTLETON	R.O.	R.O. Littleton
B.94018	SGT.	MCBURNIE	J.L.	J.L. McBurnie
H.35738	CPL.	MCLACHLAN	D.A.	A. McClachlan
P.30312	SM.	MOORE	B.C.K.	B.C.K. Moore
C.29017	PTE.	O'SHEA	S.T.	S.T. O'Shea
B.91702	PTE.	PRINCE	L.D.	L.D. Prince
B.91440	PTE.	REID	W.V.	W. Reid
D.91989	PTE.	ROACH	P.	P. Roach
B.93896	CPL.	SILVER	J.	M. Silver
H.33067	SGT.	STADNYK	J.	J. Stadnyk

This is to certify that I was present and witnessed the above signatures.

J.A. Handley
Lieut.

MEDICALS C.M.H.Q. C.M.H.Q.DETAILS.

L.17012	PTE.	STILLMAN	D.E.	D.E. Stillman
B.93705	S/SGT.	TOMKINS	F.T.	F. T. Tomkins
C.93027	SGT.	TOMLINSON	W.S.	W Tomlinson
B.85984	PTE.	WILLIAMS	H.	H Williams

$4.47.

29 Oct 42. C.M.H.Q.Details. J.H. Handley Lieut Captain.

14 Oct 42.

I certify taht I am aware of the provisions of C.M.H.Q. Daily Order Part 1 No.37 dated 10 Sep 41 and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to the date of signing this certificate.

MEDICALS. C.M.H.Q. Details.

Exhibit (C57)

H.33040	PTE.	ARMSTRONG	J.	J. Armstrong
L.17281	PTE.	BARRY	C.R.	C R Barry
D.95170	PTE.	BECIGNEUL	P.E.	P E Becigneul
D.95909	CPL.	BENSON	J.E.	J E Benson
C.29043	CPL.	BULGIN	F.G.	F G Bulgin
M.25887	PTE.	CHAUSSE	E.A.	
B.89110	PTE.	CLANCY	H.	Hugh Clancy
B.93585	S/SGT.	DAVID	L.	[illegible]
D.95191	PTE.	DE LEDICQ	H.	H. Deledicq
E.15187	PTE.	GIRARD	J.G.	[illegible]
L.17126	SGT.	GLOVER	D.L.	[illegible]
B.93706	PTE.	GRIMSLEY	S.H.	[illegible]
M.16137	SGT.	HIDSON	A.J.	[illegible]
H.25874	SGT.	HOOPER	L.S.	L Hooper
M.25844	PTE.	HORNBY	P.E.	P E Hornby
B.93698	SGT.	HOUSE	D.A.	D A House
B.37418	PTE.	JAMES	T.E.	[illegible]
U.1528	S/SGT.	JELKS	G.W.	[illegible]
F.66646	PTE.	JENKINS	C.L.	Detention
B.94020	CPL.	JOHNSTON	A.M.	A Johnston
C.29055	SGT.	KIEFER	D.H.	D H Kiefer
A.17042	PTE.	LITTLETON	R.O.	R O Littleton
B.94018	SGT.	McBURNIE	J.L.	J L McBurnie
M.35738	CPL.	McLACHLAN	D.A.	D McLachlan
P.30312	SM.	MOORE	S.C.K.	[illegible]
C.29017	PTE.	O'SHEA	S.T.	S.T. O'Shea
B.91708	PTE.	PRINCE	L.D.	L D Prince
M.16652	PTE.	QUINN	G.W.	[illegible]
B.91440	PTE.	REID	W.V.	W. V. Reid
B.93696	CPL.	SILVER	J.	M. Silver

MEDICALS. C.M.H.Q.DETAILS.

[illegible].53067	SGT.	STADNYK	J.	J. Stadnyk
[illegible].17012	PTE.	STILLMAN	D.E.	D.E. Stillman
B.93705	S/SGT.	TOMKINS	F.T.	F.T. Tomkins
C.93027	SGT.	TOMLINSON	W.S.	W.S. Tomlinson
B.85984	PTE.	WILLIAMS	H.	H. Williams
C.969	GNR.	YOUNG	O.J.	O.J. Young

P Book

This is to certify that I was present and witnessed the above signatures.

[illegible]MENT

14 Oct 42. J.A. Handley Major (Rank)

84.47.

15 Oct 42. C.M.H.Q.Details. Captain.

... and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to the date of signing this certificate.

30-9-42

Medicals.

Exhibit C6A

H.33040	Pte.	ARMSTRONG,	J.	J Armstrong
L.17281	Pte.	BARRY,	C.R.	C R Barry
D.95909	Cpl.	BENSON,	J.E.	J E Benson
C.29043	Cpl.	BULGIN,	F.G.	F G Bulgin
M.25887	Pte.	CHAUSSE,	E.A.	E A Chausse
B.89110	Pte.	CLANCY,	H.	Hugh Clancy
B.83585	S/Sgt	DAVID,	L.	David
E.15187	Pte.	GIRARD,	J.G.	Hack
L.17126	Sgt.	GLOVER,	D.L.	D L Glover
B.93706	Pte.	GRIMSLEY,	S.H.	[illegible]
M.16137	Sgt.	HIDSON,	A.J.	A Hidson
H.25874	Sgt.	HOOPER,	L.S.	L Hooper
M.25844	Pte.	HORNBY,	P.E.	P E Hornby
B.93698	Sgt.	HOUSE,	D.A.	D A House
U.1528	S/Sgt	JELKS,	G.W.	[illegible]
F.66646	Pte.	JENKINS,	C.L.	C L Jenkins
B.94020	Cpl.	JOHNSTON,	A.M.	[illegible]
B.93748	QMS	JOHNSTON,	H.T.	H T Johnston
C.29055	Sgt.	KIEFER,	D.H.	D H Kiefer
B.94018	Sgt.	MC BURNIE,	J.L.	J L McBurnie
H.35732	Cpl.	MC LACHLAN,	D.A.	[illegible]
P.30312	S.M.	MOORE,	B.C.K.	Hack
C.29017	Pte.	O'SHEA,	S.T.	S.T. O'Shea
B.91702	Pte.	PRINCE,	L.D.	L D Prince
M.16852	Pte.	QUINN,	G.N.	G N Quinn
B.91440	Pte.	REID,	W.V.	W V Reid
D.91989	Pte.	ROACH,	P.	P Roach
H.33067	Sgt.	STADNYK,	J.	J Stadnyk
L.17012	Pte.	STILLMAN,	D.E.	[illegible]

This is to certify that I was present and witnessed the above signatures.

C.93027	Sgt.	TOMLINSON,	W.S.	W Tomlinson

....

[illegible] Fitzgerald
Maj

Medicals.

B.85984 Pte. WILLIAMS, H. H. Williams

C.969 Cnr. YOUNG, O.J. O J Young

D95170 Bécigneul P.E.

A 17042 Ritchie R.O.

15-9-42

I certify that I am aware of the provisions of C.M.H.Q. Daily Order Part I No.37 dated 10 Sept.41 and that I have no outstanding debts for living expenses which were incurred more than 2 weeks prior to the date of signing this certificate.

MEDICALS.		C.M.H.Q.		C.M.H.Q.Details.
L.17281	PTE.	BARRY	C.R.	C. R. Barry
D.95170	PTE.	BECIGNEUL	P.E.	P.E. Becigneul
B.88060	PTE.	BROWN	S.W.	S.W. Brown
C.29043	CPL.	BULGIN	F.G.	F.G. Bulgin
M.25887	PTE.	CHASSE	E.A.	E.A. Chasse
B.89110	PTE.	CLANCY	H.	Fred Clancy
B.93585	S/SGT.	DAVID	L.	David
D.95191	PTE.	DE LEDICQ	H.	H. Deledicq
E.15187	PTE.	GIRARD	J.G.	[illegible]
L.17126	SGT.	GLORER	D.L.	[illegible]
M.16137	SGT.	HIDSON	A.J.	[illegible]
H.25874	SGT.	HOOPER	L.S.	L. Hooper
M.25844	PTE.	HORNBY	P.E.	P. Hornby
B.93698	SGT.	HOUSE	D.A.	D. A. House
U.1528	S/SGT.	JELKS	G.W.	[illegible]
F.66646	PTE.	JENKINS	C.L.	C. L. Jenkins
B.94020	CPL.	JOHNSTON	A.M.	[illegible]
C.29055	SGT.	KIEFER	D.H.	D.H. Kiefer
B.94018	SGT.	MCBURNIE	J.L.	J.L. McBurnie
P.30312	SM.	MOORE	B.C.K.	[illegible]
H.33073	PTE.	MORSE	W.T.	
B.91702	PTE.	PRINCE	L.D.	L.D. Prince
M.16652	PTE.	QUINN	G.N.	~~[illegible]~~
B.91440	PTE.	REID	W.V.	W.V. Reid
B.93896	CPL.	SILVER	J.	M. Silver
H.33067	SGT.	STADNYK	J.	J. Stadnyk
L.17012	PTE.	STILLMAN	D.E.	D.E. Stillman
B.93706	S/SGT.	TOMKINS	F.T.	F.T. Tomkins
C.93027	SGT.	TOMLINSON	W.S.	W. Tomlinson
B.85984	PTE.	WILLIAMS	H.	H. Williams
H.35732	Cpl.	[illegible]	D.A.	[illegible]

This is to certify that I was present and witnessed the above signatures.

Date 15 September 1942

J.H. MacArthur Grant

MEDICALS. C.M.H.Q. C.M.H.Q.DETAILS.

C.969 GNR. YOUNG C.J.

6 jours

$4.47.

14 Sep 42. C.M.H.Q.Details. Captain.

I certify that I am aware of the provisions of C.M.H.Q.Daily Order Part I No.37, dated 10 Sept.41 and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to the date of signing this certificate. C.M.H.Q.Details.

MEDICALS.

Exhibit C8

M.35040	PTE.	ARMSTRONG	J.	J. Armstrong
L.17181	PTE.	BARRY	C.R.	C R Barry
D.95909	PTE.	BENSON	J.E.	
B.88060	PTE.	BROWN	S.W.	
C.29043	CPL.	BULGIN	F.G.	F G Bulgin
M.25887	PTE.	CHAUSSE	E.A.	E A Chausse
B.89110	PTE.	CLANCY	H.	Hugh Clancy
B.93585	S/SGT.	DAVID	L.	David
D.95191	PTE.	DE LEDICQ	H.	
E.15187	PTE.	GIRARD	J.G.	
M.16137	SGT.	HIDSON	A.J.	
H.25874	SGT.	HOOPER	L.S.	L S Hooper
M.25844	PTE.	HORNBY	P.E.	P E Hornby
B.93698	CPL.	HOUSE	D.A.	D A House
U.1528	S/SGT.	JELKS	G.W.	
F.66646	PTE.	JENKINS	C.L.	
B.94020	CPL.	JOHNSTON	A.M.	
B.93748	QMS.	JOHNSON	H.T.	
C.29055	CPL.	KIEFER	D.H.	
B.94018	SGT.	MCBURNIE	J.L.	
H.35732	PTE.	MCLACHLAN	D.A.	
H.35075	PTE.	MORSE	W.T.	W T Morse
B.91702	PTE.	PRINCE	L.S.	L S Prince
M.16852	PTE.	QUINN	G.N.	
B.91440	PTE.	REID	W.V.	W Reid
D.91989	PTE.	ROACH	F.	

This is to certify that I was present and witnessed the above signatures.

[illegible]			J.	
L.17012	PTE.	STILLMAN	D.E.	D E Stillman
B.93705	SGT.	TOMKINS	F.T.	F T Tomkins

MEDICALS. C.M.H.Q.Details.

C.93027	SGT.	TOMLINSON	W.S.	W Tomlinson.
B.85984	PTE.	WILLIAMS	H.	
C.969	GNR.	YOUNG	O.J.	O Young

J A Handley Lieut

$4.47.

26 Aug 42. C.M.H.Q.Details. Captain.

DMS

DATE 30 JUL 1942

I certify that I am aware of the provisions of C.M.H.Q. Daily Order Part I No.57, dated 10 Sept.41 and that I have no outstanding debts for living expenses which were incurred more than 2 weeks prior to the date of signing this certificate.

MEDICALS C.M.H.Q.

C.M.H.Q. Details.

Exhibit (C9) (2)

E.33040	PTE.	ARMSTRONG	J.	J Armstrong
L.17281	PTE.	BARRY	C.R.	C R Barry
D.95170	PTE.	RECI NEUL	P.E.	[illegible]
D.95909	PTE.	BENSON	J.E.	J Benson
B.88060	PTE.	BROWN	S.W.	
C.89043	PTE.	BULGIN	F.G.	F Bulgin
K.87202	PTE.	BUTT	R.S.	R S Butt
E.25887	PTE.	CHAUSSE	E.A.	[illegible]
B.89110	PTE.	CLANCY	H.	Hugh Clancy
B.93525	S/SGT.	DAVID	L.	[illegible]
D.95191	PTE.	DE LEDICQ	R.	[illegible]
L.17126	CPL.	GLOVER	D.L.	[illegible]
H.16137	SGT.	HIDSON	A.J.	[illegible]
H.25874	SGT.	HOOPER	L.S.	
M.25844	PTE.	HORNBY	P.E.	
[illegible].1528	S/SGT.	JELKS	G.S.	[illegible]
B.94020	CPL.	JOHNSTON	A.E.	
[illegible].93748	QMS.	JOHNSON	H.T.	H T Johnson
C.29055	CPL.	KIEFER	D.H.	[illegible]
B.94018	CPL.	MCBURNIE	J.L.	J L McBurnie
[illegible].33732	PTE.	MCLACHLAN	D.A.	[illegible]
[illegible].30312	QMS.	MOORE	B.C.K.	[illegible]
[illegible].35073	PTE.	MORSE	W.T.	W T Morse
[illegible].26862	PTE.	QUINN	G.N.	[illegible]
[illegible].91440	PTE.	REID	W.V.	W Reid
[illegible]91989	PTE.	ROACH	P.	P Roach
[illegible]3896	CPL.	CILVER	J.	[illegible]
[illegible]3067	SGT.	STADNYK	J.	J Stadnyk
[illegible]3705	SGT.	TOMKINS	F.T.	F. T. Tomkins
[illegible]027	SGT.	TOMLINSON	W.S.	W Tomlinson

DATE 30 JUL 1942

hat I am aware of the provisions of C.M.H.Q. Daily Order
57, dated 10 Sept.41 and that I have no outstanding debts for
enses which were incurred more than 2 weeks prior to the date of
ll certificate.

C.M.H.Q.Details.

PTE. WILLIAMS H.

GNR. YOUNG O.J.

64.67.

30 Jul 42. C.M.H.Q.Details. Captains

DATE.....

...certify that I am aware of the provisions of C.M.H.Q.Daily Order Part I, ...57, dated 10 Sept.41, and that I have no outstanding debts for living ...enses which were incurred more than two weeks prior to the date of signing ...is certificate.

PERSONNEL, C.M.H.Q. C.M.H.Q. DETAILS

Exhibit C19

...H.33040	Pte	ARMSTRONG	J.	J Armstrong
L.17281	Pte	BARRY	C.R.	C R Barry
D.98170	Pte	BRUGNEUL	P.E.	
D.95909	Pte	BENSON	J.E.	
B.88060	Pte	BROWN	S.W.	S W Brown
M.25887	Pte	CHAUSSE	E.A.	
B.93585	S/Sgt	DAVID	L.	
D.98191	Pte	DeLEDICQ	H.	H.
L.17126	Cpl	GLOVER	D.L.	
M.16137	Sgt	HIDSON	A.J.	
M.25044	Pte	HORNBY	P.E.	
B.93696	Cpl	HOUDE	D.A.	D A Houde
...1528	S/Sgt	JELKS	G.W.	
...66646	Pte	JENKINS	C.L.	
B.94020	Cpl	JOHNSTON	A.N.	
C.29055	Cpl	KIMPLR	D.H.	
B.94018	Cpl	McBURNIE	J.L.	J L McBurnie
H.30732	Pte	McLACHLAN	D.A.	
P.30312	QMS	MOORE	R.C.K.	
M.33073	Pte	MORSE	W.G.	W G Morse
...91440	Pte	REID	W.V.	W. V. Reid
...91969	Pte	ROACH	P.	
...93696	Cpl	SILVER	J.	
...35067	Pte	STADNYK	J.	
...93705	Sgt	TOMKINS	P.T.	
...93027	Sgt	TOMLINSON	W.S.	W Tomlinson
...35984	Pte	WILLIAMS	H.	
...969	Gnr	YOUNG	O.J.	

This is to certify that I was present and witnessed the above signatur

.....

18 Jul 42 C.M.H.Q. DETAILS

Date.....

I certify that I am aware of the provisions 66 C.M.H.Q.Daily Order Part I No.37, dated 10 Sept.41, and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to the date of signing this certificate.

MEDICALS C.M.H.Q. Exhibit C.M.H.Q. C.M.H.Q.Details.

.33040	PTE.	ARMSTRONG	J.	J Armstrong
.17281	PTE.	BARRY	C.R.	C R Barry
.95170	PTE.	BECIGNEUL	P.E.	
.95909	PTE.	BENSON	J.E.	J. E. Benson
B.88060	PTE.	BROWN	S.W.	S.W. Brown
K.57202	PTE.	BUTT	R.S.	R S Butt
M.25887	PTE.	CHAUSSE	E.A.	E. A. Chausse
H.93585	S/SGT.	DAVID	L.	David
D.95191	PTE.	DE LEDICQ	H.	H. Delcoy
L.17126	CPL.	FLOVER	D.L.	D L Flover
M.16137	SGT.	HIDSON	A.J.	A J Hidson
H.25874	PTE.	HOOPER	L.S.	
M.25844	PTE.	HORNBY	P.E.	P E Hornby
B.93698	CPL.	HOUSE	D.A.	D. A. House
U.1528	S/SGT.	JELKS	G.W.	[illegible]
F.66646	PTE.	JENKINS	C.L.	
B.94020	PTE.	JOHNSTON	A.M.	A M Johnston
B.93748	QMS.	JOHNSON	H.T.	H T John
C.29055	CPL.	KIEFER	D.H.	D H Kiefer
B.94018	CPL.	MCBURNIE	J.L.	J L McBurnie
H.38732	PTE.	MCLACHLAN	D.A.	D. McLachlan
P.30312	QMS.	MOORE	B.C.K.	B C K Moore
H.33073	PTE.	MORSE	S.T.	W J Morse
M.16852	PTE.	QUINN	O.N.	[illegible]
B.91440	PTE.	REID	W.V.	Reid, W. V.
D.91989	PTE.	ROACH	P.	P Roach
B.93896	PTE.	SILVER	J.	M. Silver
H.33067	PTE.	STADNYK	J.	J Stadnyk
B.93705	SGT.	TOMKINS	F.T.	F. T. Tomkins
C.93027	SGT.	TOMLINSON	W.S.	W Tomlinson

This is to certify that I was present and witnessed the above signatu[illegible]

Date. 7th June 42 J Handley Lie

DATE.....

I cer[illegible]y that I am aware of the provisions of C.M.H.Q.Daily Order Part I No.37, dated 10 Sept.41, and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to the date of signing this certificate.

D.M.S.

C.M.H.Q.DETAILS.

Exhibit (C12)

JUN 16 1942

P.30146	S.M.	SEWELL	E.H.	[illegible]
P.30312	QMS.	MOORE	B.C.E.	B C Moore
B.93565	S/SGT.	DAVID	L.	[illegible]
U.1528	S/SGT.	JELES	G.W.	[illegible]
B.93748	S/SGT.	JOHNSON	H.T.	H T Johnson
M.16137	SGT.	HIDSON	A.J.	[illegible]
C.93027	SGT.	TOMLINSON	W.S.	W Tomlinson
L.17126	CPL.	GLOVER	D.L.	[illegible]
B.93698	CPL.	HOUSE	D.A.	D. A. House
C.29055	CPL.	KIEFER	D.H.	D H Kiefer
B.94018	CPL.	MCBURNIE	J.L.	J L McBurnie
L.17281	PTE.	BARRY	C.R.	C R Barry
D.95170	PTE.	BECIGNEUL	P.E.	P E Becigneul
B.88060	PTE.	BROWN	S.W.	S W Brown
K.37202	PTE.	BUTT	R.S.	R S Butt
W.25[illegible]7	PTE.	CHAUSE	E.A.	E A Chausse
D.95191	PTE.	DE LEDICQ	E.	[illegible]
M.25674	PTE.	HOOPER	L.S.	L Hooper
M.25844	PTE.	HORNBY	P.E.	P E Hornby
B.94020	PTE.	JOHNSTON	A.M.	A M Johnston
[illegible].35732	PTE.	MCLACHLAN	D.A.	[illegible]
[illegible].35049	PTE.	MORRISON	[illegible]	[illegible]
[illegible].16852	PTE.	QUINN	G.E.	[illegible]
[illegible].91440	PTE.	REID	G.T.	N. Reid
[illegible].91909	PTE.	ROSEN	P.	P Rosen
[illegible].93696	PTE.	SILVER	J.	M. J. Silver
[illegible].93625	PTE.	SPEER	E.C.	E C Speer
[illegible].35067	PTE.	STADBYE	J.	J Stadbye
[illegible].80984	PTE.	WILLIAMS	W.	

This is to certify that I was present and witnessed the above signatures.

.....Date. .....[illegible].....

Date.....

I certify that I am aware of the provisions 65 C.M.H.Q.Daily Order Part I No.37, dated 10 Sept.41, and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to the date of signing this certificate.

MEDICALS C.M.H.Q. Exhibit C.M.H.Q. Details.

.33040	PTE.	ARMSTRONG	J.	J Armstrong
.17281	PTE.	BARRY	C.R.	C R Barry
.95170	PTE.	BECIGNEUL	P.E.	
.95909	PTE.	BENSON	J.E.	J. E. Benson
B.88060	PTE.	BROWN	S.W.	S W Brown
K.57202	PTE.	BUTT	R.S.	R S Butt
M.25887	PTE.	CHAUSSE	E.A.	E. A. Chausse
B.93585	S/SGT.	DAVID	L.	[illegible]
D.95191	PTE.	DE LEDICQ	H.	H. Deledicq
L.17126	CPL.	FLOWER	D.L.	D L Flower
M.16137	SGT.	HEDSON	A.J.	A J Hedson
H.25874	PTE.	HOOPER	L.S.	
M.25844	PTE.	HORNBY	P.E.	P E Hornby
B.93698	CPL.	HOUSE	D.A.	D. A. House
U.1528	S/SGT.	JELKS	G.W.	[illegible]
P.66646	PTE.	JENKINS	C.L.	
B.94020	PTE.	JOHNSTON	A.M.	A M Johnston
B.93748	QMS.	JOHNSON	H.T.	H T John
C.29055	CPL.	KIEFER	D.H.	D H Kiefer
B.94018	CPL.	MCBURNIE	J.L.	J L McBurnie
[illegible]	PTE.	MCLACHLAN	D.A.	[illegible]
P.[illegible]	QMS.	MOORE	B.C.K.	B C K Moore
[illegible]	PTE.	MORSE	E.T.	W J Morse
M.[illegible]	PTE.	QUINN	G.N.	[illegible]
B.91440	PTE.	REID	E.V.	Reid, W. N.
D.91969	PTE.	ROACH	P.	P Roach
B.[illegible]	PTE.	SILVER	J.	M. Silver
[illegible]	PTE.	STADNYK	J.	J Stadnyk
B.[illegible]705	SGT.	TOMKINS	F.T.	F. T. Tomkins
C.93027	SGT.	TOMLINSON	W.S.	W Tomlinson

This is to certify that I was present and witnessed the above signatu

Date 30 June 42 J A Hendson Pte

MEDICALS C.M.H.Q. C.M.H.Q.Details.

18084	PTE.	WILLIAMS	H.	H. Williams
C.969	GNR.	YOUNG	C.J.	C.J. Young

24.67.

30 Jun 44. C.M.H.Q. Details. ..... Captain.

DATE.....

I certify that I am aware of the provisions of C.M.H.Q.Daily Order Part I No.37, dated 10 Sept.41, and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to the date of signing this certificate.

D.M.S. C.M.H.Q.DETAILS.

JUN 16 1942

Exhibit C12

P.30146	S.M.	SEWELL	E.H.	[illegible]
P.30312	QMS.	MOORE	B.C.E.	B C Moore
B.93565	S/SGT.	DAVID	L.	[illegible]
U.1528	S/SGT.	JELES	G.A.	[illegible]
B.93748	S/SGT.	JOHNSON	H.T.	H T Johnson
M.16137	SGT.	HIDSON	A.J.	[illegible]
C.93027	SGT.	TOBLINSON	B.S.	W Tomlinson
L.17126	CPL.	GLOVER	D.L.	[illegible]
B.93698	CPL.	HOUSE	D.A.	D A Hauser
C.29658	CPL.	KIEFER	D.S.	D H Kiefer
B.94018	CPL.	MCBURNIE	J.L.	J L McBurnie
L.17261	PTE.	BARRY	C.R.	C R Barry
D.95170	PTE.	BECIGNEUL	P.E.	P E Becigneul
B.88060	PTE.	BROWN	S.W.	S W Brown
K.37202	PTE.	BUTT	R.S.	R S Butt
M.25[illegible]7	PTE.	CHAUSSE	E.A.	E A Chausse
D.95191	PTE.	DE LEDICQ	E.	[illegible]
H.25874	PTE.	HOOPER	L.O.	L Hooper
H.25844	PTE.	HORNBY	P.E.	P E Hornby
B.94020	PTE.	JOHNSTON	A.E.	A M Johnston
H.35732	PTE.	MCLACHLAN	D.A.	[illegible]
H.33049	PTE.	MORRISON	[illegible]	[illegible]
[illegible]	PTE.	QUINN	S.R.	[illegible]
B.91446	PTE.	REID	W.V.	W. Reid
B.91989	PTE.	ROSCH	P.	P Rosch
B.93696	PTE.	SILVER	J.	M J Silver
B.93625	PTE.	SPEER	E.C.	E C Speer
H.33067	PTE.	STADSTY	J.	J Stadsty
H.35964	PTE.	WILLIAMS	W.	

This is to certify that I was present and witnessed the above signatures.

.....Date. .....[illegible]

DATE.....

I certify that I am aware of the provisions of C.M.H.Q.Daily Order Part I No.37, dated 10 Sept.41, and that I have no outstanding debts for living expenses which were incurred more than two weeks prior to the date of signing this certificate.

C.M.H.Q.DETAILS.

D.M.S.

JUN 16 1942

C.960 CHR. YOUNG O.J.

H33073 MORSE W.I. Pte

This is to certify that I was present and witnessed the above signatures.
18 Jun 42. C.M.H.Q.Details.

.....Date.

.....Captain.

Exhibit "C" (Debt Rolls from
13 June 1942 to 29 December 1942)
Summary of Evidence
B 92585 S/Sgt David, Lloyd.

Officer Detailed to take
Summary of Evidence.

Page 1 Exhibit "D" (2)

You are not obliged to say anything unless you wish to do so, but whatever you say will ~~will~~ be taken down in writing, & may be given in evidence. I have been warned by Sgt. Gibbs of the Special Investigation Section, & I fully understand the warning. (Sgd.)

I met my land lady Mrs Meaken through her two, Ken & Reg, about the first week in June '42. About the middle of June I discussed with her the question of rents, & she gave me to understand she had a room with board cheaper than I was already paying, & I moved to her house & boarded there at 37/6 a week including bed, room & sixteen meals a week. After two weeks I paid Mrs Meaken £3.15.0. Then the end of Aug '42 I paid £3.0.0. on my bill. In the last week in Sept '42 I bought five theatre seats for Mrs Meaken at 5/- each. This she deducted from my board bill. I believe that is all I paid her. I figure I owe her, for board, in the neighborhood of £50.0.0. I left her lodgings on the 14 Jan '43 when I went AWL. Sometime in Aug '42 I borrowed £10 from Mrs

C.M.H.Q. 1000 : 74
60/P & 6/805

CANADIAN PROVOST CORPS

FILE REFERENCE

COMPANY. FORMATION. CORPS.

LOCATION. DATE.

SUBJECT:

70 (D) Page 2.

File Numbers

Previous Report

Diary Date

Meakins brother Nick Renton, he is with E.N.S.A. I was hard up at the time, & needed money. This I have not paid back.

I was going to get two bracelets for an American chap, who I met through the Meakins, & he gave me £2 10.0. I think for this. I did not get the bracelets, & I have not paid the money back. I don't remember this man's name. I know his first name is Eddie. DEAMC

I borrow from Lt Handley £5.0.0 in the early part of Oct, & later in Nov another £1.0.0. This debt I have not paid.

Gor Roach, C.M.H.Q. Garage I owe £1.0.0. This I borrowed early part of Dec 42. Pte Baines, D.M.S. branch, £1.0.0. borrowed middle Dec 42. Sgt Keeffer DMS branch 10/- which I borrowed about the beginning of Dec. Pte Clancy 10/- borrowed early part Dec 42. Cpl. McLaughlin DMS branch 10/- borrowed about middle of Dec 42. Pte Beignial I borrowed £1.0.0. middle Dec 42. From one of the civilian employees Mrs Crowcroft I borrowed on two

On two occasions I borrowed ~~£2.0~~ £1.0.0. each time.

At the 'Captains Cabin' public house I owe for drinks, to a bar maid named Alice. She paid for them herself, & it amounts to I would say 5/-.

There is a lady in the B.C. house Canteen, I don't know her name outside of Tommy who gave me ~~money~~ 10/- or about to get a bottle whisky. This I did not get, & did not pay back the money. This was early Dec 1922 Duke St.

At the Chequers pub I owe 25/- to the owner of the place for drinks. A woman who I only know as Lillian, she delivers tea in the office, I owe her 10/-, this I borrowed from her.

To Col Gray & Maj Laplante of D195 Branch I owe approximately 10/-. This comes from their petty cash account. I held this money for them, it was for stamps etc.

The is a L/Cpl. who I know only as Vince

of the Canadian Legion in London who I owe 10/- This I borrowed latter part of Dec 42

(8) I became so heavy in debt that I did not know what to do, so I figured I would go absent for a few days, have a rest, & then come back, & face things. I went AWL Monday 4 Jan 43, I took a train from Paddington at 0035 hrs & went to Wales to my Aunts home Mrs A David, 'Westward' St Athan, Glamorshire I stayed until Wed night 13 Jan 43 returned to London & stayed ~~with~~ in an empty office at 11 Lower Regents Street, ~~with a friend~~ allowed by Mrs Whitehead a friend of mine.

Mrs Whitehead had agreed to let me have money in order to pay up my debts, so that I might return to my unit with a clean sheet as far as debts were concerned. She had agreed to pay my land lady the sum owed to her at 4.00 P.M. yesterday 15 Jan 43. Further money would be paid

(4)

8 Page (2)

to me to pay up the remaining odd debts
We had come to no agreement about repaying
her I intended returning to the office this
morning Sat 16 Jan 43 I read over this
statement & it is true

[signature]

Witness: L. A. Gibbs Sgt

I omitted to say that I owe her
Meaken a further £1.10.0, which I had
borrowed from her.

(8) (D)

SUMMARY OF EVIDENCE in the case of B-93585 S/Sgt. Lloyd David, R.C.A.M.C., attached to Canadian Military Headquarters, Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of evidence is taken on Oath.

Witness No. 1 Prosecution

Lieut.-Col. K.G. Gray, R.C.A.M.C. (A.M.D.1) having been duly sworn states:

The accused, S/Sgt. David, L., was the senior clerk in my office. I gave him from time to time sums of money - five to ten shillings at a time from which to pay out monies on my behalf. These were for personal expenditures such as stamps for personal letters and small sums of that kind.
On the day that S/Sgt. David was reported as being A.W.L. it was reported to me that this petty cash was missing, it being kept in a box in his desk.
The balance of the cash belonging to me I estimated to be about six or seven shillings.
On the morning that the accused was absent this document (marked exhibit "A") was on my desk. I recognised it to be in the handwriting of the accused which is familiar to me.

K.G. Gray Lt Col

The accused declined to question the evidence.

Witness No. 2 Prosecution

Major J. Paul LaPlante, R.C.A.M.C., having been duly sworn states:
The accused - S/Sgt. David, L., was the senior N.C.O. in the office of the A.M.D. (1).
I have been in the habit of giving him small sums of money to cover petty personal expenses such as stamps, cables, etc. This sum never exceeded ten shillings at any time.
When I was advised that the accused was A.W.L. Sgt. Major Moore informed me that this money above described was missing from the box which was in the desk of the accused.
I estimate that the amount of cash belonging to me would be about four shillings.
The note marked exhibit "B" was in the box and this shows that a balance of four shillings was due to me.

Paul LaPlante Lt Col

The accused declined to question the evidence.

Witness No. 3 Prosecution

B-30312 A/CSM Moore, E.C.K., R.C.A.M.C., having been duly sworn: states:

At 0900 hours 4 Jan 43, B-93585 S/Sgt. David, L., did not report for duty.
When Lieut.-Col. Gray arrived, I reported the absence of S/Sgt. David. I then reported this matter to the Camp Commandant.
I immediately made enquiries at the residence of S/Sgt. David but he was not there. He did not report for duty on any of the following days. I did not see S/Sgt. David again until this morning, 21 Jan 43.
In the box in which S/Sgt. David kept his petty cash, I found a slip of paper (marked Exhibit "B") in the handwriting of S/Sgt. David. I recognised the handwriting of S/Sgt. David with which I am familiar. There was no money in the box.
Exhibit "B" is an account of the petty cash received by S/Sgt. David and shows a balance due to Lieut.-Col. Gray of 6/6½ and a balance due to Major LaPlante of 4/-. This balance - totalling 10/6½ was not in the box and was not accounted for. I recognise the signatures on the payrolls as being in S/Sgt. David's handwriting.

E.K. Moore

The accused declined to question the evidence.

Witness No. 4 Prosecution

C-11714 C.S.M. A.T. James, Veterans Guard of Canada, having been duly sworn states:

I submit the debt rolls from 13 Jun 42 to 29 Dec 42 which were duly signed each pay period by S/Sgt. L. David (Marked exhibit "C") I did not witness the signatures.
I also submit certificate of apprehension by the Military Police (marked Exhibit "D") showing that D-93585 S/Sgt. David, L., was apprehended at 1815 hours 15 Jan 43 from which time he ceased to be absent without leave.

A. James C.S.M.

The accused declined to question the evidence.

Witness No. 5 Prosecution

Mrs. Doris Meakin, 117 Fellows Road, Hampstead, N.W.3. having been duly sworn states:

The accused S/Sgt. David L., came to board with me on 13 Jun 42.
I charged him £1.17.6 per week for bed and sixteen meals per week.
This charge of £1.17.6. per week he agreed to.
On or about 27 Jun 42 he paid me £3.15.0. that was for two weeks board.
On 31 Aug 42 he paid me £3.0.0.
When my boys came home on leave in September he purchased five theatre tickets for me amounting to £1.5.0. This amount I deducted from his board bill. This is all the money he ever paid me.
For board he owes me altogether £40.17.0.
In addition to that I loaned him £1.10.0.
On top of this he borrowed £10.0.0. from my brother. I myself refunded this amount to my Brother.
Altogether S/Sgt. David owes me £52.7.0.

Doris Meakin

The accused declined to question the evidence.

Witness No. 6 Prosecution

C-29055 Sgt D.H. Kiefer, R.C.A.M.C., having been duly sworn states:

About the beginning of December 1942 S/Sgt. David, L., borrowed from me the sum of 10/-. He has paid back two shillings so he still owes me eight shillings.

Kiefer D.H. Sgt.

The accused declined to question the evidence.

Witness No. 7 Prosecution

B-91702 Pte. L.D. Prince, R.C.A.M.C., having been duly sworn states:-

Just before 15 Dec 42 S/Sgt. L. David borrowed the sum of £1.0.0. from me. This amount he still owes to me.

L.D. Prince

The accused declined to question the evidence.

The accused was cautioned as follows:-
Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you will give will be taken down in writing and may be given in evidence.

After the above caution the accused declined to make a statement or to call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that rules of procedure 4 (C), (D), and (F) have been complied with.

E

President A.G.C.M.
15 Feb 43

London - 22 Jan 43

C.H. Rapp, Capt.,
R.C.A.M.C.,
CANADIAN MILITARY HEADQUARTERS.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR 42

I CERTIFY that No D-93585. Rank S/Sgt Name DAVID, L .....

Unit D.M.S. Br.CMHQ., RCAMC ..... was arrested at London .....(Place)

at 1815...(Hour) on 15 Jan 43.....(Date) and that at the time of his arrest he was wearing (Military Uniform) or ([redacted]).
Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable).

[signature]
.....
Officer [illegible] Major,
No. 6 Canadian Provost Corps.

Assistant Provost Marshal,
Canadian Military Headquarters.

"F"

No. 89585 Name David, Lloyd Sqn., Battery or Company 15 Can gen hosp. Corps R.C.A.M.C. Previous sheet destroyed on [illegible] 6 [illegible]

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Period not reckoning towards freedom from extra fine

Date of enlistment 8/9/39 G.C. Badges Service or Proficiency Pay [illegible] (A.P.O. 132) [illegible] H.Q. 1772-43-15

Sheet No. 2 Signature O.C. Company, etc. "C A Rae" Character Good

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
London	8-12-42	S/Sgt.		AA Rec(s) A.W.L. from 0900 hrs 8-12-42 to 1045 hrs 8-12-42 (Total 1 hr 45 min)	Sgt major Moore R.C.A.	Reprimanded	9-12-42	Major R.J. Williams	C.T.T.

Certified a true copy this 15 day of [illegible] [illegible] Officer having custody of Regimental Books.

[illegible] Pres F.C.E.M. 15 Feb 43

(P.T.O.)

"F"

M.F.B. 388
40/P & S. 975

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 93585	S/Sgt	Lloyd DAVID	R.C.A.M.C.

1. The following is a fair and true summary of the entries in the Regimental ~~and Squadron, Battery~~ Service and General Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	ONE times	One times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct NIL

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 31 ~~22~~ days in military custody, making a total of ~~22~~ 31 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 24 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 8 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 3 years 118 days

8. The accused is entitled to reckon 3 yrs 18 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N.A.

[signature]
Pres F.D.C.M.
15 Feb 43

11. ~~(In the case of an officer.)~~ The accused holds in the Royal Canadian Air Force the rank of ~~Permanent Force~~ ~~unit~~ ~~dated~~ ....., ~~and in his regiment (or corps), the rank of~~ ~~dated~~ ..... C.2.F. C.2.F.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

18 May 40 Date of promotion.

In the rank of Corporal two years.

In the rank of S/Sergeant one years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... C.2.F.

Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	Nil			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~[illegible]~~ Fifteenth (15th) day of February A.D. 1943

C.2.F.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

To: R-93585 S/Sgt Lloyd David, R.C.A.M.C. attached Canadian Military Headquarters, Canadian Army Overseas.

Notice is hereby given that pursuant to Rules of Procedure 76, the Prosecutor intends to call as a witness at the trial of your Court Martial, one C-42030 A/Sgt Gibbs, L.A., of the Canadian Provost Corps, whose evidence is not contained in the Summary of Evidence given to you as such accused.

And notice is further given that the above proposed witness will give evidence of the statement give by you to the said witness and reduced to writing and dated the 16th day of January 1943, and evidence of any admissions made by you to the said witness pertaining to the case ~~is~~ are admissible as evidence.

That attached hereto is a copy of the statement above referred to which it is proposed to place in evidence for the prosecution.

Dated this Thirteenth day of February, 1943.

Original Summary and Statement attached hereto delivered to Capt. 13 February 43.

W. R. Elder Capt.
Prosecuting Officer.

KK-28
GNR DAVID L.

Correspondence to be PINNED here.

KK-28
A.M. Douglas Maj

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

W. B. Bate Capt
Judge Advocate

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 23rd day of July, 19 43

Whereas it appears to me, the undersigned, an officer in Command of HQ 2 Army Group RCA, First Cdn Army, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted] LK

*Omit where Convening Officer is a Commanding Officer, or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Officer if not applicable.

*[redacted]:—

*(1. [redacted]) LK

*(2. [redacted]

[redacted]:—]

Judge Advocate - Capt. W.B. Bate - HQ First Cdn Army

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.		Name.	Regiment.
Major	A.M.	Douglas	5 Cdn Med Regt

Members.

Rank.		Name.	Regiment.
Lieut.	K.D.	Slater	7 Cdn A Fd Regt
Lieut	S.B.	Williams	7 Cdn A Fd Regt
Waiting Member Lieut.	L.B.	Fleet	2 Cdn Med Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (W.P. Huckvale) Brigadier
Commanding Comd- 2 Army Group RCA
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C10614, Gnr. David, L. 2 Cdn Med Regt RCA	(1) A.A.Sec.18(4) Theft.	GUILTY	GUILTY	Confirmed 26 July 43 WPR
	(2) A.A.Sec.18(4) Theft.	GUILTY	GUILTY	
	(3) A.A.Sec.18(4) Theft.	GUILTY	GUILTY	
	(4) A.A.Sec.18(4) Theft.	GUILTY	GUILTY	
	(5) A.A.Sec.18(4) Theft.	GUILTY	GUILTY	
	(6) A.A.Sec.18(4) Theft.	GUILTY	GUILTY	
	(7) A.A.Sec.15(1) Absent without leave.	GUILTY	GUILTY	
	(8) A.A.Sec.15(1) Absent without leave.	GUILTY	GUILTY.	
			To undergo detention for 18 months	
			26 Jul 43 A.M. Douglas Major	
			W.B. Katsaras Judge Advocate	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) W.P. Huckvale Brigadier — Commanding 2 Army Group RCA — Convening Officer (e)
(Signed) A.M. Douglas Major A.M. Douglas — 5 Cdn Med Regt RCA — President
W.B. Katsaras Judge Advocate

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 26th day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~ shorthand writer
*(4. The officers under instruction)

were duly sworn. the Judge Advocate

* Omit if not applicable.

Signed this 26th day of July 1943.

W.B. Katsaras Judge Advocate

A.M. Douglas
Major A.M. Douglas — President of the Court Martial. 5 Cdn Med Regt

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ____ day of ____ 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 26th day of July 1943.

W.P. Huckvale Brig.
Confirming Officer.
(W.P. Huckvale) Brigadier
Comd - 2 Army Group RCA, First Cdn Army

Promulgated and extracts taken in the case of C - 10614 Gnr David L.

(a) (Dated) 28 July 43 (Signed) A.E. Sugget Lt. Col.

Promulgated and extracts taken in the case of

(Dated) ____ (Signed) ____

Promulgated and extracts taken in the case of

(Dated) ____ (Signed) ____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No. C-10614 Gunner Lomer David, 2nd Canadian Medium Regiment, R.C.A., a soldier of the Canadian Army placed on Active Service is charged with:-

FIRST CHARGE
A.A. Sec 18(4) - WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

while in the Field on or about 6 April 1943 or 7 April 1943, did steal one fountain pen, the property of D-14553 Gnr. Hopson, F.R. a person subject to Military Law.

SECOND CHARGE
A.A. Sec. 18(4) - WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

while in the Field between 2 April 1943 and 7 April 1943 did steal a gold wrist watch and an alligator shaped brooch, the property of D-14683 Gnr. Daly, R.N. a person subject to Military Law.

THIRD CHARGE
A.A. Sec 18(4) - WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

while in the Field on or about 6 April 1943 or 7 April 1943 did steal 55 cents in Canadian money, a spent rifle bullet and a bent farthing, the property of D-14679 Gnr. Hudson A.W. a person subject to Military Law.

FOURTH CHARGE
A.A. Sec 18(4) - WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

while in the Field between 26 March 1943 and 28 March 1943, did steal a wallet the property of D-11042 Gnr. Adams K.T. a person subject to Military Law.

FIFTH CHARGE
A.A. Sec 18(4) - WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

while in the Field on or about 24 March 1943 did steal a pair of shoes the property of B-17569 Gnr. Miller, A.J. a person subject to Military Law.

SIXTH CHARGE
A.A. Sec 18(4) - WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

while in the Field, between 4 April 1943 and 8 April 1943, did steal a tunic and a pair of army issue boots, the property of D-14549 Gnr. Perry, E.F.

...../2.

(Charge Sheet cont'd)

SEVENTH CHARGE - WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

A.A. Sec. 15 (1)

in that he

in the Field while under close arrest absented himself without leave from 1500 hours 14 April 1943 until 1000 hours 25 April 1943. (Absent 10 days 19 hours).

EIGHTH CHARGE - WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

A.A. Sec. 15 (1)

in that he

in the Field while under close arrest absented himself without leave from 1120 hours 4 May 1943 until 1855 hours 7 July 1943. (Absent 64 days 7 hours 35 minutes).

Approved for trial under K.R. (Gen) 540

J.J. Kelly, Lt Col
A.J.A.G.
H.Q., First Can. Army.

W C Leggat Lt.-Col.
(W. C. LEGGAT)
C.O. 2 Canadian Medium Regiment, R.C.A.

In the Field
16th July 1943.

To be tried by Field General Court Martial
Field 23 Jul 43
B E Kuckiah Brig
2 Army G.P. R.C.A.

X

A.M. Douglas Maj
Ev. B. Bate Capt
Judge Advocate

MEDICAL OFFICER'S REPORT

A.M.D.

I certify that No. C-10614 Gnr. DAVID, Lomer

of 2 Cdn Med.Regt. is in a good state of health,

and fit to undergo Trial by Court martial.

David Capt RCAMC

Medical Officer

1st, Battalion, N.S.R. - C.A.

Station In-the-Field

Date 26 July 43

M. F. B. 246

25M—9-41 (1745)
H.Q. 1772-39 480

A.M.D.

Accused @ 10610 (Number) GNR (Rank) LOMER (Christian Names) DAVID (Surname) 2 CDN MED REGT RCA (Unit)

Held in the Field in ENGLAND (Country) on 26 JUL 43 (Date)

	Rank	Name	Unit
PRESIDENT:	MAJOR	A.M. DOUGLAS	5 CDN MED REGT
MEMBERS:	LIEUT.	N.D. SLATER	7 CDN A FD REGT
	LIEUT.	S.B. WILLIAMS	7 CDN A FD REGT
JUDGE ADVOCATE: (If any)	CAPT.	W.B. BATE	H.Q. FIRST CDN ARMY
OFFICERS UNDER INSTRUCTION:	MAJ.	R.D. TELFORD	2 ARMY GP RCA.
	LIEUT	C.J. GUSELLE	2 CDN MED REGT
	LIEUT	J.R. GOUIN	5 CDN MED REGT
	LIEUT.	J.M ROSE	7 CDN A FD REGT
	~~LIEUT~~	L.B. FLEET	~~2 CDN MED REGT.~~

PROSECUTING OFFICER: CAPT A.M. CAMPBELL 2 CDN MED REGT RCA Lawyer? Ans NO

DEFENDING OFFICER: LIEUT. F.C. BLATCHFORD 2 CDN MED REGT RCA Lawyer? Ans NO.

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(A)).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106)

The accused is (~~are~~) brought before the Court, and at 1000 HRS hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

~~President to accused:~~ ~~Do you object to~~ _____ ~~as interpreter?~~ ~~Ans~~ _____

~~The interpreter is duly sworn.~~

Do you object to DINGGYT BOR BURTON EC. as shorthand writer? NO SIR.

The shorthand writer is duly sworn. (Forms of Oath on Page 'D'.
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.10)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans NO SIR

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (~~are~~) initialled by the President.

The Prosecuting Officer informs the Court that the accused ~~has~~ (has not) elected trial by Court Martial (A.A.46(8))

(If special plea/s is/are made for separate trial on one or more charges (Rs P 62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130, R.P.57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	GUILTY	Fifth Charge	GUILTY
Second Charge	GUILTY	Sixth Charge	GUILTY
Third Charge	GUILTY	Seventh Charge	GUILTY
Fourth Charge	GUILTY	Eighth Charge	GUILTY.

(For procedure on alternative charges, see R.P. 77, fn 2)

Further proceedings are recorded on Pages hereto attached.

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(B) Ans NO SIR.

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C). Ans NO SIR

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C). Ans NO SIR

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163(i)(n) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked "S", and "T", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131)

7. President to accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans YES BY MY Defending officer (No cross-examination) (Record address, if any, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, R.P.48). Sentence should be dated)

The sentence is not announced to the accused by the Court.

W. B. Bates Capt
Judge Advocate

A. M. Douglas Major
(Signature of President)

PAGE 'B'

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President)

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P.39(A). Ans _____

2. The Prosecutor's opening address(if any) (R.P.39(B) and the evidence for the Prosecution are recorded on seperate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D')

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn1, R.P.70 fn 1)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (R.P.40(D)(ii)(a)).

5. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans _____
Q. Do you intend to call any other witness in your defence? Ans _____
Q. Is he a witness as to character only? (R.P.40(B)) Ans _____

6. The evidence for the Defence (if any) is recorded on seperate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on seperate sheets, initialled by the President and attached hereto. (For order of addresses see Rs P 40, 41 and 42)

8. The Court is now closed to consider the finding (Rs P 43 and 117)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. R.P. 117(B)

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (W.F.R.6) signed in the manner required by A.A.163(1)(n) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings, (R.P.46; Overseas R.O.3131)

11. President to accused:
Q. Do you wish to address the Court on the Statements of Character Service and Conduct and in mitigation of punishment? (R.P.46(D).
Ans _____ No cross-examination.
(Record address, if any, on seperate sheet, initialled by the President and attached hereto)

12. The Court is now closed to consider the sentence (Record on Page 2 A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.46); sentence should be dated.

The sentence is not announced to the accused by the Court.

_____
(Signature of President)

STATEMENT BY THE DEFENDING OFFICER

Sir;- In looking over this case I find Gnr. David is a very young man, a little over 21 years of age. His M.F.B. 355, a statement of character, shows that he has only had three charges in almost three years military service. These three charges are all for short periods of A.W.L. It seems that Gnr. David is not a hardened criminal, and that fact might be brought out by his conduct on these charges of theft. He did not make any attempt to get rid of the booty in any way that a criminal might, instead most of it was found on him. In view of the fact I might ask the Court to take into consideration when passing sentence that Gnr. David be given a full chance to make his life afterwards something to be proud of. Anything that the Army might do to help that would be well done in this case.

I was called on a few moments ago for a statement of character. Unfortunately as far as Gnr. David is concerned he has only been with this Regiment a very short time, and therefore we will have to rely on this statement as given on M.F.B. 355.

2 CANADIAN MEDIUM REGIMENT, R.C.A.

Court Martial re C-10614 Gnr. David L.

LIST OF WITNESSES FOR THE PROSECUTION AND DEFENCE

Number	Rank	Name		Unit	Address
B-17527	R.S.M.	McCowan	D.	2 Cdn Medium Regt, RCA	Unit in Field
D-14553	Gnr.	Hopson	F.R.	" " " " " "	"
D-14683	Gnr.	Daly	R.R.	" " " " " "	"
D-14679	Gnr.	Hudson	A.W.	" " " " " "	"
D-11042	Gnr.	Adams	K.T.	" " " " " "	"
B-17569	Gnr.	Miller	A.J.	" " " " " "	"
D-14549	Gnr.	Perry	R.F.	" " " " " "	"
D-14547	Gnr.	Doyon	O.	" " " " " "	"
A-37254	Gnr.	Lefneski	R.	" " " " " "	"
D-11053	Gnr.	Chabot	G.A.	" " " " " "	"
H-76018	Bdr.	Curtis	H.D.	" " " " " "	"
H-76143	L/Bdr.	Pile	G.A.	" " " " " "	"
F-49610	Sgt.	Giles	W.C.S.	" " " " " "	"
M-65737	Gnr.	Hall	H.L.	" " " " " "	"
	Lieut.	Dunsdon	L.H.	" " " " " "	"

Geo Whittaker

(G. Whittaker) Capt.

2 Cdn Medium Regiment, R.C.A.

2 CANADIAN MEDIUM REGIMENT, R.C.A.

Court Martial re C-10614 Gnr. David. L.

List of Exhibits

Exhibit "A"	One Fountain Pen.
Exhibit "B"	One Blue Cardboard Box.
Exhibit "C"	One Gold Wrist Watch, Berkley make.
Exhibit "D"	One Wooden Flint Tube.
Exhibit "E"	One Alligator Shaped Brooch.
Exhibit "F"	One Bent Farthing.
Exhibit "G"	250 "Sweet Caporal" Cigarettes.
Exhibit "H"	Record of the Declaration of a Court of Inquiry.
Exhibit "I"	One Pair of Birkdale, Black, Oxford Shoes.
Exhibit "J"	One Battle Blouse Tunic.
Exhibit "K"	One Pair of Army Issue Shoes.
Exhibit "L"	Certificate in accordance with P.O. 2797 of 10 Apr 42 certifying as to arrest.

Geo Whittaker Capt.

(G. WHITTAKER)
2 Cdn Medium Regiment, R.C.A.

EXHIBIT I
Goodfellow
Capt RCA

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr.42

I CERTIFY that No. C-10614. Rank Cpr. . . Name DAVID, L. . . . . .

Unit 2nd. Med. Regt. R.C.A. . . . was arrested at . Milford. . . . (place)

at 1855 . . . (hour) on 7 July 43. . (date) and that at the time of his arrest he was wearing (Military Uniform) or ~~(Civilian clothes)~~
Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
11 July 43.

. . . . . Capt.
(W. Forn) D. A. P. M.,
London Area

Appendix "B"

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 27 day of May 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. C-10614 Gunner David, L.

illegally absented himself without leave from his quarters at Approx 1030 hrs on the 4th day of May 1943, that he is still so absent, and that on the 27 May 1943 he was deficient, and that he is still deficient of the following articles:—

	ARTICLES	VALUE	ARTICLES	VALUE
2	Battle dress:Blouses serge	2- 1- 6	Badges shoulder Can. pr 2	- 7½
2	" Trousers serge pr	2- 1- 9	Titles shoulder prs 3	- 9
	Drawers cotton short pr 2	3- 8	Patches Dist. "Army" pr 3	1- 1½
	Drawers woollen pr 1	4-	Vests cotton gym. 2	3-
	Jackets sweater 1	6- 5	Bags ration 1	- 1½
	Shirts flannel khaki 1	6-11	Carriers waterbottle 1	2- 6
	Shirts woollen 1	3-10	Tins mess rect 1	2- 4
	Blacking tins 1	- 1½	Capes anti gas 1	17- 6½
	Bootdressing tins 1	- 1½	Mugs drinking 1 pt 1	- 3½
	Braces prs 1	- 2½		
	Combs 1	- 1½		
	Discs Identity w/cord			
	Forks table 1	- 4		
	Knives clasp 1	4-		
	Knives clasp, lanyards 1	- 1		
	Knives table 1	- 7		
	Sponges pipeclay 1	- 1		
	Spoons table 1	- 3½		
	Badges cap RCA 1	- 3½	Total	7- 2- 9½

Geo Whittaker, Capt RCA President

L. W. O'Bonion Lieut RCA Member

A. W. Smith Lieut RCA Member

Signed at In the Field

this 27th day of May 1943

Signature of Commanding Officer A Chaplain Lt. Col

Certified true copy A. W. Smith Lt.

Signature of Officer having custody of original record

M.F.B. 171
A.F.B. 118
(6534—3-41 (1500))
H.Q. 1773-49-287

A.M.D.
W.L.B.

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President)

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P.39(A). Ans _____

2. The Prosecutor's opening address (if any) (R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D')

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn1, R.P.70 fn 1)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (R.P.40(D)(ii)(a)).

5. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans _____
Q. Do you intend to call any other witness in your defence? Ans _____
Q. Is he a witness as to character only? (R.P.40(B)) Ans _____

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see Rs P 40, 41 and 42)

8. The Court is now closed to consider the finding (Rs P 43 and 117)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. R.P. 117(B)

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (A.F.W.6) signed in the manner required by A.A.163(1)(a) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings, (R.P.46; Overseas R.O.3131)

11. President to accused:
Q. Do you wish to address the Court on the Statements of Character Service and Conduct and in mitigation of punishment? (R.P.46(D).
Ans _____ No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

12. The Court is now closed to consider the sentence (Record on Page 2 A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48); sentence should be dated.

The sentence is not announced to the accused by the Court.

_____
(Signature of President)

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(B) Ans NO SIR.

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C). Ans NO SIR

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C). Ans NO SIR

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.N.6), signed in the manner required by A.A.163(1)(n) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked "S", and "F", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.C. 3131)

7. President to accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans YES SIR [illegible] (No cross-examination)
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, R.P.48). Sentence should be dated)

The sentence is not announced to the accused by the Court.

A.M. Douglas Maj
(Signature of President)

W. R. Balderson
Judge Advocate

STATEMENT BY THE DEFENDING OFFICER

Sir;- In looking over this case I find Gnr. David is a very young man, a little over 21 years of age. His M.F.B. 355, a statement of character, shows that he has only had three charges in almost three years military service. These three charges are all for short periods of A.W.L. It seems that Gnr. David is not a hardened criminal, and that fact might be brought out by his conduct on these charges of theft. He did not make any attempt to get rid of the booty in any way that a criminal might, instead most of it was found on him. In view of the fact I might ask the Court to take into consideration when passing sentence that Gnr. David be given a full chance to make his life afterwards something to be proud of. Anything that the Army might do to help that would be well done in this case.

I was called on a few moments ago for a statement of character. Unfortunately as far as Gnr. David is concerned he has only been with this Regiment a very short time, and therefore we will have to rely on this statement as given on M.F.B. 355.

2 CANADIAN MEDIUM REGIMENT, R.C.A.

Court Martial re C-10614 Gnr. David L.

LIST OF WITNESSES FOR THE PROSECTUION AND DEFENCE

Number	Rank	Name		Unit	Address
B-17527	R.S.M.	McCowan	D.	2 Cdn Medium Regt, RCA	Unit in Field
D-14553	Gnr.	Hopson	F.R.	" " " " " " "	
D-14683	Gnr.	Daly	R.R.	" " " " " " "	
D-14679	Gnr.	Hudson	A.W.	" " " " " " "	
D-11042	Gnr.	Adams	K.T.	" " " " " " "	
B-17569	Gnr.	Miller	A.J.	" " " " " " "	
D-14549	Gnr.	Perry	R.F.	" " " " " " "	
D-14547	Gnr.	Doyon	O.	" " " " " " "	
A-37254	Gnr.	Lefneski	R.	" " " " " " "	
D-11053	Gnr.	Chabot	G.A.	" " " " " " "	
H-76018	Bdr.	Curtis	H.D.	" " " " " " "	
H-76143	L/Bdr.	Pile	G.A.	" " " " " " "	
F-49610	Sgt.	Giles	W.C.S.	" " " " " " "	
M-65737	Gnr.	Hall	H.L.	" " " " " " "	
	Lieut.	Dunsdon	L.H.	" " " " " " "	

Geo Whittaker Capt.

(G. Whittaker)

2 Cdn Medium Regiment, R.C.A.

2 CANADIAN MEDIUM REGIMENT, R.C.A.

Court Martial re C-10614 Gnr. David, L.

List of Exhibits

Exhibit "A"	One Fountain Pen.
Exhibit "B"	One Blue Cardboard Box.
Exhibit "C"	One Gold Wrist Watch, Berkley make.
Exhibit "D"	One Wooden Flint Tube.
Exhibit "E"	One Alligator Shaped Brooch.
Exhibit "F"	One Bent Farthing.
Exhibit "G"	250 "Sweet Caporal" Cigarettes.
Exhibit "H"	Record of the Declaration of a Court of Inquiry.
Exhibit "I"	One Pair of Birkdale, Black, Oxford Shoes.
Exhibit "J"	One Battle Blouse Tunic.
Exhibit "K"	One Pair of Army Issue Shoes.
Exhibit "L"	Certificate in accordance with P.O. 2797 of 10 Apr 42 certifying as to arrest.

Geo Whittaker Capt.

(G. WHITTAKER)
2 Cdn Medium Regiment, R.C.A.

Appendix "B"

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 27 day of May 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. C-10614 Gunner David, L.

illegally absented himself without leave from his quarters at Approx 1030 hrs on the 4th day of May 1943, that he is still so absent, and that on the 27 May 1943 he was deficient, and that he is still deficient of the following articles:—

	ARTICLES	VALUE	ARTICLES	VALUE
2	Battle dress:Blouses serge	2- 1- 6	Badges shoulder Can. pr 2	- - 7½
2	" Trousers serge pr	2- 1- 9	Titles shoulder prs 3	- - 9
	Drawers cotton short pr 2	3- 8	Patches Dist. "Army" pr 3	1- 1½
	Drawers woollen pr 1	4-	Vests cotton gym. 2	3-
	Jackets sweater 1	6- 5	Bags ration 1	- - 1½
	Shirts flannel khaki 1	6-11	Carriers waterbottle 1	2- 6
	Shirts woollen 1	3-10	Tins mess rect 1	2- 4
	Blacking tins 1	- - 1½	Capes anti gas 1	17- 8½
	Bootdressing tins 1	- - 1½	Mugs drinking 1 pt 1	- - 3½
	Braces prs 1	- - 2½		
	Combs 1	- - 1½		
	Discs Identity w/cord			
	Forks table 1	- - 4		
	Knives clasp 1	4-		
	Knives clasp, lanyards 1	- - 1		
	Knives table 1	- - 7		
	Sponges pipeclay 1	- - 1		
	Spoons table 1	- - 3½		
	Badges cap RCA 1	- - 3½	Total	7- 2- 9½

Signed at In the Field

this 27th day of May 1943

Stokvis Capt R.C.A. President

L.W. O'Bonsion Lieut R.C.A. Member

A.W. Smith Lieut R.C.A. Member

Signature of Commanding Officer A.L. Pearson Lt. Col

Certified true copy A.W. Smith Lt.

Signature of Officer having custody of original record

M.F.D. 27A
A.F.D. 102
2000—8-43 (3999)
H.Q. 1772-39-257

A.M.Q.
W.D.

EXHIBIT I
Growhittale
Capt. RCA

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr.42

I CERTIFY that No. C-10614. Rank Cpr. . . . Name DAVID, L. . . . . .

Unit 2nd. Med. Regt. R.C.A. . . . was arrested at . Milford. . . . (place)

at 1855 . . . (hour) on 7 July 43. . (date) and that at the time of his arrest he was wearing (Military Uniform) or ~~(Civilian clothes)~~ Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
11 July 43.

. . . . . Capt. A.A.M.
(W. Fern) D. A. P. M.,
London Area

SUMMARY OF EVIDENCE

in the case of

No. C-10614 Gunner DAVID, Lomer, 2nd Canadian Medium Regiment, R.C.A.,

a soldier of the Canadian Army placed on Active Service is charged with, when on active service

FIRST CHARGE - A.A. Sec 18 (4) Stealing property belonging to a person subject to Military Law, in that he, while in the Field on or about 6 April 43 or 7 April 43 did steal one foutain pen, the property of D-14553 Gnr. Hopson, F.R. a person subject to Military Law.

SECOND CHARGE- A.A. Sec.18(4) Stealing property belonging to a person subject to Military Law, in that he, while in the Field between 2 April 43 and 7 April 43 did steal a gold wrist watch and an alligator shaped brooch, the property of D-14683 Gnr. Daly, R.R. a person subject to Military Law.

THIRD CHARGE - A.A. Sec 18(4) Stealing property belonging to a person subject to Military Law, in that he, while in the Field on or about 6 April 43 or 7 April 43 did steal 55 cents in Canadian money, a spent rifle bullet and a bent farthing, the property of D-14679 Gnr. Hudson, A.W. a person subject to Military Law.

FOURTH CHARGE- A.A.Sec.18(4) Stealing property belonging to a person subject to Military Law, in that he, while in the Field between 26 Mar 43 and 28 Mar 43 did steal a wallet the property of D-11042 Gnr. Adams, K.T. a person subject to Military Law.

FIFTH CHARGE - A.A. Sec 18 (4) Stealing property belonging to a person subject to Military Law, in that he, while in the field on or about 24 March 43 did steal a pair of shoes the property of B-17569 Gnr. Miller, A.J. a person subject to Military Law.

SIXTH CHARGE - A.A. Sec 18 (4) Stealing property belonging to a person subject to Military Law, in that he, while in the Field, between 4 April 43 and 8 April 43 did steal a tunic and a pair of army issue boots, the property of D-14549 Gnr. Perry, R.F.

SEVENTH CHARGE-A.A. Sec 18 (4) Stealing property belonging to a person subject to Military Law in that he while in the Field between 4 April 43 and 6 April 43 did steal 250 "Export" cigarettes, the property of D-14547 Gnr. Doyon, O. a person subject to Military Law.

EIGHTH CHARGE -A.A. Sec 18 (4) Stealing property belonging to a person subject to Military Law in that he, while in the Field on or about 7 April 43 did steal 1000 "Sweet Caporal" cigarettes the property of A-37354 Gnr. Lefneski, R. a person subject to Military Law.

NINTH CHARGE - A.A. Sec. 22 When in confinement escaping in that he on 14 April 43, when in confinement in the guard house 2 Cdn. Medium Regt., R.C.A. escaped.

TENTH CHARGE - A.A. Sec 15 (1) A.W.L. while under close arrest from 1500 hrs 14 April 43 till 1030 hrs 26 April 43.(Absent 11 days 19 hrs 30 mins)

ELEVENTH CHARGE-A.A. Sec. 22. When in confinement escaping in that he on 4 May 43 when in confinement in the quarters of H.Q. 2 Cdn Medium Regt.R.C.A. escaped.

TWELFTH CHARGE - A.A. Sec. 15(1). A.W.L. while under close arrest from 1120 hrs 4 May 43 till 1855 hrs 7 July 43.(Absent 64 days, 7 hrs, 35 min.)

THE C.O. HAS DIRECTED THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS B-17527 R.S.M. McCowan, D., 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

I am the Regimental Sergeant-Major of the 2nd Canadian Medium Regiment, R.C.A., and in this capacity I searched C-10614 Gnr. David, L. on 8 April 1943 at R.H.Q. In the presence of Gnr. Hudson A.W., Gnr. Hopson F.R., and Gnr. Daly R.R. I found in his pocket a bent farthing which was identified by Gnr. Hudson as belonging to him. I found a green fountain pen which was identified by Gnr. Hopson and also a alligator shaped brooch which Gnr. Daly identified as belonging to him. Gnr.Hudson said the bent farthing was his and was stolen with fifty-five cents canadian money from his pocket. The Accused stated "I have had that a long time, I had some Canadian money too, but I gave it to a girl on the bus." When Gnr. Hopson identified the fountain pen as his, the Accused replied "I found it on the floor yesterday when I was sweeping up along with a lighter, I gave you back the lighter but forgot to give you back the fountain pen." When Gnr. Daly identified the brooch as his, the Accused replied "I got it from a girl in Croydon." Searching further I found in the Accused's pocket a letter addressed to Gnr. Perry. I asked him about it and he replied "This is Gnr. Perry's tunic I am wearing. He gave me permission to wear it while he was on leave.

I placed him under arrest and had him removed to the guardhouse. I then searched his truck and then found 250 "Sweet Caporal" cigarettes in the side curtain pocket. On the morning of 9 April 1943, from the propietor of the Bell Hotel in Godstone, I received a gold wrist watch which Gnr. Daly identified as his and from Gnr. Hopson a pair of new black oxford shoes. At 1400 hours 9 April 43, the Accused was paraded before me in the C.O's office. I cautioned him "You are charged with theft, you need not say anything in answer to the charge but anything yo do say will be used in evidence." The shoes were on the desk in front of me and I told the Accused that they were stolen from No.2 C.A.R.U. He replied "Yes, I stole the shoes." I showed him Gnr. Daly's wrist watch and he stated "Yes, I stole the wrist watch and the brooch." I asked him if he knew anything about Gnr. Adams' wallet which had been stolen from the room and he replied "I stole the wallet and sold it to a chap in the 25th Battery, I don't know his name." I asked him about the cigarettes that I found in his truck and he replied "I did not steal the cigarettes, I get lots from Canada."

D. McCowan

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

SECOND WITNESS D-14553 Gnr. Hopson, F.R., R.H.Q., 2 Canadian Medium Regiment, R.C.A. having been duly sworn states:-

.....3.

(2nd witness cont'd)

Between reveille of the 6th of April 1943 and tattoo of the 7th April 43, there was taken from the pocket of my tunic, which was hanging in my quarters, a fountain pen and a broken mechanical lighter. The lighter was handed to me by Gnr. David at approximately at noon on the 7th of April 1943. He told me he had found it when he swept the floor.

I was present when Gnr. David was searched by R.S.M. McCowan on the 7th April 1943, my pen was found on Gnr. David. I identify exhibit "A" as my fountain pen.

F R Hopson

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

THIRD WITNESS

D-14683 Gnr. Daly, R.R., R.H.Q., 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

Between the 2nd and 7th of April, 1943 there was removed from my shelf in my quarters, a blue cardboard box containing a gold wrist watch with the trade mark "Berkley" and a wooden tube of flints and a alligator shaped brooch. I was present on April 8, 1943 when Gnr. David was searched and I identified a alligator shaped brooch found on Gnr. David as being mine. On April 9th, 1943 I identified a watch in the R.S.M's possession as the one that was missing when the blue box was taken from my shelf. I identify as mine the blue cardboard box marked exhibit "B", the gold wrist watch marked exhibit "C", the wooden flint tube marked exhibit "D" and the alligator shaped brooch marked exhibit "E".

R R Daly.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

FOURTH WITNESS

D-14679 Gnr. Hudson, A.W., R.H.Q., 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

On the evening of the 7th April 1943, when I examined my pocketbook, which I kept in the pocket of my Greatcoat, which hangs in my quarters, I missed from my pocketbook a Canadian fifty-cent piece and a small Canadian five-cent piece, a rifle slug which had on it two axe marks, this rifle slug I kept for sentimental value, and a farthing which I had bent in order that I could recognize it. I was present when Gnr. David was searched by R.S.M. McCowan on April 9th, 1943 and was able to identify the bent farthing found on Gnr. David as that which I had missed from my pocketbook. I identify the bent farthing marked exhibit "F" as mine.

A W Hudson

CROSS EXAMINED BY THE ACCUSED

"Question" - While playing poker have you seen Canadian coins amongst my money on the table before me?

"Answer" - I don't recall ever seeing Gnr. David with any Canadian money.

"Question" - Have you played poker with me?

"Answer" - I don't recall ever playing poker with you.

..... /4.

FIFTH WITNESS

D-11042 Gnr. Adams, K.T., R.H.Q., 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

On about the 26th or 27th March, 1943 I placed my wallet in my tunic pocket after pressing it. On the 30th of the month when I went to put my pay in my wallet, it was missing from my tunic. There has been no trace of this wallet since.

Adams K.T.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

SIXTH WITNESS

B-17569 Gnr. Miller, A.J., 25th Medium Battery, 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

On March 24th, 1943 I received a pair of Birkdale shoes, black, size 7, from home. I placed them under my bed. They were missing in the morning. I reported this fact to R.S.M. Crawford of No. 2 C.A.R.U., this took place while I was posted to No. 2 C.A.R.U. At the end of May 1943, when I returned to the 2nd Canadian Medium Regiment, R.C.A. from No.2 C.A.R.U., I was shown these shoes by R.S.M. McCowan. I was able to identify them as mine. I identify the Birkdale shoes marked exhibit "I" as mine.

A J Miller

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

SEVENTH WITNESS

D-14549 Gnr. Perry, R.F. R.H.Q., 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

I was on privelege leave from 4th of April to the 13th of April, 1943. I had not given permission for anybody to use my equipment while I was away. My tunic was missing and somebody else's boots had been left in place of mine when I returned from leave. I was able to identify the tunic shown to me by R.S.M. McCowan as mine. The next morning I was taken by Sgt. Giles to the guardhouse where I was able to identify my boots as those in Gnr. David's kit. I identify the tunic marked exhibit "J" as mine, the boots marked exhibit "K" are mine.

R F Perry

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

EIGHTH WITNESS

D-14547 Gnr. Doyon, O., R.H.Q., 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

On the 4th April, 1943 250 "Export" cigarettes were taken from my barrack box.

O F Doyon

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

NINTH WITNESS A-37254 Gnr. Lefneski, R., 25th Medium Battery, 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

On or about the 28th March, 1943 Gnr. David came into my hut and offered to sell me a brown leather wallet with a zipper. I did not buy it but sold it to another man for Gnr. David. I had just joined the regiment and was not familiar with many of the men and therefore do not remember nor recognized since the man to whom I sold the wallet.

On the evening of the 4th April 1943, I was given 10 packets of "Export" cigarettes by Gnr. David to keep for him. I put them in my kit bag in his presence, in which I had a parcel of a 1000 "Sweet Caporal" cigarettes.

On the 7th of April, 1943, on returning from a scheme, I found that my "Sweet Caporal" cigarettes missing. The only trace of this parcel was the cover with my name on it, which was found under one of the beds in my hut.

E.R. Lefneski

CROSS EXAMINED BY THE ACCUSED

"Question" - Did you say that you gave me some of those "Exports" little by little?

"Answer" - Yes, I did say that.

"Question" - How many cigarettes did I give you on the first night?

"Answer" - 250 "Exports" were brought down to the hut.

"Question" - Did I give you 250 to put away in your kit bag?

"Answer" - Yes, that is right.

"Question" - Did I have any cigarettes that night to go out?

"Answer" - Yes, you asked for some of the cigarettes back and I gave you some to go out.

TENTH WITNESS D-11053 Gnr. Chabot, G.A., 25th Medium Battery, 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

At about 1300 hrs on the 4th April, 1943. Gnr. David sold me a watch for thirty shillings, it was a gold wrist watch, Berkley make, with the winding stem missing. I pawned this watch the same day with the owner of the Bell Public House in Godstone.

On April 9th, 1943, in company with R.S.M. McCowan, I redeemed this watch.

G.A. Chabot

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

...../6.

ELEVENTH WITNESS

H-76018 A/Sgt.(now Bdr.) Curtis, H.D., 18th Medium Battery, 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

I was Guard Commander on the 14th April, 1943 and Gnr. David was a prisoner in my custody. Gnr. David had been detailed to sweep out the guard house. When I checked up on him about five minutes later, he had gone. I immediately searched the guardhouse, turned out the guard to search the area around the guardhouse but there was no trace of Gnr. David. He had left a note addressed to the R.S.M. I read the note to see if it gave any information as to where Gnr. David was going and then turned it over to R.S.M. McCowan.

Bdr. Curtis H.D.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

TWELFTH WITNESS

H-76143 L/Bdr. Pile, G.A. 18th Medium Battery, 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

I was second in command of the regimental guard on the 14th April, 1943. I had given Gnr. David orders at approximately 1500 hours to sweep out his cell. He had the broom and was sweeping out his cell. The Sergeant of the guard then asked me "How things were going?", he had just returned from his tour of the sentries. I said "O.K." After giving this information, he went to check up on the prisoner at approximately 1505 hours and found him gone. We then searched the guardhouse and the vicinity of the guardhouse for him but did not find him.

L/Bdr. Pile G.G.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

THIRTEENTH WITNESS

F-49610 Sgt. Giles, W.C.S. R.H.Q., 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

I was N.C.O. in charge of the rear party quartered in Marden Park House. At about 1000 hours 25 April 1943 Gnr. David L. reported to me. I recognized him as a absentee and placed him under close arrest. He had been absent since escaping from the Regimental Guardhouse on April 14, 1943. He had been absent from April 14, 1943 until he reported to me at 1000 hrs on 25 April 1943.

On 4th May 1943 Gnr. David, who was in close custody, was taken out by his escort Gnr. Hall for exercise at about 1030 hours. At about 1120 hours 4 May 1943 Gnr. Hall reported that Gnr. David had escaped custody. I formed a search party and proceeded to search the camp and immediate vicinity. I did not find any trace of Gnr. David. As duty N.C.O. R.H.Q., having seen to the calling of roll at Tattoo and Reveille, Gnr. David has failed to answer his name since that date.

W.C.S. Giles Sgt

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

FOURTEENTH WITNESS

M-65737 Gnr. Hall, H.L., 25th Medium Battery, 2nd Canadian Medium Regiment, R.C.A., having been duly sworn states:-

On the 4th May 1943 I was escort for Gnr. David while on exercise in the grounds of Marden Park. Gnr. David asked me for permission to go to the lavatory. I gave him this permission and he went behind the bush. After two or three minutes, I looked for Gnr. David but he had gone. I looked around but did not find him and reported to Sgt. Giles.

H.P. Hall

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

...../8.

FIFTEENTH WITNESS

Lieut. L.H. Dunsdon, Acting Adjutant, 2 Canadian Medium Regiment, R.C.A., having been duly sworn states:-

As Officer in charge of records in the regiment, I produce true copies of a Court of Inquiry assembled 27 May 1943 for the purpose of inquiring into and reporting upon the absence without leave and the deficiency of any equipment, clothing and regimental necessaries issued to C-10614 Gnr. David L.

L.H. Dunsdon Lieut RCA.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

THE ACCUSED HAVING BEEN PROPERLY CAUTIONED IN ACCORDANCE WITH RULES OF PROCEDURE 4(E) DECLINES TO MAKE A STATEMENT,

G.W. Whittaker, Capt R.C.A.

THE FOUNTAIN PEN, REFERRED TO BY THE SECOND WITNESS, IS LABELLED EXHIBIT "A", SIGNED BY ME.

G.W. Whittaker, Capt R.C.A.

THE BLUE CARDBOARD BOX MARKED AS EXHIBIT "B", GOLD WRIST WATCH, BENKLEY MAKE, LABELLED EXHIBIT "C", WOODEN FLINT TUBE MARKED EXHIBIT "D", ALLIGATOR SHAPED BROOCH MARKED EXHIBIT "E", REFERRED TO BY THE THIRD WITNESS, SIGNED BY ME.

G.W. Whittaker, Capt R.C.A.

THE BENT FARTHING, REFERRED TO BY THE FOURTH WITNESS, IS MARKED EXHIBIT "F" AND SIGNED BY ME.

G.W. Whittaker, Capt R.C.A.

THE CIGARETTES, REFERRED TO BY THE FIRST WITNESS, IS MARKED EXHIBIT "G", SIGNED BY ME.

G.W. Whittaker, Capt R.C.A.

THE COURT OF INQUIRY, REFERRED TO BY THE FIFTEENTH WITNESS, MARKED EXHIBIT "H", SIGNED BY ME IS ATTACHED HERETO.

G.W. Whittaker, Capt R.C.A.

THE PAIR OF BIRKDALE SHOES REFERRED TO BY THE SIXTH WITNESS, IS MARKED EXHIBIT "I", SIGNED BY ME.

G.W. Whittaker, Capt R.C.A.

THE TUNIC REFERRED TO BY THE SEVENTH WITNESS, IS MARKED EXHIBIT "J", SIGNED BY ME.

G.W. Whittaker, Capt R.C.A.

THE PAIR OF BOOTS REFERRED TO BY THE SEVENTH WITNESS IS MARKED EXHIBIT "K", SIGNED BY ME.

G.W. Whittaker, Capt R.C.A.

RULES OF PROCEDURE 4(C) (D) (E) (F) AND (G) HAVE BEEN COMPLIED WITH.

G.W. Whittaker, Capt R.C.A.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF SEVEN PAGES WAS TAKEN DOWN IN WRITING IN THE PRESENCE AND HEARING OF THE ACCUSED THIS 13TH DAY OF JULY 1943.

G.W. Whittaker, Capt R.C.A.

(G. WHITTAKER)
OFFICER DETAILED TO TAKE THIS SUMMARY OF EVIDENCE.

Old sheet destroyed, CARO(0)2084 review 15 Sep 43 R.S. Cockburn Major RCA

No. C-10614 Name DAVID L. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 11 Aug 41 O.C. Badges Service or Proficiency Pay NIA

Date of last entry in Company Conduct Sheet RSC 17 Feb 42 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Nia Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order disposing with trial	By whom awarded	Remarks
Field	22 Feb 42	Gnr		AA.15(1) AWL from 0715 hrs to 0010 hrs 2 Mar 43 (Absent 7 days 16 hours 5 min). Cost of apprehension $6.37 Kit deficiencies $6.25	Bdr. Gatour Documentary	Admonished. Stoppages to make good Cost of apprehension and deficiencies	5 Mar 42	Lt.-Col. W.C. Thackray	8 days pay RSC FR&I 149(1)(a)
Field	18 Oct 42	Gnr		AA.15(1) WOAS AWL from 0700 hrs 18 Oct 42 until 0015 hrs 19 Oct Absent 17 hrs 15 mins.	Sgt. Woyes, 42 E.F. Sgt. Thoms C.	7 days C.B.	19 Oct 42	Lt-Col. F.P. Lloyd	1 days pay FR&I 149 (1)(a)
Field	10 Mar 43	Gnr		WOAS, did absent himself from duty from 1100 hrs, 19 Mar 43 till 1500 hrs, 19 Mar 43, and that he failed to appear at a place of parade when ordered to do so (OVER)	Sgt. Ellis J. Bdr. Pigeau D.	5 Days C.B.	22 Mar 43	Major R.E. Churchill	

W.R. Bates Capt
Judge Advocate
A.M. Douglas
Maj

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(cont'd) by Bdr. Pigeau (Time absent: 4 Hrs.)A.A. Sec 15 (1)					

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL DOCUMENT IN MY POSSESSION.

L. J. Henderson Lieut

"5"

W. B. Bates Capt
Judge Advocate

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

A.M. Davids
Maj.

Number C-10614 Rank Gunner Name DAVID, L. Regiment (or unit)

2 Canadian Medium Regiment, R.C.A.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A.Sec.15 (1)	2 times	A.A.Sec.15(1)	3 times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct N/A

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 20 days in Air Force military custody, making a total of 20 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper is~~ 21 yrs 8 mos 6 days

6. The date of his ~~commission~~ attestation specified in his record of service is attestation paper 11 Aug 1941

7. The service which the accused is allowed to reckon towards discharge is 1 yr 11 mos 16 days

8. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no air force decoration, or air force reward ~~he is in possession of or entitled to. State any air force decoration or reward.~~ military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the Air Force regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit
N/A dated N/A, and in his regiment (or corps), the rank of
N/A dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of N/A years.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number C-10614 Rank Gunner
Unit
Name DAVID, L. of 2 Cdn Medium Regiment RCA Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
NIL				

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of July 1943 [signature] Major
2 Cdn Medium Regiment, RCA

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

5-J-14

Sm. David L.

Orig passed to DND

10/David 2/1
d 11 Jun 85

(Sgd) C.H. Neil 78
A G Rev C

Orig att to
45-125

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-10614 Gnr Lomer DAVID, - 2 CARU

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 22	Not Guilty	Guilty	
2nd	AA Sec 15(1)	Not Guilty	Guilty	
3rd	AA Sec 40	Not Guilty	Guilty	
4th	AA Sec 40	Not Guilty	Not Guilty	
5th				
"R" 6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in lass of kit see RP 44 fn 6.)

At present under sentence for 2 yrs imp & dis with ignominy commencing on (date) 2 Feb 45 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with Hard labour for One (1) year and eleven (11) months and to be discharged with Ignominy from His Majesty's Service.

(Sgd) _____ 18 Apr 45 (Sgd) "D.L.Redman" Lt-Col.
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, or quashed may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 577. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 4.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be [illegible]~~ "R"
(1. AA 57A. Delete if not used.)

(Sgd) "HON Brownfield"
Date 20 Apr 45 Commanding "C" Group, Cdn Reinforcement Units.
Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused. "GNR"	Date.	Signature of Offr.
C-10614 Gnr DAVID, L.	25 Apr 45	"G.W.Currie" Capt.
DO 97	4/25 Apr 45	"D.O.Rates" Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Received 4 May 1945 JAG Branch CMHQ

RECORDED AT CMHQ IN AB 160 5I-14

CFA86 (To Hdq of AFA31 40-9-45 8/1698 (2864))

FIELD GENERAL COURT-MARTIAL

Convened by Order of Cpl H.M.Bailey A/Comd "C" Gp, [illegible] dated 14 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for stating the [illegible] rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Name.	Surname.	Unit.
C-10614	Gnr	Lomer	DAVID	2 CARU

PROCEEDINGS REVIEWED 18th UL August 21 May 45 "R.V.Loiselley" Lieut REVIEWING OFFICER, JAG BRANCH CMHQ

Certified true record of proceedings 31 May 45 [illegible] CMHQ

PROCEEDINGS OF TRIAL.

R Held in the Fd in (country) England. on (date) 18 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R A1. The President, Members, ~~waiting Member, J.A. if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which matters are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

"R" A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

R A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences.

"R" A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that the accused has not had sufficient notice of the charge and~~ "R" ~~is ready to proceed.~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(C). Delete, if not applicable.)

"R" A5. ~~President to accused: Do you object to XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

"R" B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (ii).)

"R" C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1) Note - Att
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) Note - Att
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not "R" establish a prima facie case against the accused on the 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission "R" is disallowed on the 2nd charge(s), ~~and allowed on the~~ ~~charge(s)~~, and that, accordingly, the trial will proceed ~~as to the charge(s) not disallowed~~ ~~and the accused is (are) found not guilty on~~ "R" ~~the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans To make a statement. Do you intend to call witnesses on your behalf ?
"R" Ans No Sir. ~~Are they witnesses as to character only ? Ans x~~
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 80 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

"R" D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is (are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

"R" D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s)~~
"R" ~~of the Court on the charge(s) recorded as being subject to confirmation will be promulgated later.~~
"R" ~~(2) The President announces that the accused is found not guilty on all charges and is (to be) released (without,~~
"R" ~~if any, punishment) (subject to the following punishment, if any) (2) and that the proceedings are accordingly terminated. (Part I of the Schedule is completed and signed.)~~
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

Continued

"R" D9. The accused having been found Guilty of one or more of the charges, the proceedings are concluded by using Record Form ~~D~~ E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 6, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true "R" copy ~~(s)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier ~~s~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 255 or MFB 296. 2. MSM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

"R" E3. President to accused : Do you wish to address the Court on the Statement ~~s~~ and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans My Def Offr. (Note att). (2)
(1. RP 37(C), 44(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which "R" is dated and signed by him ~~and the JA if any~~.(2)
(1. Where several accused tried separately see RP 78(f). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 809, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C-10614 Gunner Lomer DAVID, "P" Training Wing No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army, Overseas, is charged with:

t Charge
ection 22
y Act

WHEN IN LAWFUL CUSTODY ESCAPING

In that he,

at 2 CARU, on 19 Mar 45 at approximately 2000 hrs, while in lawful custody, did escape from his escort.

nd Charge
ection 15(1)
rmy Act

ABSENTING HIMSELF WITHOUT LEAVE

In that he,

having escaped from lawful custody at 2 CARU, absented himself without leave from approximately 2000 hrs 19 Mar 45, until surrendering himself to the Civil Police at Hammersmith, London at 0330 hrs 24 Mar 45. Absent 4 days 7 hrs 30 mins.

3rd Charge
Section 40
Army Act

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he,

at 2 CARU on 20 Mar 45, was improperly in possession of one (1) suit of battle dress, the property of B-102222 Pte Armstrong, P.C., No 2 CITR, a person subject to military law.

4th Charge
Section 40
Army Act

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

At Hammersmith, London, at 0330 hrs 24 Mar 45, on surrendering himself to the Civil Police, did give a false number rank and name, that is to say did give B-10293 Pte Douglas POTTS of 2 CIRU, Whitley, as his Regimental particulars.

"S.H.Dobell"
(S.H.Dobell) Colonel RCA
Commanding Officer
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas)

Huron Camp
Bramshott, Hants
3 Apr 45

To be tried by Field General Court Martial.

"Hart M.Bailey" Colonel
A/Commander "C" Group, Cdn Reinforcement Units
(Convening Officer)

Bordon, Hants
14 Apr 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-10614	Gnr		Lomer	DAVID	2 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (date) this date endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". "HMB"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ "HMB"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "HMB"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ "HMB"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-col	D.L.Redman, VD	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	To be detailed by CO	1 CARU
Lieutenant	To be detailed by CO	2 CARU
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND	"Hart M.Bailey"	Colonel
(Country.)	(Signed personally. RP 105 (n 2.)	(Rank.)

Date 14 Apr 45 A/Commanding "C" Group, Cdn Rft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 9) 40/P & S/1697 (6145) *(See overleaf for oaths and notes for use on trial.)*

"M"

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN.) PARA.557

I certify that I have this morning examined

No. . C-10614 Gnr DAVID, L. . . . . .

of . . . . 2 CARU . . . . . and in my opinion he

is fit ~~unfit~~ to undergo Trial by Court martial.

" m O #2 CARU

. . . . "?" . . . . . .
Medical Officer

~~Station~~ . . . 2 CARU. . . . . .

~~Date~~ . 18. Apr. 45 . . . . . .

~~M.F.R.246~~

CASE OF

C.10614 Gnr DAVID, L 2 CARU

PROSECUTOR:

The Def Offr has told me that he is ready to admit that the accused was in lawful custody when he escaped.

DEF OFFR:

The Defence is prepared to admit that the accused was in lawful custody at 2~~000~~ hr on 19 Mar 45, because he did not wish the court to know why the accused was in custody. "R"

PROSECUTOR:

As to the 2nd charge the fact of the absence can be proven but the exact date of apprehension cannot be proven as we did not feel it worth while to bring the civil police from London.

As to the third charge I will call witnesses.

As to the fourth charge I have not the evidence to support it as we did not feel it worth while to bring the civil police here.

THE DEF OFFR MADE A SUBMISSION WITH RESPECT TO THE FOURTH CHARGE THAT AS THE PROSECUTION WAS CALLING NO EVIDENCE THE FOURTH CHARGE SHOULD BE DISMISSED.

THE PROSECUTOR DID NOT REPLY.

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION.

THE COURT REOPENED AND THE PRESIDENT STATED THAT THE SUBMISSION BY THE DEF OFFR WAS ALLOWED ON THE FOURTH CHARGE AND ACCORDINGLY THE FOURTH CHARGE WAS DISMISSED.

- PROSECUTION -

FIRST WITNESS

B.11115 L/Bdr GOSLING TV, 2 CARU, having been duly sworn, states:

I'm att to the RP at 2 CARU, and on the evening of 19 Mar 45 I was on duty at 2005 hrs escorting the accused and another soldier to the showers when the accused broke away and after an extensive search I failed to find him. I next saw the accused, whom I now recognize, when he wasbrought in to the Gd Room about 4 days later.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IS IS UNNECESSARY TO COMPLY WITH RP 85(B).

"R"

SECOND WITNESS

F.97014 L/Cpl LYNK, MV, 6 Area Pro Coy, having been duly sworn, states:

I recognize the accused, and on 24 Mar 45 I was on duty in our dtn room at 6 Pro Coy in London at 0330 hrs, when as a result of infm recd I went to the Hammersmith Civil Police Stn and picked up the accused whom I now recognize, and they handed me an AFO 1617 on him and I produce herewith that document. He told me as he was leaving the Police Stn with me that he gave his name to them as Pte Potts. I have known the accused previously in Can when I was in the same bty with him.

AFO 1617 MARKED EXHIBIT I.

NO CROSS-EXAMINATION.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS

B.6486 Bdr ECKER CW, 2 CARU, having been duly sworn, states:

I am an RP at 2 CARU in the Gd Room and I recognize the accused, and on 24 Mar 45 he was handed over to me tobe booked and taken to a cell. I saw him at no time between the 19 and 24 Mar 45. On 24 Mar 45 he was wearing battledress with no cap.

Q. I have here a battledress, can you recognize it?
A. Yes, this is the uniform he was wearing alright, he took it off and put on a suit of denims.

BATTLEDRESS MARKED EXHIBIT 2 FOR IDENTIFICATION.

Q. Where did you put this uniform?
A. In the cupboard, and I took it to the Summary and handed it to the offr there.

NO CROSS-EXAMINATION.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

FOURTH WITNESS.

B.102222 Pte ARMSTRONG, TC, 2 CITR, having been duly sworn, states:

Sir, I was in my unit lines on the night of 21-22 Mar last when I saw the accused, and he stayed at my room overnight, and the first part of the next morning. I got up to go out on parade, then returned at 10 o'clock the same morning to find my battledress gone.

Q. I have here a set of battledress?
A. It is mine, I recognize the trousers by their being shortened from 32" to 30", and the tunic by the Can badges which I sewed on myself and the box bag which was in it. There is also an eyelet on the tunic to fasten on to the hook in my trousers. This battledress is mine.

BATTLEDRESS MARKED EXHIBIT 2 FOR IDENTIFICATION NOW MARKED EXHIBIT 2

Q. Did you report the loss?
A. Yes, to the RSM and the RPs.

Q. Did you findanything in it's place?
A. Yes, a size 10 tunic and trusers size 10 which wouldn't fit me at all. However it was a good uniform, and just as good as my own, except that it wouldn't fit me. Also missing was a razor, a tin of boot polish, and my suspenders.

one

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

FIFTH WITNESS

K.51375 L/Cpl CLARKE, AE, SIS, CRU, having been duly sworn, states:

Q. Do you recognize Exhibit 2?
A. Yes, it is the same battledress which was identified by Pte Armstrong on 26 Mar 45, and which Pte Armstrong identified at 2 CARU Gd Room as being his and that had been worn by Pte David on his entry into the Gd Room.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTION IS CLOSED

SUBMISSION BY THE DEF OFFR

The Defence submits that the 2nd charge should be dismissed because the prosecution has failed to make a prima facie case in that they have not proven the exact times of the supposed absence.

REPLY BY THE PROSECUTOR TO DEF OFFR'S SUBMISSION

I submit that the charge is proven in that Bdr Gosling who was the accused's escort at the time said that at2005 hrs the accused broke away and we have proof by Cpl Lynk that he was in London on the 24 Mar in the morning. As to the termination we have in evidence a certificate made out in the name of Pte Potts, and the accused admitted to the Cpl that he had given this name to the civil police. Apart from that I have no other evidence but I submit that the charge has been proven.

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION

THE COURT IS REOPENED AND THE PRESIDENT ANNOUNCES THAT THE SUBMISSION BY THE DEF OFFR IS DISSALLOWED.

- D E F E N C E -

FIRST WITNESS

The accused made the following statement not under oath:

Sir, I'm engaged to Miss Clare Canty whom I met in Jul 44 and since then we have written many letters to each other. I want to marry her and she wants to marry me, but for some reason the Col won't sign the application which I have submitted. On 19 Mar 45 I was in custody unable to see her and she had written and told me she was in hospital pregnant. She has been in and out of hosp for the past 6 mos or more. I was very anxious to see her on 19 Mar because of her condition.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)
THE DEFENCE IS CLOSED.

"2"

STATEMENT BY THE PROSECUTOR ON THE FINDING

The first charge has been proven without a doubt, and on the second charge I have covered mostly in my submission. On the third charge a witness has given evidence and he is a person subject to military law and he has shown that Exhibit 2 is his battledress. Another witness says that it is the battledress that was on the accused at the time he was taken into the Gd room.

STATEMENT BY THE DEFENDING OFFR ON THE FINDING

Two witnesses have been called by the Prosecution and have made certain statements with regards to dates and places which disagree with what the accused has told me privately.

The accused was considerably worried about the condition of fiancee and he wanted to see her, and I'm sure we can all understand how he must have felt about her while in dtn and receiving letters from her caused the desire to go and see her. I have here the correspondence between the accused and Miss Canty, which I will tender to the Court as an Exhibit, but before doing so I would like to read just a few of her letters to him. (DEF OFFR READS ALOUD THREE LETTERS).

LETTERS MARKED EXHIBIT 5.

I submit that the accused was not in his right mind at the time and cannot be held responsible for his actions that took place on 19 Mar. Further to the letters I have here a PSO report from 2 CANU, and a report from the psychiatrist at 22 CGH on the accused, and which I will tender to the court.

THE COURT IS CLOSED TO CONSIDER ITS FINDING

THE COURT IS REOPENED.

PLEA IN MITIGATION

The report of the psychiatrist shows the accused to be of no use to the Army, and I say that being of no use to the Army it would be better if he were automatically discharged from custody and sent to No 1 Dis Repat Depot and sent home, as there would be no point in keeping him in detn. He is presently serving 2 yrs dtn and I understand that this court could not impose a higher sentence than that which he is already serving. I think that is about all I have to say in mitigation, Sir.

"R"

I acknowledge receipt of Exhibit 2 which I agree to hold and hand to the Adjt until further orders.

"W.G.Mield" Lt.
Prosecutor.

"B"

I Certify that the man whose personal description is given below surrendered himself to Sgt Hitch at Hammersmith Stn, at (hour) 3.30 a.m. on the 24th day of March 45, as being No.B.10293 (Rank and Name) Pte Douglas POTTS, ~~a deserter~~ (or absentee without leave) from 2 CIRU and it appears to me from his confession that he is a ~~deserter~~ Witley or absentee without leave.

Age 22 Height 5 feet 6 Inches

Complexion Fresh Hair Dark

Eyes Brown

Marks Nill

In uniform or plain clothes: Uniform

Probable Date and Place of Attestation	Sudbury, Ontario
Probable Date of Desertion or beginning of absence, and from what place	Witley, 23/3/45

Signature of Officer of Police in charge of "H.Lee Sgt" Hammersmith Station.

24/3/45 Date of Signature.

COPIES OF LETTERS - Miss Clair Canty

51 Marlborough Place.

My Darling Pat:

I do not know quite what to say at least I feel very lonely and awfully unhappy about the way the things are going. I realy do not no what is going to happen I have only got you and you are far away. Doctor says baby might come anytime . Now I feel awful you have know idea how badly I feel I wish things where different for us. I feel if I am not wanted now and it is just worring me stiff. How are you doing My darling, it is awfull to see the patients in labour just before the baby is born. I hope you are ok now and I wish yo where here with me I feel so scared now it is realy awfull Perhaps you don't know how I feel, I love you an awfull lot, but what can I do in hospital. I feel lonely and depressed now. I feel awfull but I got myself in this mess so now I got to get myself out. I wish we where married so I could have you to come and see me it is awfull having no one to see you when you are in hospital I do not want to upset you at all but put yourself in my place. I am not wanted but still I will have the baby when it is born. I shall get a job and work for it because I have to have some money to support it. I am sorry to complain but I feel as if I am not wanted to thats all the Canadian headquarters are being so difficult. I can do as you ask yet because I am in hospital. I love you very much and always will even if we do not get married. I wish their was something one could do but is is hopless it seems I will register the baby in your name. Well darling I must close now with all my love and kisses to you from,

Claire

xxxxxxxx

51 Marlborough Place, NW.8

Dear Pat,

You should of recived my three letters telling you I am in hospital again so there is not much I can do until I come out it is awfull to know you are fed up but everything will be ok soon I have seen to some of this awful business, and I am hoping to hear the results soon. I am just as fed up as you only it is worse for me. I am expecting this baby and the poor little soul will have no future if things do not liven up. I shall do something desperate. I love you very much as you know you might ask B Gullin for the letter I wrote to you he has the letters and signed three kisses. I am hurring to get this letter written to you so you wont worry to much I can only write but I am sure the officer must keep them. It is hard when I know I write and you donot recive them it worries me awfull. I do not want you to think I do not want you,you ought to know better than that, I love you would I go through this if I didn't have some kind offaith in you. So please get the idea out of your head that I do not want you. I do. Will let you know more if I learn any more, so with all my love I close this letter to darling with lots of love, from,

Claire

51 Marlborough Place,
N.W.8.
30 March 45.

My Darling Pat:

I am in hospital so you will have to wait until I come out I have got toximar posoning and all other complcations I hope you are alright please take care of yourself. My lawyer will get in touch with you soon as he can I am going to sue you for breech of promise so look out for yourself. I am sorry you got caught and I would of love to seen you again. I was glad to seen you when I did. I am in Paddington Hospital could you get some one to phone and find out how I am.....

SUMMARY OF EVIDENCE IN THE CASE OF C-10614 Gunner Lomer DAVID, "P" Training Wing, No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army, Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

B-111115 L/Bdr GOSLING, T.V., Ontario Camp, 2 CARU, a soldier of the Cdn Army, Overseas, having been duly sworn states:

"On 19 Mar 45 at approximately 2008 hrs, I was escorting two soldiers under sentence - Gnr David and Gnr McGeein, to the showers in number 2 hut. Just before reaching the hut Gnr David, whom I now recognize as the accused, broke away and ran off. I took Gnr McGeein to Hut 2 and left him there in the charge of Gnr Payne. I searched the area for David, going as far as Liphook village, but could not find him. I returned to camp and reported the escape of Gnr David to Sjt Nygaard."

"L/Bdr Gosling T.V."

The accused declines to cross-examine this witness.

2nd Witness for the Prosecution

F-97014 L/Cpl Lynk, M.F., No 6 Area Provost Coy, a soldier of the Cdn Army, Overseas, having been duly sworn, states:

"At approximately 0330 hrs 24 Mar 45 I received a call from the Hammersmith Civil Police, requesting an escort for a Cdn soldier. On arrival at the Police Station they handed to me an AFO.1617 made out in the name of B-10293 Pte POTTS, D., which I now produce as Exhibit "A". They turned over to me a Cdn soldier who was Gnr David. On arriving at the vehicle Gnr David said he had given the Police his wrong name. I escorted him to Henrietta Street 6 Coy Detention and turned him over to the Sjt IC cells. I recognize the accused as the man I picked up that day.

"M.F.Lynk",

The accused declines to cross-examine this witness.

3rd Witness for the Prosecution

B-6486 Bdr Ecker, C.W., a member of the Military Police, Ontario Camp 2 CARU, a soldier of the Cdn Army, Overseas, having been duly sworn, states:

"On 24 Mar 45 I was NCO IC Ontario Camp Guard Room 2 CARU when Gnr David, whom I now recognize as the accused, was turned over into my custody at approximately 1600 hrs. He was wearing a suit of battle dress which I now produce as exhibit "B".

"C.W.Ecker",

The accused declines to cross-examine this witness.

4th Witness for the Prosecution

B-102222 Pte Armstrong, T.C., of 2 CITR, a soldier of the Cdn Army, Overseas, having been duly sworn, states:

"On 21 and 22 Mar 45, Gnr David, whom I now recognize as the accused, spent the night and morning with me in my sleeping quarters. I reported for duty at 0730 hrs 22 Mar 45 and when I returned to my quarters at 1000 hrs 22 Mar 45. my battle dress was missing. I reported this to the camp RP Sjt Major. I recognize the battle dress marked Exhibit "B" as belonging to me, for the following reasons: (1) I tailored the tunic myself, using brown thread which is not issue (2) I fastened the hook on the belt of the jacket to correspondent with a loop on the trousers. (3) The manner in which I had sown the Canada flashes on the blouse. (4) I had tailored a box-back in the blouse. (5) I shortened the trousers and removed the tabs. (6) I tailored the trousers down from a

32 inch to a 30 inch waist. (7) I moved the buttons down on the trousers to correspondent with the loop holes on the jacket."

"T.C.Armstrong",

The accused declines to cross-examine this witness.

"R"

5th Witness for the Prosecution

K-51375 L/Cpl Clarke, A.E., SIS, APM Office, HQ CRU, a soldier of the Cdn Army Overseas, having been duly sworn, states:

"On 26 Mar 45, I had information to the effect that Gnr David, an absentee from 2 CARU had stayed the night of either 21 or 22 Mar 45 at 2 CITR. I proceeded to 2 CITR and there contacted Pte Armstrong, T.C. from whom I obtained a statement to the effect that Gnr David had slept in his billets on the night mentioned and that at 1000 hrs the following morning Pte Armstrong noticed that one of his battle dress blouses and trousers were missing. Accompanied by Pte Armstrong I proceeded to North Camp Guard Room, 2 CARU and there Pte Armstrong identified the battle dress which had been worn by David on his entry to the Guard Room, as being his property. I then interviewed Gnr David at this time but he refrained from making any statement either verbal or written. I recognize the battle dress marked Exhibit "B" to be the one which was shown to me by Bdr Ecker as being the one Gnr David was wearing at the time he was admitted to the Guard Room.

"A.E.Clarke",

The accused declines to cross-examine this witness.

The accused was cautioned as follows: "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c),(d),(e) and (f) have been complied with.

"G.W.Currie" Capt.
(G.W.Currie) Capt RCA
Administrative Officer
"P" Trg Wing, 2 CARU

Officer detailed to take the Summary of Evidence.

"R"

Huron Camp
Bramshott, Hants
5 Apr 45.

COPIES OF LETTERS - Miss Clair Canty

51 Marlborough Place.

My Darling Pat:

I do not know quite what to say at least I feel very lonely and awfully unhappy about the way the things are going. I realy do not no what is going to happen I have only got you and you are far away. Doctor says baby might come anytime . Now I feel awful you have know idea how badly I feel I wish things where different for us. I feel if I am not wanted now and it is just worring me stiff. How are you doing My darling, it is awfull to see the patients in labour just before the baby is born. I hope you are ok now and I wish yo where here with me I feel so scared now it is realy awfull Perhaps you don't know how I feel, I love you an awfull lot, but what can I do in hospital. I feel lonely and depressed now. I feel awfull but I got myself in this mess so now I got to get myself out. I wish we where married so I could have you to come and see me it is awfull having no one to see you when you are in hospital I do not want to upset you at all but put yourself in my place. I am not wanted but still I will have the baby when it is born. I shall get a job and work for it because I have to have some money to support it. I am sorry to complain but I feel as if I am not wanted to thats all the Canadian headquarters are being so difficult. I can do as you ask yet because I am in hospital. I love you very much and always will even if we do not get married. I wish their was something one could do but is is hopless it seems I will register the baby in your name. Well darling I must close now with all my love and kisses to you from,

Claire

XXXXXXXXX

51 Marlborough Place, N.W.8

Dear Pat,

You should of recived my three letters telling you I am in hospital again so there is not much I can do until I come out it is awfull to know you are fed up but everything will be ok soon I have seen to some of this awful business, and I am hoping to hear the results soon. I am just as fed up as you only it is worse for me. I am expecting this baby and the poor little soul will have no future if things do not liven up. I shall do something desperate. I love you very much as you know you might ask B Gullin for the letter I write to you he has the letters and signed three kisses. I am hurring to get this letter written to you so you wont worry to much I can only write but I am sure the officer must keep them. It is hard when I know I write and you do not recive them it worries me awfull. I do not want you to think I do not want you, you ought to know better than that, I love you would I go through this if I didn't have some kind offaith in you. So please get the idea out of your head that I do not want you. I do. Will let you know more if I learn any more, so with all my love I close this letter to darling with lots of love, from,

Claire

51 Marlborough Place,
N.W.8.
30 March 45.

My Darling Pat:

I am in hospital so you will have to wait until I come out I have got toximar posoning and all other complications I hope you are airight please take care of yourself. My lawyer will get in touch with you soon as he can I am going to sue you for breech of promise so look out for yourself. I am sorry you got caught and I would of love to seen you again. I was glad to seen you when I did. I am in Paddington Hospital could you get some one to phone and find out how I am.....

at Maida Vale. You have my phone number as you know. I do love you very much and always will my darling so you never need think that I will let go because I wont. I will get some one to get my letters for me and send them on to you. I do love perhaps you get your discharge from the army you can get a job or perhaps they might sen d you home what will I do then. I love you and I want to marry you as well as see you it is hard for me to see them so hard on you, if you only new how I loved you perhaps it is awfull to say so but I would love to kill them for this it making me awfully worried I am doing my best for you darling. I am tied in hospital . Whatever you do donot kill yourself if you do the baby will have to die and me so darling please know ones loves you like I do so do not make it harder for me will you. I will write again to you so then until you hear from me dont do anything rash will you darling think of me and the baby I want the baby very much only if you do things like that it wont live when it is born. I love you so dont forget it will you darling. I must close now will all my love and kisses to you my darling. Cheerio then, lots of love to you from your own little wife one day to be.

Claire
xxxxxxxxxxxxxxxxx

51 Marlborough Place, NW8

20 Feb.

My Darling Pat:

How are you my darling I recived your letter but darling I have been writing. I have written three last week to you so I do not no what is happing to the letters you hurt me very much when you wrote that because you know at the bottom of my heart as well as yours I love you and I want you. I have said I would never let you go dozent matter what happens you ought to know that by now. I do love you my darling and always will. Well darling I am getting on baby is coming on to. I feel fine but I would feel better if I knew what is going to you I love you and I do not want anything to happen to you I do worry over that and you, I cant help it, I hope you go free that is all I want and then we can be very happy dont you think. I am not thinking of what happened before you met me at all that dozes not worry me so dont you think of it any more. I want you to try and forget what has happened, it wont do you any good to be thinking of it all the time. I will not hold that against you my darling you will never hear from me I can promise that. I do want to see you very much my darling and I do love you very much so do not worry I wont let you go so easy, after waiting all this time for you my darling. Have you heard any more from the Commanding Officer yet I hope now everything will turn out alright for us both my darling. Have you heard from your people yet it reely dozent worry you all that much dozes it. I hope you are not worring over them I know you must miss them and are eager to here but hold on you might yet .
I do love you and want you to put your mind arest now will you darling, please dont be angry with me or hurt me. I want to be near you and cannot yet because you are to far from me.
But I can assure you I love you very deeply and know one will ever take your place. You are the only one for me.

SUMMARY OF EVIDENCE IN THE CASE OF C-10614 Gunner Lomer DAVID, "P" Training Wing, No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army, Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

B-111115 L/Bdr GOSLING, T.V., Ontario Camp, 2 CARU, a soldier of the Cdn Army, Overseas, having been duly sworn states:

"On 19 Mar 45 at approximately 2008 hrs, I was escorting two soldiers under sentence - Gnr David and Gnr McGeein, to the showers in number 2 hut. Just before reaching the hut Gnr David, whom I now recognize as the accused, broke away and ran off. I took Gnr McGeein to Hut 2 and left him there in the charge of Gnr Payne. I searched the area for David, going as far as Liphook village, but could not find him. I returned to camp and reported the escape of Gnr David to Sjt Nygaard."

"L/Bdr Gosling T.V."

The accused declines to cross-examine this witness.

2nd Witness for the Prosecution

F-97014 L/Cpl Lynx, M.F., No 6 Area Provost Coy, a soldier of the Cdn Army, Overseas, having been duly sworn, states:

"At approximately 0330 hrs 24 Mar 45 I received a call from the Hammersmith Bivil Police, requesting an escort for a Cdn soldier. On arrival at the Police Station they handed to me an AFO.1617 made out in the name of B-10293 Pte POTTS, D., which I now produce as Exhibit "A". They turned over to me a Cdn soldier who was Gnr David. On arriving at the vehicle Gnr David said he had given the Police his wrong name. I escorted him to Henrietta Street 6 Coy Detention and turned him over to the Sjt IC cells. I recognize the accused as the man I picked up that day.

"M.F.Lynx",

The accused declines to cross-examine this witness.

3rd Witness for the Prosecution

B-6486 Bdr Ecker, C.W., a member of the Military Police, Ontario Camp 2 CARU, a soldier of the Cdn Army, Overseas, having been duly sworn, states:

"On 24 Mar 45 I was NCO IC Ontario Camp Guard Room 2 CARU when Gnr David, whom I now recognize as the accused, was turned over into my custody at approximately 1600 hrs. He was wearing a suit of battle dress which I now produce as exhibit "B".

"C.W.Ecker",

The accused declines to cross-examine this witness.

4th Witness for the Prosecution

B-102222 Pte Armstrong, T.C., of 2 CITR, a soldierof the Cdn Army, Overseas, having been duly sworn, states:

"On 21 and 22 Mar 45, Gnr David, whom I now recognize as the accused, spent the night and morning with me in my sleeping quarters. I reported for duty at 0730 hrs 22 Mar 45 and when I returned to my quarters at 1000 hrs 22 Mar 45 my battle dress was missing. I reported this to the camp RP Sjt Major. I recognize the battle dress marked Exhibit "B" as belonging to me, for the following reasons: (1) I tailored the tunic myself, using brown thread which is not issue (2) I fastened the hook on the belt of the jacket to correspondent with a loop on the trousers. (3) The manner in which I had sown the Canada flashes on the blouse. (4) I had tailored a box-back in the blouse. (5) I shortened the trousers and removed the tabs. (6) I tailored the trousers down from a

32 inch to a 30 inch waist. (7) I moved the buttons down on the trousers to correspondent with the loop holes on the jacket."

"T.C. Armstrong",

The accused declines to cross-examine this witness.

"R"

5th Witness for the Prosecution

K-51375 L/Cpl Clarke, A.E., SIS, APM Office, HQ CRU, a soldier of the Cdn Army Overseas, having been duly sworn, states:

"On 26 Mar 45, I had information to the effect that Gnr David, an absentee from 2 CARU had stayed the night of either 21 or 22 Mar 45 at 2 CITR. I proceeded to 2 CITR and there contacted Pte Armstrong, T.C. from whom I obtained a statement to the effect that Gnr David had slept in his billets on the night mentioned and that at 1000 hrs the following morning Pte Armstrong noticed that one of his battle dress blouses and trousers were missing. Accompanied by Pte Armstrong I proceeded to North Camp Guard Room, 2 CARU and there Pte Armstrong identified the battle dress which had been worn by David on his entry to the Guard Room, as being his property. I then interviewed Gnr David at this time but he refrained from making any statement either verbal or written. I recognize the battle dress marked Exhibit "B" to be the one which was shown to me by Bdr Ecker as being the one Gnr David was wearing at the time he was admitted to the Guard Room.

"A.E. Clarke",

The accused declines to cross-examine this witness.

The accused was cautioned as follows: "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c),(d),(e) and (f) have been complied with.

"C.W. Currie" Capt.
(C.W. Currie) Capt RCA
Administrative Officer
"B" Trg Wing, 2 CARU

Officer detailed to take the Summary of Evidence.

"R"

Huron Camp
Bramshott, Hants
5 Apr 45.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-10614	Gnr	David, L	2 C.A.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For WITHIN LAST 12 MOS SINCE ENLISTMENT times.

For A.A. Sec. 15(1) None Three times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 22 Feb 42

Date of last entry in Field Conduct Sheet 19 Mar 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for two yrs hard labour beginning on the 2 day of Feb 45

4. The accused has been awaiting trial on the present charges for ~~days in civil custody, and for~~ "GWC" Nil days in military custody, *i.e.*, ~~days in open arrest~~ "GWC" Nil days in close arrest ; of ~~which "GWC" days were spent in hospital~~

5. The present age of the accused is 22 yrs 149 days

6. The date of his attestation ~~calling up for military service~~ is 11 Aug 41

7. The service which the accused is allowed to reckon is 3 yrs 250 days

8. The accused is in possession of‡ CVSM & Clasp

‡State the military decorations (if any) held by accused.

9. ~~If the accused is a warrant officer or N.C.O. The accused has served continuously without reduction in the present date~~ "GWC" ~~Date of conviction~~

~~In the substantive rank of~~ _____ _____

~~In the war substantive rank of~~ _____ _____

~~In the acting rank of~~ _____ _____

EA B "R"

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[illegible] Wt.[illegible] 100,000 4/42 A.A.S.W. Ltd. Gp.[illegible]
[illegible] Wt.[illegible] 60,000 3/42 " " Forms/B.296/Wart/2

"R"

Fin here Loose Sheets of Record.

4th

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

"R" D2. The Prosecutor makes (an) ~~(ab)~~ opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) Note Att

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not "R" establish a prima facie case against the accused on the 4th charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission "R" is disallowed on the ~~charge(s)~~, and allowed on the 4th charge(s), and that, accordingly, ~~the trial will proceed on the former but~~ the accused is ~~(are)~~ found Not Guilty on R" the latter charge(s).(4)

"R" *(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

~~D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.~~

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Do you intend to call witnesses on your behalf? "R" Ans. Are they witnesses as to character only? Ans.

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 64(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

continued

"R" D9. ~~The accused having been found Guilty on one or more of the charges,~~ the proceedings are ~~concluded~~ by using Record Form ~~B below.~~ D-1

"P" TRAINING WING
NO 2 CARU

PW/5-4-5
5 Apr 45

Commanding Officer,
No 2 C.A.R.U.

C-10614 Gnr DAVID, L.

1. It is respectfully requested that an officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

"L.David"
C-10614 Gnr DAVID, L.

"P" NO 2 TRAINING WING CARU

Commanding Officer,
No 2 C.A.R.U.

PW/5-4-5
5 Apr 45

FGCM
C-10614 Gnr DAVID, L.

1. I acknowledge having duly received a copy of the Charge Sheet and a copy of the Summary of Evidence comerning my forthcoming trial by Field General Court Martial.

"L.David"
C-10614 Gnr DAVID, L.

LIST OF WITNESSES

FOR THE PROSECUTION:	B-111115	L/Bdr	GOSLING T.V. 2 CARU
	F-97014	L/Cpl	LYNK M.V. No 6 Area Provost Coy.
	B-6486	Bdr.	ECKER C.W. 2 CARU
	B-102222	Pte.	ARMSTRONG T.C. 2 CITR
	K-51375	L/Cpl.	CLARKE A.E. SIS, CRU
FOR THE DEFENCE:	N I L		

LIST OF EXHIBITS

Exhibit "A"	Certificate of Surrender, Army Form C.1617
Exhibit "B"	Suit of Battle Dress.

48-125

Gen. David L.

13 Sep 45

J.A.G. Rev

Original proceedings despatched Bomber to DHD.

This H.Q. 10/David L/1

Dated 11 Jun 45

C.H. Heil Lt
A G Rev C

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-10614 Gnr DAVID, Lomer- 2 CARU.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd AA Sec 18(4)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

"EMM"

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

"EMM" NOT At present under sentence for ---------- beginning on (date) ---------- (1)

(1/ Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which Nil. days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two (2) years and to be discharged with ignominy from H.M.Service.

"EMM" (Sgd) ---------- 2 Feb 45 (Sgd) "E.M.Miller" Major, President. (RP 45, 50.)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 33(D) fn 6.66(A), 54-56, 120, MML pp 759-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) Sgd

(1. AA 57A. Delete if not used.)

(Sgd) "H.M. Brownfield"

Date 4 Feb 45

Commanding "HON BROWNFIELD" Brigadier Cond "C" Gp Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.		Date.	Signature of Offr.
C-10614	Gnr DAVID, L.	5 Feb 45	"G.W.Currie" Capt. "DO Rates" Lt.
Do 32		d/7 Feb 45	"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 45-125

Received 23 Feb 1945 JAG Branch CMHQ

FIELD GENERAL COURT-MARTIAL

CPA96 (Inside of AFA2) 40-P-1608 (2004)

Convened by Order of BRIG HON Brownfield CBE MC Cond "C" Gp, CRU dated 31 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 14, 71, 109. As to reasons for showing Christian name or initials or defence-rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmt R. (b) Appmt, A/R or A/Appmt.	Full Christian Name.	Surname.	Unit.
C-10614	Gnr	[illegible]	DAVID	2 CARU

Original Proceedings Reviewed by Reviewing Officer 31 Jan 45 Copy forwarded to JAG Branch CMHQ

PROCEEDINGS REVIEWED "R.V.Laichley" Capt. "EMM" REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 2 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

"EMM" A1. The President, Members, ~~waiting Members, JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)

"EMM" The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

"EMM" A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if non applicable.)

"EMM" A5. President to accused: ~~Do you object to~~ ---------- an interpreter. 1 Asst. ---

~~The Interpreter is sworn.(1) Do you object to ---------- as shorthand writer. 1 Asst. ---~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

"EMM" A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.M.Miller, ED KC	HQ CRU
Member	Capt	R.T. ~~not on Roll~~	1 CMEERU
Member	Lieut	T.R.Heal	1 CMEERU
"EM" ~~Judge-Advocate~~			
Prosecutor	Lieut	A.Zimmerman	2 CARU
Defending Offr	Lieut	R.A.Quenton	2 CARU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 59 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ---------- before arraignment makes(s) (no) ~~of~~ plea.

"EMM" ---------- ---------- (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

"EMM" A9. The accused is (are) ~~arraigned (separately)~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 36, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; unless several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

"EMM" A10. The Court ~~is viewed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 89, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

"END" B1. The President ~~or J.A. if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No. (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

"END" B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* R95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*c*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No Sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1.)

"END" *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(2), and certified true copy (~~copies~~) of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex C respectively.(4)

(1. *AFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Dfg Offr read and filed Plea (2)

"END" (1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

"END" E5. The Court considers the sentence.(2) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)

(2. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 109, 2323, *MML p* 80, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

"EMM"

The accused C-10614 Gunner Lomer DAVID "P" Training Wing, No 2 Cdn Arty Rft Unit, a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he,

In the Field, absented himself without leave from 1330 hrs 18 Jul 44, until apprehended at 1600 hrs 17 Aug 44. Absent 30 days, 2 hours and 30 minutes.

2nd Charge
Section 18(4)
Army Act

WHEN ON ACTIVE SERVICE
STEALING GOODS, THE PROPERTY OF A PERSON SUBJECT TO MILITARY LAW

In that he,

In the Field, stole a watch, the property of Gnr Samford, No 2 CARU, a person subject to military law.

"S.H.Dobell"
'S.H.Dobell' Colonel, RCA
Commanding Officer
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas).

Huron Camp
Bramshott, Hants
16 Jan 45

To be tried by Field General Court Martial

"HON Brownfield" Brigadier
Commanding "O" Gp, Cdn Reinforcement Units
(Convening Officer)

Bordon, Hants

"EMM"

31 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-10614	Gnr		Lomer	DAVID	2 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (*date*) this date endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". "EMM"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ "EMM"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "EMM"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereof the Offr mentioned hereunder.~~ "EMM"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj	E.M.Miller ED	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	to be detailed by CO	1 COMERU
Lt	to be detailed by CO	1 COMERU
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England	"HON Brownfield"	Brigadier
(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 31 Jan 45 Commanding "C" Gp, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 95 (In lieu of AFA 3) 40/P & S/1697 (6143) *(See overleaf for oaths and notes for use on trial.)*

"EMM"

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN.) PARA.557

I certify that I have this morning examined No. . . C-10614 . . Gnr DAVID, L. . . . . of . . . 2 CARU . . . . . and in my opinion he is fit to undergo Trial by Court martial.

??? MO 2 CARU

"?" Capt
Medical Officer

~~Station~~ . . . 2 CARU . . . . .

~~Date~~ . . . 2 Feb 45 . . . . . .

~~M.P.R.246~~

"M"

PLEA OF MITIGATION.

C-10614 Gnr DAVID, Lomer, 2 CARU.

Sir,

Lomer David was born on 20th Nov 1922 in Hull PQ., of French Canadian parentage, son of a contractor.

He attended a French school in Ottawa and completed Grade eight. Upon leaving school at the age of fourteen, he worked with his father, then as a tinsmith and as a driver for his uncle, who is a contractor.

David earned as much as $1.10 per hour on this last job.

At 18 years of age, Lomer David enlisted in the Canadian Army (active) at Ottawa on 6 August 1941., served one year in Canada at Ottawa, Peterborough and Petawawa, here he was employed as a driver, and he now speaks good English, and is unaccustomed to using his mother tongue.

He proceeded to the UK in Sept 1942 to 2 CARU, where he was trained as a medium gunner and later was employed as instructor - driver i/c.

Gunner David has been charged with being AWL and of petty larceny on several occasions.

His first twenty months service have been blemished only by two charges of AWL, 7 days and 1 day respectively, and thirdly by absence from duty for four hours. He has never been directly charged with drunkenness.

From April 43, his record made a great change. In civil life he had been accustomed to an appreciable amount of pay and spending money.

In the army overseas, being short of money and obsessed by a desire to show that he could treat his friends, (to use his own words) he weakened.

These desires became overbearing and under the influence of liquor, this weakness of character overcame his better judgement and he began committing acts of petty larceny, pens, watches, cigarettes, and other articles which he usually sold. On sobering up he was afraid of being found out had he returned any articles.

His drinking became heavier, as he says, and these offences continued.

In my mind these offences are the result of a kleptomania and a desire for possession, heightened by the influence of alcohol although I have no proof of this last factor.

Whilst awaiting FGCM on these charges (of April 1943). Gunner David became obsessed with a fear of trial and a long sentence, it played on his mind to such an extent that he escaped confinement on two occasions. In the first instance he reported back to his unit on his own. The second time he broke confinement, he was afraid of coming back.

By FGCM, he was awarded 18 months detention on 26th July 1943, of which he was remitted a total of 9 months for good behavior, being released 30th Apr 44.

On the 18th of August, 1944, Gunner David borrowed a bicycle from a RP at 2 CARU (then Superior Camp) and went to Godalming with no intention of going AWL. He met friends, was drinking and decided to go AWL. Weakening, again, he sold the bicycle.

Even though this soldier had served a sentence of these offences, he began committing acts of larceny, for which he was convicted in a civil court and sentenced to 6 months imprisonment of which 2 months were remitted.

On the day of this trial (4 Sept 44) Gunner David of his own free will made the statement (exhibit "C") pertaining to additional larceny, with which he had never been accused or charged.

He expressed a desire to have this statement of his admissions taken in consideration in Civil Court. And he understood at the time of sentence that they were being considered, even though they were not read in court. (Reference Summary of Evidence, 2nd witness).

Gunner David is now being tried for these larcenies admitted by himself.

This soldier wished to have these offences cleared up and

to cease altogether any further misconduct. He decided this when he awaited his civil trial and made his statement of guilt of his own free will. He has again expressed the same desire to me, his defending officer.

Had his intentions not been sincere gentlemen, would he have made that statement?

My plea is that further punishment for these offences will be no incentive to this man in his present desire to be a good soldier.

But there is another reason, gentlemen, why this soldier wishes to go straight.

Last July, Lomer David met Miss Clair Canty of Midhurst to whom he is now engaged to be married. It is an unfortunate case gentlemen, that Clair Canty is now at a maternity home under the care of reverend sisters at 51 Marlborough Place, St John's Wood, London N.W.8, Telephone number Maida Vale 3044.

I spoke to this lady on the telephone last evening (1 Feb 45) by permission of the mother superior. She does not know the story of his case and is expecting to see him and be married to him soon. Their child is expected on April 24 1945. His plans for obtaining permission of his CO and marrying have been thwarted through being in prison. She is worried and expects to see him soon.

My plea is gentlemen, that Gunner David has learned a severe lesson and nothing whatever can be gained by long sentences. This is not a strong willed soldier, he is sensitive and he has suffered.

For their future Lomer David expresses his concern and anxiety. He is sincere in his wish to cause no sorrows on her part.

May I submit a letter to Gnr David (unfortunately better evidence has been destroyed) from Clair Canty received 1st Feb 45.

I close this plea of mitigation with the express recommendation(in these exceptional circumstances) that the court be most merciful in the Judgement of Lomer David.

Signed:- "R.W.Quinton Lieut, RCA"
2 CARU
CAE

PS He is fully trained as a medium gunner and driver i/c. His category is category A.

m

SUMMARY OF EVIDENCE IN THE CASE OF C-10614 Gunner Lomer DAVID, of No 2 CARU, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the PROSECUTION

Lt G.W.Currie, A/Administrative Officer, "P" Trg Wing, No 2 CARU, an officer of the Canadian Army Overseas, having been duly sworn states:

"I produce:

(a) A CERTIFIED TRUE EXTRACT of No 2 CARU Part II Order No 176 d/12 Aug 44, purporting to be signed by Lt D.A. Rates, A/O IC Records, No 2 CARU, relating to the accused whom I now recognize. This extract is marked Exhibit "A" and annexed to the Summary of Evidence.

(b) ARMY FORM O.1618 purporting to be signed by A.T. Steens T/Superintendent Guildford Borough Division, relating to the accused whom I now recognize. This Army Form is marked Exhibit "B" and is annexed to the Summary of Evidence."

"G.W.Currie" Lt.

The accused declines to cross-examine this witness.

2nd Witness for the PROSECUTION

M-25608 L/Cpl Halley, L.W. No 9 Provost Corps, a soldier of the Cdn Army Overseas, having been duly sworn, states:

"On 4 Sep 44 in Guildford Civil Police Station, I took a statement from C-10614 Gnr Lomer DAVID, which I now produce. This statement is marked Exhibit "C" and is annexed to the Summary of Evidence.

I now produce a watch redeemed from Pte Romer, O.H., Calgary Highlanders, att to 22 Cdn Gen Hosp., which is marked Exhibit "D" and is annexed to the Summary of Evidence.

I now produce a statement signed by M-35662 Pte Romer, O.H.? Calgary Highlanders, att to 22 Cdn Gen Hosp. This statement is marked Exhibit "E" and is annexed to the Summary of Evidence.

"L.W.Halley".

The accused cross-examines this witness as follows:-

"Q" When I gave you this statement at the police station, I asked you to take it into consideration in court. I asked you if I was going to be charged with this when I got out and I was told that they were going to drop the charges.

"A" This was mentioned to the Prosecution at the Civil Police Station, and they refused because you were already remanded twice. I asked them but they refused.

"Q" Why didn't you tell me about this before, about not dropping the charges?

"A" You were in prison and I couldn't do it anway. You knew that you hadn't been charged at Civil Police Court. You were hoping for a third remand.

"L.W.Halley"

The accused declines to further cross-examine this witness.

(to Page 2)

"M"

d Witness
F the
OSECUTION

M-35662 Pte Romer, O.H. Calgary Highlanders, att 22 Cdn Gen Hosp, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"Around the 2 Aug 44, I was approached by a Cdn soldier. He asked me if I wished to buy a watch for Three Pounds. This I agreed to do. I paid him One Pound Ten Shillings and the rest on payday. The Cdn soldier selling me the watch was named David, whom I now recognize as the accused. I did not know the watch had been stolen. First knowledge of this was when I was approached by the Provost. The watch marked Exhibit "D" is the watch I bought from David."

"Romer OH"

The accused declines to cross-examine this witness.

The accused was cautioned as follows: "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one and one-half pages was taken down by me in the presence and hearing of the accused and that Rules of Prodedure 4(c)(d)(e) and (f) have been complied with.

"D.P.J. Rolfe"
(D.P.J.Rolfe) Lt RCA
"G" Bty 2 CARU

Buron Camp
Bramshott, Hants
16 Jan 45

Officer detailed to take the Summary of Evidence.

Ex A "E"

No 2 Canadian Artillery Reinforcement Unit
Canadian Army Overseas

Last Order
No: 175
d/11 Aug 44

Part II Orders
Issued By
Col. Mackenzie Waters, MC, VD, Commanding Officer.

This Order
No: 176
d/12 Aug 44

9.

ABSENT WITHOUT LEAVE

(c) Absent without leave from 1330 hours, 18Jul 44, and still absent a period of over 21 days.

C 10614 Gnr DAVID, L.

Certified true extract from Part II Orders.

"D.A.Rates"
(D.A.Rates) Lieut
A/O i/c Records
No 2 C.A.R.U.

"A"

No 2 Canadian Artillery Reinforcement Unit
Canadian Army Overseas

Last Order No: 175 d/11 Aug 44

Part II Orders Issued By
Col. Mackenzie Waters, MC, VD, Commanding Officer.

This Order No: 176 d/12 Aug 44

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C 10614 Gnr DAVID, L.

Certified true extract from Part II Orders.

"D.A.Rates"
(D.A.Rates) Lieut
A/O i/c Records
No 2 C.A.R.U.

"L"

"B"

Army Form O.1618.

IMMEDIATE.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

---

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(*[illegible]) Wt.[illegible] 10,000 [illegible] A.& E.W.Ltd. Gp.[illegible]
(*[illegible]) Wt.[illegible] 50,000 [illegible] " " Forms/O.1618/[illegible]

DESCRIPTIVE RETURN OF § C. 10614 Gunner Lomer DAVID who apprehended at 1630 hrs (hour) on the 17th day of August 44 and was committed to confinement at Guildford on the 18th day of August, 1944 as a Deserter (or Absentee without leave) from the 2CARU Bn. of the Canadian Army

Regiment of

Age 21 yrs Height 5 feet 5 inches

Complexion Fresh Hair Brown curly Eyes Brown

Marks In uniform or plain clothes Uniform

Probable date and place of attestation	Not known
Probable date of desertion or beginning of absence and from what place	18.7.44 2 C.A.R.U.
Name occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	

Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.

* Was apprehended in Guildford, for larceny, and upon inquiry it was ascertained that he was absent without leave from his Unit. At Guildford Borough Police Court on 4.9.44, he was sentenced to 6 months imprisonment for the larceny. He was not dealt with for AWL. T/Superintendent

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he†

the before-mentioned Corps

A.T.Steen Signature
Residence
Post Town
of Committing Magistrate.

Date of Signature

Signature of Prisoner

Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence.

Signature
Residence
Post Town
of Magistrate.

Date of Signature

‡ Care should be taken to insert Army No. and Rank.

† Insert " was apprehended " or " surrendered," as the case may be.

* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.

† Insert " is " or " is not a Deserter " or " Absentee without leave from," or " belongs," or " does not belong to," as the case may be

DAVID/ 4/9/44 "C"

CANADIAN PROVOST CORPS

SUBJECT: Theft of Personal Property DATE: Sept 4, 1944.

STATEMENT OF Reft No: C10614 Gnr: Lomer David.

Taken at:- Guildford Police Station.

"I have been warned that I am not obliged to say anything unless I wish to do so, but anything I now say will be taken down in writing and may be given in evidence."

"To show that I understand the above warning, I make this statement voluntarily and sign my name herewith."

SIGNED: "Lomer David."

STATES:

While I was AWL I slit a number of Kit Bags at 2 CARU South Camp.

I slit a number of Kit Bags in Hut 7, Hut 6, Hut 5, Hut 11. The only articles taken from these Kit Bags were to the best of my knowledge cigarettes, it is quite possible I took other articles but I can't remember what they were.

In North camp, I stole from Hut 10. I took a wrist watch from Gnr Sanford out of his Kit Bag, also a fountain pen. From another Hut I stole and I think, Hut 9, I slit a Kit Bag, and took out cigarettes and various articles, (tooth paste etc.,) From another Hut at North Camp I slit two kit bags, and took cigarettes and other small articles. From another hut I slit a few more kit bags, and stole cigarettes and chocolate bars. I sold the watch I stole from Sanford to a Pte Romer at Bramshott Hospital, employed on the Fire Brigade. I believe during my period of AWL I slit at least twenty kit bags.

Around the 18 of June I stole four fountain pens and thousand cigarettes from Hut 8 at South Camp. To the best of my knowledge I have given a frank and truthful account of all the thefts committed by myself.

"Lomer David"

I remember that on a Thursday night £10.00 was taken from a hut where Smith had been. On saturday morning around 0300hrs, Smith came into the kitchen and I asked Smith if he had any money. He replied that he had £16.0.0. I knew that a couple of nights previous he was broke, I asked him where he got it from, but he would not tell me where he had got it from. I did not see the money but I believe that he had it.

"Lomer David".

"E"

M.35662 Pte ROMER O.H. Calgary Highlanders, att to No.22 Gen Hosp.

states:

Around the 2nd of August 1944, I was approached by a Cdn soldier who I think was in the Artillery. He asked me if I wished to buy a wrist watch for £3.0.0. This I agreed to do I paid him £1.10.0 there and the rest on Payday. The Cdn soldier selling me the watch was named David.

I did not know it had been stolen, the first knowledge of this, was when I was approached by the Provost.

Sept. 4, 1944.
BRAMSHOTT
No.22 Gen Hosp.

Signed: "Romer O.H."

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-10614	Gnr	DAVID, L.	2 CAHU

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement and annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number or entries in the conduct sheets, pursuance being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For A.A. Sec 15(1)	NONE	times.	TWO	times.
For		times.		times.
For		times.		times.
For		times.		times.
For		times.		times.

~~Number of instances of gallant or distinguished conduct~~ GWC

or

~~There are no entries in the conduct sheets of the accused.~~ GWC

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The sentence of the present trial is under sentence for imprisonment for the period of days from the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~GWC~~ days in civil custody, and 28 days in military custody, making a total of 28 days, of which ~~GWC~~ days were spent in hospital. "GWC"

5. The present age of the accused according to his ~~sworn statement~~ attestation paper is 22 years 64 days.

6. The date of his ~~enlistment~~ attestation specified in his ~~last engagement~~ attestation paper is 11 Aug 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 165 days

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs 165 days service.

9. The accused is entitled to reckon 3 yrs 165 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no~~ military decoration or military award ~~(or is in possession of, or entitled to (state any military decoration or award).)~~

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer had completed~~ ~~years~~ ~~service as a non-commissioned officer.~~ GWC"

12. ~~The accused after he was made a warrant officer has served~~ ~~years~~ ~~days as a warrant officer and has completed~~ ~~years~~ ~~days service as an officer.~~ GWC

(*[illegible]) W.[illegible] 50,000 10/41 A.& E.W.Ltd. Gp.698
(*[illegible]) W.[illegible] 12,000 A.44 " "

Ex B "21"

C-10614 No. DAVID, L. Name | Sqn., Battery, or Company | Corps RCA | Date of enlistment 11 Aug 9[illegible] | Service or Proficiency Pay | M.F.M. 6 (A.F. B.127) 40/P & /5134 (2668)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Superseding with trial)	By whom awarded	Remarks
Field	22 Feb 42	Gnr		A.A.15(1)AWL from 0715 hrs 22 Feb 42 to 0010 hrs 2 Mar 42.(7 days 16 hrs 55 mins) cost of apprehension $6.37 Kit deficiencies $6.25.	Bdr Latour Documentary	Admonished. To make good cost of apprehension & deficiencies	5 Mar42	Lt-col W.C. Thackray	8 days pay FRI 149(1)(a)
Field	18 Oct 42	Gnr		A.A.15(1)WOAS, AWL from 0700 hrs 18 Oct 42 until 0015 hrs 19 Oct 42(17 hrs 15 mins)	Sgt Noyes Sgt Thoms	7 days CB	19Oct 42	Lt-colF.F. Lloyd	1 days pay FRI 149(1)(a)
Field	19 Mar 43	Gnr		WOAS did absent himself from duty from 1100 hrs 19 Mar 43 to 1500 hrs 19 Mar 43, and that he failed to appear at a place of parade when ordered to do so by Bdr Pigeau.(Absent 4 hrs) A.A.15(1)	Sgt Ellis Bdr Pigeau	5 days CB	22 Mar43	Major B.E. Churchill	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	Apr 43	Gnr		A.A.Sec 18(4) Six charges of theft.			26 Jul 43	FCCM	
Field	14 Apr 43	Gnr		A.A.Sec.15(1)WOAS,AWL from 1500 hrs 14 Apr 43 to 1000 hrs 25 Apr 43.(10 days 19 hrs)		18 months detention			
	4 May 43	Gnr		A.A.Sec.15(1)WOAS,AWL from 1120 hrs 4 May 43 to 1855 hrs 7 Jul 43. Absent(64 days 7 hrs 35 mins.)		Released from having expired by senior Auth	Cdn Det Bks 30 Apr 44. Sentence COMMANDANTS INITIALS suspended N.E.F. 26 Apr 44. marks earned 7 B		
Field		Gnr		larceny		6 mos imprisonment.	4 Sep 44	Civil Auth	

"G.W.Currie"Lt
(G.W.Currie) Lt-RCA
A/Administrative Officer
"P" Trg Wing, 2 CARU

"Ex C"
"EWM"

Officer having custody of Original MFM 6.

CERTIFIED TRUE COPY OF ORIGINAL MFM 6.

LIST OF WITNESSES

FOR THE PROSECUTION

(1) 1t G.W.Currie A/Administrative Officer "P" Trg Wing No 2 CARU.
(2) K-25608 L/Cpl Hailey, I.W. No 9 Provost Corps.
(3) M-35662 Pte Romer, O.H., Calgary Highlanders, Att 22 Cdn Gen Hosp.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

Exhibit "A"	Certified True Extract of No 2 CARU Part II Order No 176
"B"	ARMY FORM O.1618
"C"	Statement from C-10614 Gnr Lomer DAVID
"D"	Watch redeemed from Pte Romer, O.H.
"E"	Statement signed by M-35662 Pte Romer, O.H.

"L"

"P" NO | TRAINING 2 | WING CARU

Commanding Officer
No 2 C.A.R.U.

PW/5-4-5
22 Jun 45

FGCM C-10614 Gnr DAVID, L.

1. It is respectfully requested that an officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

"L.David"
C-10614 Gnr David, L.

"M"

"P" TRAINING WING
NO 2 CARU

PW/5-4-5
22 Jan 45

Commanding Officer,
No 2 C.A.R.U.

FGCM - C-10614 Gnr DAVID, L.

1. I acknowledge having duly received a copy of the Charge Sheet and a copy of the Summary of Evidence concerning my forthcoming trial by Field General Court Martial.

"LDavid"
C-10614 Gnr David, L.

"A"

Received one watch, exhibit in FGCM re Gnr David.

Feb 2/45

"Alfred Zimmerman Lt".
for OC. 2 CARU.

4 R-4

Pte David R.

13 Sep 45

J.A.G. Rev

Original proceedings despatched
Bomber to DND.

This H.Q. 10/David R/1

Dated 15 Jun 45

C.H. Heil
N.G. Rev C

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 57111 Pte David, R. R de Mais

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two (2) years and to be discharged with ignominy from His Majesty's Services

(Sgd) (EK McDougall) Capt — 9 Jan 45 — (Sgd) (EA Pinkham) Major
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) (WJ Megill) Brig

Date 10 Jan 45 — Commanding Comd 5 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 57111 Pte David R.	12 Jna 45	(G LaClerc) Capt & Adjt R de Mais

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4R-4

FIELD ... COURT-MARTIAL

CPA66 (To issue of AFA3)
40/P & S/1668 (4000)
4/38B

Convened by Order of Brig WJ Megill Comd 5 C I B dated 8 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 57111	Pte	certified true copy	Roger	DAVID	R de Mais

D J A.

Cdn Sec G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 9 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~were~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~were~~ brought before the Court. At ..... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~an interpreter? Ans.~~

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ~~a shorthand writer? Ans.~~
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	EV Pinkham	R H C
Member	Capt	IJ Coady	Calg Highrs
Member	Lieut	PA Bneau	R de Mais
Judge-Advocate	Capt	EK MacDougall	HQ 2 Cdn Inf Div
Prosecutor	Capt	FD Bouries	R de Mais
Defending Offr	Lieut	R Leay	R de Mais

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused D 57111 Pte David R. before arraignment make(s) (no) (a) plea ..... (3)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned (~~severally~~ jointly) on all charges in the charge sheet.(1) The accused does (~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared~~ ~~and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of J A see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No, Sir (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change ~~his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) ~~his~~ (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 17(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 43(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No, sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)
(*1. MFB 355 or MFB 256. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. By my defending Officer (2)
(*1. RP 37(C), 46(C). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 1223, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D 57111 Pte DAVID, Roger Le Regiment de Maisonneuve a soldier of the Cdn Army Overseas is charged with:

AA Sec 15 (1) WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITH UT LEAVE

in that he

In the Field, absented himself without leave from 2230 hrs 12 Oct 44 until he was apprehended in ANTWERP at 1600 hrs on 27 Dec 44.

Total absence: 75 days, 18 hrs, 30 mins.

To be tried by Field General Court Martial.

8 Jan 45

(WJ Megill) Brig
Comd 5 Cdn Inf Bde

In the Field
6 Jan 45

(J Bibeau) CO
Regt de Mais
Cdn Army (O)

Owing to the exigencies of the service, Capt J M P Robert is unable to sit as a member of the court. He is therefore replaced by Lieut P A Brien, Regt de Mais, the waiting member.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 57111	Pte		Roger	DAVID	R Ded Mais

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on 8 Jan 45 (date) endorsed by me, (~~as by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	EV Pinkham		R.H.C.

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	IJ Coady		Calg Highrs
Capt	JMP Robert		18 Cdn Fd Amb

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	PA Brien		R de Mais

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	EK McDougall		R de Mais

On Active Service in the Fd

in HOLLAND (Country.)

(WJ Megill) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Dat 8 Jan 45

Commanding 5 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

I certify that I have this morning examined D 57111 Pte David R. of REgt de Mais and in my opinion he is fit to undergo trial by Court Martial.

In the Feild
9 Jan 45

(G Sabrieu) Capt
RCAMC

SUMMARY OF EVIDENCE

In the case of: D 57111 Pte David R. R de Mais a soldier of the Can Army Overseas while on active service, is charged with:

Short Statement of charge;

Absenting himself without leave AA Sec 15 (1)

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS D 56390 Pte Tousignant, G. R de Mais Cdn Army (O)

On the 12 Oct 44 at noon time I warned Pte David R. that he had to go back to his Coy. At 1500 hrs on the 12 Oct 44 when time to leave the accused couldn't be found at B Echelon. We searched the area and the accused couldn't be found, and never saw him since then.

The accused does not wish to cross-examine the witness.

(D 56390 Pte Tousignant)
Regt de Mais. C.A. (O)

The certificate of arrest in accordance with AA Sec 103 (1) (jj) produced as documentary evidence, was read over to the accusde, marked exhibit A signed by me and attached hereto.

(FD Bourcier) R de Mais
Offr detailed to take
summary

The accused was cautioned as follows.

Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you with to do so, but whatever you say or any evidence you give will be taken down in writing and mey be given in evidence.

I do not wish to make a statement.

(D 57111 Pte David R.)
Regt de Mais C.A. (O).

The accused does nto call any witnesses.

I certify that the foregoing summary of evidence, consisting of One pages was taken down by me in the presence of the accused and that RP 4 (c) (d) (e) (f) and (if applicable (g) have been complied with.

(FD Boucier) Regt de Mais
Officer detailed to
take the summary.

In the Field
6 Jan 45.

CERTIFICATE OF ARREST IN ACCORDANCE WITH AA SEc 163(1)(11)

I certify that D 57111 Pte David R. of Regt De Mais was arrested at Antwerp at 1600 hrs on 27 Dec 44. He was dressed in Uniform

27 Dec 44

(RO Dunn)
7 Cdn Pro Coy
i/c Antwerp Detn.

No. D 57111 Name DAVID R. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (APR 132) 40/P&S/136 (3420)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET, ORIGINAL NOT AVAILABLE					
				(L. Lacroix) I/C records Regt de Mais. C.A. (O).					

(PTO)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D 57111	Pte	David, Roger	"Le Regiment de Maisonneuve" CA(O)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For _____ _____ times.

For _____ _____ times.

For _____ _____ times.

For _____ _____ times.

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet _____

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been awaiting trial on the present charges for _____ days in civil custody; and for 12 days in military custody, *i.e.*, _____ days in open arrest, 12 days in close arrest; of which 12 days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation / calling up for military service is 9 Apr 40

7. The service which the accused is allowed to reckon is _____

8. The accused is in possession of ‡C.V.S.M. and Clasp

‡State the military decoration (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of _____

In the war substantive rank of _____

In the acting rank of _____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*28072) Wt.20721/8701 [illegible] 9/44 A.&B.W.Ltd. Gp.688

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6 th day of January 45

)L. Lacriox) Capt. O i/c Records
Regiment De Mais. CA(O)

IN MITIGATION

The accused was in action with us since D Day 2 Div. He did his share well until he went AWL. He was never AWL in action or in the time he was in England. He is willing to go back to Beach and do his work as he was doing it when he left. His first offence and I ask the Court to consider this fact and be lenient.

(EV Parkham) Major.

CCC-31
SPR DAVIDSON A F

CCC-31

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40 (P.N.S.) 1698 (28614)

Convened by Order of Maj Gen F.E. Worthington Comd 4 Cdn Armd Div dated 14 Jan 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F78526	Sgt	Arthur Forbes	Davidson	8 Cdn Fd Sqn RCE

PROCEEDINGS REVIEWED
21 Jan 44
W.H. Waugh Capt.
REVIEWING OFFICER, JAG BRANCH G.M.H.Q.

PROCEEDINGS REVIEWED
Date 12 May 44
A.J.A.G.
FIRST CDN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 17 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1010 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~an interpreter ? Ans~~

~~The interpreter is sworn.~~(1) Do you object to Sgt K.R. Tuite as shorthand writer ? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 740.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Wgr	J.G. Wm Lennon	15 Cdn Fd Amb RCAMC
Member	Captain	F.A. Phillips	HQ Sqn 4 Cdn Armd Div
Member	Captain	B.C. Douglas	6 Cdn Fd Pk Sqn RCE
Judge-Advocate	Wgr	W.H. Tuite	HQ 4 Cdn Armd Div
Prosecutor	Lieut I.M.	Mackowski	8 Cdn Fd Sqn RCE
Defending Offr	Lieut G.C.	Skowcroft	8 Cdn Fd Sqn RCE

Questions by President: Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 21.)

A8. The accused Sgt Arthur Forbes Davidson before arraignment makes(s) (no) (1) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 17), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rec cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B Cond E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: Sgt Arthur Forbes Davidson

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 60 days

(Sgd) W.H. Tuite Wgr — Judge-Advocate, if any. 17 Jan 44 — Date awarded. (Sgd) J.G. Wm Lennon Maj — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding & sentence but commute the sentence to read — To undergo Field Punishment for (No) sixty days and Forfeit (no) Pay for sixty days

~~I direct that the accused be not committed to prison or detention barracks until further order(s).~~ (1. AA 57A. Delete if not used.)

(Sgd) [illegible] Brig.

Date 21 Jan 44 — Commanding 4 Cdn Armd Div. — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F78526 Sgt Davidson AF	22 Jan 44	A Lawndale Capt 8 Fd Sqn RCE.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*B*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty to all charges, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 2. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para L1 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(2) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A), (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(*1. If "Yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 86(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 114. 2. RP 40(A), see B5(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(K).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. X and Ex. Y respectively.(3)
(*1. MFB 3[5] or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes, showing distinguished efficiency (2)
(*1. RP 37(C), 46(D). 2. Footnote, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 94(B). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 48F, 118, 119(A), KR Con XXI, 130, 563-566, Overseas AO 3[0]9, 2323, MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F-78526 Spr. Arthur Forbes Davidson, 8 Cdn Fd Sqn R.C.E. A soldier of the Canadian Army Overseas, placed on Active Service is charged with:-

FIRST CHARGE Sec 15(1) Army Act

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field on 20 Dec 43 absented himself without leave from his unit, 8 Cdn Fd Sqn R.C.E. from 0830 hrs., 20 Dec 43 until 2230 hrs., 4 Jan 44. (Absent 15 days, 14 hrs., 0 minutes).

(G.L.MacDonald) Major, R.C.E.
O.C. 8 Cdn Fd Sqn, R.C.E.

11 Jan 44
In the Field.

H.Q. 4 Cdn Armd Div

To be tried by F.G.C.M.

(F.F.WORTHINGTON) Maj-Gen
GOC 4 Cdn Armd Div

In the Field
14 Jan 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 78526	Spr		Arthur Forbes DAVIDSON		
			8 Cdn Fd Sqn RCE		

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 Jan 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". FHW

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ FHW
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ FHW
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.A. MacLENNAN 15 Cdn Fd Amb RCAMC	

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F.A. PHILLIPS HQ Sqn 4 Cdn Armd Div	
Capt	D.C. DOUGLAS 6 Cdn Fd Pk Sqn RCE	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	A Clarke 4 Cdn Armd Bde Wkshp RCOC	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Major	W.A.D. GUNN HQ 4 Cdn Armd Div	

On Active Service in the Fd

in England (Country.) F.F. Worthington (Signed personally. RP 105(C).) (F.F. WORTHINGTON) Maj-Gen (Rank.)

Date 14 Jan 44 Commanding 4 Cdn Armd Div Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

J.A. MacLennan Maj Pres

MEDICAL OFFICER'S REPORT

I certify that No. F-78526 Spr. Davidson, A.F. of 8 Cdn Fd Sqn R.C.E. in a fit state of health, and able to undergo Trial by Court martial.

W F Bi Capt
Medical Officer

Station Field

Date 17 Jan 44

J A McGennan Maj Pres

M. F. B. 246
25M—6-41 (792)
H.Q. 1772-39 480

SPR DAVIDSON

PLEA IN MITIGATION BY DEFENDING OFFR

~~IN THE OPINION OF THE COURT AND JUDGE ADVOCATE NOT NECESSARY TO COMPLY WITH AO 43 B.~~

Mr President and Members.

I believe that though Spr Davidson has no lawful excuse for his act, there are a number of circumstances that have a bearing on the matter. He has been overseas since 1941, a little over 2 years now and training for most of that time for action which has not materialized, and trg does get monotonous for most of us. He has been with two other units before coming to the 6 Fd Sqn. He wished very much to stay with one of the units, but was MOS on going to the hospital. This unit was 1 Wkshp & Pk. He has been with this unit for 6 months now, trained and qualified as a concretor, and has not had a total of more than three days at his trade since coming to this unit. Around 1 Dec 43, Davidson tried to transfer to the 7 Fd Pk Coy, in which unit he has a very good friend. I talked with Mr. Ditchburn, who was his tp comd at the time, and he told me that Davidson had come to him with a request for transfer, but the transfer had not been proceeded with, which is not in accordance with A ORO 1614(?), having a good friend there was not sufficient reason. During Dec, it appears that one Half the NCOs in 6 Fd Sqn were away from the Sqn on leave or on courses. Trg and supervision of the men was not at a high peak. I was there and there was considerable disorganization. The morale of the men was low and there was considerable unrest. Lastly, I would like to say that Spr Davidson has done some work at his trade under my supervision and I think it is the only work he has done at his trade. I found him to be a very good tradesman, and also that on the one occasion on which I inspected a Sqn guard of which he was a member, I chose him as "stick man" for the guard for being the smartest and best turned out soldier on the guard.

SUMMARY OF EVIDENCE IN THE CASE OF F-78526 SPR. DAVIDSON, A.F. OF THE 8 CDN FD SQN R.C.E. A SOLDIER OF THE CANADIAN ARMY, PLACED ON ACTIVE SERVICE.

CHARGE "ABSENTING HIMSELF WITHOUT LEAVE"
(The Commanding Officer directs that evidence be taken on oath)

FIRST WITNESS

B-27501 Sgt. Christie, D.M. being duly sworn states:
I, B-27501 Sgt. Christie, D.M. of the 8 Cdn Fd Sqn R.C.E. was Orderly Sgt. on 19 Dec 43. In this capacity, It is my duty to collect passes of soldiers returning from leave; Spr.Davidson whom I now identify, did not submit his week-end pass to me which terminated at 2359 hrs 19 Dec 43.

D M Christie
(D.M. Christie)
B-27501 Sgt. R.C.E.

Accused declined to ~~xxx~~ cross-examine the witness.

SECOND WITNESS

B-25812 Sgt. MacPhail, P. being duly sworn states:
I, B-25812 Sgt. MacPhail, P. of # 2 Tp 8 Cdn Fd Sqn R.C.E. called the roll at 0830 hrs 20 Dec 43 and Spr. Davidson, whom I now ~~xx~~ identify was not present and has not been present at any subsequent roll call of the unit until reporting to me at 2230 hrs 4 Jan 44, At which time I placed him under arrest.

P. MacPhail
(P. MacPhail)
B-25812 Sgt. R.C.E.

Accused declined to cross-examine the witness.

QUESTION TO THE ACCUSED.

Do you wish to make any statement or to give any evidence upon oath? You are not oblidged to say anything or to give evidence unless you wish to do so. What ever you say or any evidence you give will be taken down in writing and may be given in evidence.

ACCUSED I have nothing to say.

I certify that the Rules of Proceedure 4 (C) (D) (E) and (F) have been complied with. Taken down by me in the presence of the accused this 7th day of January 1944.

P. Malachowski
(P. Malachowski) Lieut.
8 Cdn Fd Sqn R.C.E.

Ex. "A"
J.A. McGinnan Maj
Pres

No. F78526 Name DAVIDSON, A.F. Sqn., Battery, or Company | Corps R.C.E. | Date of enlistment 5-6-41 | G.C. Badges | Service or Proficiency Pay

M.F.M. 6 (A.F.B. 112)

Date of last entry in Company Conduct Sheet: NIL | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine: Nil | Sheet No. 1 | Signature O.C. Company, etc. | E.W. ?????? Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Nov 42	Spr		A.W.L. 1 day 9 hrs.	L/Cpl. Richardson	3 days pay	23 Nov 42	Maj G.C. Tyrrell	Forf 2 days FR&I-149 Total 5 days pay.
Field	24 May 43	Spr		A.A.15(1) WOAS AWL from 0700 hrs 23 May 43 to 2359 hrs 24 May 43 Absent 1 day 16 hrs 59 min.	L/Cpl. Legault, E.A. Cpl. Saunders	5 days pay FR&I 149(2)	26-5-43	Lt-Col CS Thompson	Forf 2 days FR&I 149(1)(a) 5 days pay FR&I 149(2)
Field	30 May 43	Spr		A.A.Sec15(1) WOAS AWL from 2359 hrs 30 May 43 until 1800 hrs 31 May 43. Absent 18 hrs 1 min	Doc.	7 days C.B.	2 Jun 43	Lt-Col.C Mitchell	Forf 1 days pay under FR&I 149(1)(a)

(P T O)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13Jun 43	Spr		A.A.Sec15(1) WDAS AWL from 0700 hrs 13 Jun 43 until 2200 hrs 13 Jun 43. Absent 15 hrs.	A/Cpl. Saunders	7 days C.B.	15Jun 43	Lt. Col. Mitchell	Forf 1 days pay under PRMI 149(1)(a)

"Certified a true copy from the regimental books in my custody"

(M.Turner) Capt. R.C.E.
2 i/c 8 Cdn Fd San R.C.E.
Officer i/c Regimental Books

Ex "X"
J.A. McGennan Maj.
Pres.

M.F.B. 388
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F-78526	Sapper	Arthur F. DAVIDSON	8 Cdn Fd Sqn R.C.E.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and~~ Squadron, ~~Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.W.L.	3 times	A.W.L.	4 times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under~~ ~~Air Force Act~~ ~~A.F.A. 73~~ ~~Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule~~ ~~annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for xxxxxxxxx beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 12 ~~Air Force~~ days in military custody, making a total of 12 days in custody, ~~of which~~ ~~days were spent in hospital.~~

5. The present age of the accused according to his record of service is 24 years, 3 months, ~~attestation paper to~~ 30 ~~[illegible]~~ days.

6. The date of ~~his commission~~ attestation specified in his record of service is 5 June 1941 ~~Attestation paper~~

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~[illegible]~~ ~~possession of or entitled to~~. ~~State any air force decoration or reward~~ ~~military~~

10. ~~If the accused is a warrant officer: The accused before he was made a warrant officer last held~~ ~~Air Force~~ ~~the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force

dated , and in the regiment (or corps), the rank of unit

dated .

12. The accused has served as a noncommissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17th day of Jan 44

(A. Turner) Capt. R.C.E.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

EEE 76

TPR DAVIDSON A.C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: Tpr Alexander Cromwell Davidson

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	with the exception that the damages be set £8-0-0 but is £5-8-0.
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on~~ (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 39 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 90 days and to be put under stoppages of pay until he has made good the sum of £2-8-0 in respect of cost of damages to veh CF 62076

(Sgd) W.S. Stevens Major — Judge-Advocate, if any. 18 Jan 44 — Date awarded. (Sgd) J.A. Wm Lennox Maj — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 66(A), 51-56, 120, MML pp 719-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 66. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 62. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence, but commute the sentence to read "To suffer fd punishment for 90 days and to forfeit 90 days pay and to be put under stoppages of pay until he has made good the sum of £2-8-0 in respect of cost of damagees to veh CF 62076.

~~I DISAPPROVE THE FINDING AND SENTENCE AND DIRECT THAT THE ACCUSED BE RELEASED FROM CUSTODY.~~ ~~I DIRECT THAT THE CHARGE BE DISMISSED.~~ ~~I DIRECT THAT A FRESH TRIAL BE HELD BEFORE A DIFFERENT COURT.~~ ~~I DIRECT THAT THE CASE BE REFERRED TO HIGHER AUTHORITY.~~

(1. AA 57A. Delete if not used.)

(Sgd) F.F. Worthington

Date — Commanding — C.O.C. 4 Cdn Armd Div — Confirming Officer.

FEB 1 1944

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
M16065 Tpr Davidson A C	3 Feb 44	R.A. Allsopp Capt (R A Allsop) Capt, Adjt 29 Cdn Armd Recce Regt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. 6667

CFA86 (In lieu of AFA3) 40/P & S/1600 (2604)

FIELD GENERAL COURT-MARTIAL

Convened by Order of F.F. Worthington Maj Gen Comd 4 Cdn Armd Div dated 14 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prtnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M16065	Tpr	Alexander Cromwell	Davidson	29 Cdn Armd Recce Regt

PROCEEDINGS REVIEWED Blatherwick Capt. 14 Mar 44 REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 17 and 18 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Have you objection to~~ ~~no interpreter + Ans~~ ~~The Interpreter is sworn.~~(1) Do you object to Sgt R.R. Tuite as shorthand writer? Ans No

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.A. Mac Lennox	15 Cdn Fd Amb RCAMC
Member	Captain	F.A. Phillips	HQ Sqn 4 Cdn Armd Div
Member	Captain	D.C. Douglas	6 Cdn Fd Pk Sqn RCE
Judge-Advocate	Major	W.S. Stevens	HQ 4 Cdn Armd Div
Prosecutor	Capt C.B.	Mc Bayne	29 Cdn Armd Recce Regt
Defending Offr	Capt J.K.	Kelly	15 Cdn Fd Amb RCAMC

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
Q. If Pros a lawyer and 2nd Offr not, accused is entitled to an adjournment when RP 59 (8) and fn 2 were not followed. See D1 p 2.)

A8. The accused Tpr Alexander Cromwell Davidson before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 120(E), 108), or as to the jurisdiction of the Court (RP 36, 39(A), 113), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the subsequent reply in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rel cond. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is sworn and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-exzmination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.*)

President to accused : Do you wish to make a statement ? Ans. .....(5)

(5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing on Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by usual* paras D1 to D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. no (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2)~~ The Court is closed, and considers the submission.(2) ~~The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)~~ The Court charge(s), and allowed on the

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. make a statement Do you intend to call witnesses on your behalf ?

Ans. yes Are they witnesses as to character only ? Ans. no, as to fact

(1. *RP* ~~115~~ 114, 115, 116. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 102(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces ~~the finding(s), if any, of Not Guilty, and states~~ to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)

(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. no

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy (copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)

(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. yes, the way defending Offr

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7 / 7

(1. *When several accused tried separately see RP* 106. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-564. *Overseas RO* 309, 2323, *MML p* 80, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*B*), 66(*f*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused H 16065 Tpr Alexander Crowell DAVIDSON, HQ Sqn 29 Cdn Armd Recce Regt (S Alta R) a soldier of the Canadian Army Overseas is charged with when on active service:-

First charge
Sec 40
Army Act

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he
in the field on 9 Dec 43 improperly and without authority took and used a Cdn Army Veh W.D. No CF 62076 thereby occasioning damage to the said veh to the extent of £8-0-0.

A J Coffin Major
a/ Commanding Officer
29 Cdn Armd Recce Regt

In the Field
Jan 44

HQ 4 Cdn Armd Div

To be tried by F.G.C.M.

F F Worthington
(F.F.WORTHINGTON) Maj-Gen
GOC 4 Cdn Armd Div

In the Field
14 Jan 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FA8/1697 (2968)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 162, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 16065	Tpr		Alexander Crowell	DAVIDSON	29 Cdn Armd Recce Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 Jan 44 endorsed by me, (~~or by an offr of my staff for me~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~) FFL
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ FFL
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Rank.		Unit.
Major	J.A. MacLENNAN	15 Cdn Fd Amb RCAMC

(*Must be named. RP 106.*)

MEMBERS.

Rank.		Unit.
Capt	F.A. PHILLIPS	HQ Sqn 4 Cdn Armd Div
Capt	D.C. DOUGLAS	6 Cdn Fd Pk Sqn RCE

(*Named or detailed. RP 106.*)

WAITING MEMBER.

Rank.		Unit.
Lieut	A Clarke	4 Cdn Armd Bde Wkshp RCOC

(*Named or detailed, if any. RP 106.*)

JUDGE-ADVOCATE.

Rank.		Unit.
Major	W.A.D. GUNN	HQ 4 Cdn Armd Div

(*Must be named, if any. RP 106.*)

On Active Service in the Fd

in England (*Country.*)

Date 14 Jan 44

J.V. Loulston (*Signed personally. RP 105(C).*)
(F.V. WOOD-HOUSTON)
Maj-Gen (*Rank.*)
Commanding 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

Jd MacLennan Maj
Pres.

MEDICAL CERTIFICATE

17 Jan 44

This is to certifythat I have today examined H16065 Trp Alexander Crowell DAVIDSON and find him fit to undergo trial by F.G.C.M.

W E Boothroyd
(W E Boothroyd) Capt
Medical Officer
29 Cdn Armd Recce Regt (S Alta R)

J R MacLennan Maj
O/C

MEDICAL CERTIFICATE

Certified that H16065 Tpr Alexander Crowell Davidson, 29 Cdn Armd Recce Regt, and find hi fit to undergo trial by F.C.C.M.

18 Jan 44

[illegible] Major
Capt RCAMC
Medical Officer
29 Cdn Armd Recce Regt

J. A. MacLennan Maj
Pres

FD COURT MARTIAL - TPR A.C. DAVIDSON, 29 Cdn Armd Recce Regt

IN THE OPINION OF THE COURT AND JUDGE ADVOCATE NOT NECESSARY TO COMPLY WITH RP 83B

1st Witness for the Prosecution

M 45021 Sgt Tarr, NH, 29 Cdn Armd Recce Regt, having been duly sworn, is examined by the Prosecuting Officer.

Q.1 Will you state your number, rank, name and unit to the Court?
A.1 I am M 45021, Sgt Tarr, NH, 29 Cdn Armd Recce Regt.
Q.2 What is your position in the regt?
A.2 I am in charge of IC tps.
Q.3 Will you tell me what happened on the night of 9 Dec 43 in your tp?
A.3 We went out on a wireless scheme which lasted all day. We came back that night at approx 1700 hrs, and all vehs were in except one which was accounted for.
Q.4 Tell the Court what happened on the following morning.
A.4 As a result of infmn received by me, I went up to Mereworth and recovered the scout car which was there.
Q.5 What was the number of the scout car which you were sent to Mereworth to recover?
A.5 I don't know.
Q.6 On whose charge was this scout car.
A.6 Tpr Davidson.
Q.7 When did you last see Tpr Davidson driving the scout car.
A.7 On 9th Dec.
Q.8 At what time was that.
A.8 Approx 1700 hrs.
Q.9 By whose authority was the veh taken out of the pk later.
A.9 I don't know sir.
Q.10 You did not sign a work ticket covering the veh on charge to the accused.
A.11 No sir.

The Defending Offr declines to cross-examine the witness.

Questioned by the Court.

Q.12 Was the veh in question in the wireless scheme.
A.12 It was.
Q.13 You say on the morning of 10 Dec 43 that as a result of a conversation you went to Mereworth. What did you see.
A.13 I saw the veh which was on charge to Tpr Davidson.
Q.14 In what posn was it.
A.14 It was in a ditch nearly upside down.
Q.15 After you saw the veh there, what did you do.
A.15 Righted it on its wheels and towed it back to the veh pk.
Q.16 Can you recall the WD No. of the veh.
A.16 No sir.
Q.17 Will you be able to find out the WD No. of the vehicle which is on charge to the accused.
A.17 Yes sir.
Q.18 You righted the veh and had it towed back to the veh pk. Did you notice if there was any damage to the veh.
A.18 On the left side two fenders, the radio aerial and the top were damaged.
Q.19 What time of the day 10 Dec was it you saw the veh in the ditch.
A.19 Approx between 1030 and 1100 hrs.
Q.20 Can you give a rough idea of the distance from the veh pk of 29 Recce Regt to the place where you saw the veh in the ditch.
A.20 About 3½ miles.
Q.21 Did you sign a work ticket covering the veh on charge to the accused on 10 Dec 43.
A.21 No sir.
Q.22 Will you give us the veh No.
A.22 CF 62076 sir.
Q.23 On whose charge was it.
A.23 Tpr Davidson.

Witness - Sgt Tarr, NH.

THE WITNESS WITHDRAWS

2nd Witness for the Prosecution

B-49304, Gdsm Kay, WL, 21 Cdn Armd Recce Regt, having been duly sworn, is examined by the Prosecuting Officer.

Q.24 Will you identify yourself to the Court please.
A.24 I am B-49304, Gdsm Kay, WL, 21 Cdn Armd Regt.
Q.25 Will you tell us what you were doing on 9 Dec 43.
A.25 On 9 Dec 43 I was on duty as gate guard on the North Gate between 1800 and 2000 hrs, when a scout car pulled up.

Questioned by the Court.

Q.26. At what time did the Scout car pull up to you.
A.26 At approx 1830 hrs.
Q.27 Who were in it.
A.27 Two men sir.
Q.28 Who were the two fellows.
A.28 I dont know sir.
Q.29 Was the accused one of them.
A.29 I don't know sir.

Prosecution continues to examine witness.

Q.30 What did you do when the scout car came up to you at the gate.
A.30 I walked over to them and they explained they were going on a Map Reading scheme and they pulled away before I had any more time.
Q.31 Did you see the number of the scout car.
A.31 No sir.

2nd Witness cross-examined by Defending Offr

Q.32 You say you were on duty the night of 9 Dec 43. Is that the only night you were on duty.
A.32 Yes sir.
Q.33 How do you know it was 9 Dec 43.
A.33 I know because we change duties every 24 hrs sir.
Q.34 It might have been the 7th or the 11th.
A.34 No sir.
Q.35 What day was the 9th Dec 43.
A.35 I don't know sir.
Q.36 You are not sure then that it might not have been the 7th or the 11th.
A.36 No sir.
Q.37 You saw two tprs in a scout car one night when you were on duty though.
A.37 Yes sir.

2nd Witness re-examined by the Prosecution

Q.38 Did anything happen the following day to fix the date in your mind.
A.38 No sir.

2nd Witness again questioned by the Court

Q.39 Was the night of 9 Dec 43 a dark night.
A.39 A very dark night sir.
Q.40 Did you have a flash light when you were on duty that night.
A.41 No sir, I did not.
Q.42 Would you have asked this man for a work ticket in the car going out.
A.42 That is right sir, but I did not have time, they just slowed up and pulled away.
Q.43 Did you report this at the time.
A.43 No sir, but I did when I came off duty.

Witness - Gdsm Kay, WL.

Q.44 To whom did you report.
A.44 I reported it to the Cpl.
Q.45. The Cpl of the Guard that is.
A.45 I don't know now sir.
Q.46 When you saw this veh it was leaving the veh pk of the 29 Recce Regt.
A.46 No sir, it was going through our gate, [redacted]
Q.47 Is there an In and Out gate.
A.47 Yes, there is both sir.
Q.48 Was there anyway that you could identify the veh's regt.
A.48 No sir, but it could not have been my own regt.
Q.49 What gate was it you were on duty at.
A.49 At our own gate sir.
Q.50 What is the nameof the gate.
A.50 It was the South Gate of Maresfield Camp.
Q.51 When did you see this veh again after 1830 hrs 9 Dec 43.
A.51 I did not see it again after that.
Q.52 There was absolutely no indication of what regt the veh or men belonged to.
A.52 None sir.
Q.53 This gate is a common exit for units other than your own.
A.53 Yes that's right sir.

THE WITNESS WITHDRAWS

3rd Witness for the Prosecution

C.45426, Sgt Latta, RR, No. 1 SIB att 2 Cdn Corps, having been duly sworn, is examined by the Prosecuting Officer.

Q.54 Will you identify yourself to the Court please.
A.54 I am C.45426, Sgt Latta, RR, SIB 2 Cdn Corps Sir.
Q.55 On 14 Dec 43 did you interview Tpr Davidson.
A.55 Yes Sir.
Q.56 Will you tell us what went on at the interview.
A.56 As a result of info received, in company with Sgt Harrison, I interviewed the defendant.
Q.57 What did you say to him.
A.57 The accused was interrogated as to his movements on the night of 9 Dec 43, and gave a statement.
Q.58 Could you give us the actual wording, of the caution.
A.58 Yes Sir. I am not obliged to say anything unless I wish to do so, but anything I now say will be taken down in writing and may be given in evidence. To show that I understand the above warning, I sign my name voluntarily.
Q.59 Where were you at the time you put this question to him.
A.59 We were right in the office right next to the gd rm, the regtl police of the 29 Recce Regt.
Q.60 Who were present.
A.60 Sgt Harrison, myself and Tpr Davidson.
Q.61 Did you say anything else to him.
A.61 No sir.
Q.62 Nothing else.
A.62 No sir.
Q.63 As a result of what you just said to the accused, the accused made a statement to you then.
A.63 Yes sir.
Q.64 Did you take the statement.
A.64 The statement was taken by me.
Q.65 Was the statement taken down by you while the accused was telling his story.
A.65 Yes sir.
Q.66 After the accused told his story, which was written down by you, did he sign it.
A.66 He read it over and then signed it. Several alterations were made which he initialled.
Q.67 Who was the other Sgt.
A.67 Sgt Harrison sir.

Witness - Sgt Latta RR

Q.68 Did Sgt Harrison say anything to the accused.
A.68 We both interrogated him as to his movements on the night of 9 Dec 43.
Q.69 Did Sgt Harrison say something to the accused before or after he was warned.
A.69 Before sir.
Q.70 What did Sgt Harrison say to the accused.
A.70 I can't remember everything that Sgt Harrison said.
Q.71 Just what did you question the accused about.
A.71 We questioned him with regard to his movements on 9 Dec 43.
Q.72 Was that all.
A.72 Just on that particular item sir.
Q.73 Did Sgt Harrison also put to the accused a similar warning that you did.
A.73 No sir, I gave him the warning.
Q.74 What length of time elapsed from the time of warning to accused until it was completed by the accused.
A.74 Immediately after sir, and it was signed right there.

2nd Witness cross-examined by Defending Officer.

Q.75 You state that on the 14th Dec you interviewed the accused and he signed a statement.
A.75 Yes sir.
Q.76 How many times have you seen him.
A.76 Once sir.
Q.77 Have you ever seen him before.
A.77 No sir.
Q.78 Has the other Sgt.
A.78 No sir.
Q.79 In other words, this man was not interrogated by either you or the other Sgt excepting on the day that he signed this statement.
A.79 Yes sir. He was interrogated on the 14th Dec only. That is the only time I have seen him.

WITNESS WITHDRAWS

4th Witness for the Prosecution.

A-55251, Sgt Harrison, JT, No. 1 SIS att 2 Can Corps, having been duly sworn, is examined by the Prosecuting Officer.

Q.80 Will you identify yourself to the Court.
A.80 I am A-55251, Sgt Harrison, JT, SIS APM's office 2 Can Corps
Q.81 What did you have to do with the accused with regard to the matter of a scout car.
A.81 On 14 Dec 43, in company with Sgt Latta, SIS 2 Can Corps, we questioned the accused Tpr Davidson concerning the taking of a scout car from the unit lines of the South Alberta Regt.
Q.82 Who else was present besides Sgt Latta.
A.82 There was no one else present sir.
Q.83 Where did the questioning take place.
A.83 In the quarters of the Pro Sgt sir of the unit here.
Q.84 Can you tell me what you said to the accused.
A.84 I asked the accused for an explanation as to what had occurred concerning this scout car. After listening to the accused's explanation, I told the accused that frankly we did not believe him his story. The accused replied that he knew his rights in such matters and that he had given an explanation and proposed sticking to it, and that he knew he was under no compulsion to make a statement, and that he did not propose making one. We told the accused that the other party involved had made a statement and the accused was very dubious as to that. This was just before supper time. We broke off the interrogation for supper and continued the interrogation after supper, at approx 1630 hrs sir.

After supper the accused was still not satisfied that the other party involved had made a statement so Sgt Latta produced the statement of Tpr Wheat. After having satisfied himself that Tpr Wheat had made a statement, the accused said he would make a statement. He was told that he was bound to say nothing unless he wished to do so, and that anything he did say would be taken down in writing and might be given as evidence. He was allowed to read the caution and signed the caution involved.

Q.85 Was Tpr Wheat present at that time.
A.85 No sir.
Q.86 Did you say anything else to Tpr Davidson.
A.86 No sir. He dictated his own statement.
Q.87 Who took the statement down.
A.87 Sgt Latta took the statement down sir. The accused signed the statement after it was taken down by Sgt Latta and I witnessed it.

4th Witness cross-examined by Defending Offr

Q.88 Had you interrogated the accused before that day.
A.88 No sir.
Q.89 There was no threat made towards the accused at all.
A.89 No sir.
Q.90 Were you a policeman in civil life.
A.90 Yes sir.
Q.91 In civilian life is the same type of interrogation used as in this case.
A.91 Yes sir.

WITNESS WITHDRAWS First Witness for Defence

The Defending Officer now calls witnesses to testify as to the circumstances surrounding the statement made by the accused.

M-63572, Tpr Norman Perry WHEAT, 29 Cdn Recce Regt, having been duly sworn, is examined by the Defending Officer with reference to the facts surrounding the alleged statement.

Q.92 Do you recognize these two SIS constables who were interrogating you in reference to these charges.

A.92 Yes sir.
Q.93 How often were they in the Guard House.
A.93 Just once sir.
Q.94 By anyone else.
A.94 Yes sir.
Q.95 For how long and for how often.
A.95 Three, four or five days, maybe.
Q.96 Morning and afternoon both.
A.96 Yes sir.
Q.97 Were you threatened.
A.97 No sir.

First Witness for Defence cross-examined by Prosecution.

Q.98 Will you tellme, was one of the people asking the questions Capt Creighton.
A.98 Yes sir, he asked me some questions.
Q.99 Was that before 14 Dec 43 when you were interrogated by the SIS Sgts.
A.99 Afterwards sir.
Q.100 Before 14 Dec 43 did the Adjutant ask you any questions regarding the 9th Dec 43.
A.100 Yes sir, he did.
Q.101 Who questioned you during the period you were in detention.
A.101 The Sgt Provost and the two Civilian Police
Q.102 That's all that questioned you between the time that of the 9th and 14th Dec 43.
A.102 Yes sir.

First Witness for the Defence is questioned by the Court.

Q.103 Do you know from your own personal knowledge was Tpr Davidson questioned by the police and any other offrs.
A.103 No sir.
Q.104 This is what you went through and not what Davidson went through.
A.104 Yes sir.
Q.105 Had you personal knowledge that Tpr Davidson was interrogated and questioned by anyone else on this case between the 9th and 14th Dec 43.
A.105 Yes sir, he was with the two civilian police and the Provost.
Q.106 Do you know what took place in that room between Tpr Davidson and the Provost.
A.106 No sir.

The accused is called by the Defending Officer for the purpose of giving evidence concerning the circumstances surrounding the alleged statement.

The accused H-16065 Tpr Alexander Cromwell Davidson, 29 Cdn Armd Recce Regt having been duly sworn is examined by the Defending Officer.

Court
Remember you are under oath.
Q.107 For how many days were you interviewed by people interrogating you - civilian police, Provst, SIS etc.
A.107 About five or six days.
Q.108 For how long did these last.
A.108 All day. In between breaks, Tpr Wheat and I were examined for a couple of hours each day.
Q.109 Did you receive any threats.
A.109 Yes sir.
Q.110 Will youtell the court about it.
A.110 Yes sir. I was taken for a walk down the road towards Five Oaks Corners by the Provost Sgt, the RP of this Regt. We got to arguing about the case, and he said I was a Dirty Shit Heel for letting Tpr Wheat take the blame for the accident. I got mads and told him that I thought that he had nothing to do with the case or me, but to keep me in custody. He then said that he could make me talk by cutting off my food and all privileges of the Guard Room. So I told him he had better take me back and lock me up. The next time was the SIS man. On the afternoon of the 14th Dec, Sgt Latta asked me if I was married and I said yes and he asked me if I had any children. I told him yes. We got to talking and bandying words between each other and he said I might as well tell otherwise he would drag my wife into it. I told him that it had nothing to with my wife and it only concerned myself. He said he had power of authority to drag anyone in on the charge at any time, and I let it go at that.
Q.111 After several days you were not looking forward to these daily visits.
A.111 No I was not sir.

Prosecution

The Accused is cross-examined by the Defending Officer.

Q.112 You say that the Sgt MP said you were a Dirty Shit Heel for leeting Wheat take the blame. Did he say anything to you about taking the blame.
A.112 Yes sir.
Q.113 What were the words used by the Provost Sgt about your food being cut off.
A.113 He actually said that if he wanted to, he could cut off my food.
Q.114 Did he say he was going to.
A.114 No sir.
Q.115 Is that all that was said.
A.116 A few more things were said and I told him to mind his

own business and just keep me under custody which was his business.

Q.117 Did you say anything to them about being questioned.
A.117 I don't know the exact day sir, but one afternoon just after being questioned, I told them that anything they had to say would be brought out at the Court Martial. The Provost told the Guard Comds to keep me locked in the cell as I thought I was hard and to take it easy with Tpr Wheat.

The Court questions the accused.

Q.118 Do you remember on 1st Dec 43 being questioned by Sgt Latta
A.118 Yes sir.
Q.119 Would that be the only date that the SIB man interviewed you.
A.119 Yes sir.
Q.120 What time of the day was it when they first started to interrogate you down at the Provost Office.
A.120 Just after dinner sir.
Q.121 Was it in the morning that you were walking with Sgt Latta and he said the words about dressing in your wife.
A.121 Approx 1600 hrs in the afternoon.
Q.122 was that before or after you had signed any particular document.
A.122 Before.

2nd
Defending Offr calls ~~First~~ Witness for Defence.

Maj FA Minchall RCAMC, 15 Cdn Fd Amb, having been duly sworn, is examined by the Defending Officer.

~~Q.123 Will you identify yourself to the Court please.~~
~~A.123 I am Maj FA Minchall, 15 Cdn Fd Amb, RCAMC.~~
~~Q.124 I should like you to tell the Court what your opinion is in a case such as this. You are a qualified medical practitioner having graduated from a recognized University I am.~~
~~A.124~~
~~Q.125 You have a considerable amount of work in this line.~~
~~A.125 Yes both in the Army and in civilian practice.~~
~~Q.126 Would you tell the Court what your opinion is in such a case as this. A man confined in under close arrest in a Guard Room and subjected to interrogation by his own offrs, by the regtl police Sgt by civilian police and SIB of the Provost Corps. This continued over a period of several days and on some days lasted all day except for breaks in the morning and following the evening meal. Would you tell the Court what your opinion is as to whether this statement was signed under duress or not.~~
~~A.126 If a man has been under interrogation for some considerable period, under conditions which could be termed adverse, his statesent in such a case could very easily have been coloured by suggestions made by the interrogators~~
~~Q.127 In other words then, in unfriendly circumstances he might make a statement under duress.~~
~~A.127 Yes but it would cover an awful lot of ground but it could be said from a scientific viewpoint that it was not his free opinion.~~
~~Q.128 Do you think that this would have any bearing on it -- the man having learned that his whole unit was to be CBd until such time as the crime was solved.~~
~~A.128 That would depend on the man's mental makeup. If he were of the suggestive type it might have a great bearing on his future action.~~
~~Q.129 Would youth have any bearing on it.~~
~~A.129 A younger man would be more susceptible to such than an older more mature man.~~
~~Q.130 Can you tell the Court anything else in support of your statement. Is this your own opinion or is it a general feeling in the medical profession.~~

(over)

A.131 In dealing with neurosis psychological reports I would say it would be ~~a~~ generally accepted principle.

Questioned by the Court

Q.132 With a hypothetical case as set forth by the Defending Officer, if no suggestions were put forward by the interrogating offrs, would the individual be apt to tell the truth, or would he make a false statement.

A.132 That would be a question that would be almost impossible to answer unless you knew the individual concerned and his degree of mental stability. He might make a false statement merely to get the thing over with.

Q.133 You see the accused in Court to-day. Have you had an opportunity to investigate him from a psychological point of view.

A.133 No, I have never seen the accused before.

WITNESS WITHDRAWS.

~~[illegible]~~

M-5615, Sgt Walmsley, , 29 Can Recce Regt, having been duly sworn, is examined by the Court.

Q.134 Will you identify yourself to the Court.

A.134 I am M-5615, Sgt Walmsley, Regtl Police Sgt of the 29 Recce Regt.

Q.135 Were you acting as such from the 9th Dec 43 until the end of Dec 43.

A.135 I was.

Q.136 Do you know the accused, Tpr Davidson.

A.136 Yes sir.

Q.137 How long have you known him.

A.137 Since 10 Dec 43.

Q.138 On 10 Dec 43 was the accused in your custody.

A.138 Yes sir, at 1700 hrs on 10 Dec 43.

Q.139 Did you at any time say this to the accused - You are a DIRTY SHIT HEEL for letting Tpr Wheat take the blame for the accident.

A.139 No sir, I can't remember saying anything like that for sure, though I may have.

Q.140 Did you say to the accused that you could make him talk by cutting off his food and all privileges of the Guard Room, or words to that effect.

A.140 No sir.

Prosecution declines to examine the witness.

Defence cross-examines the witness.

Q.141 Are you quite sure that you did not call him that name.

A.141 Yes sir.

Q.142 When did you ~~next~~ speak to the accused.

A.142 First when I locked both men up at 1700 hrs. Immediately after supper I came back to the Guard Room. I asked if Tpr Davidson knew why he was locked up. I don't remember what answer I got.

Q.143 Did you on the first, second, third or fourth nights have words with this Tpr.

A.143 No sir.

Q.144 Did you threaten this Tpr or call him names.

A.144 No sir

Q.145 Did you say anything that the accused might have construed with the cutting off of his ~~&~~ food.

A.145 No sir.

Q.146 The accused says that the remark - you are a DIRTY SHIT HEEL was made during a walk.

A.146 We walked down, turned around and came back sir. The conversation was chiefly why he was in detention. That is all sir.

Q.147 Did you ever advise the accused that he might get off easier if he would make a statement on the alleged crime.

A.147 I did not sir.

Sgt Latta, who was third witness for the Prosecution is recalled by the Court.

Q.148 On 14 Dec 44 did you ask the accused Tpr Davidson whether he was married or not.
A.148 Yes I did sir.
Q.149 Did he reply yes.
A.149 Yes sir.
Q.150 Did you ask him if he had any children.
A.150 I did sir.
Q.151 Did you say to him these words or words to this effect - you might as well tell the truth or otherwise I will drag you wife into it.
A.151 No sir, I did not.
Q.152 Did the accused say to you that you (Sgt Latta) had nothing to do with my (Davidson's) wife.
A.152 No sir.
Q.153 Did you say to him words to the effect that you had the authority to drag anyone into the case at any time.
A.153 Definitely not sir.
Q.154 Your evidence earlier was to the effect that you gave the regular caution to Tpr Davidson and as a result of that he made a statement to you.
A.154 That is correct sir.

Prosecution declined to examine the witness.

Defending Offr cross-examines theWitness.

Q.155 How was the name of Tpr Davidson's wife brought into it.
A.155 He was headed with the car in the direction of where his wife was staying. He was asked if he had been to a certain place.
Q.156 Did you make any remark that his wife would be brought into it.
A.156 No sir.
Q.157 Then you have no way of explaining how is wife was to be dragged into it.
A.157 No sir. The assumption was that he took the truck to see his wife.

Judge Advocate addresses the Court.

Mr President and Gentlemen. You have heard the evidence concerning the facts surrounding the attaining of a statement made by the accused to Sgt Latta of theNZ. I want to point out to you what the rules are with reference to the admissability of that statement. I am going to read to you para 75 on Page 91 of the Manual of Military Law.

Judge Advocate reads para 75 on Page 91 of the Manual of Military Law.

Therefore Mr President and Gentlemen, what you have to satisfy yourselves about is [redacted] whether the admission has been induced by any fear of prejudice or hope of advantage. If you come to the conclusion that the statement has been obtained through fear of prejudice or hope of advantage the statement must be excluded from evidence. But if on the other hand it was not induced by any fear of prejudice or hope of advantage the statement is admissable. Therefore I now ask suggest you close the Court to make your finding with reference to the particular statement.

THE COURT IS CLOSED TO CONSIDER THE STATEMENT.
THE COURT REOPENS.

The Court has decided that this statement is admissable evidence and accept it as such.

The Court recalls Sgt Latta.

Prosecution examines the Witness.

Q.158 I hand you a document, will you tell the Court what it is.
A.158 This is a statement obtained by me from Tpr Davidson
Q.159 Is the accused in Court to-day.
A.159 Yes sir.
Q.160 I notice on this document the caution states - I have been cautioned by Sgt Harrison.
A.160 Each investigator has this form printed out. I should have had one with my name on it but I did not.
Q.161 If you had your own how would it have read.
A.161 I have been cautioned by Sgt Latta sir.
Q.162 Sgt Latta, will you read this statement taken ~~xxx~~ down by you from the accused.
A.162 Yes Sir.

Sgt Latta reads the statement to the Court.

Q.163 The caution at the top of the statement is signed.
A.163 Yes sir. Tpr Davidson read and signed the caution at the head of the statement.

Witness is questioned by the Court.

Q.164 You saw the accused sign at the end of that statement.
A.164 Yes sir.
Q.165 And who were present when Sgt Harrison signed as a witness.
A.165 I was sir.

The statement is handed to the President of the Court. It is accepted by the President and marked Exhibit A ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ WWS

The Court calls Sgt Harrison.

Prosecution examines the witness.

Q.166 I hand you a document exhibit A. Whose signature is this under Sgt Latta's.
A.166 Tpr Davidson's sir, and witnessed by myself.
Q.167 Did you see Tpr Davidson sign in both places where his signature is.
A.167 Yes sir.

WITNESS WITHDRAWS.

5th Witness for the Prosecution

M-59134, Tpr Goldby, GL, 29 Cdn Recce Regt, having been duly sworn, is examined by the Prosecuting Officer.

Q.168 Will you identify yourself to the Court.
A.168 I am M-59134, Tpr Goldby, GL, 29 Cdn Recce Regt sir.
Q.169 On the 5th Dec 43, were you on duty in the veh pk.
A.169 Yes sir.
Q.170 While you were there will you tell me what happened between the hrs of 1700 and 1900 hrs in the evening.
A.170 I was on duty at the Out entrance where I am supposed to stand it was between 1800 and 1900 hrs when two men walked up to me and started talking to me.
Q.171 Who were these two men.
A.171 One was Tpr Wheat, the other I could not identify.
Q.172 What was said to you.
A.172 They started talking about scout cars being delayed around Tunbridge Wells. They asked me if I had seen it come in and I said I had not.
Q.173 What happened then.
A.173 They then passed into the vehicle park and that was the last I saw of them.

WWS

Q.174 Did anything else happen.
A.174 A few trucks came in and I saw two more go out.
Q.175 Did any cars leave the veh pk about that time.
A.175 Not to my knowledge.
Q.176 Perhaps they did not go out the gate you were at.
A.176 I saw a veh go out the In entrance sir.
Q.177 Could they have gone out any other gate.
A.177 There was only the Main entrance sir, but I saw a veh go out but I am not sure what kind of a veh it was.
Q.178 Did any other persons go out of the veh pk.
A.178 Only those who brought the trucks in.
Q.179 Did those persons who came into the veh pk leave right away.
A.179 Yes sir.
Q.180 Did you say that you could not recognize the veh that left the veh pk.
A.180 No sir, I was up at the other end of the veh pk.

Defending Officer cross-examines the witness.

Q.181 Could anyone else get into the veh pk without you seeing them.
A.181 Yes sir.
Q.182 Do you know the accused Tpr Davidson.
A.182 No sir.
Q.183 When was the first time that you recall seeing him.
A.183 Just that night sir, and I did not recognize him and I dont know the man at all.
Q.184 You only recognizeed the chap with him.
A.184 Yes sir.
Q.185 How long a time elapsed between the time the men left you and you saw the veh going out of the Main entrance.
A.185 About 10 or 15 minutes sir.
Q.186 When the two men left you did they go in a direction of the vehs in the veh pk.
A.186 Yes sir.
Q.187 And it was 15 minutes later when this veh went out.
A.187 Yes sir.
Q.188 Was this the first time you were on the Gate.
A.188 No sir.
Q.189 During the time you have been on the gate have you ever seen a veh going out the ~~Main~~ In entrance. West
A.189 Never, sir.
Q.190 What is the distance from where you were in the veh pk to the Main entrance.
A.190 100 yds or more.
Q.191 Were the lights on the veh when it went out.
A.191 The lights were on sir and all I saw was the silhouette of the veh.
Q.192 You say that when these two men came up to you that they started to talk to you. Did the other chap say anything to you.
A.192 He may have said something, but I just cannot recall.
Q.193 Did you smell any intoxicating liquors on either or both of these men.
A.193 No sir.
Q.194 Did you have a flash light with on guard duty.
A.194 No sir.
Q.195 Was there any light shining in that veh which would shine on Wheat and theother Chap.
A.195 None at all sir.

THE WITNESS WITHDRAWS

6th Witness for the Prosecution

Capt KL Akehurst, 4 Cdn Armd Bde Whsp, RCOC, having been duly sworn is examined by the Prosecuting Officer.

Q.196 Will you identify yourself to the Court please.
A.196 I am Capt KL Akehurst, 4 Cdn Armd Bde Whsp RCOC.

Q.197 On 23 Dec 43 were you called in to inspect a scout car which had been damaged.
A.197 Yes.

Court questions the Witness.

Q.198 Can you give us the number of the veh.
A.198 I cannot.
Q.199 Have you any kind of a record of the Scout car.
A.199 We have an accident form which is filled in but we don't keep any records of vehs brought in for repair.

Q.200 Who is the commanding officer of 4 Bde Wksp.
A.200 Major J.M. Meller.
Q.201 Are you familiar with his handwriting.
A.201 Yes I am.
Q.202 Have you seen him writing his name at any time.
A.202 Yes sir.
Q.203 Take a look at this document here. Did you make out this document.
A.203 I write these reports out, they are typed out and he signs them.
Q.204 Where is that handwritten copy which you made out.
A.204 It would normally be destroyed.
Q.205 Therefore the document that you have in your hand is a copy of the original which you made out.
A.205 Yes sir.
Q.206 And it is signed by whom.
A.206 By Major Meller.
Q.207 and what veh does it cover.
A.207 It is for Scout Car OF 62076.

Prosecution re-examines the witness.

Q.208 You made this examination of the Scout Car. Can you tell the Court what damage was done to it.
A.208 Yes sir. The top on the left rear fender was damaged so badly that it was not repairable. The left rear fender was bent and the wing with right rear fender. The left aerial mount was damaged and the rear view mirror was missing. The bracket on the co-driver's seat was damaged.
Q.209 Can you give an estimate of the cost of materials and labour required to repair this veh.
A.209 20 hrs labour and £2 of material.
Q.210 How much is that for labour.
A.210 three shillings per man-hour.
Q.211 How much was the total damage.
A.211 £2

The Prosecution tenders a statement made concerning the damage to the veh in question which includes the cost of materials and labour which is consented to by the Def Offr. The document is handed to the President, is accepted and marked as Exhibit B

Defending Officer cross-examines the witness.

Q.212 On assessing the damage to this vehicle and checking it over did you find all this damage.
A.212 Yes sir.
Q.213 Wasn't it possible for a rear vision mirror to be knocked off during exercises Briddon and Grizzly.
A.213 It could have been possible.
Q.214 The muffler was missing. Was it knocked off recently.
A.214 It might have been.
Q.215 There is a long list of damage and the car has been out on exercises for two and a half months and a few pieces of equipment might have been knocked off then. I can remember that a number of vehicles were in a collision

in London.
A.215 It is quite possible.
Q.215 The cost of labour at 3/- is that customary.
A.216 The cost of labour is set at three shillings per man-hour
Q.217 Why is a man paid Army pay and then a charge of three shillings per man-hour charged.
A.217 This is not so unless you have been involved in an accident and the claims Commission have laid down a certain standard of charges to be charged.
Q.218 A considerable amount of this damage may have occurred prior to this accident.
A.218 It might have occurred before.
Q.219 Do you think the mufflers might have been knocked off before.
A.219 Not the mufflers. It takes a good knock to dislocate the mufflers and it would not have been operational unless it had mufflers.
Q.220 The cost of labour is then peculiar to the Army.
A.220 Yes sir.

Court again questions witness.

Q.221 Where is the rear vish mirror located.
A.221 On the fender.
Q.222 Was that on one of the fenders which was damaged.
A.222 Yes.
Q.223 Was there anything to indicate that the muffler was a recent break.
A.223 Not that I recall.

Defending Officer tells the Court that the muffler on the veh on charge to the accused was missing a muffler.

The Court replies that when the time comes he can give evidence on oath.

THEWITNESS WITHDRAWS

7th Witness for the Prosecution

Major CF Punchard, OC Hq Sqn 29 Can Armd Recce Regt having been duly sworn is examined by the Prosecution.

Q.224 Will you identify yourself to the court.
A.224 I am Major CF Punchard, OC Hq Sqn 29 Can Recce Regt.
Q.225 Who is responsible or allowed to sign veh work tickets in this Sqn.
A.225 Myself as OC, the 2 i/c or acting 2 i/c and the SM under certain circumstances.
Q.226 With regard to the SM can you tell the court whether or not he was present in Camp on 9 Dec 43.
A.226 The SM on 9 Dec 43 was on a course and did not return until after the mid-month.
Q.227 On 9 Dec 43 did you sign a work ticket authorizing Scout Car CF 62076 to be taken from the lines or driven from the lines by anyone.
A.227 No I did not.

Questioned by the Court

Q.228 Did you give anyone else the authority for the use of scout car CF 62076.
A.228 No, they are largely under the direction of the OC Recce Tp. Under certain circumstances the SM has authority to sign work tickets, but at this time he was away on a course.
Q.229 Did anyone else take over in that capacity.
A.229 No.

Defending Offr declines to cross-examine.

WWS

The fact that this witness did not testify at the summary of evidence and the Prosecuting Offr did not give notice to the accused pursuant to RP 76, the Defending Offr waives the right of any adjournment. ∅ WWS

The Prosecution calls 8th Witness

Lt GR Woods, 29 Cdn Armd Recce Regt, i/c Recce Tp, having been duly sworn is examined by the Prosecution.

Q.230 Will you identify yourself to the court.
A.230 I am Lt GR Woods, i/c Recce Tp, 29 Cdn Recce Regt.
Q.231 You are permitted to authorize work tickets for the scout cars.
A.231 Yes sir.
Q.232 On 9 Dec 43, did you sign a work ticket to take scout car CF 62076 outside the lines.
A.232 No sir.
Q.233 You did not delegate this authority to anyone else.
A.233 No I did not.

Cross examined by Defending Officer.

Q.234 Do you know what day the 9 Dec 43 was.
A.234 It was a Monday.

Questioned by the Court.

Q.235 Is scout car CF 62076 one of the scout cars in your Recce Tp, and who is it on charge to.
A.235 It is in my Recce Tp and is on charge to Tpr Davidson.
Q.236 Is Tpr Davidson here.
A.236 Yes sir. Q. Was there a work ticket issued on 9 Dec 43 A. There was in the day time, but not at night.

WWS

Re cross-examined by the Defending Offr.

Q.237 Will you give the court a statement as to the character of Tpr Davidson.
A.237 Yes. As far as Tpr Davidson is concerned he has been very good, and as far as I personally am concerned if we had anything to do I have had no trouble with him at all but when we were away there was another case on a rear party in which he was connected. He is a good soldier and the best driver mech I have.
∅ - add para above on C.P. 76 WWS
WITNESS WITHDRAWN.

9th Witness for the Prosecution.

Lt EH Reardon, HQ Sqn, 29 Cdn Recce Regt, having been duly sworn is examined by the Prosecution.

Q.238 Will you identify yourself to the Court.
A.238 I am Lt EH Reardon, HQ Sqn 29 Cdn Recce Regt.
Q.239 As an offr in this Sqn have you the authority to sign work tickets for vehs.
A.239 Yes I have that authority
Q.240 Did you on 9 Dec 43 sign a work ticket for scout car CF 62076 authorizing anyone to take it out of the lines.
A.240 I have never signed a work ticket for any scout car in this camp.

Questioned by the Court.

Q.241 What position do you hold in this regt.
A.241 I have the AA Tp.
Q.242 Is the accused Tpr Davidson a member of this Tp.
A.242 No sir.

WWS

The fact that this witness did not testify at the summary of evidence and the Prosecuting Offr did not give notice to the accused pursuant to RP 76 the Defending Offr waives the right of any adjournment.

THE WITNESS WITHDRAWS.

10th Witness for the Prosecution.

M-44993, L/Sgt Armstrong, GW, 29 Cdn Recce Regt, having been duly sworn, is examined by the prosecution.

Q.243 Will you identify yourself to the Court.
A.243 I am M-44993, L/Sgt Armstrong, GW, 29 Cdn Recce Regt.
Q.244 What is your job.
A.244 I am the Sgt Fitter for H.Q. Sqn.
Q.245 Have you any knowledge of a scout car CF 62076 which was taken from the lines on 9 Dec 43.
A.245 Only second-hand information and when I saw the car when it was brought back.

Witness is cross-examined by the Defending Offr.

Q.246 Do you know this veh very well.
A.246 I do not sir.

The Defending Officer calls the Accused, who makes a statement on oath.

Re the damages as listed on that sheet (exhibit B) for the veh scout car CF 62076, I can prove that the parts were changed on my vehicle before it was taken into the Workshop for examination of damage, damaged parts were put on my vehicle and it went in for repair.

Third Witness for the Defence

Cpl Smith GS, having been duly sworn, is examined by the Defending Offr.

(Was not asked to identify himself)

Q.247 You are acquainted with the scout car assigned to Tpr Davidson.
A.247 Yes sir.
Q.248 Can you tell me about the muffler being removed.
A.248 The LAD had taken it off and put it on Hawethorne's veh prior to the accident.
Q.249 Do you know of anything else being taken.
A.249 There were some tools taken out of it and were intended to be used until Davidson got back.
Q.250 That was when the car was brought back and xxxx before the assessment.
A.251 Yes, these parts were taken off the veh before the Workshop assessment.

Witness cross-examined by the Prosecution.

Q.252 You said you heard some boys discussing it in the hut did you remove or assist to remove any of the parts.
A.252 No sir.
Q.253 Who were these people discussing the removals in the hut.
A.253 It was one rainy afternoon. Sgt Prenewost mentioned theseparts. I know that one of the boys in the hut said that the muffler was taken off.
Q.254 Can you tell me who took the muffler off.
A.254 No sir.
Q.255 Do you know the names of any who could have done so.
A.255 Only the LAD sir.

Q.256 You did not see the parts removed, you did not assist in the removal and you did not do it yourself.
A.256 No sir, I did not.
Q.257 You did not take them off, you did not see anyone take them off and you think the LAD took them off but you are not sure.
A.257 The LAD would be the only ones who would take them off.
Q.258 You yourself don't know though.
A.258 No sir.

THE WITNESS WITHDRAWS

The Defending Officer Sums Up

There are certain points I should like to bring out. No work ticket was produced for the night of 9 Dec 49; moreover there is no proof that the vehicle was ever taken out of the park on that evening. The sentry on duty that night could not pin it down any further than it was during the week of Dec 9, or before that. I have nothing to say as to his mental capacity. The veh was not even identified as belonging to the SAR. Authorities who specialise in psychological work are agreed that a man subject to prolonged daily interrogation in unfriendly surroundings and who have at the end of that time given a written statement to the interrogators, might well be said to have been given that statement under compulsion of a sort which I think is very true. You can put yourself in the position of the accused - he is close arrest, in most uncomfortable Guard House - stone walls and a cement floor and not much light. He has a wife and a sick baby about whom he is quite worried. He has learned that the regt has been confined to barracks and will remain there until the guilty party is discovered. He is interrogated for long hours day after day and as a grand finale the SIS are called in to finish him off. Two great hulking men who could scarcely be described as laughing boys carry on the quiz. One feels that the only thing that was missing was the bright lights and the rubber hose. There was moreover a certain amount of threat. The RPS admits he called the prisoner a very foul name. The accused under oath states that the SIS Sgt threatened to bring his wife into it. The SIS Sgt denies this it is true also under oath. It is possible that the accused's wife was mentioned in a manner somewhat different from that which the accused thought. Nevertheless he obviously did interpret whatever threat was made to drag in his wife. Now as to the vehicle itself. The damage was assessed. A witness Capt Ashhurst has admitted that when he assessed the damage done to this car he noted everything broken or missing on it. I am sure that the court will agree that any military veh which is brought in for a thorough check would have a considerable amount in the way of pounds, shillings and pence wrong with it although it had had the best of care. It has also been brought to my attention that there was a certain amount of cannibalization going on with respect to this veh. The muffler was removed from it following the accident and placed on another car assigned to another Tpr in this unit. I am further told that the generator and distributor were taken off it and put on another veh. If this is so, it is quite likely to suppose that other parts had been removed from it and that damaged parts were put back in their place. On many recent exercises we saw vehicles in the North being damaged by trees rocks, etc. It is quite possible that this veh likewise suffered. That is all that I wish to present before the Court at this time.

The Prosecuting Offr sums up.

The Defending Officer has made certain points I should like to cover. I should like to make a resume of the case.

The Prosecution have called witnesses who have sworn that scout car CF 62076 was on Tpr Davidson's charge and other witnesses have indicated that on the night of 9 Dec 43 there was no authorized work ticket issued to the accused to take his veh out of the Pk. Another witness has stated that on the same evening while he was on guard duty in the veh pk, he talked with the two men but he was unable to identify the accused as one. He talked to two men who entered the Pk and did not leave on foot. A few minutes [illegible] later a car which he was unfortunately unable to identify as a scout car left by another gate. At approx the same time a Tpr belonging to another unit has testified on oath that scout car of this regt left the lines and they told him they were going on a map-reading scheme. It seems reasonable to assume that the vehs were one and the same. The defence has made much of the fact that the accused underwent a psychological third-degree by SIS men. SIS men of the APM's office are people with proper police trg whose duty it is to get at facts. I fail to see that the physcial size of the SIS men should have anything to do with it. The defence brought a witness who testified on oath that a certain amount of cannibalization had been going on between the scout cars of this unit after the accident and before the scout car went out to the workshop. Parts were removed, tools taken out to make up shortages in other vehs. When questioned by the Prosecution the witness admitted that he did not see the act and had not taken part in it and that his evidence was based merely on hearsay.

The Judge Advocate sums up.

The charge before the Court to-day is -

The charge is read to the Court.

If you come to the conclusion that the Prosecution did not prove the full amount of the money damage set forth in the charge sheet, and if you feel that the prosecution proved all the other essential ingredients in the charge, you will not bring in a finding of Not Guilty, but you would bring in a special finding setting forth the amount of money damage proved.

The facts in this particular case are within a very narrow compass and to aid you, you have the confession which was made by the accused to Sgt Latta of the SIS and in that confession the accused said among other things on Thurs 9 Dec 43 at about 1630 hrs we went down to the car pk [illegible] and took my veh CF 62076 and drove out the [illegible] gate. At the gate, we were stopped by the sentry and Trp Wheat told him we were going on a Map Reading scheme. We were allowed to pass, etc etc. The prosecution brought before you the witness to testify that two men came up to him while in a veh and said we are going on a MR exercise or words to that effect and this veh in question was found on 10 Dec 43 about 30 miles from the 29 Recce Regt veh pk in a damaged condition. So I don't think Mr. President and Gentlemen that you should have a great deal of difficulty in coming to the conclusion that the accused took the scout car No. CF 62076 and drove it a considerable distance and the veh was damaged about 30 miles away. You have to satisfy yourself as to whether or not the Prosecution has proved to your satisfaction that the veh was taken and used without authority having been given. My opinion is and as I have already intimated which opinion you are not bound to accept that the Prosecution has proven adequately that no authority was given to the accused to use his veh on the night of 9 Dec 43.

With reference to the damages to the veh, the suggestion has been put forth by the defending officer that the damage testified to by Capt Akehurst was not the damage that was sustained by xx the veh on the night of 9 Dec 43, that cannibalization had taken place and that therefore the total amount of the damage would not be £8, but in my opinion, which opinion you are not bound to accept, the witness for the defence in testifying as to parts of the car which had been taken off before the assessment was made by Capt Akehurst was xx purely of a hearsay nature. He said if I remember the evidence correctly, that a discussion took place one rainy afternoon in the hutp and that the boys were mentioning this and that and the other thing. However, it is for you to decide, and if you give any credence to the evidence given by that particular witness Cpl Smith, then, of course, the amount of damage would be lessened.

The Court must remember the principle of English law that the accused is presumed to be innocent until he is proved to be guilty, and that the burden of proof rests upon the prosecution. Unless, therefore, the guilt of the accused has been established beyond reasonable doubt, the accused must be acquitted, as the prosecution has failed to sustain adequately the xx burden or proving his guilt. Such a doubt wouldbe one that reasonable men would have. It is more than mere suspicion. In other words, the Court must be sstisfied not only that the circumstances proved were consistent with the guilt of the accused, but also that they were inconsistent with any other rational conclusion.

Wot The Court consider it necessary in the interest of justice to recall Capt Akehurst - R.P. 86 D.

Capt Akehurst is must + questioned by the Court.

Q.259 Could you tell at the time you examined the scout car CF 62076 whether the damage to the tool box on the left rear fender was a recent injury.
A.259 Yes it was.
Q.260 How many mufflers were missing.
A.260 Two sir.
Q.261 Could you tell that the absence of thosetwo mufflers was a recent absence.
A.261 No sir.
Q.262 What would the cost of a muffler be.
A.262 Nineteen shillings each. Thirty-eight shillings for two.
Q.263 What would be the amount for the labour necessary to instal two mufflers.
A.263 One hour - three shillings.
Q.264 The left rear fender was bent, was that a recent or an old bending.
A.264 It was a recent one.
Q.265 And the right rear fender was bent.
A.265 That was recent also.
Q.266 The driver's hatch was damaged.
A.266 That was also recent.
Q.267 The left aerial mount damaged.
A.267 That was also recent.
Q.268 The rear view mirror was missing, how about that.
A.268 It was on the fender that was damaged and we have no evidence as to whether it was recent or not.
Q.269 Was it broken off.
A.269 It wasn't there.
Q.270 What would the cost of the rear-view mirror be.
A.270 Ten shillings.
Q.271 The bracket holding the co-driver's seat.
A.271 That was recent damage.
Q.272 You say the rear-view mirror would cost ten shillings. How long would it take to install.
A.272 About twenty minutes labour - one shilling.
Q.273 Was there any indication Capt that the mufflers were taken off by hand recently or were they torn off.
A.273 There was no indication of their being torn off. I noted that fact and that there was no damage to the parts that the mufflers were fitted on with.

The Defence cross-examines the witness

Q.275 Can you tell me how this three-shillings an hour is arrived at.

A.275 It is laid down by the Cdn Claims Commission. You would be charged approx the same rate in a civilian garage.

Q.276 But it was not taken into a civilian garage and it is grossly unfair.

A.276 These charges are only made when there has been an accident which is the fault of the driver of the veh.

With the defending officer does not wish to make any further address on behalf of accused.

PLEA IN MITIGATION BY DEFENDING OFFICER

Gentlemen. There are one or two remarks I should like to make in the case of the accused. One thing which has not been brought out is that this soldier joined the Army on 5 Sep 39 and like the majority of us wanted to come over and get the job done and get back home. He came ove with 1 Cdn Div and through no fault of his own, was left behind when 1 Cdn Div went to the present theatre of war and is somewhat ~~as~~ naturally discouraged, and has something what the English call a browned off feeling. He has from time to time tried to get a transfer to 1 Cdn Div. The first remark addressed to him was that of a Sgt Major who said we don't want the likes of you around here. This would not tend to make him any happier in his unit. He put in through the usual channels an application for transfer. This was turned down either by the CO or 2 Ech and once again he had a set-back. He went further than this and asked to be paraded before the GOC to no avail. Tak ng all these factors into consideration, you can picture the man who is thoroughly fed up with his lot, and has reached that frame of mind of a man who feels truly or wrongly that he has been kicked around and takes French Leave and thinks it is the perfectly normal reaction under the circumstances. To hearken back to the damages to the veh, these have seemingly been well considered with particular reference to the missing mufflers. However, one feels that this charge of three shillings per hr is rather unjust but it perfectly regular as laid down by the Canadian Army Overseas. I cannot believe the damage to the left rear fender and right rear fender when the car was on its left side for they both could not have been damaged by this accident. That however is a minor point. The last point which I should like to bring up is one which I think is too often forgotten in Military Courts. That is punishments in Civil Courts and Military Courts. An employee of a large trucking firm having taken a veh belonging to that firm in order to see his ailing child and during the trip having had an accident with that car he might conceivably lose his job and would undoubtedly be assessed for the damages to the car, but he would at least be free to search for another job. In other words, his capacity as a wage earner would not be interfered with for a very long period, whereas in the Army there is always a tendecy when a man is guilty to throw the book at him. The result of this will be a soldier who is returned to work feeling very disgruntled indeed particularly in this ~~punishment~~ specific case. When you are considering this case, I would ask you to bear in mind that the traffic offence and punishment in civil and military courts and also the fact that this man did have in fact a sick child.

EXHIBIT A

J H Crichton

(J H Crichton) Capt
Officer taking
Summary of Evidence

STATEMENT O H.16065. Tpr. Davidson. AC DATE 14 Dec 43.

29 Cdn. A.R.R.

I have been Cautioned by A/Sgt. Harrison, J.T., S.I.S., C.M.H.Q. that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given as evidence.

To show that I have read over and understand this Caution, I sign my name here.

Witness: R. R. Latta. H16065. Tpr. Davidson A.C.

On Thursday the 9 Dec 43, in company with Tpr. Wheat at about 1830 hrs. we went down to the car park. H.Q. Sqr. and took my vehicle C.I. 62076 and drove out the B.G.F.G. gate. At the gate we were stoped by the sentry and Trooper Wheat told him we were going on a map reading scheme. We were allowed to proceed. When outside the gate we turned left and circuled around through Uckfield then followed the main road through Tunbridge Wells and Tonbridge. where we turned off and Tpr Wheat started to drive. We went through a small town. Hadlow and going up the road farther it was foggy and Tpr Wheat missed the bend in the road and we landed in the ditch. The car turned over and landed ~~up~~ dell on its side. I scrambled out through the top and looked for Tpr Wheat and when I saw him he was outside the car. When I was satisfied he was alright. I looked at the car and seeing there was nothing we could do to put it back on the road decided to make for camp. We started walking along the road and met three people and I asked what way was Tonbridge. They told us to turn back and take the right hand turning and follow the road straight through to Tonbridge. We arrived in Tonbridge and hung around the station for a while

2 Coast for a while. We saw some mailmen loading mail on to a truck and we bummed a lift from one of them into Tunbridge Wells. at Tunbridge Wells we spoke to a policeman and asked him when the next train left for Uckfield He told us that it left at 06.. hrs so we went down to the roundhouse at the railway station. stood around for a while to get warm, and saw two bicycles by the building which we took. We cycled down the road for a ways and 4pr wheat could not ride his so we left his leaning up against a hedge and I rode him on the bar of my bicycle We rode down to Five Ash Corners where we left the bicycle and walked into camp We came through the cemetry into the back of the camp and went to bed.

I have read over the above statement and it is true. Jas. Davidson

R. R. Latta Sgt.
J. T. Hanson Sgt.

Ex. "A"
Ja McLennan Maj
Pres.

COPY OF EXHIBIT "B"

STATEMENT OF..N16065 Tpr DAVIDSON, A.G DATE..14.Dec.43

I have been cautioned by A/Sgt Harrison, J. T., S.I.S., C.M.H.Q. that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given as evidence.

To show that I have read over and understand this Caution, I sign my name here.

Witness: R R Latta ....

On Thursday, the 9 Dec 43, in company with Tpr Wheat, at about 1830 hrs, we went down to the car park, HQ Sqn, and took my vehicle CF 62076 and drove out the G.G.F.G. gate. At the gate we were stopped by the sentry and Trooper Wheat told him we were going on a map reading scheme. We were allowed to proceed. When outside the gate we turned left and circled around through Uckfield then followed the main road through Tunbridge Wells and Tonbridge, where we turned off and Tpr Wheat started to drive. We went through a small town, Hadlow, and going up the road farther it was foggy and Tpr Wheat missed the bend in the road and we landed in the ditch. The car turned over and landed on its side. I scrambled out through the top and looked for Tpr Wheat and when I saw him, he was outside the car. When I was satisfied he was all right, I looked at the car and seeing there was nothing we could do to put it back on the road decided to make for camp. We started walking along the road and met three people and I asked what way was Tonbridge. They told us to turn back and take the right hand turning and follow the road straight through to Tonbridge. We arrived in Tonbridge and hung around the station for a while. We saw some mailmen loading mail on to a truck and we bummed a lift from one of them into Tunbridge Wells. At Tunbridge Wells, we spoke to a policeman and asked him when the next train left for Uckfield. He told us that it left at 0600 hrs so we went down to the roundhouse at the railway station, stood around for a while to get warm, and saw two bicycles by the building which we took. We cycled down the road for a ways and Tpr Wheat could not ride his so we left his leaning up against a hedge and I rode him on the bar of my bicycle. We rode down to Five Ash Corner where we left the bicycle and walked into Camp. We came through the cemetery into the back of the camp and went to bed.

I have read over the above statement and it is true.

.....

R.R. LATTA SGT

J.T. HARRISON SGT

4CABWS/7-2-2/Scout Car/

20 Dec 43

OC
29 Cdn Armd Recce Regt(SAR)

FORD SCOUT CAR CF62076
Estimate of cost of repairs

1 Damages on m/n veh include:

Tool Box(left rear fender) - BLR
Mufflers - BLR
Lft rear fender bent
Left front fender bent
right rear fender bent
Drivers hatch damaged
Left aerial mount damaged
Rear view mirror missing
Bracket holding co-driver seat damaged

Cost of materials	-	£5/0/0
Cost of labour	-	£3/0/0
TOTAL	-	£8/0/0

2 For your infm, please.

J H Mellor
(J H MELLOR) MAJ OC
4 Cdn Armd Bde Wksp

Ex. "B"
J A McGinnon Maj
Pres.

Original.

SUMMARY OF EVIDENCE in the case of H16065 Trooper Alexander Crowell Davidson -

29 Cdn Armd Regge Regt (S ALTA R) [illegible]

FIRST WITNESS: M45021 Sgt Tarr,N.H. 29 CARR(SAR) having been duly sworn states:-
I was on the 9 Dec.43 and still am I C Sgt. 29 CARR(SAR) on the 9 Dec 43 we were on a wireless scheme, all the vehicles were out except one, until approximately 1700 hrs. The vehicle left in was CF 164170. At approximately 0700 hrs. the following morning the Orderly Officer notified Sgt.Fremovost and myself that one of our scout cars was abandoned in the vicinity of Meresworth. The Adjutant ordered me to get the vehicle as soon as possible. I went up taking Cpl.Armstrong,Tpr. Williams and Tpr.McCarty with me. About one mile east of Meresworth we found the scout car,No CF 62076 very nearly upside down. We picked up the loose equipment from the police at Meresworth and returned to camp with the vehicle.

Q. On whose charge is scout car No. CF 62076?
A. On Tpr Davidsons's charge.
Q. Was Tpr.Davidson driving it during the exercise and at approximately 1700 hrs on Dec. 9th?
A. Yes sir.
Q. Did you see Tpr Davidson take the vehicle from the vehicle park after 1700 hrs. on the 9th Dec?
A. No sir.
Q. Was this vehicle in the vehicle park at about 1700 hrs. 9 Dec. 43?
A. Yes sir.
Q. Was there any authority for the vehicle having been taken out of the vehicle park after this time?
A. No sir.

The accused declines to cross examine this witness.

N.H. Tarr

SECOND WITNESS: M59134 Tpr Colby, C L, 29 CARR(SAR) having been duly sworn states:-
I was on the 9 Dec 43 and still am a Trooper in the 29 CARR(SAR). I was on duty at the veh Park between the hours of 1700 and 1900 on 9 Dec 43, when two men, one of whom I recognized as Tpr Wheat,and I recognize him here as the accused, and the other I could not identify, came up to me and started talking. They then passed into the Veh Park. They spoke to me and asked if I had seen a scout car come in. I told them I had not seen one. After passing into the park that was the last I saw of them. Between five and fifteen minutes after they had left me I saw a veh leave the "IN" entrance to the Veh Park. I could not stop it because it was gone before I could get down to that end of the Veh Park.

Q. Could you identify the veh that left the park?
A. No, sir.
Q. Had you seen anyone else come into the park?
A. No, sir.
Q. Could you state about what time Tpr Wheat and his companion came into the Park?
A. Between 1800 and 1900 hrs.
Q. Can you recognize the other man here?
A. No, sir.

The accused declines to cross-examine this witness.

C L Colby

J.A. McClennan Maj
Pres.

SUMMARY OF EVIDENCE in the case of H16065 Trooper Alexander Growell Davidson - 29 Cdn Armd Recce Regt (S Alta R) and M63572 Trooper Norman Percy Wheat - 29 Cdn Armd Recce Regt (S Alta R).

THIRD WITNESS: A84681 Sgt Harrison, J T, No.1 S.I.S., attached to APM's Office 2 Cdn Corps, having been duly sworn, states:

I was on the 14 Dec 43 and still am, a sergeant in the No.1 S.I.S. attached to APM's Office, 2 Cdn Corps. On 14 Dec 43 in company with Sgt Latta of No.1 S.I.S., I questioned M63572 Tpr Wheat, N P concerning the taking of a W.D. vehicle from the car park of HQ Sqn 29 Cdn Armd Recce Regt (S Alta R). As a result of our interrogation, T pr Wheat elected to make a statement in writing after he had been properly cautioned and which was taken down in writing, and which I hereby tender in evidence.

Said statement is admitted in evidence and marked Exhibit "A" by the officer taking the summary for purpose of identification.

Questioned by Court

Q.10 Did you hold out any promise of leniency if the accused made a statement?
A.10 No, sir.

Q.11 Did you make any threat to him if he did not make a statement?
A.11 No, sir - no threat, promise or inducement was made to him.

Q.12

J. T. Harrison

The accused, M63572 Tpr Wheat, N P, declines to cross-examine this witness.

FOURTH WITNESS: G45426 Sgt Latta, R R, No.1 S.I.S., attached to APM's Office 2 Cdn Corps, having been duly sworn, states:

I was on the 14 Dec 43 and still am, a sergeant in the No.1 S.I.S. attached to APM's Office, 2 Cdn Corps. On the 14th Dec 43, in company with Sgt Harrison, I interviewed Tpr Davidson and after being properly cautioned obtained from him the signed statement which I now produce as evidence.

Said statement is admitted in evidence and marked "Exhibit "A" by the officer taking the summary for purpose of identification.

Questioned by Court:

Q.12 Did you hold out any promise of leniency if the accused made a statement?
A.12 No, sir.

Q.13 Did you make any kind of promise or inducement to him if he made a statement?
A.13 No, sir.

Q.14 Did the accused make this statement of his own free will?
A.14 Yes, sir.

Q.

R. R. Latta.

The accused, H16065 Tpr Davidson, A C, declines to cross-examine this witness.

QUESTIONED BY COURT

Q.15 Were you present at the questioning of Tpr Wheat?
A.15 Yes, sir, I was there.

Q.16 Did Tpr Wheat make a confession?
A.16 He made a voluntary statement.

Q.17 Was any inducement, promise of leniency or threat made to him in order to secure this statement?
A.17 No, sir.

R. R. Latta

H16065 Tpr Davidson A C

The accused, M63572 Tpr Wheat, N P, declines to cross-examine this witness.

R. R. Latta.

SUMMARY OF EVIDENCE in the case of H16065 Trooper Alexander Crowell Davidson - 29 Cdn Armd Recce Regt (S Alta R) and [illegible] Trooper [illegible] [illegible] - [illegible] Recce Regt (S Alta R).

FORM [illegible]

[illegible] WITNESS:
(Recalled)

A[illegible] Sgt Harrison, J T, No.1 S.I.S., attached to APM's office 2 Cdn Corps, having been re-[illegible], states:

Cont'd [illegible]

Questioned by Court:

Q.18 Were you present at the questioning of Tpr Davidson?

A.18 Yes, sir.

Q.19 Did Tpr Davidson make a statement?

A.19 Yes, sir - in writing, sir.

Q.20 Was any inducement, promise or leniency or threat made to Tpr Davidson in order to secure this statement?

A.20 No, sir.

J. T. Harrison

The accused, H16065 Tpr Davidson, A C, declines to cross-examine this witness.

SUMMARY OF EVIDENCE in the case of H16065 Trooper Alexander Crowell Davidson - 29 Cdn Armd Recce Regt (S Alta R) ~~and M63572 Trooper Norman Percy Wheat - 29 Cdn Armd Recce Regt (S Alta R)~~.

FIFTH WITNESS: B49304 Gdsmn Kay, W L, 21 Cdn Armd Regt (GGFG), having been duly sworn, states:

I was on the 9th Dec, 43, and still am a ~~gdsmn~~ soldier of the 21 Cdn Armd Regt (GGFG). On the evening of 9 Dec 43 at approximately 1830 hrs I was doing my duty as a sentry on gate guard on the North gate of MARESFIELD CAMP when the scout car came along. I halted it and these two fellows told me that they were going out on a map reading scheme. I let them pass.

Questioned by Court

Q.21 Do you recognize these two men as being the men in the scout car?
A.21 I couldn't say sir, as it was dark then.

Q.22 What was the number of the scout car?
A.22 I don't know, sir.

~~Q.23~~

W L Kay.

The accused, H16065 Tpr Davidson, A C, declines to cross-examine this witness.

~~The accused, M63572 Tpr Wheat, N P, declines to cross-examine this witness.~~

SUMMARY OF EVIDENCE in the case of H16065 Trooper Alexander Crowell Davidson - 29 Cdn Armd Recce Regt(S ALTA R) ~~and M63372 Trooper Norman Perry Sheet - 29 Cdn Armd Recce Regt (S ALTA R)~~.

SIXTH WITNESS: M44993 L*Sgt.Armstrong G.J. HQ Sqn 29 Cdn Armd Recce Regt having been duly sworn states;-

I am L/Sgt.Armstrong G.J. HQ Sqn 29 CARR (S ALTA) and I am a fitter in HQ Sqn and have been a L/Sgt. since Nov 1942. I know nothing about the accident. G.J. Armstrong.

Copy Issued by the Accused Sgt.

Q. Davidson: Do you remember the day that I was packing the front wheels of the scout car and asked you if it would hurt to cut the ends of the mufflers off as they were all chewed up?

A. Yes.

Q. Do you remember sawing the ends of the mufflers off?

A. Not of that particular scout car as I have cut the ends off several scout car mufflers.

Q. Did you change a muffler from one scout car to another?

A. No.

Q. Do you know of anyone who did?

A. No.

G.J. Armstrong.

X

SUMMARY OF EVIDENCE in the case of H160065 Trooper Alexander Crowell Davidson - 29 Cdn Armd Recce Regt(S ALTA R) and M63572 Trooper [redacted] Norman Perry Wheat - 29 Cdn Armd Recce Regt (S ALTA R).

SEVENTH WITNESS: / Capt. E.L. Akhurst, 4th Cdn Armd Bde Workshop, RCOC, having been duly sworn, states:

I am an E.M.E. on the strength of 4th Cdn Armoured Bde. Workshop. On 23 Dec 43 I was called in to estimate the damage to Ford Scout Car No.CF 62076. The estimated cost of repairs including materials and labour is:-

Damage on Scout car CF62076 include
Tool Box (left rear fender) - BLR
Mufflers - BLR
Left rear fender bent
Left front fender bent
Right rear fender bent
Driver's hatch damaged
Left aerial mount damaged
Rear view mirror missing
Bracket holding co-driver seat damaged

Cost of materials - 5/0/0
Cost of labour - 3/0/0

TOTAL _____8/0/0/

Q. How do you arrive at the cost of the labour?
A. It is charged at three shillings(3) an hour and is the standard charge throughout the Canadian Army. It is estimated that the time taken to repair this vehicle would be twenty (20) hours.
Q. Tpr Davidson - How bad were the fenders bent?
A. The fenders were bent to such an extent that they only had to be hammered out - they could be repaired without replacing them.
Q. Were mufflers beyond local repair?
A. Yes.
Q. The vehicle was lying on its left side, therefore how could the right muffler be broken?
A. I do not know how this could happen, but when I examined the vehicle the muffler was damaged to such an extent that it will have to be replaced.
Q. Was the right rear fender bent?
A. Yes. It could be repaired without being replaced.
Q. Capt Crichton with regard to the Muffler. Would any marks on the nuts or bolts indicate whether or not it had been tampered with?
A. I don't believe that it would show on the nuts or bolts.
Q. When you examined this vehicle would you have noticed if any parts had been removed or replaced?
A. It would be pretty hard to tell whether parts had been replaced by parts from an old vehicle, it could be told if they were new parts.

E. L. Akhurst Capt

No. H16065 Name Davidson AC | Sqn., Battery, or Company | Corps CAC | Date of enlistment | G.C. Badges | Tradesmen's Rates of Pay N. A. | A.F.B. 6 (A.F.B. 121)

No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 May 42	Tpr		WOAS Sec 15(1) AA. AWL 2215 hrs 16 May 42 to 0600 hrs 18 May 42 (Absent 1 day 7 hrs 45 min)	L/Cpl Fiss E W	14 days CB	20 May 42	LT Col HW Foster	2 days forf of pay
"	3 Oct 42	Tpr		AA Sec 15(1) AWL from 2230 hrs to 0840 hrs 5-10-42	Cpl Greer	21 days FP 21 days Pay	5-10-42	Lt Col Adams	Forf 2 days pay
"	13 Jan 43	"		WOAS Sec 11 AA Neglecting to obey Guard orders i.e. left guard room and went to bed without permission	L/C Loutte	10 days CB	13 Jan 43	Capt A H Claxton	
"	1 Aug 43	Tpr		AA Sec 15(1) AWL 2200 hrs 1 Aug 43 to 1000 hrs 2 Aug 43 (Absent 12 hrs)	Cpl Kanten WG	Admonished	4 Aug 43	Capt HE Allsopp	Forf 1 days pay.

CERTIFIED TRUE COPY from Regimental Books in my custody

(R H Allsopp) Capt & Adjt, 29 Cdn Armd Recce Regt (S Alta R).

SUMMARY OF EVIDENCE in the case of H160065 Trooper Alexander Crowell Davidson - 29 Cdn Armd Recce Regt(S ALTA R) and M63572 Trooper [redacted] Norman Perry Wheat - 29 Cdn Armd Recce Regt (S ALTA R).

SEVENTH WITNESS: Capt. E.L. Akihurst, 4th Cdn Armd Bde Workshop, RCOC, having been duly sworn, states:

I am an E.M.E. on the strength of 4th Cdn Armoured Bde. Workshop. On 23 Dec 45 I was called in to estimate the damage to Ford Scout Car No.CF 62076. The estimated cost of repairs including materials and labour is:-

Damage on Scout car CF62076 include
Tool Box (left rear fender) - BLR
Mufflers - BLR
Left rear fender bent
Left front fender bent
Right rear fender bent
Driver's hatch damaged
Left aerial mount damaged
Rear view mirror missing
Bracket holding co-driver seat damaged

Cost of materials - 5/0/0
Cost of labour - 3/0/0

TOTAL _____8/0/0/

Q. How do you arrive at the cost of the labour?
A. It is charged at three shillings(3) an hour and is the standard charge throughout the Canadian Army. It is estimated that the time taken to repair this vehicle would be twenty (20) hours.
Q. Tpr Davidson - How bad were the fenders bent?
A. The fenders were bent to such an extent that they only had to be hammered out - they could be repaired without replacing them.
Q. Were mufflers beyond local repair?
A. Yes.
Q. The vehicle was lying on its left side, therefore how could the right muffler be broken?
A. I do not know how this could happen, but when I examined the vehicle the muffler was damaged to such an extent that it will have to be replaced.
Q. Was the right rear fender bent?
A. Yes. It could be repaired without being replaced.
Q. Capt Crichton with regard to the Muffler. Would any marks on the nuts or bolts indicate whether or not it had been tampered with?
A. I don't believe that it would show on the nuts or bolts.
Q. When you examined this vehicle would you have noticed if any parts had been removed or replaced?
A. It would be pretty hard to tell whether parts had been replaced by parts from an old vehicle, it could be told if they were new parts.

E. L. Akihurst Capt

THE ACCUSED WAS CAUTIONED AS FOLLOWS - Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

THE ACCUSED REPLIES -"I have nothing to say."

Taken down by me this 21st day of December 1943.

Certified that R.P. 4 (C), (D) & (E) have been complied with.

(J H Crichton) Capt
29 Cdn Armd Recce Regt (S Alta R)

No. H16065 Name Davidson AC | Sqn., Battery, or Company | Corps CAC | Date of enlistment | G.C. Badges | Tradesmen's N.A. Rates of Pay | Character

No. and date of last drunk | Period not reckoning towards freedom from extra line | Sheet No. 2 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 May 42	Tpr		WOAS Sec 15(1) AA. AWL 2215 hrs 16 May 42 to 0600 hrs 18 May 42 (Absent 1 day 7 hrs 45 min)	L/Cpl Fiss H W	14 days CB	20 May 42	LT Col HW Foster	2 days forf of pay
"	3 Oct 42	Tpr		AA Sec 15(1) AWL from 2230 hrs to 0840 hrs 5-10-42	Cpl Greer	21 days FP 21 days Pay	5-10-42	Lt Col Adams	Forf 2 days pay
"	13 Jan 43	"		WOAS Sec 11 AA Neglecting to obey Guard orders i.e. left guard room and went to bed without permission	L/C Loutte	10 days CB	13 Jan 43	Capt A H Claxton	
"	1 Aug 43	Tpr		AA Sec 15(1) AWL 2200 hrs 1 Aug 43 to 1000 hrs 2 Aug 43 (Absent 12 hrs)	Cpl Kanten WG	Admonished	4 Aug 43	[illegible]	Forf 1 days pay.

CERTIFIED TRUE COPY
from Regimental Books in my custody
(R H Allsopp) Capt & Adjt 29 Cdn Armd Recce Regt (S Alta R).

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of or order dispensing with trial	By whom awarded	Remarks
				Exc. "Y" J.A. MacLennan Maj. Pres.					

No. H16065 Name DAVIDSON A.C. Sqn., Battery, or Company } Corps C.A.C. Date of enlistment } 5 Sep 39 G.C. Badges } Tradesmen's Rates of Pay } M.F.M. 6 (A.F.B. 142) 1000—11-41 (2400) H.Q. 1712-44-1932

No. and date of last drunk } Period not reckoning towards freedom from extra fine } Sheet No. Signature O.C. Company, etc. } HC Foster Lt Col Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No Regimental entries on previous sheet: destroyed on completion of two years service 5 Sep 41									
Field	26-12-41	Tpr		W.O.P.S. AA Sec 15 AWL from 1015 Hours 26 Dec 41 to 1215 hrs 27 Dec 41 (Absent 1 day 2 hrs)	Lt W F Johnston	28 days FP forf 28 days pay FR&I 149(2) Stop. of pay £1-14-0 FR&I 172(8)	30 Dec 41	Lt Col H C Foster	Forf 1 days pay FR&I 149 (1)(a)
"	23 Dec 41	Tpr		Convicted in Civil Court of dangerous driving and of failing to return to the scene of an accident.		Fined £5-8-4 including costs Forf G.C. badge	6 Jan 42	Civil Police Magistrate Shoreham, Sussex	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
Field	22 Mar 42	Tpr		WOAS (1)Sec 15(1) AWL 2230 hrs 22 Mar 42 to 0907 hrs 23 Mar 42 (Total 10 hrs 52 mins)(2) Sec 40 i.e.was improperly dressed,i.e. did not have his respirator at Worthing station.	L/Cpl Simpson L/Cpl Gough L/Cpl Wheeler Capt Duck	7 daysCB	23 Mar 42	AJD Capt	1 days forf of pay FR&I 149 (1)(a)
"	5 Apr 42	Tpr		WOAS Sec 40 AA Cond to prej etc i.e. driving a WD veh in an unauthorized place	Capt Hepburn Sgt Finan	14 days CB	11 Apr 42	Maj WNG Darling	
"	19 Apr 42	Tpr		WOAS Sec 15(1) AA Awal from defaulters parade 1 hr 19 Apr 42	Sgt Kershaw Sgt Dixon	7 days CB 2 days forf of pay	20 Apr 42	AJ Duck Capt	
"	27 Jun 42	Tpr		WOAS AA Sec 15(1) AWL from 2359 hrs 27 Jun 42 to 2230 hrs 28 Jn 42 (absent 22 hrs 31 mins)	L/Cpl Hunter Cpl Wheeler	1 days pay FR&I 149(a)	29 Jun 42	Capt Duck	forf 1 days pay FR&I 149 (1)(a)

M.F.B. 155
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H16065	Trooper	Alexander Crowell DAVIDSON	29 Cdn Armd Recce Regt

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Neglecting to obey Range Orders	1 times	Neglecting to obey Range Orders	1 times
For		times		times
For		times	Conduct to the prejudice, etc	1 times
For		times	A.W.L.	7 times

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 18 days in military custody, making a total of 18 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 25 yrs

6. The date of his attestation specified in his attestation paper 5 Sep 39

9. The accused is in possession of or entitled to no military decoration, or military reward (State any military decoration or reward.

[illegible] DHQ.

[illegible] DHQ.

[illegible] DHQ.

[illegible] DHQ.

[illegible] DHQ.

[illegible] DHQ.

[illegible] DHQ.

[illegible] DHQ.

[illegible] DHQ.

[illegible] DHQ.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

[illegible] DHQ.

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number H16065 Rank Tpr [illegible] DHQ.

Name Alexander Crowell DAVIDSON of 29 Cdn Armd Recce Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Civil Police Court	6 Jan 42, Shoreham, Sussex	(1) Dangerous Driving (2) Failing to Return to the Scene of an Accident	Fined £5-8-4 (including costs)	N/a

Ex "X"
J A McPherson Maj
Pres

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of December, 1943 (R H Allsopp) Capt
Adjt., 29 Cdn Armd Recce Regt

R H Allsopp Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

22-28

Pte DAVIDSON G.J.

22-28

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this FIRST day of JANUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 3 PARACHUTE BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

~~*[I am unable to appoint :—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

PROCEEDINGS REVIEWED
W. C. Inde Lieut.
25 Jan 44 Rec'd
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	S. TERRELL	8 PARA BN.

Members.

Rank.	Name.	Regiment.
~~[illegible]~~ CAPTAIN	J. P. HANSON ~~TO BE DETAILED BY CC~~	1 CDN PARA BN.
~~[illegible]~~ Lieutenant	D.S. CAILIN ~~TO BE DETAILED BY CC~~	9 PARA BN.

*Signed [signature] BRIG.

Commanding 3 PARACHUTE BRIGADE.

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
No. B-8719, Pte Davidson, G.J. 1 Cdn Para Bn.	1st Charge Sec 8(2) A.A. WOAS using insubordinate language to his superior officer.	NOT GUILTY	NOT GUILTY	Confirmed & commit 16 days of the sentence awarded
	2nd Charge (Alternate Charge) Sec 40 A.A. WOAS, conduct to the prejudice of good order and Military discipline.	NOT GUILTY	GUILTY To serve 28 days (twenty eight days) detention	

8 Jan 43

J.J.L. Hill

COMD. 3 PARACHUTE BRIGADE

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" Answer No.

Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) J.J.L. Hill BRIG. (*Signed*) Clifton Tennell Maj for Pre Parachute Bgd

Commanding 3 PARACHUTE BRIGADE. *Convening Officer* (*e*) *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Sixth day of January, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this Sixth day of January 1944.

Clifton Tennell Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 8 day of January 1944.

J.J.L. Hill

Comd. 3 Parachute Brigade *Confirming Officer.* Brigadier

Promulgated and extracts taken in the case of B 8719, Pte. Davidson G.J.

(*a*) (Dated) 8 Jan 43 (Signed) D. W. Whassell

ASSISTANT [illegible]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

The accused elects trial by Court Martial

CHARGE SHEET

The accused, No. B-8719, Pte. George Joseph Davidson, 1st Canadian Parachute Bn, CA, a soldier of the Canadian Army, placed on Active Service is charged with:

FIRST CHARGE

AA Sec 8(2)

WHEN ON ACTIVE SERVICE, using insubordinate language to his superior Officer

in that he

At Carter Barracks, Bulford, on 21 DEC 43, when undergoing instruction, after being warned to change his tone of voice and insolent manner or he would be put in the guard house, replied to Sgt Hanlon, C.E., 1st Canadian Parachute Bn: "I don't give a shite"

SECOND CHARGE (Alternative Charge)

AA Sec 40

WHEN ON ACTIVE SERVICE, conduct to the prejudice of good order and Military discipline

in that he

At Carter Barracks, Bulford, on 21 DEC 43, when undergoing instruction, after being warned to change his tone of voice and insolent manner or he would be put in the Guard House, replied to Sgt Hanlon, C.E., 1st Canadian Parachute Bn: "I don't give a shit.

G.P. Bradbrooke

(G.P.P. Bradbrooke) Lt-Col.,
C.O., 1 Cdn Para Bn, C.A.

Date 24 Dec 43

Bulford, Wilts.

Stephen Terrell Roy
8th Bn Parachute
Pneus

FORM A.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD IN THE FIELD ON THE 6th DAY OF January 1946

Trial of No. 8.8719. Pte Davidson. 4J.

Prosecutor Lieutenant D.S. Maclean. 1st Cdn Parachute Bn

Defending Officer Lieutenant J. A. Clancy 1st Cdn Parachut Bn

Officers Under Instruction Lieutenant R.E. Harrison 1st Cdn Parachute Bn
Lieutenant O.A. Weikle

1. The Order Convening the Court is read in the presence of the accused.

2. The accused is asked the following questions:-

Do you object to be tried by the President or any Members of the Court, whose names you have heard read over ?

Answer - No.

3. The President, Members, ~~Judge Advocate~~ Lt, Officers Under Instruction, ~~Shorthand Writer, and Interpreter~~ Lt are duly sworn.

4.(a) The accused answers to his name and number, and is duly arraigned on the charges.

(b) ~~The accused having pleaded guilty to the charge(s), R.P. 15(B) and 37(B) are complied with.~~ Lt

5. The accused is asked the questions at the foot of page 2 of APA 3, and answer is recorded beneath the question.

6. The Prosecutor makes ~~(a)~~ the following address.
Lt

Colfthen Tewell Maj
8th Bn Parachute Regt
President

OPENING ADDRESS - PROSECUTION:

I intend to prove that by the impertinent manner in which the accused replied to his superior officer, namely Sgt. HANLON, and that, knowing Sgt HANLON to be his superior officer and knowing him to be in charge of the class of instruction of which the accused was a member; and further, that by his reply to Sgt HANLON "I dont give a shit", that the accused is guilty as so charged.

D.S. Hanlon Jr.

Stephen Jewell Maj.
6th Bn Parachute Regt.
President

Evidence for the Prosecution

1st witness for the prosecution No G-32888 Sgt Hanlon C.E. having been duly sworn states:-

Evid in chief.

I recognise the accused. On or about 1130 hrs on the 21st December 1943 I was taking a class of instruction on the R.R.C. in the hut adjoining the briefing room at Carter Barracks Bulford Camp. The accused was a member of the class. I gave the accused an order and he replied "Yes, sergeant" in a smart cheek manner. I told him that he would have to change his tone or I would place him in the guard room and he replied "I don't give a shit." I placed him under close arrest and fell in the rest.

The reply "yes sergeant" was made in an insolent manner. The accused knew I was his superior officer. The remark "I don't give a shit" was addressed to me personally.

accused. The order which I gave to the accused was to pay attention; he had something in his hand and was not paying attention. I don't know exactly what he was doing. I spoke to the accused in a tone of voice of me in authority. The accused replied to me in a smart aleck and somewhat insolent manner.

I have heard the expression "I don't give a shit" before.

sergeant The reply "yes sergeant" provoked me to say that I did.

Questioned by the Court The accused when he made the remark "I don't give a shit" said it at me and was looking me in the face.

At the time of the instruction the class was grouped around the gun and the accused was slightly to the right and in front of the gun

2nd witness for the prosecution No. H-1332 L/Cpl Dooley R 1st Air Parachute Bn having been duly sworn states:-

Evd in chief

I recognise the accused. In the afternoon of the 21st December 1943 I was in the class taken by Sgt Hanlon at Easter Barracks Bulford Camp; the time was between 1500 and 1520 hours. Sgt Hanlon told the accused to pay attention to which the accused replied "yes sergeant" in a not ordinary tone of voice. Sgt Hanlon told him (the accused) to change his tone of voice or he would land up in the guard room to which the accused replied "I dont give a shit". I was right beside the accused at the time.

The accused knew Sgt Hanlon to be his superior officer and allowed his remark "I dont give a shit"

directly to Sgt Harlon

cross end. The time was just after a break. We were gathered in a semi-circle round the gun about three feet away. The accused was to the front of the gun - sideways to me and facing Sgt Harlon Duo was behind the gun. Sgt Harlon was giving the instruction. The accused was looking at pictures with another detachment and not paying attention.

I don't remember hearing the expression "I don't give a shit" before. The accused is a good type of man.

I identify the original charge sheet against the accused (Marked 'A'). I appreciate that it does not mention that the warning was given by a superior officer and that it does not state to Duom the reply was made.

The accused is informed on his rights in accordance with R.P. 40 (A) and Note 2 on pag. 644 of the Manual of Military Law, 1929 Edition. The accused is asked the following questions:-

Q.1. Do you wish to give evidence as a witness ?

A.1. Yes

Q.2. Do you intend to call any other witness on your behalf ?

A.2. Yes

Q.3. Are they witnesses as to character only ?

A.3. No. As to fact also

Stephen Tennell Maj
8th Bn Parachute Regt
President

Evidence for the Defence

1st witness for the Defence No. 6-28066 Pte Doyle A.D. 1st Cdn Parachute Bn having been duly sworn states:-

cad in chief. I recognise the accused. Between 1500 and 1530 hours on the 21st December 1943 I was a member of a class with the accused which was being taken by Sgt Harlow at Carter Barracks Bulford Camp. We were gathered round the MMG just after a break; Sgt Harlow told us all to pay attention. I was on the extreme left of the group while the accused was on the extreme right in front of the gun. The accused was doing something with his purse. Then Sgt Harlow told him to put

"that" away and pay attention. The accused replied "Yes sergeant" and I noticed nothing out of the ordinary in his tone of voice. Sgt Barlow told him to change his tone of voice ~~or he would put him in the guard room~~. The accused replied "yes sergeant" again. I was not paying attention after this and did not hear anything further said.

I have heard the expression "I don't give a shit" before. It does not mean anything spiteful.

The accused has always used the same tone of voice while I have known him.

corrected I did not hear the accused say "I don't give a shit" that day.

2nd witness for the defence No. 0-202553 Pte Lewis C.D. 1st Cdn Parachute Bn having been duly sworn states:-

cnd in chief

I recognise the accused. Between 1500 and 1600 hours on the 21st December 1943 at Carter Barracks Bulford Camp during a break in R.M.C. instruction I was with the accused sitting down looking at some photographs from his wallet. When an instructor shouted to everybody to return to their lines the accused was having some difficulty in putting the photographs back in the wallet. I heard Sgt Scanlon say to the accused "Pay attention" and I heard the accused reply "yes sergeant" in an ordinary

tone of voice. I did not hear anything further as I joined my own class.

I have heard the expression "I don't give a shit" many times; it is much the same as "I don't give a damn".

No cross-examination.

3rd witness for the defence (the accused) No B-8719 Pte Davidson G.J. 1st Cdn Parachute Bn having been duly sworn states -

At about 1515 hours on the 2nd December 1943 at Carter Barracks Bulford Camp I was ~~in a~~ showing some pictures from my wallet to Pte Lewis during a break in MMG. instruction. An instructor ordered us all to return

to our dances and in doing so I was having difficulty in putting the pictures away. Sgt Hanlon who was instructing my class said to me "Put the pictures away" to which I replied "Yes sergeant" in the same tone of voice that I am using now. Sgt Hanlon then told me to change my tone of voice" to which I replied "yes sergeant" again in an ordinary tone of voice. He then said that if I didn't change my tone of voice he would place me behind bars to which I answered "I don't give a shit." I did not say this at the sgt; I was at

the side of the door and facing the other members of the class as well.

Sgt Hanlon then placed me under close arrest.

The expression "I don't give a shit" means no more to a Canadian soldier than "Bloody" does to an English soldier.

Sgt Hanlon has been victimizing me ever since I applied to return to the Mortar Platoon and I know that he has reported me to the CSM to be a ringleader of trouble. The result has been that he has always been checking me for every little thing

crossed. No questions to ask

FORM C

AFTER FINDING.

Lieut D.S. Maclean is sworn and states:-
1st Cdn Parachute Bn. ~~ctd~~ & MFB 388

I produce a certified true copy of AFB 122 relating to the accused, (The said copy is marked "B" & "C", ~~signed~~ by the President, and attached to the Proceedings). ~~ctd~~

Question to the accused:-

Do you wish to address the Court, or to call evidence as to character ?

Answer:- No.

The (~~Accused~~) ~~ctd~~ (Defending Officer) makes the following plea in mitigation of sentence: attached and marked "D"

Stephen Tennell Maj
8th Bn Parachute Regt
President

"D"

Plea in Mitigation of Punishment in the case of No. B-8719 Pte Davidson G.J. 1st Canadian Parachute Bn

It is not contested that the accused is a good soldier in his duty. The court is asked to take into consideration the fact that the accused was not happy where he was and had made every effort to get back to his old platoon through the proper channels.

It is clear from the evidence that he was being threatened by Sgt Harlow and the court is asked to take a more lenient view of a remark that slipped out under those circumstances.

The accused has been in confinement already for sixteen days.

Stephen Terrell Maj.
8th Bn Parachute Regt.
President

HARGE

"A"

H.Q. ~~Sqn.~~ ~~Sty~~ 1 Cdn. Para. Bn. Coy. Unit Cliffton Sandy Hay 8th Bn Parachute Regt Presided

HARGE against No. B 8719 Rank Pte. Name Davidson G J

Place	Date of Offence	Offence	Name of Witness	Disposal of Case with Name of Officer disposing of it
FIELD	21/12/43	Contrary to A A s40 The accused B8719 Pte. Davidson G J 1 C P B is charged with (W O A S) Conduct to the prejudice of good order and military discipline, in that he, at Carter Barracks on 21 Dec. 43, 1530 hrs, While on Parade under instruction, after being warned to change his tone of voice & insolent manner or he would be put in the guard house, replied, "I don't give a shit"	Sgt Hanlon C.L. 4 Cpl Overby A.	Remanded to C.O. 21 Dec 43 B Berteck Lt

Placed IN CLOSE ARREST 1530 HRS. 21 DEC 43.

(Signature of Investigating Officer)
Commanding

APPENDIX "E"

I, B8719, Pte. George Joseph Davidson, desire to have an officer assigned to represent me at my trial by Court Martial.

(I desire the services of Capt. H.M. MacLeod if he is available).

G.J. Davidson

G.J. Davidson

DEC 24, 1943.

5 Copies

SUMMARY OF EVIDENCE

IN THE CASE OF

No. B-8719 Pte George Joseph DAVIDSON, First Canadian Parachute Battalion, C.A., a soldier of the Canadian Army placed on active service.

CHARGE

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS No. G-32888 Sgt. HANLON, C.E. First Canadian Parachute Battalion, being duly sworn, states: "On 21 Dec 43 at approximately 1530 hrs I was in charge of a class of instruction on the MMG. I had given Pte DAVIDSON an order and he replied "Yes, sergeant" in a smart-aleck

(P.2.)

or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but, whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by accused:-
I have nothing to say at present.

I certify that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

Taken down by me in the presence of the accused at Carter Barracks Bulford, England on this 24th day of December 1943.

D S MacLean Lt
1st Cdn Para Bn CA.

Stephen Terrell Maj.
8th Bn Parachute Regt
President

5 Copies

SUMMARY OF EVIDENCE

IN THE CASE OF

No. B-8719 Pte George Joseph DAVIDSON, First Canadian Parachute Battalion, C.A., a soldier of the Canadian Army placed on active service.

CHARGE

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS No. G-32888 Sgt HANLON, C.E. First Canadian Parachute Battalion, being duly sworn, states "On 21 Dec 43 at approximately 1530 hrs I was in charge of a class of instruction on the MMG. I had given Pte DAVIDSON an order and he replied "Yes, sergeant" in a smart-alecit

(P.2.)

manner. This had occurred on a previous occasion. Pte DAVIDSON, when I told him that he would have to change his tone and insolent manner, or that I would place him in the guard room, replied to me "I dont give a shit". At this reply I had L/Cpl OVERBY fall in two men and escort Pte DAVIDSON to the guard room. That is all."

C.C. Hanlon Sgt HANLON C.E.

The accused declined to cross-examine the witness.

SECOND WITNESS No. H-1332 L/Cpl OVERBY, G. First Canadian Parachute Battalion, being duly sworn, states:—

"On the afternoon of 21 Dec 43, while undergoing instruction on the MMG, Sgt HANLON told Pte DAVIDSON to pay attention. Pte DAVIDSON in reply said "Yes sergeant" in a not ordinary tone of voice. Sgt HANLON told him to change his tone of voice or he would have him in the guard room. Pte DAVIDSON answered "I dont give a shit". That is all".

A Overby L/Cpl OVERBY, G.

The accused declined to cross-examine the witness.

THIRD WITNESS No. G-28066 Pte DOYLE, A.D. First Canadian Parachute Battalion, being duly sworn, states:—

"On the afternoon of 21 Dec 43, at some-time after 1500 hrs, we were under Sgt HANLON's instruction in the MMG. ~~We had~~ Pte DAVIDSON had stated once before that he was not interested in this drill and had tried to get a transfer. Sgt HANLON drew the classes attention after a break and Pte DAVIDSON was talking to another chap. Sgt HANLON told Pte DAVIDSON to put

away his purse and pay attention. Pte DAVIDSON answered "Yes sergeant". I did not notice anything of an insulting nature in his voice. I was then busy getting my mens' attention as I was 2i/C No. 6 Section. The next I heard was Sgt HANLON telling Pte DAVIDSON to pay closer attention and not to use that tone of voice in speaking to an NCO. That is all I can remember except that I became an escort to take Pte DAVIDSON to the guard room."

A.D. Doyle Pte DOYLE, A.D.

The accused declined to cross-examine the witness.

FOURTH WITNESS No. G-28255 Pte LEWIS, C.D. First Canadian Parachute Battalion, being duly sworn, states:—

"On 21 Dec 43, shortly after 1500 hrs and at the end of a break period, Pte DAVIDSON was putting away some pictures he had been showing me. One of the instructors called for everyone to go back to their own detachments. I arose to return to mine when Sgt HANLON told Pte DAVIDSON to pay attention. Pte DAVIDSON answered "Yes sergeant". I returned to my detachment and during the whole procedure I found nothing spiteful in Pte DAVIDSON's behaviour. That is all."

C.D. Lewis Pte LEWIS, C.D.

The accused declined to cross-examine the witness

Question to the accused:—

Do you wish to make any statement

APPENDIX D. M.F.B. 355 "C"

STATEMENT AS TO CHARACTER AND PARTICULARS

OF SERVICE OF ACCUSED.

Number	Rank	NAme	Regiment (or Unit)
88719	Pte.	Davidson, George Joseph	1st Cdn. Para. Bn.CA.

1. The following is a fair and true summary of the entries in the Service and General, ~~Regimental and Squadron, Battery conduct sheets or Company~~ conduct sheets of the accused, exclusive of convictions by a Court-Martial or a civil Court, of summary awards under Section 47 of the Army Act ~~Air Force Act~~ and of cases in which trial has been dispensed with.

	Within last 12 months		since Enlistment	
for		times		times
for	A.A. Sec 9(2) One	times	A.A. Sec 40 One.	times
for		times	A.A. Sec 15 One.	times
for		times	A.A. Sec 24(4) One.	times

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct Sheets of the accused.~~

NOTE: If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this~~ ~~Airforce Act~~ statement.

3. The accused is not under sentence at the present time

or

~~The accused at the present time is under sentence for.....beginning on the.....day of.....~~

4. The accused has been in confinement awaiting trial on the present charges for..nil..days in civil custody, and.16...days in military custody, making a total of 16.....days in custody, of which..nil...days were spent in hospital.

5. The present age of the accused according to his ~~Record of Service~~ Attestation Paper is 23 Yrs. 8 Months.

6. The date of his ~~commission~~ Attestation specified in his ~~Record of Service~~ Attestation Paper is 17 June 41.

7. ~~The service which the accused is allowed to reckon towards discharge is.~~

8. ~~The accused is entitled to reckon.....service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~Air Force~~ Military decoration, or ~~Air Force~~ Military reward (~~or is in possession of or entitled to) State any Air Force decoration or reward.~~

10. ~~(If the accused is a warrant Officer) The accused before he was made a warrant officer last held the regimental rank of.....~~

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

signed this..27.....day of December 1943.

[signature]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked..... signed by the president, and annexed to the proceedings.

[signature]
6th Bn Paradgate Regt.
President

COUNTER NUMBER 539578

HOUR 1400

OPERATOR'S INITIALS GG

RELIEVING OPERATOR SM

4I-126

SGT- DAVIDSON JE

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H/3178 Sgt John Edward DAVIDSON, 5 Coy CDC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)c	Guilty.	Guilty.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for ~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which ~~ ~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the ranks

George A M Edwards Major

(Sgd) ..... 23 Nov 44 (Sgd) G A M Edwards, Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.66(A), 51-56, 120, MML pp 759-761, KR Can 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign hers personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (2)

(2. AA 57A. Delete if not used.)

Date 6 Dec 44 (Sgd) D. C. Spry - Jr

Commanding 3 Cdn Inf Div

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H-3178 Sgt Davidson, JE Edwd	14-12-44	J Mitchell Capt Adjt 5 Coy. C.D.E.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160.

RECEIVED 27 DEC 1944 JAG BRANCH C.M.H.Q.

41-126

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFAB) 40/P & S 2/6064 (42064)

RCA

Convened by ~~Command~~ of Brig E R Suttie Comd 3 Cdn Div dated 2 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Units.
H/3178	Sgt	John Edward	DAVIDSON	5 Coy CDC

PROCEEDINGS REVIEWED Taylor Nicholson Lieut 28 Dec 44 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED Date 16 Dec 44 A.D.J.A. Con. Sec. G.H.Q. 2 Echelon 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Holland on (*date(s)*) 23 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 15 | 25

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr,~~ if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn HQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1040 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ~~ as interpreter? Ans ~~

~~The Interpreter is sworn.(1) Do you object to ~~ as shorthand writer? Ans ~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(2). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr,~~ if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G A M	Edwards	HLI of C
Member	Capt	A C	Lundie	1 Cdn Scot Regt
Member	Capt	W H	Hayward	North Shore (NB) Regt
Judge-Advocate				
Prosecutor				
Defending Offr				

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dl p 31.)

A8. The accused H/3178 Sgt J E DAVIDSON before arraignment makes(s) (was) no plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the adjustment made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Page 1 of 4

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record. 3

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, *KR* 135.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Noise the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex and Ex respectively.(3)
(*1. MS. 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No, I would rely on my defending officer.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which might affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 179(A), KR Con 308, 330, 343-346, Overseas RO 309, 2323. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 30. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. M-3178, Sgt. DAVIDSON, John Edward, No. 5 Coy., Canadian Dental Corps, an N.C.O. of the Canadian Army Overseas, is charged with:-

First Charge Sec 15 (1)(a) Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 2230 hours 29 October 1944 until voluntarily surrendering at 2130 hours 7 November 1944.
(Absent 8 days, 23 hours).

(R.F. Denholm) Lt-col,
Officer Commanding,
No. 5 Coy. Canadian Dental Corps.

In the Field
10 Nov 44.

To be tried by Field General Court Martial.

In the field
12 Nov 44

(D C SPRY) Major-Gen
GOC 3 Cdn Inf Div
CRA 3 Cdn Inf Div

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H/3178	Sgt		John Edward DAVIDSON		
			5 Coy CDC		

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) Nov 44 endorsed by me, ~~for by an offr of my staff for me~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ FHS

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ FHS

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ FHS

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	G A M Edwards (Must be named. RP 106.)	HLI of C	(Unit.)

MEMBERS.

Capt	A C Lundie	1 Cdn Scot Regt	
Capt (Rank.)	W H Hayward (Named or detailed. RP 106.)	North Shore (NB) Regt	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

Dat 23 Nov 44

E R Luther (Signed personally. RP 105 fn 2.) CRA 3 Cdn Inf Div Brig

~~(D C SPRY)~~ Major-General
Commanding 3 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) 40/P&S/1697 (6143)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 763, RP 82, 111.*)

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2693.*)

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*) (*See RP 46 fn 1.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(E)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(c).*)

(vii) Summing up by JA, *if any*. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declaration made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of registered books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

23 NOVEMBER 1944.

I HEREBY CERTIFY THAT I HAVE THIS DAY EXAMINED NO. W 3178 SGT. DAVIDSON James Edward, and IN MY OPINION HE IS FIT TO UNDERGO TRIAL BY COURT- MARTIAL.

(Signature of Medical Offr).

E3. 23 Nov. 44.

In the case of No. H 3178 Sgt. Davidson J.E. No. 5 Coy. C.H.C., C.A.O., charged with being Absent Without Leave. (A.A.15(1))

Plea of Mitigation of Sentence

Before sentence is passed there are several points concerning the accused which should be brought to the attention of the court and which I feel should have some bearing on the final decision reached by the court.

In the first place it was not the premeditated intention of the accused to go A.W.L. but was a combination of circumstances which finally led to this getting intoxicated with liquor and finding himself absent from his unit. It is reasonable to suppose and easy to believe that on awakening in the morning with a hangover and the realization of what he had done that he was fearful of the probable consequences of the escapade and it is also reasonable to believe that he would turn to liquor to give him courage to face the facts. One drink led to another with the result that he again reached the stage of intoxication and failed to return to his unit. There was a repetition of the each day until he finally sobered completely and fully realized the error of his ways and voluntarily returned to his unit.

The accused has given good and faithful service in the army for

over four years and during that time has kept his conduct above unblemished. He has worked hard and has not been on leave for a year and a half. The strain of the present conflict and unnatural way of living for a prolonged period of time has had considerable effect on the decisions we now make and it is not unreasonable to maintain that the accused in a moment of pressure relaxed his hold on himself sufficiently to result in his getting intoxicated and being A.W.L.

Secondly it is going to be very strange for the accused after living the life and enjoying the comforts and privileges of a Sgt. to suddenly relinquish all these amenities. I am sure that each day will forcibly bring to his attention the consequences of discovery disciplin and that he will fully realize the importance of discipline in the army.

A. D. Hamilton Major
C.A.P.C.

Ex A
Gen B.

SUMMARY OF EVIDENCE

in the case of No. M-3178 Sgt. DAVIDSON, J.E., No.5 Coy. Canadian Dental Corps, CAO., charged with being ABSENT WITHOUT LEAVE (AA 15 (1)).

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS:

B5343 C.S.M. (WO II) COLLETT, E.P.D., No. 5 Coy., C.D.C., sworn states:-

"On Sunday, 29 Oct 44 the dental detachment consisting of Capt. Decker, Sgt. Davidson, and Pte. MacDonald reported to this H.Q. Sometime during the afternoon I was instructed by the O.C. to allocate sleeping accommodation for Sgt. Davidson and Pte. MacDonald. I neglected to inform the Orderly Sgt. that these men had been put on H.Q. strength.

At roll-call on the morning of Oct 30th 1944 at 0845 hrs., Sgt. Davidson was missing from parade. This is not unusual with dental detachments just arriving as usually their clinics have to be set up for dental duties.

At 0930 hrs Capt. Decker inquired as to whether Sgt. Davidson was on parade. I informed him he was not, that I thought he was in Capt. Decker's clinic. Capt. Decker informed me he was not there.

On inquiry from Sgt. Van Rysell, the Orderly Sgt. of the previous night, I was informed that Sgt. Davidson was not in his quarters at Tattoo Roll Call, 2230 hrs.

This information was passed on to the Adjutant, Capt. Nacht, by me.

On all subsequent parades, until the 8th of November, 1944, Sgt. Davidson was absent.

At 2145 hrs. on the 7th of November, 1944, the Orderly Sgt., Cpl. Cameron reported to me, in my tent, that Sgt. Davidson had returned from absence, voluntarily. He was accompanied by Sgt. Davidson. I instructed Cpl. Cameron to allocate a bed for Sgt. Davidson.

I reported this fact to the O.C. at 0830 hrs., 8 Nov 44, who instructed me to place Sgt. Davidson under close arrest, pending charges being laid.

The accused declines to cross-examine this witness.

C.R.D. Collett

CSM COLLETT E.P.D.

SECOND WITNESS: M-3148 Sgt. Van RYSSEL, A., No. 5 Coy., C.D.C., sworn states:-

"On the night of 29 Oct 44 at 2230 hrs, being Orderly Sgt., I made a personal check of the barracks, and Sgt. Davidson was not in.

I did not report it to the Sergeant Major, but I made inquiries the next morning, and then made a report to CSM Collett."

The accused declines to cross-examine this witness.

A. Van Ryssel
Sgt. Van RYSSEL, A.

THIRD WITNESS: Capt. G.E. DECKER, No. 5 Coy., C.D.C., sworn states:-

"On the morning of the 30 Oct 44, my Chair Assistant, Sgt. Davidson, did not report for duty. I asked Capt. Nacht to find out whether he was missing, or around camp. He spoke to the Sgt. Major, and the latter informed me Sgt. Davidson had been absent from roll-call that morning.

The following morning I turned over the Sergeant's kit to the Q.M. Stores."

The accused declines to cross-examine this witness.

Geo E Decker
Capt. G.E. Decker.

FOURTH WITNESS: G-45234 C.Q.M.S. BURNETT, C.A.C., #5 Coy., C.D.C., sworn states:-

"The day after Sgt. Davidson left the Unit, his kit was turned over to me by Capt. Decker. It was kept in the Q.M's custody until Sgt. Davidson returned.

When he returned I checked the kit in his presence. He was short one pair of boots."

The accused declines to cross-examine this witness.

A. Burnett
C.Q.M.S. BURNETT, C.A.C.

FIFTH WITNESS: C97010 Sgt. PAQUIN, K.D., No. 5 Coy., C.D.C., sworn states:-

"I am Orderly Room Sgt. of No. 5 Coy., C.D.C. On the morning of 31 Oct 44, I was directed by Capt. M. Nacht to submit a casualty return to 2 Ech showing H3178 Sgt. Davidson J.E. as A.W.L. from 2230 hrs 29 Oct 44. After 72 hrs. A.W.L. I sent a description of Sgt. Davidson to the D.A.P.M. 3 Cdn. Inf. Div (REAR). On the 8th day of absence, 7 Nov 44, I submitted a casualty return to 2 Ech showing Sgt. Davidson still absent as at 2230 hrs. 6 Nov 44.

On the morning of the 8th of November 44 I was notified by CSM Collett that a casualty return would be submitted to 2 Ech showing Sgt. Davidson returning from Absence Without Leave at 2130 hrs 7 Nov 44. This was done."

The accused declines to cross-examine this witness.

K.D. Paquin
Sgt. PAQUIN, K.D.

The C.R's referred to above are attached hereto, marked Exhibits "A" "B" and "C" respectively.

SIXTH WITNESS: F-51398 Cpl. CAMERON, H.A., No. 5 Coy., C.D.C., sworn states:-

"On November 7th I was Orderly Sgt., and at 2130 hrs. Sgt. Davidson reported to me. I brought him down the the Sergeant-Major's tent. The Sgt. Major instructed me to see that he would get a room to sleep in for the night, which I did."

The accused declines to cross-examine this witness.

H Cameron
Cpl. CAMERON, H.A.

The accused was cautioned as follows:-

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I want to make a statment.

Q On oath or not on oath?

A On oath.

The accused, M3178 Sgt. Davidson, J.E., sworn states:

"After coming in off detachment, having been assigned to my quarters, there was nothing for me to do until the following morning.

I proceeded to have a few drinks with friends. We continued to drink, and I remember nothing else until sobering up and returning to my Unit."

J.E. Davidson
Sgt. DAVIDSON, J.E.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of four pages, was taken down by me in the presence of the accused and that RP 4 (C), (D), (E) and (F) have been complied with.

G.D. Macdonald
(G.D. MacDonald) Capt.
No. 5 Coy., C.D.C.

In the Field,
10 Nov 44.

Army Form W.3011A

(Margin for filing purposes)

Serial No.

Number of sheets to this return

CERTIFIED TRUE COPY
G D MacDonald Capt.

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
ATTACHMENTS						
(a) The u/m are att f.a.p. except regt'l duties to units shown w.e.f. date shown						
L 25828	Sjt	Jarvis, N.R.	C.D.C.	H q 3 Cdn Inf Div	w.e.f. 30 Oct 44	
D 3725	Pte	Leroux, O.	C.D.C.	HQ 3 Cdn Inf Div	w.e.f. 30 Oct 44	
C 41764	Sjt.	Shanks, H.W.	C.D.C.	Royal Winnipeg Rifles	w.e.f. 31 Oct 44	
M 56154	Pte	Eggen, C.E.	C.D.C.	Royal Winnipeg Rifles	w.e.f. 31 Oct 44	
(b) The u/m c.t.b.m. units shown w.e.f. dates stated						
H 3178	Sjt	Davidson, J.E.	C.D.C.	N.N.S. Highrs	w.e.f. 29 Oct 44	
D 105118	Pte	Mac Donald A.J.M.	C.D.C.	N.N.S. Highrs	w.e.f. 29 Oct 44	
F 76632	Sjt	Lee, A.S.	C.D.C.	7 Cdn Recce Regt	w.e.f. 30 Oct 44	
G 41485	Pte	Bernier, J.O.	C.D.C.	7 Cdn Recce Regt	w.e.f. 30 Oct 44	
ABSENT WITHOUT LEAVE						
H 3178	Sjt	Davidson, J.E.	C.D.C.	) Absent without leave from 1030 hrs 29 Oct 44		
D 105118	Pte	MacDonald, A.J.M.	C.D.C.	)		

(Unit)

No.5 Cdn Dental Company
3 Cdn Inf Division.

(Date) 31 Oct 44 194

Signed RF Denholm Lt.-col OC

(Signature and appointment of Officer).

(Bde., Divn., Area, etc., with which unit is serving).

This is identical as referred to in the [illegible] of Evidence in the case of H 3178 Sjt Davidson [illegible] taken before me this 10th day of November 1944

(G.D. MacDonald) Capt.

Army Form W 3011A.

This is exhibit 'A' referred to in the Summary of Evidence in the case of H 3178 Sjt Davidson, J.E. taken before me this 10th day of November 1944

(Margin for filing purposes)

Serial No. [redacted]

(GD MacDonald) Capt.

Number of sheets to this return 1

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS) OTHER RANKS.

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
ATTACHMENTS - CANCELLATIONS						
A.F.W. 3011A Page 1 of 9 Nov 44 insofar as paras (a) & (b) refer to the undernamed is hereby cancelled						
K 84909	Sjt.	Fairhurst, E.	C.D.C.	K 73201 Pte	Hurford, J.H.	
L 25828	Sjt.	Fielding, N.	C.D.C.	K 68920 Pte	Donaldson, R.G.	
ABSENT WITHOUT LEAVE						
[redacted] AMENDMENT						
AFW 3011A of 31 Oct 44 insofar as it refers to the undernamed is amended to read " w.e.f. 2230 hrs 29 Oct 44".						
H 3178	Sjt.	Davidson, J.E.	C.D.C.			
D 105118	Pte.	MacDonald, A.J.M.	C.D.C.			

CERTIFIED TRUE COPY

(G.D. MacDonald) Capt., Adjt.

No. 5 Cdn. Dental Company (Unit)

(Date) 10 Nov 44 194 Sgd. GD MacDonald Capt for Lt.-col OC 3 Cdn. Inf. Division

Signature and appointment of officer (Bde., Divn., Area, etc., with which unit is serving).

"This is Exhibit "B" referred to in the Summary of Evidence in the case of H 3178 Sjt Davidson, J.E. taken before me this 10th day of November 1944

(G.D. MacDonald) Capt.

Army Form W.3011A.

Serial No.

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS) OTHER RANKS.

Number of sheets to this return 1

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
ABSENT WITHOUT LEAVE						
H 3178	Sjt.	Davidson, J.E.	C.D.C.	Absent without leave from 2230 hrs 29 Oct 44		
D 105118	Pte.	MacDonald, A.J.M.	C.D.C.	and still AWL from 2230 hrs 5 Nov 44.		

CERTIFIED TRUE COPY

(G.D. MacDonald) Capt., Adjt.
No. 5 Cdn. Dental Company

No. 5 Cdn. Dental Company (Unit)

(Date) 7 Nov 44 194 Signed R.F. Denholm Lt.-col OC 3 Cdn InfDivision.

Signature and appointment of Officer.

This is Exhibit "A" referred to in the Summary of Evidence in the case of H 3178 Sjt Davidson, J.E. taken this purpose before me this 10th day of November 1944.

(G.D. MacDonald) Capt.

Army Form W.3011A.

Serial No. 86

Number of sheets to this return 1

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
ABSENCE WITHOUT LEAVE						
H 3178	Sjt	Davidson, J.E.	C.D.C.	Returned from Absence without leave at 2130 hrs		
D 105118	Pte	MacDonald, A.J.M	C.D.C.	7 Nov 44		
		CERTIFIED TRUE COPY		(G.D. MacDonald) Capt., Adjt. No. 5 Cdn. Dental Company		

No. 5 Cdn. Dental Company (Unit)

(Date) 8 Nov 44 194 Sgd (RF Denholm) Lt.-col OC 3 Cdn. Inf. Division.

Signature and appointment of Officer. (Bde., Div., Area, etc., with which unit is serving)

Army Form W 3011

(Margin for filing purposes)

Serial No.

CERTIFIED TRUE COPY
J. Macdonald Capt

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Number of sheets to this return

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
DETACHMENTS						
The W/s are all		I.D.D. except regtl duties	to units shown			
L [illegible]20	Sjt.	Jarvis, H.H.	C.D.C.	No 7 Cdn Inf Div	W.o.f.	30 Oct 44
L [illegible]25	Pte.	Lorenz, O.	C.D.C.	No 5 Cdn Inf Div	W.o.f.	30 Oct 44
D 87[illegible]	Pte.	Shanks, H.W.	C.D.C.	Royal Winnipeg Rifles	W.o.f.	31 Oct 44
C 4[illegible]76	Sjt.	Nguen, C.H.C	C.D.C.	Royal Winnipeg Rifles	W.o.f.	31 Oct 44
N 56[illegible]94	Pte	Smith, W.J.	C.D.C.	dated at Sea		
The W/s a.t.D.D.		units shown W.o.f.	dated at Sea			
H 1[illegible]76	Sjt.	Davidson, J.E.	C.D.C.	H.M.S. Nigara	W.o.f.	29 Oct 44
D 10[illegible]16	Pte.	MacDonald, A.J.M.	C.D.C.	H.M.S. Nigara	W.o.f.	29 Oct 44
F 7[illegible]12	Sjt.	Lee, A.B.	C.D.C.	7 Cdn Recce Regt	W.o.f.	30 Oct 44
E 4[illegible]85	Pte.	Dernier, J.O.	C.D.C.	7 Cdn Recce Regt	W.o.f.	30 Oct 44
ABSENT WITHOUT LEAVE						
H 1[illegible]76	Sjt.	Davidson, J.E.	C.D.C.	Absent without leave from 1030 hrs 29 Oct 44		
D 10[illegible]16	Pte.	MacDonald, A.J.M.	C.D.C.			

No 5 Cdn Dental Company (Unit)

(Date) 31 Oct 44 194 Signed HF Denholm Lt.-Col O/C 5 Cdn Inf Division
Signature and appointment of Officer. Rks., Divn., Area, etc., with which unit is serving.

This is Exhibit 'A' referred to in the Summary of Evidence in the case of H 3178 Sjt Davidson, J.E. taken before me this 10th day of November 1944 (GD MacDonald) Capt.

(Margin for filing purposes)

Army Form W.3011A.

Serial No. 89

Number of sheets to this return 1

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
ATTACHMENTS & CANCELLATIONS						
A.F.W. 3011A Page 1 of 9 Nov 44 insofar as paras (a) & (b) refer to the undernamed is hereby cancelled.						
K 84909	Sjt.	Fairhurst, E	C.D.C.	K 73201 Pte Hurford, J.H.		
L 25826	Sjt.	Fielding, N.	C.D.C.	K 68920 Pte Donaldson R.G.		
ABSENT WITHOUT LEAVE - AMENDMENT						
A.F.W. 3011A of 31 Oct 44 insofar as it refers to the undernamed is amended to read "w.e.f. 2230 hrs 29 Oct 44".						
H 3178	Sjt.	Davidson, J.E.	C.D.C.			
E 105116	Pte.	MacDonald, A.J.M.	C.D.C.			

CERTIFIED TRUE COPY

(G.D. MacDonald) Capt., Adjt.

(Date) 10 Nov 44

Sgd. GD MacDonald Capt for Lt.-Col OC

(Signature and appointment of Officer)

No. 5 Cdn. Dental Company
3 Cdn Inf Division.

(Unit)

(Bde., Div., Area, etc., with which unit is serving)

Army Form W.3011A.

This is Exhibit 'B' referred to in the Summary (filing purposes) of Evidence in the case of H 3178 Sjt Davidson, J.E. taken before me this 10th day of November 1944 (G.D. MacDonald) Capt.

Serial No. 85

Number of sheets to this return 1

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS) OTHER RANKS.

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
ABSENT WITHOUT LEAVE						
H 3178	Sjt	Davidson, J.E.	C.D.C.	Absent without leave from 2230 hrs	29 Oct 44	
D 105116	Pte	MacDonald, A.J.M.	C.D.C.	and still AWL from 2230 hrs	8 Nov 44	

Certified true copy

(G.D. MacDonald) Capt., Adjt.
No. 5 Cdn. Dental Company.

No. 5 Cdn. Dental Company (Unit)

3 Cdn Inf Division. (Bde., Div., Area, etc., with which unit is serving)

(Date) 7 Nov 44 194 Signed R.F. Denholm Lt.-col OC (Signature and appointment of Officer)

Army Form W 3011A.

Serial No. 56

Number of sheets to this return 1

This Exhibit was referred to in the Summary of Evidence in the case of H 3178 Sjt Davidson, J.E. taken before me this 10th day of November 1944.

(G.D. MacDonald) Capt.

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
ABSENCE WITHOUT LEAVE						
H 3178	Sjt	Davidson, J.E.	C.D.C.	Returned from Absence without leave at 2130 hrs		
D 105118	Pte	MacDonald, A.J.M	C.D.C.	7 Nov 44		
		CERTIFIED TRUE COPY		(G.D. MacDonald) Capt., Adjt. No. 5 Cdn. Dental Company		

No. 5 Cdn. Dental Company (Unit)

3 Cdn. Inf. Division.

(Bde., Divn., Area, etc., with which unit is serving).

(Date) 8 Nov 44 194 Sgd (RF Denholm) Lt.-col OC

(Signature and appointment of Officer).

M.F.B. 355
12M—8-40 (6435-6)
H.Q. 1772-39-626

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H 3178	Sjt	Davidson, J.E.	5 Cdn Dental Company

1. The following is a fair and true summary of the entries in the Company ~~xxxxxxxxxxxx~~ Conduct Sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For LOSING BY NEGLECT HIS CLOTHING	1 times	times
For	times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused ~~by a court-martial or a civil court~~ A.F.A. 72 ~~Air Force Act~~ and summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

~~The accused at the present time is under sentence (~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 5 days in military custody, making a total of 5 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 28 YRS 2 MONTHS 15 DAYS

6. ~~The date of his commission specified in his record of service is~~ ~~attestation~~ attestation paper

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. The accused is entitled to reckon 4 yrs 2 mos ~~service~~ for the purpose of determining his pension, etc.

9. The accused ~~is in possession of or entitled to any air force decoration, or air force reward~~ (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. C.V.S.M. AND CLASP

10. ~~(If the accused is a warrant officer)~~ The accused before he was made a warrant officer last held the regimental rank of

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit dated [illegible], and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— SGT (CONFIRMED) 22 DEC 41 Date of promotion.

In the rank of A/L/CPL 3 MONTHS years.

In the rank of A/CPL 6 [illegible] years.

In the rank of A/SGT 6 MONTHS years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions ~~by a court-martial or civil court,~~ of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number H3118 Rank SGT Name DAVIDSON, JOHN EDWARD of #5 COY. C.D.C. ~~Regiment~~

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
O.C.	9 NOV 44 FIELD	LOSING BY NEGLECT HIS CLOTHING (AA 24 (2)	DEDUCTION OF PAY TO THE AMOUNT OF $5.46	———

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16 TH day of NOVEMBER 1944 [signature]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No. H 3178 Name Davidson, J.E. Sqn., Battery, or Company — Corps C.D.C. — Date of enlistment 11 Sep 40 — Service or Proficiency Pay N/A — Character Exc

Date of last entry in Company Conduct Sheet 16Jul42 — No. and date of last drunk N11 — Period not reckoning towards freedom from extra fine — Sheet No. 4 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order disposing with trial	By whom awarded	Remarks
				Previous sheet destroyed. Last entry 16 Jul 42					
				Certified true copy of MFM 6, 10 Nov 44					
				Signed (F.R. Arnot) Capt., Adjt.					
Field	8Nov44	Sjt		AA Sec 24(2) - Losing by neglect CSM Collett his clothing in that he, at QM CQMS Burnett inventory on 8 Nov 44, was deficient of one pair boots.		Deduction from pay amounting to the sum of $5.46	9Nov44	(RF Denholm) Lt.-col	

(CERTIFIED TRUE COPY OF MFM 6) (OD MacDonald) Capt., Adjt.

Sheet 5

No. H 3178 Name Davidson, J.E. Sqn., Battery, or Company — Corps C.D.C. — Date of enlistment 11 Sep 42 — C.C. Badges N/A — Service or Proficiency Pay N/A — A.F.M. 6

Date of last entry in Company Conduct Sheet 16Jul42 — No. and date of last drunk Nil — Period not reckoning towards freedom from extra fine — Sheet No. 4 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16Jul42	Sjt		Previous sheet destroyed. Last entry 16 Jul 42					
						Certified true copy of MFM 6, 10 Nov 44			
						Signed (G.D. MacDonald) Capt., Adjt.			
Field	6Nov44	Sjt		AA Sec 24(2) - Losing by neglect his clothing in that he, at QM inventory on 8 Nov 44, was deficient of one pair boots.	CSM Collett CQMS Burnett	Deduction from pay amounting to the sum of $5.46	9 Nov44	(RF Denholm) Lt.-col.	
				CERTIFIED TRUE COPY OF MFM 6					
						(G.D. MacDonald) Capt., Adjt.			

(P.T.O.)

I ~~do/do not~~ desire to have the Convening Officer assign an Officer to represent me at my trial.

J. E. Davidson

H-3178 Sgt. DAVIDSON, J.E.

5 V-101

Cpl. Davidson. L.D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-120411 CPL LYAL, DOUGLAS DAVIDSON

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. 40	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ NIL beginning on (date) ~~.....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NIL days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

AWARDED A SEVERE REPRIMAND AND PLACED UNDER STOPPAGES OF PAY IN THE AMOUNT OF £20-10-0 IN RESPECT OF DAMAGE TO CM VEH CL-5926750

(Sgd) ~~Judge Advocate, if any~~ Nov 8, 1945 (Sgd) President. (RP 45, 50.)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) (1. AA 57A. Delete if not used.)

(Sgd) C. Tulloch Major

Date 11 Nov 45 Commanding HQ 2 Can Gen Tpt Coln

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H 120411 CPL DAVIDSON Lyal Douglas	13 Nov 45	D Brandeis Capt A/Cdt Can Base Tpt Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AF 19[illegible]

5V-101

CPA86 (To take the place of CPA82) 40/P & S/168/P(M2) 4/388

FIELD GENERAL COURT-MARTIAL

Convened by Order of Major A.F. Tulloch A/Comd 2 Can Gen Tpt Coln dated 6 Nov 45

RECD 26 Nov 45 JAG

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H120411	Cpl		Lyal, Douglas	DAVIDSON	1 Can Base Tpt Coy RCASC

PROCEEDINGS REVIEWED 26 Nov 45 [illegible] JAG

[illegible] JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) Nov 8, 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation on procedure will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (~~and amenable~~) to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6, fn 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 10.45 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to~~ ~~as interpreter? Ans~~

The Interpreter is sworn.(1) Do you object to ~~.....~~ as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, (E, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	K. J. CREBER	64 CON A TPT COY
Member	CAPT	H. G. YOUNG	66 CON GEN TPT COY
Member	CAPT	G. S. WRIGHT	69 CON GEN TPT COY
~~Judge Advocate~~			
Prosecutor	CAPT	C. W. MAIR	1 CON BASE TPT COY
Defending Offr	~~CAPT~~ LT	J. H. TAYLOR	1 CON BASE TPT COY

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 23.)

A8. The accused H-120411 CPL LYAL, DOUGLAS DAVIDSON before arraignment make(s) (no) (1) objection to the Charge Sheet.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 37), or as one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62, when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A)* (*B*); *duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(1)(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to~~ change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s).~~ Part I of the ~~Schedule is amended~~ accordingly.

(1. *Court may be closed to consider the statement.* ~~*Delete* whole or part not used.~~)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CP 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(extracts)~~ of Conduct Sheet(s) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(d) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)

(1. *MFB 355 or AFB 294.* 2. *MEM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to address on such anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 3079, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL CERTIFICATE (K.R.(Can) 567)

I certify that I have this morning examined No. H/12041 Cpl.
Davidson, L.D. of 1 Cdn. Base Tpt. Coy. RCASC, in my opinion
is fit to undergo trial by Court-Martial

Base.

8 November 45.

N.J. Bell Capt.
Medical Officer

CHARGE SHEET

The accused, M-12041 Cpl Lyle Douglas DAVIDSON, Workshop 1 Canadian Base Transpot Company, Royal Canadian Army Service Corps, a soldier of the Canadian Army Overseas, is charged with:-

Sec 40
ARMY Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF
GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the field, in Holland, at approximately 2200 hours 23 Sep 45, improperly and without authority used Canadian Military vehicle CL-5926750 for his private purposes resulting in damage to the said vehicle to the amount of £20-10-0.

Wheel	£ 2-0-0
Tire and Tube	£10-0-0
Door	£ 1-0-0
Front Spring	£ 3-0-0
Parts cost	£16-0-0

Labour 30 hours @ £0-3-0 per hour.

£ 4-10-0

In the Field
30 Oct 45

L. S. Pommet

(L.S. Pommet) Major
Officer Commanding
1 Cdn Base Tpt Coy RCASC

To be tried by Field General Court-Martial.

6 Nov 45.

A. F. Tulloch

(A.F. Tulloch) Major
A/C.RASC
HQ Comd 2 Cdn Gen Tpt Coln

(Whether the accused to b
of any other force, if authorised
AA 40, 50, RP 104-107, 114.
RP 87(3).
There should be a separate Co
see RP 62, and as to separate trials on c
As to reasons for showing (or) permissive

FI

TIAL

ened by any offr of Can Army Overseas or
of restriction imposed by appropriate authy.
plication see AGAI, Chap V paras 20 and 23.
As to separate charge sheets
RP 7(1)(c), 109.
Accused charged jointly: see RP 16, 109;
see AI 182, 183, fnt. 6A Can Sch. 23B, 23D.)

Number. Rank. Surname. Unit.

H12041 (a) Pvmnt R. (b) Appmt, A/Tt or A/Appmt Cpl DAVIDSON 1 Cdn

Lyal Jame

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above or the a
being subject to military law, had (Name) committed the offence(s) set forth in the Charge Sheet(s) attached ar
(date) endorsed by me, (Name) to be tried by Field General Co
Martial ": I DO T

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary (General
Court-Martial; (Omit this if it is not practicable to delay the trial for reasons connected with the exigencies
(Omit part in brackets when not required for compliance with RP 103(3).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed
or detailed hereunder.

4. I am unable to appoint [at] three Offrs to form the Court. (At a [3] Offr Court-Martial, for the Accused I have
attached hereto.
(AA 40, RP 104(3), 107(1A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat Major/Capt/Capt or Lt (Name) of the Judge-Advocate General's Branch
(RP 104(f). Delete, if none appointed.)

Major
(Rank.)

Capt
(Rank.)

Capt or Lt
(Rank.)

K. J. CRASER
PRESIDENT.
(Must be named. RP 104.)

to be detailed by CC 64 Cdn Gen Tpt Coy RCASC
MEMBERS.
(Named or detailed. RP 104.)

Capt or Lt
(Rank.)

to be detailed by CC 64 Cdn Gen Tpt Coy RCASC
WAITING MEMBER.
(Named or detailed, if any. RP 104.)

64 Cdn A Tpt Coy RCASC
(Unit.)

On Active Service in the Fd
In Holland
(Country.)

Dat 6 Nov 45

to be detailed by CC 63 Cdn A Tpt Coy RCASC
JUDGE-ADVOCATE.
(Must be named, if any. RP 104.)

(Unit.)

H.H. Lidstone
(Signed personally. RP 103 fn 2.)

(Unit.)

Commanding 63 C Cdn Gen Tpt Coln
Convening Officer.

Major
(Rank.)

4338A CPA 88 (To take place of AFA 2 and 3 of RP 103(a))

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS
(Use encircled for audits and notes for use on trial.)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H12041	Cpl	Lyal, Douglas	DAVIDSON	1 Cdn Base Tpt Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Nov endorsed by me, (~~or by an offr of my staff for me~~). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint~~ (a) three Offrs to form the Court, (b) a ~~Pd~~ Offr as President, for the ~~reasons I have~~ attached herewith. (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat~~ the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	K. J. CRABB	64 Cdn A Tpt Coy RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CC 66 Cdn Gen Tpt Coy RCASC	
Capt or Lt	to be detailed by CC 69 Cdn Gen Tpt Coy RCASC	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	to be detailed by CC 63 Cdn A Tpt Coy RCASC	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	NONE	

On Active Service in the Fd

in Holland (Country.)

Dat 6 Nov 45

(Signed personally. RP 105 fn 2.) Major (Rank.)

Commanding H1 2 Cdn Gen Tpt Coln Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 66 (In lieu of AFA 3) 66-7-8 (3/1947) (6143)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions where accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS R, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

PLEA OF MITIGATION - H-12041 Cpl Davidson, L.D.

I would like to make a plea of mitigation for H-12041 Cpl Davidson, L.D.

Throughout the Italian Campaign Cpl Davidson was a very desirable type of soldier. It was here he was promoted to the rank of Cpl. On this continent he also proved to be very efficient and trustworthy in his particular employment.

It is appreciated that on Sunday afternoon Cpl Davidson did borrow another drivers truck with the intention of going to see his brother.

May I bring to the attention of the Court the following facts:-

(a) That Cpl Davidson is married and has one child at home.

(b) His repat point score is 149.(May I ask the courts leniency in dealing with Cpl Davidson.)

(c) Cpl Davidson has been repeatedly held off repat drafts since 27 Sep 45, pending court Martial.

(R.H. Taylor) Lt
1 Cdn Base Ppt Coy RCASC

EX "A"

Summary of Evidence
in the case of
H 12041 Cpl Davidson L. D.

Charged with: Improperly and without authority used Cdn Mil vehicle CL 592 6750 for his private purposes resulting in damage to said veh to the amount of $20-10-0 AA Sec 40.

By Direction of Commanding Officer the evidence is taken on oath.

First: Witness: #79 Cpl Yorge Neef D.P. Netherlands Tpt Colmn, duly sworn states:

I am Cpl Yorge Neef in the Netherlands Tpt Colmn. service #79. On the 23rd Sept. 1945 at approx 2120 hrs I was with my 3 ton wagon of the D.P. on the Boschdijk road in Eindhoven at the village of acht. I was coming from the direction of S'Hertogenbosch going in the direction of Eindhoven. At the time and place mentioned above a vehicle was coming

towards me from the direction of Eindhoven with very blinding headlights, I applied my brakes to slow down a little, I was then driving with my head out at the side watching the trees. At a distance of approx 70 metres, I dimmed my only headlight and continued to drive with townlights only. The other vehicle who was coming from Eindhoven did not dim his lights. When I came near the other vehicle mine came in contact with his, after that I can't remember anything.

The speed at the time of accident was approx 30. M. P. H.

I have read over the above statement & it is true.

The accused does not wish to cross-examine the witness.

Z. Neef.

Ahead true translation.

C. H. [illegible]
Sgt.

③

Second Witness: Statement of Theodorus Gerardus, Maria Oosterbosch, living in Eindhoven, #5 Rijstraat having been duly sworn states:

I am Theodorus Gerardus, Maria, Oosterbosch. On Sunday night at approx 2140 hrs I was walking on the road, Boschdijk in Eindhoven in front of house 1061. At that time & place I saw a vehicle approaching in the distance 100 metres coming from the direction of S'Hertogenbosch. who dimmed his lights & kept them on town lights, the vehicle concerned had normal speed. After a short time the same vehicle became involved in an accident with another vehicle travelling from Eindhoven. One vehicle went to the side of the road between the trees and the other one went off the road & turned upside down. I went to the middle of the road to see what had happened, & went to the vehicle that was upside down. I saw a soldier coming out of the vehicle staggering. I helped him over beside a tree & then I did the same with another soldier out of same vehicle. Later I gave

assistance to the other vehicle, the one that came from S'Hertogenbosch. Further I declare there were three people in the cab of the vehicle from S'Hertogenbosch, one soldier & two girls. I have read over the above statement at it is true.

The accused does not wish to cross-examine the witness.

Theodorus Gerardus Maria Oosterbosch

Certified true translation.
C. H. Mari
Capt.

Third Witness: Statement of Maria Jonette Meyer living at Eindhoven, 11 Freethaan.

I am Maria Jonette Meyer. On Sunday night 23 Sept 45 after 9 o'clock p.m. I was sitting in a truck drive by a Dutch military soldier and another young lady. We were proceeding in the direction of Eindhoven and had just crossed the bridge at Best. The speed he was driving was approx 40 km p.h. and he had his lights on which he dimmed several times during the journey. During the accident I can't remember a thing

(3)

was thinking of home and didn't pay any attention to the traffic coming from the opposite direction. I remember one thing, I asked the driver if he had sufficient room in which to drive as it was very crowded. The accused declines to cross-examine the witness.

Sgd. M. J. Meyers

Certified true translation

C. H. Harris Capt.

Fourth Witness: C 78114 Pte Keating J.V of 1 Cdn Base Tpt. Coy RCASC sworn, states.

I am C78114 Pte Keating J. V. of 1 Cdn Base Tpt Coy R. C. A. S. C., W/S Platoon. On Sunday afternoon 23 Sept 45 at approx 1230 hrs Cpl Davidson asked me if I wanted to go for a ride with him. As I had nothing else to do I said "yes". I went out, got into the truck and we started off. Cpl Davidson said he was looking for his brother in the vicinity of Lindhorn

He arrived at Eindhoven and looked around for his brothers outfit, #17 special Employment Co of for about 1/2 hour. As we couldn't find him we left for Tourinhout and arrived about 1630 hrs. After looking around Tourinhout with no success we had something to eat and started home. About 3 miles out of Eindhoven towards S'Hertogenbosch I was sitting in the spare drivers seat and I noticed a vehicle approaching with two small lights and a big colored light. It appeared to be on its own side of the road. Cpl Davidson dimmed his lights two or three times. It seemed to me that the truck approaching would pass as the same as any other truck but suddenly there was a crash and the next thing I knew we were upside down on the side of the road. I was slightly dazed but managed to climb out of the vehicle alright. I noticed the other vehicle on the opposite

side of the road about ½ on and ½ off. I washed my face off in a nearby house, then an ambulance arrived and took me to No. 38 F.S.U. where I was examined by a doctor & put to bed. The speedometer on the truck was broken but I would say we were going approx 30. m.p.h. The accused declines to cross-examine the witness.

J.V. Keating.

Fifth Witness: 1272486 Cpl Wiltshire J. D.A.P.M. No 7 Police Area RAF, sworn, states:

I am 1272486 Cpl Wiltshire J. of DAPM No 7 Police Area. At Eindhoven on 23 Sept 45 at 2200 hrs I was called to the scene of an accident on the S'Hertogenbosch - Eindhoven Rd. in company with Cpl Lenoir, D and Lagge H. of #7 Police Area. On arriving at scene of accident I saw the Cdn lorry upside-down and the Cdn driver was standing beside his lorry. The lorry was facing S'Hertogenbosch at an angle of about 30° with the front on the edge of the road and the back on the grass. The Dutch lorry was on the opposite side with the front of the lorry facing

towards the verge and the end jutting out into the road to the extent of about 6'. On the rd. behind the Cdn veh. there was a skid mark 21' long showing that the vehicle was skidding slightly sideways. I would say that the skid mark was the off side rear wheel which definitely shows the Cdn. veh. was on its own side of the road. A civilian witness who I now know to be Theodorus Gerardus Maria Oosterbosch came over to us & stated that he had seen the accident. He then said the lorry coming from the direction of Eindhoven dipped its lights then I heard a crash. I ran over to the lorry on the rt. hand side of the road and helped two men to get out.

The accused declines to cross-examine the witness.

J. Wiltshire, Capt.

(9)

Witness: 1565703 Cpl Rennie D. of DAPM
#7 Police Area RAF sworn states:

on 1565703 Cpl Rennie D of DAPM
#7 Police Area R.A.F. On the evening of
23 Sept 45 at approx 2200 hrs I
was called to the scene of an accident
on the St Hertogenbosch - Eindhoven Rd in
company with Cpls Wiltshire & Legge of
#7 RAF Police Area. On arriving at
the scene of the accident I saw a
Cdn lorry lying upside-down on the
right hand side of the road and
a Dutch lorry standing on the opposite
side of the road. I measured
the road in company with Cpl Wiltshire
and examined a skid mark which
I would say was made by the left
hand rear wheel of the Cdn lorry
DR. Cpl.

This showed that the car lorry was on the correct side of the road. It was about 21' long. Whilst taking down these particulars a Dutch civilian approached us whom I now know to be Theodorus Gerardus Maria Oostebosch and stated he had seen the accident. He also stated that he had seen the lorry coming from the direction of Eindhoven dip its lights & then he heard a crash. He then said he had helped the two occupants of this lorry out of their cab. We then assisted in clearing the road of the two lorries.

The accused declines to cross-examine the witness.

D Rennie Cpl
R.A.F. Police
No 4 Area.

Seventh Witness: 1484938 Cpl Legge H. of DAPM #7 Police Area R.A.F. duly sworn, states:

I am 1484938 Cpl Legge H. of DAPM #7 Police Area R.A.F. On 23 Sept 45 at approx 2215 hrs. I was informed there was an accident on the S Hertogenbosch Eindhoven Rd. and in company with Cpls Wiltshire & Rennie I proceeded to the scene of the accident on arrival at the accident I noticed a Cdn truck upside down on the verge of the road. The front on the road and the back on the grass verge. Directly opposite, half on the road and half on the grass verge I noticed a Dutch military vehicle. Immediately on arrival I enquired of the injured & found that they had been removed to

(12)

hospital. I took a statement from the car driver who was still with his truck and then sent him to 38 F.S.U. I tried to find witnesses but the only one was a young civilian boy whose name is Theodorus Gerardus Maria Oosterbosch and he could give me very little information about the accident. A recovery wagon from 1104 General Tpt. Coy Netherlands was on hand and removed the two wrecks to their unit lines after that we came back to our H.Q. and submitted the details of the accident.

The accused declines to cross-examine the witness.

Signed. H Legge. Cpl.
RAF Police. No 7 Area.

The a/m report is attached hereto as Exhibit 9.

Eighth Witness: Capt J. G. McLaughlin,
1 Cdn Base Tpt Coy R.C.A.S.C.
duly sworn states:

I am Capt J. G. McLaughlin of 1 Cdn Base Tpt Coy R.C.A.S.C. and W/S Officer. Cpl Davidson is a F.M.T. clerk in my platoon and at no time did he ask permission to use W. D. vehicle No CL 5926750 for any journey nor did I give him this permission on 23 Sept 45. I am the only person in the platoon that has the authority to sign work tickets. I examined W. D. vehicle CL 5926750 after the accident and found the damage to be:

1 wheel	@	2-0-0
Tire & tube	@	10-0-0
1 door	@	1-0-0
1 Front Spring	@	3-0-0
		16-0-0

The labour involved was 30 hrs @ 3 shillings per hour = £4-10-0, the total damage thus amounting to £ 20-10-0

J. G. McLaughlin Capt

The accused was cautioned as follows:-

Q. Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I want to make a statement

Q. On oath or not on oath?

A. On oath.

The accused sworn, states:-

about three miles past Eindhoven towards S'Hertogenbosch on our way home, I noticed a vehicle approaching with two small side lights and a fairly large yellow one. The large yellow colored lights wasn't so bright as to blind me but it had more of a confusing effect, I could only see vaguely what was in front of me. I dimmed my lights three times trying to get the

other driver to dim his large yellow light. We seemed to be passing in the normal way but at approx fifty feet I suddenly realized he was too far over on my side of the road. I remember putting on my breaks, then there was a crash. I next remember Pte Keating climbing out of the truck which was upside down on the edge of the road and I climbed out after him. I then noticed the other vehicle on the opposite side of the road, half on & half off. I was travelling approx 30 m.p.h. and it was a bright moonlight night.

L D Davidson.

~~Attached hereto are:~~
~~Exhibit "A" - Cpl Legge's report~~
~~Exhibit "B" - Cpl Legge's diagram~~
~~Exhibit "C" - Accident Report~~

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of fifteen written pages were taken down by me in the presence of the accused and that R. P. 4 (C), (D), (E), (F) and (G)(13) have been complied with.

In the field,
14 Oct 45

S. H. Mair Capt.
1 Cdn Base Tpt Coy
R.C.A.S.C.

LIST OF WITNESSES

FOR PROSECUTION

#79 Cpl Y. Naef	D.F. Meth. Tpt Coln
Theodorus Gerardus Maria Oosterbosch	#5 Nynstraat - Eindhoven
Maria J Meyer	#11 Fuutlaan - Eindhoven
C-76114 Pte Keating, J.V.	1 Cdn Base Tpt Coy RCASC
1272486 Cpl. Wiltshire, J	#7 Police Area R.A.F.
1565703 Cpl. Rennie, D.	#7 Police Area R.A.F.
1484936 Cpl. Legg, W.	#7 Police Area R.A.F.
Capt. J.G. McLaughlin	1 Cdn Base Tpt Coy RCASC

FOR DEFENCE

N I L

Ex "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H130.41	CPL.	DAVIDSON LD	1 Cdn Base Tpt Coy RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For NIL times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet NIL

Date of last entry in Field Conduct Sheet NIL

~~2. Previous convictions of the accused by court-martial or civil court, as set out in the schedule hereto.~~ X

*Strike out if not applicable.

~~*3. The accused is by present trial in custody for~~

~~desertion or the~~ ~~offence~~

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for NO days in military custody, *i.e.*, 48 days in open arrest, NO days in close arrest; of which NO days were spent in hospital.

5. The present age of the accused is 28

6. The date of his attestation is 8 AUG 41

7. The service which the accused is allowed to reckon is 4 yrs, 3 months, 3 days 1939-45, Italy, France Germany Star

8. The accused is in possession of; & nd Defence Medal & CVSM & Clasp

State the military decorations (if any) held by accused.

9. *If the accused is a warrant officer or N.C.O.*: The accused has served continuously without reduction in the present grade

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of Cpl	6 May 43
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

527683) W1.24959/3404 24,000 2/43 A.& E. W. Ltd. Gp.698 Form B.296(War)/3

Ex "C"

MFM 6
(AFB 122)
40/P&S/130 (3438)

H-12041 No | DAVIDSON L D Name | Sqn. Battery or Company | RCASC Corps | 5-8-41 Date of enlistment | GC Badges | Service or Proficiency Pay

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				N I L		Duplicate created from MFM 4 24 Oct 45 Record of conduct prior to TOS overseas June 1943 Not Available.			

Certified true copy of original held in my custody

W O Anderson

(W.O. Anderson) Capt
A/Officer Commanding
1 Cdn Base Tpt Coy RCASC

Sgd G R S Foster Capt
Officer IC ASA
Cdn Sect 2 Sch H. BAOR

(PTO)

Ex "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H122441	CPL.	DAVIDSON LD	1 Cdn Base Tpt Coy RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, punishments being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a ~~fair~~ and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For NIL times.

For ____ times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet NIL

Date of last entry in Field Conduct Sheet NIL

~~2. Previous convictions of the accused by court-martial or civil courts are set out in the Schedule annexed.~~ X

*Strike out if not applicable.

*~~3. The accused stands present under the following~~ ____

~~sentences, viz.~~ ____

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for NO days in military custody, *i.e.*, 45 days in open arrest, NO days in close arrest; of which NO days were spent in hospital.

5. The present age of the accused is 25

6. The date of his attestation is 5 Aug 41

7. The service which the accused is allowed to reckon is 4 YRS, 3 months, 3 days 1939-45, Italy, France Germany Star

†State the military decorations (if any) held by accused.

8. The accused is in possession of† a nd Defence Meda l & CVSM & Clasp

9. ~~(If the accused is a warrant officer or N.C.O.).~~ The accused has served continuously without reduction to the present date as :—

	Date of Promotion.
In the substantive rank of ____	____
In the war substantive rank of Cpl	8 May 42
In the acting rank of ____	____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27822) W1-2420/1404 30,000 7/41 A.& E.W.Ltd. Gp.498 Forms/B.296/W(AN)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this Eighth day of November 1945

W.O. Anderson Capt

(W.O. Anderson) Capt
A/Officer Commanding
1 Cdn Base Tpt Coy RCASC

73. H. for DAVIDSON, O.R. (2nd case) **O. H. M. S.**
and
4 H. for LAVOIE, J.R.

See 1011 for Davidson's 1st case)

2

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.9090 Gunner, Davidson, O.R. 4 Cdn Fd Regt, R.C.A.	FIRST CHARGE: A.A. Sec. 22 When in arrest, escaping (see charge sheet att.)	Guilty	Guilty ~~120 Days Detention~~ AHB	Confirmed RCDees Brig
	SECOND CHARGE: A.A. Sec. 15(1) Absent without leave. (see charge sheet att.)	Guilty	Guilty ~~120 Days Detention~~ AHB	
	~~Sentences to run concurrently~~		AHB	
SENTENCE:- To undergo detention for 120 days. 18 Apr 42 AHBirks Major				
A.27215 Gunner LAVOIE, J.R., 4 Cdn Fd Regt R.C.A.	FIRST CHARGE: A.A. Sec. 15(1) Absent without leave (see charge sheet att.)	Guilty	Guilty ~~60 Days Detention~~ AHB.	
	~~Sentences to run concurrently~~		AHB	
SENTENCE:- To undergo detention for 60 days. 18-Apr-42 AHBirks Major				

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) RCDees Brigadier (Signed) AHBirks Major

Commanding R.C.A. 2 Cdn Div. 5th Cdn. Fd Regt R.C.A.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of April, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~

were duly sworn.

* Omit if not applicable.

Signed this 18th day of April 1942

AHBirks Major, R.C.A.
President of the Court Martial.
5 Cdn. Fd. Regt., R.C.A.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

* See footnote (f) on page 762 M.M.L. 1929.

Signed this 18th day of April 1942

AHBirks Major, R.C.A.
President of the Court Martial.
5 Cdn. Fd. Regt., R.C.A.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

Signed this 23 day of April 1942

RCDees
Confirming Officer
C.R.A., 2 CDN. DIV.

Promulgated and extracts taken in the case of B 9090 Gnr Davidson OR

(a) (Dated) 27.4.42 (Signed) John D Harrison Capt
Adjutant 4th Fd. Regt., R.C.A., C.A.

Promulgated and extracts taken in the case of A. 27215 Gnr Lavoie J.R.

(Dated) 27.4.42 (Signed) John D Harrison Capt
Adjutant 4th Fd. Regt., R.C.A., C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Correspondence to be PINNED here.

73 H
74 H

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this Fifteenth day of April, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint :—

*(1. ~~Three Officers to form the Court.~~)

*(2. ~~A Field Officer as President.~~)

*(3. ~~Three Officers having more than one year's service.~~)

for the following reasons, namely :—]

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule."

PROCEEDINGS REVIEWED. [illegible] 14th May 42

President.

Rank.	Name.	Regiment.
Major	A.H. Birks	5 Cdn Fd Regt.

Members.

Rank.	Name.	Regiment.
Capt.	R.C. Thomson	2 Cdn A Tk Regt.
Capt.	W.L.S. McLeod	8 Cdn A Fd Regt.
Lieut [Waiting Member]	W.A. Reid	5 Cdn Fd Regt.

(A-7)

* Must be signed personally by the Officer himself in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R Dew Brigadier

Commanding R.C.A. 2 Cdn Div.

Convening Officer.

MEDICAL

This is to certify that B9090

fit to undergo trial by Field

18- Apr-42.

5

CHARGE SHEET

The accused, B9090 Gunner Davidson, O.R., 4th Cdn Fd Regt R.C.A. a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 22
Army Act

"Being in arrest, Escapes" In that he, in the Field broke out of close arrest on the night of 4/5 Apr 42.

Second Charge
Sec 15 (1)
Army Act

WOAS "AWL" in that he, in the Field absented himself without leave from 0645 hrs 5 Apr 42 until apprehended at 1600 hrs 5 Apr 42.
The following expenses were incurred in apprehending and returning B9090 Gnr. Davidson, O.R. to Barracks £0-10-8.

(P.A.S. Todd) Lt-Col.
Commanding Officer
4th Cdn Fd Regt R.C.A.

14th Day of Apr 1942
In the Field
to be Tried by F.G.C.M.

Brigadier
C.R.A. 2 Cdn Div

AHB

6

I, B9090 Gunner Davidson, O.R., 4th Cdn Fd Regt R.C.A. desire to have an officer assigned to represent me at my trial by Court Martial.

I desire the Services of Lieut R. Douglas
if he is available

Dated In the Field

This 14 Day of Apr 1942. Gnr. D Davidson

Appendix 'B'

7

Record of Proceedings of a F.G.C.M.

1. Trial of B 9090 Gnr. Davidson, O.R.
4th Cdn. Fd. Regt..

Held at R.H.Q. 4th Cdn. Fd. Regt. R.C.A., in the field,
18 April 1942.

2. Court

President.	Major A.H.Birks,	5 Cdn. Fd. Regt..
Members.	Captain B.C. Thomson,	2 Cdn. A. Tk. Reg't.
	Captain W.L.S. McLeod.	8 Cdn. A. Fd. Reg't.

3. Prosecuting Captain J.D. Harrison, 4 Cdn. Fd. Regt..

Defending Lieut. R.S. Douglas. 4 Cdn. Fd. Regt..

4. The accused is arrainged and pleads 'Guilty' to the following Charges:-

First Charge Sec 22, Army Act.

'Being in arrest, Escapes'.
In that he, in the Field, broke out of close arrest on the night of 4/5 April '42.

Second Charge Sec 15 (1) Army Act.

'W.O.A.S. "A.W.L." in that he, in the Field, absented himself without leave from 0645 hours 5 April '42 until apprehended at 1600 hours 5 April '42.
The following expenses were incurred in apprehending and returning B 9090 Gnr. Davidson, O.R. to barracks £ oo-10-o8.

5. Rule of Procedure 35 (B) is complied with.

6. The abstract of evidence is read.

7. The Prosecuting Officer files AFB 296 and certified true copy of MFM 6.

8. The accused declines to make a statement in mitigation of punishment.

9. The accused declines to call any witnesses as to Character.

Certified a True ~~Copy~~ Record of this Trial
this Eighteenth Day of April 1942.

A.H.Birks Major President.
5 Cdn Fd Regt. R.C.A

Abstract

~~Summary~~ of Evidence in the Case of B9090 Gnr DAVIDSON, O.R. taken by Lieut. J.A. Irvine by command of Lt.-Col. [illegible] Todd.

9

1st Witness

C-5348 Bdr. Law, F.J. 14 Fd Bty, 4 Cdn Fd Regt, RCA upon being duly sworn states:

"On 5 April 42 I was Guard Commander at 14th Bty, 4 Fd Regt. At 0645 hrs 5 April 42 I inspected the 14 Bty Detention Room where Gnr Davidson was confined. The room was locked but Gnr Davidson was not there. I searched for him in the billets and he was not there. On 4 April 42 at 2220 hrs I had visited the detention room and Gnr Davidson was present.

On 7 April 42 I was ordered to 2 Cdn Div Reception Camp, Eastbourne where at approximately 1500 hrs I was given custody of Gnr Davidson with certain papers. Gnr Davidson was not in the billets between 0645 hrs 5 Apr 42 and 1600 hrs 7 April 42.

(C5348 Bdr Law, F.J)

Gnr Davidson having been duly warned refused to make a statement.

(J.A. Irvine) Lieut.

AHB

File No. 12/71...

11

Officer Commanding

14th Bty.4th Cdn Field Regt.R.C.A.
Eastbourne

Re:B.9090.Cnr.Davidson.O.R.

1. Forwarded for your information and necessary action, please, and disposal under C.A. Routine Orders (C) No. 388 dated 29.Oct.40.

2. The m/n has no Complaints

London
7-April-42.

[signature]---Lt.
for Capt.S.Dalton
O.C.No.6 Coy.
Cdn.Provost Corps.

AHB

16

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I CERTIFY that the following expenses were incurred by the _____

Police in connection with the apprehension of _____

_____ and are

payable to _____

_____ {Superintendent or Officer i/c Police Station at

Date _____ _____

AUTHORITY for the PAYMENT of a REWARD. *(For Army use only.)*

The Command Paymaster _____ is hereby authorised to

pay to _____ being the person recommended by the

Committing Magistrate, a reward of _____ for the apprehension

of _____

Date _____ _____ (O.C. Unit)
Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below :—

IMMEDIATE.

Army Form O.1618.

13

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(*10054) Wt.[illegible] 10,000 [illegible] A.d.E.W.Ltd. Cp.[illegible]
(*12257) Wt.[illegible]/1710 10,000 [illegible] " " Forms/O.1618/[illegible]

14

DESCRIPTIVE RETURN OF § Gunner. Ormand Robert DAVIDSON B. 9090

was apprehended at 4.pm. (hour) ~~on the~~ 5/4/1942 who of ... and was committed to confinement at HIGHGATE. day on the 6th. day of April. 1942 as a Deserter (or Absentee without leave) from the 4th. Bn. of the Field Regiment

Regiment of Royal Canadian Regeiment

Age 25

Complexion Fresh Height 5' feet 8'' inches

Marks Nil Hair Brown Eyes Hazel

In uniform ~~or plain clothes~~

Probable date and place of attestation	Toronto 8/9/1939.
Probable date of desertion or beginning of absence and from what place.	12.30. A.M. 5/4/1942.
Name occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	P.S.21.S. George Dodd.(Whetstone)
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.	* I saw the defendant walking along High Rd Whetstone.N. I questioned him and asked for his pass, which he failed to produce. and ~~and~~ admitted being an absentee.

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he†

the before-mentioned Corps.

[signature] Signature
Court House, Residence
Highgate N. 6. Post Town
of Committing Magistrate.

[signature] Date of Signature

[signature] Signature of Prisoner

G. Dodd [signature] Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the ... day of ... for the purpose of obtaining such evidence.

Signature
Residence
Post Town
of Magistrate.

Date of Signature

† Care should be taken to insert Army No. and Rank.
‡ Insert "was apprehended" or "surrendered," as the case may be.
* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
§ Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

15

PART II. Army Form O.1618

This portion of the Form, after the Magistrate has committed the soldier and completed recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. ... of ...

Regiment at ... on ... by ...

who was committed as a Deserter (or Absentee without leave) on the ...

RECOMMENDATION FOR REWARD.

I RECOMMEND* ...

Address ...

for a reward of ...

... Signature of Committing Magistrate.

... Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 17

Reg. No. B-9090 Rank Pte. Name Hairdson, O.B. Unit 4 Edn. Fld. R.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
April 42	4 Escorts return fare from LONDON To Eastbourne (½ portion)		5	9
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Eastbourne		4	11
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		10	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

M. C. Byers Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
60/P & S/489

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Westfield	3-2-42	Gnr		Sec 15(1) AA AwL from 0730 hrs sick parade	L/Sgt. Kinninmonth	5 days C.B.	24-2-42	Major McG Young	
Hastings	14-3-42	Gnr.		Sec 40 AA Dirty Web Equipment on Kit inspection	B.S.M. Addie	5 Days C.B.	18-3-42	Major McG Young	
St Leonards		Gnr		AWL AA 15(1) 2 charges Breaking Barracks AA 10(4) Two charges		49 days F.P.	MARCH 2[illegible]	F.G.C.M.	Elected Trial by F.G.C.M.

CERTIFIED TRUE COPY

[signature] Capt

Adjutant 4th Fd. Regt., R.C.A., C.A.

[signature]

(Substitute for AFB 296)
or NFD 585

21

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. B9090 NAME Gnr. Davidson, O.R. UNIT 4th Cdn Fd Regt R.C.A.

AGE 25 MARRIED OR SINGLE Married NO. OF DEPENDENTS Two

DATE OF ATTESTATION 8 September, 1939

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL — MILITARY 13 HOSPITAL — TOTAL 13

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

A CERTIFIED TRUE COPY OF THE N.P.M. A MUST ACCOMPANY THIS FORM

(Officer i/c Records)

Adjt. 4th Cdn Fd Regt R.C.A. Capt Unit.

Dated XXX In the Field

this 18th day of Apr 1942

(To be dated and signed as of date of trial)

Q11B

3

MEDICAL CERTIFICATE

This is to certify that H/27215 Gnr Lavoie J R. is fit

fit to undergo trial by Field General Court Martial.

M. Gander Capt.
(T.A. Gander) Capt.
Medical Officer
4 Cdn Fd Regt, RCA

18-Apr-42.

AHRB

CHARGE SHEET

The accused, ~~a~~ 27215 Gunner Lavoie, J.R., 14th Cdn Fd Bty. R.C.A. 4th Cdn Fd Regt R.C.A., a soldier of the Canadian Army Overseas is charge d with:-

First Charge
Sec 15 (1)
Army Act

WOAS "AWL" In that he was absent w thout leave from 2230 hrs 28 Mar 42 until 2200 hrs 12 Apr 42.

(P.A.S. Todd) Lt-Col
Commanding Officer
4th Cdn Fd Regt R.C.A.

14th Day of Apr 1942
In the Field
to be Tried by F.G.C.M.

Brigadier
C.R.A. 2 Cdn Div

AHB

Appendix 'B'

Records of Proceedings of a F.G.C.M.

6

1. Trial of A 27215 Gnr. Lavoie, J.R.,
4th Cdn. Fd. Regt. R.C.A.

Held at R.H.Q. 4th Cdn. Fd. Regt. R.C.A., in the Field,
18 April 1942.

2. Court

President	Major A.H.Birks,	5 Cdn. Fd. Reg't.
Members	Captain B.C. Thomson,	2 Cdn. A. Tk. Reg't.
	Captain W.L.S.McLeod.	8 Cdn. A. Fd. Reg't.

3. Prosecuting Captain J.D. Harrison, 4 Cdn. Fd. Regt.

Defending Lieut. R.S. Douglas. 4 Cdn. Fd. Regt.

4. The accused is arraigned and pleads 'Guilty' to the following Charges.

First Charge Sec 15 (1) Army Act.

W.O.A.S. "A.W.L." in that he was absent without leave from 2230 hours 28 March '42 until 2200 hours 12 April '42.

5. Rule of Procedure 35 (B) is complied with.

6. The abstract of evidence is read.

7. The Prosecuting Officer files AFB 296 and certified true copy of MFM 6.

8. The accused makes the following statement in mitigation of punishment:-

'I am a bit of a fanatic. I joined the Army to serve my King and Country. Now with a shortage of petrol and paper I see vehicles washed down with oil and I am ordered to put cardboard in my resperator haversack. I consider these and other practices recently put into effect in my unit as scandaleous. I went A.W.L. in protest so that I might be court martialled and bring these things to the attention of higher authority. I also thought that it might be a means of getting out of this outfit."

9. The accused declined to call any witnesses as to character.

Record
Certified a True ~~copy~~ of this Trial
this Eighteenth day of April 1942.

A.H. Birks Major President.
5 Cdn. Fd. Regt. R.C.A.

CHARGE SHEET

The accused, ~~A~~ 27215 Gunner Lavoie, J.R., 14th Cdn Fd Bty. R.C.A. 4th Cdn Fd Regt R.C.A., a soldier of the Canadian Army Overseas is charge d with:-

First Charge
Sec 15 (1)
Army Act

WOAS "AWL" In that he was absent w thout leave from 2230 hrs 28 Mar 42 until 2200 hrs 12 Apr 42.

(P.A.S. Todd) Lt-Col
Commanding Officer
4th Cdn Fd Regt R.C.A.

14th Day of Apr 1942
In the Field
to be Tried by F.G.C.M.

C.F.A. 2 Cdn Div Brigadier

AHB

I, A27215 Gunner Lavoie, J.R. 14th Bty. 4th Cdn Fd Regt R.C.A. desire to have an officer assigned to represent me at my trial by Court Martial.

I desire the services of Major J. Finch 11th Field ambulance RCAMC
if he is available

Dated ~~at~~ in the Field
This 14th Day of Apr 1942

James R Lavoie

Attached Summary of Evidence in the Case of A27215 Gnr L.VOIE, J.R. taken by Lieut. J.A. Irvine by command of Lt.-Co. P.A.S. Todd

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1st Witness

619506 Sgt Mulligan, T. 14 Bty, 4 Cdn Fd Regt, RCA having been duly sworn states:

"I was Orderly Sgt. 28 Mar 42. At 2330 hrs Roll Call it was reported to me that Gnr Lavoie was absent. I investigated and found that Gnr Lavoie was absent. He was not in billets between 2330 hrs 28 Mar 42 and 2200 hrs 12 Apr 42.

(T.M. Mulligan Sgt)

2nd Witness

M41974 Gnr. Robinson, T. 14 Bty, 4 Cdn Fd Regt, RCA having been duly sworn states:

"I was i/c the 14 Bty Guard on 12 Apr 42. At 2200 hrs Gnr Lavoie reported to me. I placed him under arrest.
Gnr Lavoie was not in billets between 2330 hrs 28 Mar 42 and 2200 hrs 12 Apr 42.

(F.Robinson, Gnr.)

Gnr Lavoie having been duly warned refused to make a statement.

(J.A. Irvine) Lieut.

0443

No. A27215 Name Lavoie, J.R. Sqn., Battery, or Company 11th Fd Amb R.C.A.M.C. Corps Date of enlistment 26.2.40 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	16-6-40	Pte		AWOL 0101 hrs 16-6-40 to 1800 hrs 16-6-40	Sgt Baird Sgt Ward	144 Hrs Detn.	17-6-40	L.M. Stuart Lt-Col	
Camp Borden	13-7-40	Pte		AWL 0001 Hrs 13-7-40 to 2200 hrs 14-7-40	Sgt Fearnall Cpl Lunn	144 hrs Det	15-7-40	L.M. Stuart Lt-Col	
Camp Borden	17-8-40	Pte		A.W.L. from 0101 to 2200 hrs	RSM Ralston SgtFearnall	21 Days Det ention	19-8-40	L.M. Stuart Lt-Col.	
Camp Borden	29-7-40	Pte		Absent from Parade at 0615 & 0815 hrs.	Sgt Fearnall Sgt Sewhurst	7 days C.B. forf 1 days pay 4 days C.B.	29-8-40 30-10-40	F.O. Thompson Major O.C. 2 D.D.	
Toronto	29-10-40	Pte		A.W.L. 1 Day					
Toronto	4-12-40	Pte		Failed to appear at a place of parade and remained absent for 30 Minutes	Sgt Dewhurst	7 Days C.B.	5-12-40	O.C. 2 D.D.	

(Substitute for AFB 396)
or AFB 386

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STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No A27215 NAME Gnr. Lavoie, J.R. UNIT 4th Cdn Fd Regt R.C.A.

AGE 30 MARRIED OR SINGLE Married NO. OF DEPENDENTS Four

DATE OF ATTESTATION 26-2-40

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL — MILITARY 6 HOSPITAL — TOTAL 6

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

A CERTIFIED TRUE COPY OF THE N.P.N. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)
Adjt 4th Cdn Fd Regt R.C.A. Capt Unit.

Dated XX In the Field
This 18 day of Apr 1942
(To be dated and signed as of date of trial)

AHB

4L-103

Pte Davidson O.R.

First Case - H-73

2nd " I-101

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B9090 Pte Armand Daniel Arbour ITC B S C
can on 4 IIR and subsequently RQM

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40 (2)	guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one year

(Sgd) — Judge-Advocate, if any. Date awarded. 18 Nov 44 (Sgd) [signature] President. (RP 45, 52)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks [illegible] (1. AA 57A. Delete if not used.)

(Sgd) [signature] Lt-Col. i/c Adm

Date Commanding 21 NOV 1944 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
#B9090 Pte Desrochers O.R.	7th Mch 45	R.C.M.P. Desmond Mayo Camp Commandant, Canadian Section, G.H.Q. 2nd Echelon, 21 Army Gp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that no irregularities in duly obtaining or irregularities in the proceedings subsequent to confirmation of these proceedings have come to my knowledge.

[illegible] Maj-Gen, DAG, 21 Army Gp, HQ, Ch Sec, GHQ 1 Echelon, 21 Nov 44

RECORDED AT CMHQ IN AB 160 — 4L-103

RECEIVED 21 JAN 1945 CMHQ

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA31) 40/P 20 8/1608 (40081) 4/38B

Convened by Order of Brigadier B W Beaumont Comd 21 Army Gp dated 13 Nov 44

ACCUSED. (s 174 (1) (a) (ii))

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B9090	Pte	Armand Richard	Desrochers	1 ITC BSC

PROCEEDINGS REVIEWED IN HQ BRANCH C.M.H.Q. 24 JAN 1945 [signature] Lieut

PROCEEDINGS REVIEWED IN HQ BRANCH C.M.H.Q. 22 JAN 1945 [signature] Lieut

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 18 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (B 126)

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10 20 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. ~~President to accused:~~ Do you object to as interpreter? Ans

~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 111, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G de Lee	
Member	Major	[illegible]	
Member	Captain	J de Boisblanc	
Judge-Advocate	—		
Prosecutor	Captain	G. B. Armstrong	
Defending Offr	Captain	D. S. Macdonald	

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) ~~or plea~~ (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in ML rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. nil (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement(1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..... initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B as appropriate.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (nil) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(m).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(B). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (5), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. Nil

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)

(1. *AFB 355 or AFB 296.* 2. *Note 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Nil (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 88, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED B9090 Pte DAVIDSON, Osmond Robert, RCASC on STRENGTH CDN SEC GHQ 2ND ECHELON 21 ARMY GP, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH:

FIRST CHARGE
SEC 8 (2)
ARMY ACT

WHEN ON ACTIVE SERVICE OFFERING VIOLENCE TO HIS SUPERIOR OFFICER

in that he

In the Field in Belgium on 4 Nov 44 pointed a loaded pistol at C8179 Sgt McFarlane D J, RCASC, on strength Cdn Sec GHQ 2nd Echelon 21 Army Gp.

In the Field
9 Nov 44

(C C McDermid) Major
Camp Commandant
Cdn Sec GHQ 2 Ech 21 A Gp

To be tried by Field General Court-Martial

(A.W.Beament) Brigadier
OIC
Cdn Sec GHQ 1 Ech - 21 A Gp

In the Field
13 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
B-9090	Pte		Ormond Robert	DAVIDSON	Cdn Sec GHQ 2 Ech 21 A Gp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Nov 44 endorsed by me, (~~his/their name(s) stand(s) for trial~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to order the trial for reasons to a superior (qualified) authy~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~The Judge Advocate (is) (is not) to be present at the Court, as a Fd Offr as President for the purpose of this trial.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~The officer as Judge Advocate to be present at the trial is appointed.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	E.P. Lee		Gen List - Cdn Sec GHQ 1 Ech 21 A Gp

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Major	M.L. Troy		Alg Regt - att Cdn Sec GHQ 1 Ech 21 A Gp
Capt	F.A. Baillargeon		Gen List - att Cdn Sec GHQ 1 Ech 21 A Gp.

~~WAITING MEMBER~~

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 13 Nov 44

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(A.W. Beament)

Commanding Cdn Sec GHQ 1 Ech 21 A Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for addl notes for use on trial.)

4/38A (PAM6 (To form of AFAS 40/F & S/1867 (Addl))

Approved:

ADJA.

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 63 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 62.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD items B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting as evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (A).*)

(v) Exhibits numbered Ex A, Ex B, etc.

(vi) Summary of Evidence, if not already an exhibit.

(vii) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 118(C), MML p 758.*)

3. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", unless otherwise directed.

4.

Date NOV 18 1944

Cdn Section G.H.Q. 2nd
Echelon, 21 Army Group.

I hereby certify that I have **this day** examined

Reg. No. B9090 Rank Pte Name Davidson O.R.
and in my opinion he is fit to undergo trial by court martial.

[signature] Capt RCAMC
Medical Officer

Summary of Evidence in the case of B-9090 - Pte Davidson, OR, RCASC, on strength of Cdn Sec GHQ 2nd Echelon, 21 Army Group, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS
For the prosecution

G-8179 - Sgt McFarlane, DJ, RCASC, on strength of Cdn Sec GHQ 2nd Echelon, 21 Army Group, a soldier of the Canadian Army Overseas, having been duly sown, states as follows:

On the night of 4 NOV 44 at approx 2315 hrs, I was up in my quarters, Men's Mess, Kammen Straat, Antwerp, Belgium, when I heard a commotion downstairs. I decided to investigate and proceeded downstairs. On arriving downstairs in the hallway, I found B-9090 - Pte Davidson, OR, and Pte McKenzie, both members of the Kitchen Staff of which I am the NCO in charge. Pte Davidson was sprawled on the floor with Pte McKenzie on top of him. I stepped in and separated them which they did voluntarily. I led Pte Davidson to his quarters which are upstairs in the Men's Mess Bldg. I then returned downstairs to escort McKenzie to his quarters. Having done this, I reported back to my own quarters. Arriving at the top of the stairs leading up from the Mess Hall, I saw Pte Davidson standing on the stairs leading to the attic with a pistol in his hand. Entering my room, I turned around and Pte Davidson followed me and was standing in the doorway of my room. Pte Davidson pointed the pistol at me and said "stay where you are or I will fill you full of lead". I told Pte Davidson that he was rather foolish and to put the gun away, as he was going to do himself more harm than good. Pte Davidson said that he did not care. I do not remember the exact words, but Pte Davidson was mumbling something at the time, to the effect that he had something on his mind that was driving him crazy. I tried to talk Pte Davidson into giving me the pistol or putting it away but he would not listen at all. There was someone coming up the stairs and Pte Davidson turned around from the door and ordered him to halt. It turned out to be Cpl Hachey. Cpl Hachey came into the room and we talked to Pte Davidson and I managed, after about 5 minutes, to take the revolver away from him. The revolver was loaded. I also removed a spare clip from his locker. I tried talking Pte Davidson into going to his bed but he would not do so, so I got a lorry and brought him down to the Guard Room, with Pte Michol and Pte Pierson. Pte Davidson was turned over to Cpl MacEachern, Regtl Police. Pte Davidson threatened, two or three times on the way to the Guard Room, that he would shoot me. Pte Davidson had been drinking, as the odour of liquor on his breath was noticeable.

Cross-examined by the accused.

Question: Sgt McFarlane, how did you get the clip out of my locker?

Answer: On entering your room, you opened your locker with a key attached to your identity discs around your neck. Your holster was hanging on your belt in your locker. You showed me the clip and I took the clip out of the holster myself.

Question: Do you take it by these actions that I was going to give you the clip?

Answer: At the time, I would not take anything for granted.

Question: Referring to my condition, you did not consider me drunk. The reason for asking this question is that, at times, I have had liquor on my breath, and have I ever threatened you before?

Answer: You have never threatened me.

Question: I would like to know whether you considered that I was drunk or not.

Answer: I would not go so far as to say that you were drunk, although you had been drunking.

D J Mc Farlane
G-8176 - Sgt McFarlane, DJ

SECOND WITNESS
For the prosecution

G-19385 - Cpl Hachey, G, RCASC, on strength Cdn Sec GHQ 2nd Echelon, 21 Army Group, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At Antwerp, Belgium, on 4 NOV 44, at approx 2320 hrs, I was walking up the stairs from the Mess Hall, Men's Mess, Kammen Straat, leading to my quarters, when I saw Pte Davidson, a member of the Kitchen Staff, pointing a pistol at Sgt McFarlane. When he heard me, he turned around and pointed it at me. I was approx 5 ft away from him at the time. He told me to halt and then he said "get in your room". When I got into my room, the same room occupied by Sgt McFarlane, Sgt McFarlane and myself talked to Pte Davidson, asking him to give up his revolver and Sgt McFarlane finally managed, after about 5 minutes of talking, to take it from him. Sgt McFarlane then took him to the Guard Room.

Cross-examined by the accused.

Question: You say you saw me pointing the pistol at Sgt McFarlane while coming up the stairs. Where was I standing?

Answer: In the doorway.

Question: Therefore, you could not see Sgt McFarlane?

Answer: There was only Sgt McFarlane in there.

Question: Would you consider that I was drinking at the time?

Answer: In my opinion, you were not sober.

G Hachey
G-19385 - Cpl Hachey, G

THIRD WITNESS
For the prosecution

F-79071 - Cpl MacEachern, JD, CIC, on strength of Cdn Sec GHQ 2nd Echelon, 21 Army Group, having been duly sworn, states as follows:

At the Main Office Building, Antwerp, Belgium, at approx 2350 hrs, 4 NOV 44, Sgt McFarlane brought Pte Davidson to me to be placed under close arrest which I did. He had the odour of liquor on his breath. At the time, he was capable of managing himself.

The accused declines to cross-examine the witness.

J D MacEachern
F-79071 - Cpl MacEachern, JD

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The Accused elects to make a statement:

The Accused, B-9090 - Pte Davidson, OR, RCASC, on strength Cdn Sec GHQ 2nd Echelon, 21 Army Group, a soldier of the Canadian Army Overseas states:

I, B-9090 - Pte Davidson, OR, on Saturday, 4 NOV 44, started drinking just after I left duty, about 1915 hrs. I was in a Cafe where there was an orchestra and in there, I was drinking hard liquor. I left there, and headed home. When coming to, I found myself under guard.

D. Davidson
B-9090 - Pte Davidson, OR

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f), and (g) have been complied with.

G.A. Armstrong
(GA ARMSTRONG) Capt
Officer detailed to take the Summary of Evidence.

Antwerp, Belgium
8 NOV 44

No. B9090 Name DAVIDSON O R Sqn., Battery, or Company Corps RCASC Date of enlistment 8 Sep 39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 3 Signature O.C. Company, etc. CC McDermid Maj Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Petawawa	17 Jun 40	Gnr		AA Sec 15 (1) AWL from 1400 hrs 17 Jun 40 to 1715 hrs 18 Jun 40 (1 day 3 hrs 15 mins)	Bdr MacMillan	Forf 1 day pay 2 days CB	20 Jun 40	Maj Harris	Forf 2 day pay FR&I 149(1)(a)
Field	18 Mar 42	Gnr		AA Sec 15 (1) AWL from 1730 hrs 18 Mar 42 to 2225 hrs 19 Mar 42 and from 1315 hrs 21 Mar 42 to 2200 hrs 22 Mar 42 and breaking out of billets.		56 days FP (7 days remitted)	28 Mar 42	FGCM	Forf 4 day pay FR&I 149(1)(a) Forf 6 day pay FR&I 149(1)(b)
Field	5 Apr 42	Gnr		AA Sec 15 (1) AWL from 0645 hrs 5 Apr 42 to 1600 hrs 5 Apr 42 AA Sec 22 (a) Escaping from arrest	Bdr Law	120 days detn	18 Apr 42	FGCM	Forf 1 day pay FR&I 149(1)(a) Forf 13 day pay FR&I 149(1)(b)
Field	12 Nov 42	Gnr	1	AA Sec 19 - Drunkenness	L sgt Hickman	7 days CB	12 Nov 42	Maj Dodds	

(P.T.O.)

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B9090	Pte	DAVIDSON, Ormond Robert	Cdn Sec GHQ 2 Echn 21 A Gp

1. The following is a fair and true summary of the entries in the ~~Service and Pay Record~~ Regimental and Equation Pay Books C.C.M.D. of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Conduct sheets C.C.M.D. ~~or Company Defaulters Sheets~~ ~~for the last~~ A.F.A. C.C.M.D. of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AA Sec 40 (1)	Two times	AA Sec 15 (1) Four times
For	0 times	AA Sec 11 One time
For	times	AA Sec 40 Two times
For	times AA Sec 19	One times
For	times	times

~~Number of entries of entry or existing absolution~~ C.C.M.D.
~~xxx~~
~~There are no entries in the records or sheets of the accused~~
~~Except the charge on frontispiece, the entries for which are stated as follows~~
~~In the accused does not have previous conviction~~
or.

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under ~~Air Force Act~~ A.F.A. C.C.M.D. A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.
~~The accused is under sentence of imprisonment~~ C.C.M.D.
~~xxx~~
~~The accused at the present time is undergoing sentence for~~ ~~imposed on the~~
~~days.~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~the Army~~ P.C.M.D. civil custody, and 13 days in military custody, making a total of 13 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ C.C.M.D. attestation paper is 27 years 8 months

6. The date of his ~~discharge~~ C.C.M.D. attestation specified in his ~~documentary evidence~~ C.C.M.D. attestation paper is 8 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 5 years 2 months

8. ~~The accused is entitled to reckon~~ ~~towards the purpose of discharge his service in~~

9. ~~The accused is in possession of a certificate of good conduct~~ ~~for~~ ~~service~~ C.C.M.D.
~~The accused is entitled to claim no certificate of character or record~~
~~since~~

10. ~~If the accused is convicted of the present charge he will have to reckon~~ ~~for~~ ~~service~~
~~the unexpired part of~~

11. ~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

12. ~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

C.C.M.O.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number B9090 Rank Pte Unit Name DAVIDSON, Ormond Robert of Cdn Sec GHQ 2 Ech 21 A Gp ~~Regiment~~ C.C.M.O.

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
FGCM	Field 28 Mar 42	AA Sec 15 (1)	Guilty 56 days FP	7 days
FGCM	Field 18 Apr 42	AA Sec 15 (1) AA Sec 22 (a)	120 days detn	Nil

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18 day of Nov 44 C. C. McDonald Major
Camp Commandant,
Canadian Section, G.H.Q. 2nd Echelon.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

E1.

1..

B9090
Pte Davidson. O.R.

Since arriving oversea's I have had trouble with my wife last Sept it came to a head as my wife left my son & up to date I do not know where she is

I tried to go back to Canada at that time but was not allowed to I have worried over this & from time to time have gone out & got drunk this I know now has been very foolish as it has got me into more trouble

It use to be that I could enjoy a friendly drink but now my friends tell me that I get quarrelsome

I can not understand why I should have threatened the Sgt or any one here as they have never hurt me in anyway.

as the evedence has shown I had been drinking also quarelsome and I must of thought the Sgt was interfering so I pick on him I can honestly say I did not know what I was doing at the time

Ormond Davedson.

By the Court

My wife lives in Canada. I tried to get home. The Childrens Aid Society stepped in. She has since run away. My son is now in my mothers care. I work with Sgt. and the Cpl. I came overseas on 5 Sep 40. My son is 7½ yrs old. I am a qualified cook.

E3

PLEA IN MITIGATION OF PUNISHMENT IN THE CASE OF B 9090 PTE DAVIDSON O.R.

Further to the statement which Pte Davidson has just made I would like to point out that while this soldier has had several crimes previously, the nature of these crimes tends to show that he is not a bad character.

I would ask the Court to take into consideration the mental strain this soldier has been under in regard to his marital life. It certainly has not been conducive to a state of complacency.

Pte Davidson, in my opinion, was under such a mental strain that he did not know or realize what he was doing while he was intoxicated. He had no reason to offer violence to either Sgt McFarlane [redacted]. It was not his intention to do them any harm. He was in a condition of extreme mental anxiety and that in conjunction with the alcoholics he had consumed rendered him in such a state as to be not entirely in control of himself. Surely each of you must know what torment one undergoes from continual worry.

I ask the court that this case be given the utmost consideration and that instead of causing this soldier added anxiety, that an effort be made to alleviate the cause of his trouble. If it is deemed, by the Court, that a punishment must be meted out, I ask that it be made as little as possible in view of the extenuating circumstances.

I would point out that Pte Davidson is Category A and is very anxious to serve in the pond lines. May this also be taken into consideration by the Court

S Macdonald Capt
Defending Officer
18 Nov 44

I desire to have Capt K S Macdonald, Cdn Sec GHQ 2 Ech 21 A Gp

assigned by the convening officer to represent me at the Court-Martial

Date:

O. Davidson

(B9090 Pte Davidson, O R

G-126.

te. Davidson. V.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-3711 Pte Vernon John DAVIDSON 1 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.15(1)	Not Guilty	Guilty	except that he was not dressed in civilian clothes on apprehension.
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~As present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of (1 year) one year.

3 Nov 44 (Sgd) J.T. Brodie Major
Date awarded. President. (RP 45, 50.)

(Sgd) ~~Judge-Advocate, if any.~~

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 562-577. Inquiries require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attested before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: "I confirm the finding of the Court but mitigate the sentence so that it shall read, "To undergo detention for six (6) months" and confirm the Sentence as so mitigated"

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

(Sgd) C.W. Connelly Brig

Date 9 Nov 44 Commanding B' Group CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A-3711 Pte DAVIDSON, V.J.	10 Nov 44	W Murray Lt

Promulgated in D.O. 291 d/13 Nov 44

W Murray Lt
Adjutant,
No. 1 Cdn. Gen. Rein. Unit. C.A. (o.s.)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 1 DEC 1944 JAG BRANCH C.M.H.Q.

RECORD AT CMHQ IN AB 160, 46-126

CPA86 (1st Rev of APA3) 40-P & B-1608 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig A.B. Connelly Comd "B" Gp CRU dated 27 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) ~~Appmt, A/R. or A/Appmt.~~	Full Christian Names.	Surname.	Unit.
A-3711	Pte	Vernon John	DAVIDSON	1 CGRU

PROCEEDINGS REVIEWED 14 Dec 44 H C Dunk Capt.

REVIEWING OFFICER

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 3 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, ~~if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter?~~ Ans

~~The interpreter is sworn.(1) Do you object to a shorthand writer?~~ Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, ~~if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.T. Brodie	1 CGRU
Member	Capt	H.E. GILBERT	1 CGRU
Member	Lieut	E.O. VICK	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT	D.D. CARTER	1 CGRU
Defending Offr	MAJOR	N.A. FELLOWES	1 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused A3711 Pte Davidson J.A. before arraignment make(s) (no) (~~a~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 36, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the evidence, if any, in support or against, the finding, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on the charge(s) in the charge sheet.(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~re-opens and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see* RP 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see* RP 35(A). *As to plea when sentence may be death see* RP 35(D).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p* [redacted] 3.

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see* RP 37 (A) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see* RP 59, 60(C); *powers and duties of JA see* RP 103; *duty of Prosecutor see* RP 60(A) (B); *duty and privileges of accused and Defending Offr see* RP 60(C), 87(C), 91, 92; *swearing and withdrawal of witnesses from Court see* RP 81, 82; *questioning of accused see* RP 80, 87(C), 92(B), *and of witnesses see* RP 83-85; *calling or re-calling of witnesses by Court etc see* RP 75-79, 86, 116; *use of Summary of Evidence at Trial see* RP 17(E) *fn* 6; *and responsibility of JA or Pres to record proceedings see* RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans _____ (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by son of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the the charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and allowed on the _____ charge(s), and disallowed on the _____ charge(s), and that, accordingly, the trial will proceed ~~on the former~~, but the accused is (are) found Not Guilty on ~~the charge(s)~~ the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans I do not wish to make a statement. Do you intend to call witnesses on your behalf? Ans Yes Are they witnesses as to character only? Ans NO
(1. RP 185. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the findings of the Court on the _____ charge(s), being subject to confirmation, will be promulgated later.~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans yes
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex K and Ex L respectively.(3)
(1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment?(1) Ans The mitigation of punishment must only by way of [illegible] to prove
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused [illegible] to say on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the date of entry.(2)
(1. Where several accused tried separately see RP 24(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 68, 118, 119(A), KR Con 308, 330, 563-564. Overseas 40D 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

118.

CHARGE SHEET

The accused, No.A.2711, Private Vernon John DAVIDSON, Royal Canadian Army Medical Corps, on strength of No.1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Section 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, at 2359 hours on the 26th day of July, 1944, did absent himself without leave from No.1 Canadian General Reinforcement Unit, till apprehended by Military Police at North Town, Aldershot at 1100 hours on the 23rd day of October, 1944, dressed in Civilian Clothes.

Total number of days absent, 88 days 11 hours 1 minutes.

L. M. Watson

(L.M. Watson) Lieutenant-Colonel
A/COMMANDER

No.1 Canadian General Reinforcement Unit.

In the Field
This 26th day of October, 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

A B Connelly

27 Oct 44

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-3711	Pte		Vernon John	DAVIDSON	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 Oct. 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J.T. Brodie (Must be named. RP 106.)	1 CSRU (Unit.)

MEMBERS.

Captain	H.E. Gilbert	1 CSRU
Lieutenant (Rank.)	E.G. Vick D.E. Rhodes (Named or detailed. RP 106.)	1 CERU (Unit.)

WAITING MEMBER.

Lieutenant (Rank.)	to be detailed by (Named or detailed, if any. RP 106.)	1 CERU (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date 27 Oct. 44

Commanding (A.B. Connelly) Brig Comd "B" Gp CRU Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (FASS (To Dup of AFAS) 40/7 & 8/1607 (440))

MEDICAL OFFICER'S REPORT

I certify that No. A-3711 Pte. Davidson, V.J.

of #1 CGRU is in a good state of health,

and fit to undergo Trial by Court martial.

W H R

W H Rose. Capt.
Medical Officer

Station Field.

Date 3 Nov 44.

M. F. B. 246
25M—6-41 (792)
H.Q. 1172-20 480

Trial of A5711 Pte Davidson V.S. ICGRU. JAB
3 Nov 44

Court opened at 10 AM.
The Court is satisfied it is legally correct and convened and the accused is subject to Military Law.
The accused is brought before the Court
Medical Certificate is produced for the accused.
The accused does not object to the Court, and the Court and officers under instruction are sworn.
The charge is read and the accused pleads not guilty
The Prosecution Lieut D.O. Carter ICGRU proceeds with the prosecution
- A Declaration of a Court of Inquiry on the illegal absence of the accused is produced and admitted.
- a certificate of apprehension of the accused is produced and admitted.
The Prosecution closes.
The Defense opens and submits the evidence is not sufficient.
The Court closes, decides it is, and reopens.
The Defense continues and submits that:
- The charge against the accused is incorrect as to the civilian clothes part.
- That one has to assume that the Court was correct in its declaring the accused as absent
- That the accused was not on the strength

of 1 CGRV on 26 July and submits a Part II order of 1 CGRV dd 28 Aug - with the entry ante dated

- That according to K.R. Can 497 - that the proper entries were not made in Pt II orders.

- That the Court of enquiry must be convened as soon after 21 days as possible. This was not done

- Proceeded a written signed statement that the man was not in civilian clothes when apprehended.

and the Defense thus closed, summing up again.

The Prosecution does not make a closing speech.

The Court closes and finds the accused guilty with the exception of his being dressed in civilian clothes.

The Court then adjourns until 1330 hrs.

At 1330 hrs the Court reopens.

The Prosecution presents the particulars of Service and MFM 6.

The Defense says they are correct, except a remission of 50 days on the award of 150 days detention was left off. ~~th~~

The Court closed and had the proper entry made by Adj't 1 CGRV.

The Court Reopened

The accused reads a statement to the Court appended

The Defense makes a plea for mitigation, appended.

The Court closed to consider sentence.

Davidson Case

Address by Defending officer and Sub Mission of Regimental Documents under OSRO 3131 and RECAN 1988.

JJB.

Ex Whit "H"

Mr President – the prosecution has used the Submission of Regt. documents to make his case – I too will use Regt documents, duly certified and admissable, to frame the ~~defence~~ as a corner Store for the defence.

The charge, I submit, is a very unusual one: in that it ~~accuses~~ the alledges the accused is AWL and then adds "Dressed in civilian clothes" The wearing of civilian clothes has no bearing concerning the Severity of the Sentence if the accused is found Guilty of AWL. and although ~~perhaps~~ not an illegal charge it is perhaps unfare in that it puts the accused in an unfavourable position before the court. It is doubly unjust in this case – as the statement – Dressed in Civilian clothes is untrue.

I propose therefore to divide the defence

Into two parts.
1st. The AWL case Proper.
2nd The wearing of Civilian Clothes.

The prosecution for the AWL case is based on The certificate of True copy of Record of a declaration of a court of inquiry. and also the certificate of apprehension.

Now any certificate of True copy really means that the findings or record of the court of inquiry have been Truly and correctly put on paper. The word True copy does not necessarily mean that the court of inquiry has been carried out in the proper as set down in MML & KR can.

The Submission of this certificate of True copy of Record of a declaration of a court of inquiry is merely used to the Save the Time of numerous officers, NCOs present at Roll call etc and thus make their attendance is strictly at the FOOD not required. unnecessary.

I submit therefore that to be just this documentary evidence must ~~be based on~~ have a bastion of miliculous legal accuracy.

① Before a Soldier can be charged with AWL he ~~may~~ must first be on Strength.

During the year 1944 ~~he~~ the accused was not on ~~Strength up to and including any order~~ ~~Part II Daily orders published by~~ No 1 CGRU ALTHOUGH ~~accused of~~ being AWL at 2359hs 26 Jul 44 (see charge sheet) charged with

During the year 1944 The accused was not shown as being on Strength of No I CGRU up to and including the Daily Part II orders published on 27 Jul 44

he was not even shown on Strength as of orders Part II published on 15 aug 44.

He actually was TOS No 1 CGRU on 28 aug 44 Part II order No 205 page 2 at Bottom and ante-dated.

I file certified True copy orders No 205.

(2)

~~I Submit that ante-dating in the Registered document~~

(1) when a Soldier goes AWL in accordance with KRCAM 497 (i) (ii) (iii) he will be notified in UNIT Part II orders ~~as published on the day following~~ and his name must appear on the day following AWL, His name will appear on the 8th day of absence and will appear on the 22nd day. ~~and~~

& This is all set out for the protection of the Soldier and to facilite the keeping of good records and these are the rules by which we must abide.

In the case of the accused his name did not appear as AWL morders published on or about 26-27 Jul 44. ~~the~~

His name did not appear in orders published on the 8th day. That is 3 Aug 44.

His name did not appear in orders published on the 22nd day That is 22 Aug 44

(5)

It was not until 28 Aug 44 Part II orders
No 205 Page 7. Centre. the 1st. 2nd. 3rd
Amdt publication was noted and again
anti-dated.

I file a certified Part II order No 205
28 Aug 44.

(3) Rules as
In the event of a Soldier being absent
without Leave for a period of 21 clear days
a court of inquiry must be assembled at
once unless the soldier has been apprehended
(AA 72 (1) and read Notes 1.)

This is again for the protection of the
Soldier and the keeping of information
while he is still fresh in the minds of
all the witnesses. In any event these are
the rules as set down in AA.

In the case of the accused this
Court of inquiry was not ordered until
9 Oct 44. It was held a 10 Oct 44 not
22 days but 75 days after absence.

I file certified copy of Part II orders No 299
18 Oct 44. Page 10 Section.

To Sum up gentlemen the members of the court of inquiry overlooked every the regulation which appy, and in addition they themselves were late in sitting.
How could they come to a decision after almost 3 months had ~~all~~ passed and with all this ante-dating.
I only wish that the regulation permitted these three members of the court of inquiry to come here for cross examination.

Now coming to the Second Point the Question of Dressed in Civilian Clothes.

Call. NCO Blaney. British Police. for evidence.
on oath.
(1). Get clean statement.
(2). exhibit coverall.
Bring in STATEMENT of Can. Corporal.

Summary of Defence

(7)

To Sum up the defence - I submit that the court of inquiry and Certified True copy which is the result of the court of inquiry is based on Thin legal ice and there are reasonable doubts concerning the Documentary ~~evidence as produced by the Prosecution. In the case~~. Proof that the Accused went AWL on 26 Jul 44.
Rather Not shown Tos, Not shown AWL on 1st. 8th 2nd. and court 7 days

(2). The Second Part of the docent evidence certificate of apprehension merely ~~shows~~ suggests that a mil Policeman - went to a plot of ground right here in the out skirts of Aldershot and picked up a Soldier in uniform (or wearing fatigue or military clothes) There is certainly Nothing here to Show that this man went AWL on 26 Jul 44.

(3) Finally the charge was wrong. The Soldier picked up by the mil Police was widently the accused - but he I have been able to prove that he was Not in Civilian Clothes. Smart Soldiers Incurred at I ask that the charge be dismissed

STATEMENT by accused

(D)
Ex "1" GB.

I am a married man with a wife and child (12 years of age) back in Canada. Previous to the war I worked as a hospital orderly ~~for 7 years~~ at Byron Sanaturian and finally ~~7 years~~ with the westminster military Hospital at ~~London~~ London Ont ~~Ontario~~. my ~~work~~ work was always satisfactory and not once in civil life did I run foul of the law. my record was clean and I was a good citizen and Father. ~~I am Sorry that the reference from the Westminster has not arrived but there has been little time.~~ ~~Major Fellowes my defending officer sent a cable.~~

I joined the R.C.R. in 1940 and Transferred to the 1st Hussars in 1941 ~~in~~ order to get overseas. I came over in Nov 1941 - once overseas I ~~I~~ my ~~a~~ medical Cat was found to be 'B2' and I put in for Transfer to the

medical corps where my civilian experience could be used. up to that time my record in the army was clear. I have always been a man of action and ~~little~~ Like others got Browned off a bit in 1942 - and 1943 Sitting around waiting for action. During this time I did get into Trouble ~~now~~ once in a while but it was never anything but the odd AWL. I never stole from anyone and I am not a Criminal. I belive my Trouble was due at this Time to uninteresting Training, lack of interest on the Part of my NCOs and generally Poor manmanagent in not keeping me really busy.

When 'D' day came I was another Person. I was warned for action and went as a L.S.T Boat. American Ship No 541 - For three weeks Solid we brought wounded out of France and my work was Satisfactory after the three weeks was over

We were all sent back to the unit evidently because it was decided not to evacuate any more Casualties in this manner. From then on I was have been waiting for the day that I can get back and took after the wounded. I am very distressed at the change "dressed in Civilian Clothes" I left a good Job in Canada to Join up and do my bit and I am still a Soldier who is at his best when kept busy. I was wearing my issue Denims COVERALLS which are on exhibit Here,

(3)

Defence Plea - Mitigation. "J" J.H.

① Accused left home and growing Child away back in 1941.

② He got brawed off in 42-43 Due to lack of interest, ~~and~~ and probably understand

③ He is Smart, and Soldierly - he did his Job on D day. and for 3 weeks on his own Statement.

④. He is not a Criminal Type. ~~but~~ his only crimes appear to be AWL.

⑤ Here is he bright an intelligent - I Submit a copy of Telegram received from Canada.

⑥. Sending this man to prison will do no good, He will be merely an expense to the Public..

⑦. The most effective Punishment for this Soldier if he is guilty of any crime ~~is~~ would be to let him carry wounded under fire in France and this he is most anxious to do.

⑧ I would ask that he be given ~~a Suspended Sentence~~ a Sentence which would insure that he be placed on the first boat either way.

Exhibit "B"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at No.1 C.G.R.U. on the 10 day of OCTOBER 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A-3711, Pte. DAVIDSON, V.J.

DECLARATION.

The Court declare, that A-3711, Pte. DAVIDSON, V.J. Medical Wing, No.1 Cdn Gen Rft Unit, illegally absented himself, without leave from Medical Wing, No.1 Cdn Gen Rft Unit, Cdn Army, England, on the 26th day of July, 1944; that he is still so absent, and that on the 10th day of October, 1944, he was deficient and he is still deficient of the articles shown in Appendix "D" attached hereto.

Names of President and Members

PRESIDENT:	Major E.L. MacKay, E.D.	CIC
MEMBER:	Capt. C.E. Lafond	CIC
MEMBER:	Capt. L.E. Raiche	Gen List

Signature of Commanding Officer B.R. Ker, Colonel,

CERTIFIED TRUE COPY.

[signature] Capt.

Signature of Officer having custody of the Original Record.

Adjt No.1 Cdn Gen Rft Unit.

(12281) Wt.34518/1622 75,000 10/39 A.& E.W.Ltd. Gp.698 Forms/B/115/34

Exhibit "E"

Certificate in accordance with the Army Act
Section 163 (i) (11)

I certify that No. A.3711 Rank. PTE. Name. DAVIDSON. W.J.

Company.....Unit. R.C.A.M.C. No. 1 C.C.R.U.

was arrested at (Time) 11.00 hours in (place) 'THE DAIRY FARM' NORTH TOWN. ALDERSHOT.

on the 23rd day of OCTOBER 1944, as a deserter

(or absentee without leave).

He was dressed in CIVILIAN CLOTHES.

Major,
Assistant Provost Marshal,
158 M.P. Provost Company,
R.M.P. into whose custody
the above named person was
taken on arrest.

Aldershot.
24/10/1944.

Exhibit D 116

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order Issued DO 204 Aug 44 Page 1

Daily Part II Orders issued by COL B R KERR ED COMMANDER

THIS ORDER NO 205 28 Aug 44

Section "A"

OFFICERS

STRENGTH INCREASE

wef 27 Aug 44

TOS on posting from 1 CARU
Auth: 44/Ech 5/1/2 d/24 Aug 44
Capt Reginald John APPELYARD (RCA)

wef 27 Aug 44

TOS on posting from 1 Cdn Base W/S ROMME
Auth: 44/Ech 5/1/2 d/24 Aug 44
A/Capt Alexander Manson BROWN (RCAPC)

wef 21 Aug 44
22 Aug 44

SOS Cdn Army AMI
TOS Cdn Army (UK)
Auth: 409/AK/1(Pers 1) d/26 Aug 44
Major A G DUNCAN (RCAMC)

wef 26 Aug 44

TOS on posting from 1 NETD
Auth: 44/Ech 5/1/2(AG2) d/24 Aug 44
Capt John Donald KILLORAN (RCAPC)

wef 19 Aug 44

TOS on posting from Y3 List 1 CGRU
Auth: 406/Cas/1 d/7 Jan 44
Capt Raymond George McGIVNEY (GEN LIST)

wef 26 Aug 44

TOS on posting from 1 Cdn Reception Depot
Auth: 44/Despatch/3/3(AG2a) d/3 Aug 44
Major Hugh Richard McLAREN (CDC)

wef 27 Aug 44

TOS on posting from 4 CIRU
Auth: 44/Ech 5/1/2 (AG2) d/24 Aug 44
Capt Hugh MacNutt JONES (RCAPC)

wef 27 Aug 44

TOS on posting from 1 COMERU
Auth: 44/UK 5/1/2 d/24 Aug 44
Capt George Buchanan SOMERS (RCAPC)

wef 8 Aug 44

TOS on posting from 2 CACRU
Auth: 2 CACRU DO 190 d/7 Aug 44
Capt Gordon Leighton Elmer WOOD (RCAPC)

ATTACHMENTS

wef 27 Aug 44

Att fap to 1 CERU
Auth: A 7239 d/25 Aug 44
Capt Hubert Haig LLOYD (RCAMC)

wef 20 Aug 44

CTRA fap to 3 CACRU
Att fap to 1 Cdn Base W/S PE wef 21 Aug 44 to 25 Aug 44
Auth: 447/P/Gen/1 d/25 Aug 44
H/Capt Samuel Wladimir SAWCHUK (CCS)

wef 27 Aug 44

Att fap to 1 CARU
Auth: A 7240 d/25 Aug 44
Capt Marvin Manuel MASSEMLIN (RCAMC)

wef 26 Aug 44

CTRA fap to 2 Wing CTS
Auth: MS 2807 d/3 Aug 44
Lieut John Ambrose McKIBBON
Lieut William Robert REFF
Lieut Leslie Edward WILSON

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 204 25 Aug 44 Page 2

Daily Part II Orders issued by COL E R MEREDITH COMMANDER

THIS ORDER NO 205 28 Aug 44

Section "A"
OFFICERS

3 LEAVE OF ABSENCE

Granted 7 days P L with money allowance in lieu of rations for period from 19 Aug 44 to 26 Aug 44

CEN Capt Raymond George McGIVNEY (GEN LIST)
Supvr E G WALLING (Aux Serv)

4 VERIFICATION OF NEXT OF KIN

Mr H B Fletcher (father) 165 Queen St., Sherbrooke, Que.
CAMC Capt Howard Bruce FLETCHER

Mrs Evelyn Margaret MacFarlane (wife) 28 Duke St., Hamilton, Ont.
CAMC Capt James Wallace MacFARLANE

Mrs Catherine G MacNeill (mother) 146 Main St., Glace Bay, N.S.
CAMC Capt Neil Francis MacNEILL

Mrs Lillian Martuniuk (wife) 10443 Telegraph Rd., Inkster, Mich.
CAMC Capt Frank Jospph MARTUNIUK

Mrs T Molloy (mother) 2 Barnes Rd., St. Johns., Newfld.
CAMC Capt John Herbert MOLLOY

5 STRENGTH DECREASE

SOS Cdn Army Overseas & 1 CGRU wef 27 Aug 44
Auth: 409/ZDK/1(Pers 1) d/26 Aug 44
RCAMC Major A G DUNCAN (RCAMC)

SOS on posting to "Q" List wef dates as shown
Auth: CMHQ (MS) 3075 d/23 Aug 44 (CIC)
GEN Major William Henry POILE wef 28 Aug 44 (GEN LIST)
Capt Lancelot NUTHERRY wef 25 Aug 44

CTBA & SOS on posting to BN & PS Hospital wef 21 Aug 44
Auth: 10/Gray IJ/1(M35a) d/24 Aug 44
RCAMC Lieut (M/S) Isabel Jean GRAY

SOS on posting to 12 Cdn Aux Serv Sect wef 26 Aug 44
Auth: 10/Walling EG/1 d/16 Aug 44 (Aux Serv)
CEN Supvr E G WALLING

Section "B"
OTHER RANKS

1 STRENGTH INCREASE

TOS on posting from X List (C PROVO C) wef 26 Aug 44
Auth: 406/Cas/1 d/7 Jan 44
PROVO C 10273 L/Cpl BLAIR D P

TOS on posting from 9 Cdn Gen Hospital wef 26 Jul 44
Auth: 9 CGH DO 112 d/24 Jul 44
RCAMC A 3711 Pte DAVIDSON V J

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order Issued NO 204 6 Aug 44 Page 5

Daily Part II Orders
issued by
COL B R KER ED COMMANDER
Section "B"
OTHER RANKS

THIS ORDER NO 206 28 Aug 44

STRENGTH INCREASE

TOS on posting from X3 List (RCAMC) wef 28 Aug 44
RCAMC M 29616 Sgt MOSS J C (RCAMC)

TOS on posting from X5 List (Aux Serv) wef 25 Aug 44
Auth: 406/Cas/1 d/7 Jan 44
AUX K 71920 Tpr McCREIGHT D L (Aux Serv)

TOS on posting from BN & PS Hospital wef 27 Aug 44
Auth: 408/RCAMC/1(PTA) d/9 Aug 44
RCAMC B 62050 Pte PICKFORD A J (RCAMC)

TOS on posting from 24 Cdn Gen Hospital wef 26 Aug 44
Auth: REC/G 43097 d/31 Jul 44
RCAMC G 43097 Pte PHILLIPS A (RCAMC)

TOS on posting from 2 CARU wef 24 Aug 44
Auth: A 7080 d/22 Aug 44
ROA E 21879 Sgt SMITH J (ROA) Storeman "C"

TOS on posting from X4 List (C PROVO C) wef 18 Aug 44
Auth: 19/Gen/1/4 (AAG)(Pers) d/19 Jul 44
PROVO C 70085 L/Cpl TAYLOR D E

TOS on posting from 1 Cdn Reception Depot wef 27 Aug 44
Auth: 44/DIS/3/3(AG2a) d/3 Aug 44
RCAMC H 33038 Pte THOMAS C D (RCAMC)

TOS on posting from 15 Cdn Educ Sect wef 26 Aug 44
Auth: A 7249 d/26 Aug 44
EDUC B147157 A/Cpl WRIGHT S W Clerk "C"

TOS on posting from 3 CARU & att fap to 1 Cdn Sel & Appr Cen wef 21 Aug 44
Auth: 3 CARU DO 194 d/23 Aug 44
GEN K 57026 L/Sgt (Pre-Cadet) JAMES W A
H 42170 Cpl (Pre-Cadet) WRIGHT R

TOS on posting from units shown while attending CMHQ Course 12 wef 27 Aug 44
Ser 22
Auth: AO 222 d/8 Sep 42

GTW	B133274	Tpr McGOWAN W M	Oper "C"	1 CARU
	C101917	Tpr CROMWELL E J		1 CARU
	D131743	Tpr TREMBLEY L F		1 CARU
	D131461	Tpr HELL J J		1 CARU
	K 40631	Tpr MacDONALD R G		1 CARU
	F 36460	Tpr SAXTON D R		1 CARU
	B133211	Tpr LIGHT G T		1 CARU
	K 42955	Pte McKENNA J J		1 CIRU
	M10749	Pte YOUNG J W H		1 CIRU
	A 51316	Pte CAMPBELL D G		1 CIRU
	K 51833	Pte DOUGLAS S A		1 CIRU
	B115523	Pte JUDGES A G		1 CIRU
	K 339	Pte KING J D		1 CIRU
	K 40991	Pte POTOSKY D J		1 CIRU

1 STRENGTH INCREASE

TOS on posting from 2 CAORU wef 27 Aug 44
Auth: AO 222 d/8 Sep 42

OTW	C 75177	Tpr	THOMPSON G E	L101269	Tpr	WINTER E S	
	G 47353	Tpr	McCOURT W H	B142272	Tpr	CASEMENT L E	
	C103221	Tpr	O'NEIL R	B133001	Tpr	GRIFFITHS M C	
	H 26010	Tpr	FALCONER P R	L107325	Tpr	JENKINS B J	
	B148739	Tpr	DAVIDSON H W				

TOS on posting from 4 CIRU while attending CMHQ Orse 138 Ser [illegible] wef 28 Aug 44
Auth: AO 222 d/8 Sep 42

OTW	G 43001	A/Sgt	BUTLER W F	B 43638	A/Cpl	BLACKWELL E [illegible]	
	B 41420	CSM	USHER H C	G 60577	Pte	PRICE S G	
	G 64935	Pte	DOSENCE R D	G 1740	Pte	ELLIOTT H W	
	C 17746	A/Cpl	KIRKPATRICK R C	B144319	Pte	MURRAY A E	
	G 51432	Pte	PARKER E A				

TOS on posting from 1 COOD while attending CMHQ Orse 139
Auth: AO 222 d/8 Sep 42 wef as shown

ATW	A 59955	Pte	FURSDON G F	Clerk "C"	wef 26 Aug 44
	B 1071	Pte	HENDERSON S F	Storeman "C"	25 Aug 44

TOS on posting from 2 CAORU while attending CMHQ Orse 139 Ser [illegible] wef 25 Aug 44
AO 222 d/8 Sep 42

OTW	L 36356	Tpr	LUKENBILL C C	Clerk "C"	

TOS on posting from 1 CABORU while attending CMHQ Orse 139 wef 26 Aug 44
Auth: AO 222 d/8 Sep 42

OTW	L 92114	A/L/Cpl	SHARPE A J J (ROSS)	Clerk "C"	

TOS on posting from YS List 1 CCRU wef dates as shown
Auth: 406/Cas/1 d/7 Jan 44

PROVO	F 77883	L/Cpl	BROWN F		wef 27 Aug 44
A WING	B 17443	Gnr	FORSYTH J R		27 Aug 44
GEN	G 7307	A/Sgt	STARRIT R F	Clerk "C"	25 Aug 44
INTELL	A103951	A/L/Cpl	WARTY D G		27 Aug 44

Amendments

DO 138 (1B) d/10 Jun 44 insofar as it refers to the u/m OR is amended to read regimental number "D10120"

PROVO	D 16120	Gnr	GRAY J E	

DO 139 (1B) d/5 Jul 44 insofar as it refers to the u/m OR is amended to read "Pte Marlatt"

GEN	A 44163	Pte	MARLITT F L (ROSS)	

DO 150 (1B) d/24 Jun 44 insofar as it refers to the u/m OR is amended to read "Pte May A D"

PROVO	K 53402	Pte	MAY A D	

2 ATTACHMENTS

OTBA fap to 16 CBDO wef 20 Aug 44
Att fap ex regt'l duty to 1 Sub W/S ROEME & for duty to 16 CBD
Auth: CRU Dent 59 d/26 Aug 44 wef 30 Aug 44
GEN D117529 Sgt BROWN A D Dent Asst "B" (CDC)

OTBA fap ex regt'l duty from 16 CBDO wef 20 Aug 44
Auth: CRU Dent 50 d/22 Aug 44
GEN M 34975 Cpl DEMKO T Dent Asst "B" (CDC)

Att fap to Methods of Instr Sub-Wing OTS wef 27 Aug 44
Auth: A 7186 d/24 Aug 44
ROAMC C 51516 Sgt DOLIMAN F

OTBA fap to 14 Coy CFC wef 26 Aug 44
INDUC A 49981 A/Cpl FAIRBANKS J T

Att fap to HQ "D" Gp wef 28 Aug 44
Auth: GLC/620 d/26 Aug 44
AIR POOL B 83991 Pte GABRIEL A G

OTBA fap to 1 Wing OTS wef 26 Aug 44
ROAMC D 92506 Sgt LAMBERT A C Wardmaster "B"

OTBA fap to 2 Wing OTS wef 26 Aug 44
PROVO K 53402 Pte MAY A E
INTELL H 59203 A/Cpl STARZLEWIR J W Dvr Mech "C"

Att fap to 22 Cdn Gen Hospital wef 27 Aug 44
Auth: 408/RCAMC/1(Org) d/24 Jul 44
ROAMC G 43170 Pte TREMARTEN G R

Att fap to Methods of Instr Sub-Wing OTS wef 27 Aug 44
Auth: A 7186 d/24 Aug 44
PROVO K 20019 Cpl WHITE F L
M 55532 A/Sgt WILSON W E

Att fap to 11 Cdn Gen Hospital wef 26 Aug 44
Auth: 408/RCAMC/(Org) d/24 Jul 44

ROAMC	D135030	Pte ADAMS H B	H 43217	Pte	BATES T A
	D143482	Pte BRUNEAU J	L 10778	Pte	COSTAIN F S
	A106257	Pte CRUDGE F L	C 52853	Pte	DAVIDSON J A
	A106994	Pte DEGEN H C	J 56318	Pte	DOBSON W L
	M 8079	Pte DOTY A F	H 43195	Pte	DUCHARME W E
	D157876	Pte GAILANT P	E 15310	Pte	GAWTHLER C
	B118430	Pte HAIG R L	L155513	Pte	HAMILTON R T
	A 259	Pte HANSEN W R	B 31338	Pte	HERBERT W J
	L108095	Pte HOLIOFF J	A 57549	Pte	JACOBS R A

OTBA fap to 26 Tech Trg Gp on completion of CMHQ Crse 281 Sec
PROVO L 10120 Pte BRAY J E wef 24 Aug 44
D131773 Pte GAGNON J P L R
A 68265 L/Cpl CECILE F

Cancellation

DO 187 (28) d/7 Aug 44 insofar as it refers to the u/m OR is cancelled
PROVO D131773 Pte GAGNON J P L R

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 204 [illegible] Aug 44 Page 6

Daily Part II Order issued by COL B R KLR ED COMMANDER

THIS ORDER NO 205 28 Aug 44

Section "B"

OTHER RANKS

3 ON COMMAND: ON COURSE:

Returned from CMHQ Orse 261 Ser 10 at 26 Tech Trg Gp wef 24 Aug 44
A WING L102662 Gnr CAMPBELL L K

4 LEAVE OF ABSENCE

Granted 7 days P L with money all'ce in lieu of rations for period 19 Aug 44 to 26 Aug 44
RCAMC K 1413 Pte CHUNGRANES R G

Granted 7 days P L with money all'ce in lieu of rations for period from 18 Aug 44 to 25 Aug 44
RCOVC C 70085 L/Cpl TAYLOR D E

Granted 7 days P L with money all'ce in lieu of rations for period from 21 Aug 44 to 28 Aug 44
RCASC B 26783 Pte WHYTE G G

5 PAY & ALLOWANCES

Granted a daily regt'l rate of pay of $1.50 having completed 6 months service with efficiency & good conduct wef 25 Jul 44
RCAMC K 1882 Pte STANLEY F

6 POSTINGS

RCAMC Posted from Reinf RCAMC Coy to Basic PE A Wing wef 25 Aug 44
A WING B 43084 Pte DANYLCHUK M

RCAMC Posted from Reinf RCAMC Coy to No 4 Standard Incre A Wing wef 25 Aug 44
A WING E 29441 Pte DEMOY O

Posted from Reinf RCAMC Coy to Reinf CTW while attending CMHQ Course 138 Ser 22 wef 27 Aug 44
RCAMC
CTW
B 50556 Pte PELLETIER J J
B124735 Pte HARQUAIL D E
B157539 Pte CHAMILTON L N
G 43044 Cpl MILLS J W
B 70490 Pte WEBB L D
B 62787 Pte LAFOLIETTE P E
B115554 Pte GABA N C

7 TRANSFERS

Transferred from RCA to CDC wef 25 Aug 44
Auth: 408/1 CGRU/1(PTA) d/21 Aug 44
CDN B 9625 Gnr ALLAIR L L

Transferred from CAO to CMSC wef 26 Aug 44
Auth: 408/Trans L/2(PTA) d/26 Aug 44
CAO POOL D 27032 Gdsm LOWERY S T

8 APPOINTMENTS: PROMOTIONS: REVERSIONS:

Reverted to permanent grade of Pte wef 26 Aug 44
To draw a daily regt'l rate of pay of $1.50 wef 27 Aug 44
RCOVC C 10273 L/Cpl BLAIR D F

To be A/Sgt with pay wef 23 Aug 44
CDN E 37031 Cpl BOWEN A

Exhibit "E"
J/B

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 204 26 Aug 44 Sec 7

Daily Part II Order issued by COL B R KER ED COMMANDER
Section "B"
OTHER RANKS

THIS ORDER NO 205 28 Aug 44

3 APPOINTMENTS: PROMOTIONS: REVERSIONS

Confirmed in the rank of Cpl wef 10 Aug 44
GEN A 11458 A/Cpl LIVINGSTONE D J

Reverted to permanent grade of Pte wef 18 Aug 44
To draw a daily regt'l rate of pay of $1.50 wef 19 Aug 44
PROVO C 70085 L/Cpl TAYLOR D E

4 TRADESMEN RATES OF PAY

Amendment

DO 200 ("B") d/22 Aug 44 insofar as it refers to the u/m OR is amended to read wef "15 Aug 44"
WELL D 61421 Sgt PINEAULT R (SOS to 1 Cdn Interpreters Pool)

9 ABSENT WITHOUT LEAVE

AWL from 2359 hrs., 26 Aug 44
✓ RAMC A 3711 Pte DAVIDSON V J

AWL from 2359 hrs., 26 Aug 44
Still absent (6th day) 2359 hrs., 3 Aug 44
✓ RAMC A 3711 Pte DAVIDSON V J

AWL from 2359 hrs., 26 Aug 44
Still absent (22 day) 2359 hrs., 17 Aug 44
✓ RAMC A 3711 Pte DAVIDSON V J

11 PUNISHMENTS

Awarded 28 days Field Punishment and a forfeiture of 28 days pay vide Art 149 (2) FR&I and forfeits 28 days pay vide Art 149 (1) (a) FR&I. Placed under stoppages of pay in amount of $1.12.7 for AWL from 0600 hrs., 27 Jul 44 to 2135 hrs 23 Aug 44
Absent 27 days 15 hrs 35 mins Sec 15 (1) A A
Total forfeiture 56 days pay
Total stoppages of pay $1.12.7 (Cost of apprehension)
GEN A 65828 Pte SMITH H wef 25 Aug 44

12 MARRIAGES: DEATHS: BIRTHS:

Married with permission to Miss Agnes Ruth Purssord at All Saints Parish Church, New Eltham, Woolwich on 19 Aug 44
Cert #D/3 746104
RCAMC H 66230 Pte SHARP J I

13 NEXT OF KIN

Change of N-of-K to Mrs Agnes Ruth Sharp (wife) 499 Footscray New Eltham, London, S.E.9, England.
RCAMC H 66230 Pte SHARP J I

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 204 28 Aug 44 Page 8

Daily Part II Orders issued by COL B R KER ED COMMANDER

Section "B"

OTHER RANKS

THIS ORDER NO 205 28 Aug 44

14 HONOURS & AWARDS

Awarded one good conduct badge wef 2 Feb 44
RCAMC M 67724 Pte BROWN L C

Awarded Canadian Volunteer Service Medal & Clasp wef 16 Aug 44
RCAMC K 40214 Pte RITCHEY D E (Att 2 CMC)

Awarded Cdn Volunteer Service Medal and Clasp wef 25 Aug 44
A WING B143111 Pte SCHWARZMANN M

15 STRENGTH DECREASE

SOS on posting to Y2 List 1 CGRU on committment to Cdn Detn Bks
Auth: 406/Cas/1 d/7 Jan 44 wef 28 Aug 44
CM POOL C 96400 Pte LEPINE R P

SOS on posting to 14 Cdn Aux Serv Sect wef 26 Aug 44
Auth: EAR 11/59 d/24 Aug 44
GEN A 44163 Pte MARLATT F L

SOS on posting to 4 CIRU wef 21 Aug 44
Auth: 408/Provo/1(PTA) d/14 Aug 44
PROVO F 50015 Pte NEWCOMBE J H

SOS on posting to Y3 List 1 CGRU on adm to 4 Cdn Gen Hosp wef dates shown
Auth: 406/Cas/1 d/7 Jan 44
RCAMC F 52694 Pte SPINNEY P N wef 27 Aug 44
PROVO D142317 Pte LAROCHE G J 24 Aug 44

SOS on posting to Y3 List 1 CGRU on adm to 22 Cdn Gen Hospital wef 26 Aug 44
Auth: 406/Cas/1 d/7 Jan 44
GEN M 16119 Sgt McINTOSH G (CIC)

SOS on posting to 1 CASCRU wef 25 Aug 44
Auth: A 7185 d/24 Aug 44
GEN B 93665 Pte BROWN R A
L 7942 Pte McNULTY L W

SOS on posting to 14 Cdn Aux Serv Sect wef 25 Aug 44
Auth: EAR/11/53 d/23 Aug 44
GEN A 56728 Pte GRUBB S G
F 89705 Pte O'CONNELL D J
F 41627 Pte TIBBETTS J S

SOS on posting to "Q" List wef 25 Aug 44
Auth: CMHQ AT 1293 d/17 Aug 44
GEN B 23513 Sgt MATHEW J E
D121301 Cpl MICHAUD J R
G 28975 Pte ARSENAULT A J
Z 41944 Pte GAGNE W
B115993 Pte MAISSONEUVE H L
C 30040 Pte PEPIN H
G 52664 Pte VAUTOR A J
F 56984 Pte BLADES J E
E 48515 Pte LANDRY C
K 47448 Pte WOOF R
B 83255 Pte ROBERTSON R J
K 53917 Cpl McIVOR D A
E 49758 Pte MORIN R
H 1298 Pte COMBAT P
E100955 Pte LAROUCHE L L
D127775 Pte MALO J Z O
D 91788 Pte GAUTHIER A J
B 84304 Pte DAVIES F A
B 85466 Pte WINTERS J H
M127197 Pte WAKEFORD P
F 55910 Pte MORRIS W R

Part Order
Issued
NO 204
Aug 44
Sec 9

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Daily Part II Orders
issued by
COL B RYKER ED COMMANDER

THIS ORDER
NO 208
28 Aug 44

Section "B"
OTHER RANKS

15 STRENGTH DECREASE

Cancellation

DO 192 (14B) d/12 Aug 44 insofar as it refers to the u/m OR is cancelled
G 606 Pte EDWARD E A

DO 201 (17B) d/23 Aug 44 insofar as it refers to the u/m OR is cancelled.
B 7136 Gnr HOLLINGSWORTH R (ROA)

S LIST
Section "A"
OFFICERS

Nil

Section "B"
OTHER RANKS

1 STRENGTH DECREASE

OTBA fap td HQ CRU
SOS on posting to CRU Postal Unit wef 26 Aug 44
Auth: 408/CRU HQ/1(PTA) d/25 Aug 44 wef 26 Aug 44
H105074 Pte BIANSKI A E (SSB)

CANADIAN WOMEN'S ARMY CORPS
Section "A"
OFFICERS

Nil

Section "B"
OTHER RANKS

1 STRENGTH INCREASE

SOS on posting to CMHQ
Auth: CMHQ Demand 7241 d/4 Aug 44 wef 26 Aug 44
W 2527 Pte GRAHAM D I
W 10255 Pte PLASTER E C
W 3014 Pte JOHNSTON M E
W120258 Pte MAILLIE M

Amendment

DO 200 (3B) d/22 Aug 44 insofar as it refers to the u/m OR is amended to read regimental number "W 13565"
W 1365 Pte MEDUKA A M

(B RYKER) Col
Commander
No 1 Cdn Gen Rft Unit

CERTIFIED TRUE COPY OF THE ORIGINAL DOCUMENT IN MY POSSESSION

(W.E. McNaughton), Capt.,
Adjt No. 1 Cdn Gen Rft Unit,
Canadian Army Overseas.

Exhibit "F"

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 248 17 Oct 44 Page 1

Daily Part II Orders issued by COL B R KERR ED COMMANDER Section "A" OFFICERS

THIS ORDER NO 249 18 Oct 44

1 STRENGTH INCREASE

(a) TOS on posting from 4 (C) Wing CTS wef 18 Oct 44
Auth: MS 3958 d/16 Oct 44
GEN A/Capt Edward Alwyn BUIE RCE
Lieut George Andrew BANNERMAN CIC

(b) TOS on posting from 17 CBDC wef 18 Oct 44
Auth: S/Dent/2/5(MSC) d/10 Oct 44
GEN Capt Allan Erwin DINER CDC

(c) TOS on posting from 17 CBDC wef 18 Oct 44
Auth: S/Dent/2/5(MSC) d/10 Oct 44
GEN Capt James Edward Curson MacGOWAN CDC
Capt John Eric HIBBERD CDC

(d) TOS on posting from 1 Cdn Reception Depot wef 16 Oct 44
Auth: MS 3749 d/ Oct 44
GEN Major John Dexter OVERHOLT RCA

(e) TOS on posting from 1 CIRU wef 16 Oct 44
Auth: A 8147 d/4 Oct 44
GEN Major Arthur Howard PLOWS CIC

(f) TOS on posting from H, 1 Cdn Army & att fap to CMH, wef 8 Sep 44
Auth: MS 3935 d/15 Oct 44
GEN Lt-col Colin RANKIN GEN LIST

(g) TOS on posting from 4 Cdn Conv Depot wef 18 Oct 44
Auth: A 8075 d/13 Oct 44
GEN Lieut Louis TRAKAS RCASC

(h) TOS on posting from YS List 1 Cdn Reception Depot & att fap to BH & PS Hospital wef 13 Oct 44
Auth: 1 CRD DO 35 d/19 Oct 44
RCAMC Col Harvey Gordon YOUNG DSO MC ED

(i) SOS Cdn Army Canada wef 3 Oct 44
TOS Cdn Army Overseas 4 Oct 44
Disembarked in UK 12 Oct 44
Reported for duty 1 CGRU 13 Oct 44
RCAMC Capt Kenneth Archibald FRASER RCAMC
Capt Maurice JACOBS RCAMC
A/Major Frank Alexander TURNBULL RCAMC
GEN Major Roger Joseph Leon CARROLL CIC
Lieut D'Arcy Dunlop CARTER GEN LIST
Capt William Graham CHIN RCOS
Lieut Charles CHINN GEN LIST
Capt Edward Dixon GRAHAM CIC
A/Major Edward Alexander MacDONALD GEN LIST
Capt George Roderick O'HANDLEY CIC
A/Major William Arthur WILKINSON GEN LIST
Major Charles George Richard WILLIAMS RCOS

Amendments

(j) DO 235 (1A) d/29 Sep 44 insofar as it refers to the a/m Officer is amended to read wef "28 Sep 44"
RCAMC Capt Mark Francis CORBIN

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order Issued No 248 7 Oct 44 Page 2

Daily Part II Orders Issued by COL B R MERRIFIELD COMMANDER Section "A" OFFICERS

THIS ORDER NO 249 18 Oct 44

1 STRENGTH INCREASE

Amendments

(k) DO 137 (1A) d/9 Jun 44 insofar as it refers to the u/m Officer is amended to read wef "13 Mar 44" Auth: CMHQ Obs MS 4/944 d/8 Sep 44
GEN Capt Charles Michael DEVANEY

(l) DO 137 (1A) d/9 Jun 44 insofar as it refers to the u/m Officer is amended to read wef " 7 Jun 44 " Auth: CMHQ Obs MS 4/852 d/9 Sep 44
PROVO Lieut Russell Oliver DUNN

(m) DO 195 (1A) d/16 Aug 44 insofar as it refers to the u/m Officer is amended to read TOS from "1 Cdn Reception Depot" Auth: CMHQ Obs OFF 413 d/8 Sep 44
GEN Lieut Joseph Gerard Walter Jean Charles FORTIER (SOS to 1 RSTD)
Lieut Joseph Henri FOISY (SOS to 1 RSTD)

(n) DO 235 (1A) d/20 Oct 44 insofar as it refers to the u/m Officer is amended to read "Capt Joseph Jacob SCHLOSSER (CDC)"
GEN Capt Joseph Jacob SCHLOSSER (CIC)

2 ATTACHMENTS

(a) Att fap except reg't'l duty to 2 CARU & for reg't'l duty to 18 CDC wef 18 Oct 44 Auth: 2 CARU DO 31 d/12 Oct 44
GEN Capt James Edward Carson MacGOWAN CDC

(b) Att fap to DN & PS Hospital wef 17 Oct 44 Auth: MS 3952 d/17 Oct 44
RCAMC A/Major Frank Alexander TURNBULL RCAMC

(c) CTDA fap to CMHQ on adm to 23 Cdn Gen Hospital wef 26 Sep 44
CEN Lt-col Colin RANKIN GEN LIST

(d) Att fap whilst on command from MDH) on arrival from Canada wef 13 Oct 44 Auth: 44/Despat: V/3/10(.G2a) d/10 Oct 44
GEN Major John YOUNG CIC

Amendments

(e) DO 137 (2A) d/9 Jun 44 insofar as it refers to the u/m Officer is amended to read wef "13 Mar 44" Auth: CMHQ Obs MS 4/944 d/8 Sep 44
GEN Capt Charles Michael DEVANEY

Cancellations

(f) DO 80 (1A) d/4 Apr 44 and DO 126 (2A) d/27 May 44 insofar as they refer to the u/m Officer are cancelled Auth: CMHQ Obs MS 4/948 d/8 Sep 44
GEN Capt Arthur King REID GEN LIST

3 HOSPITAL

(a) Removed from 23 CdnGen Hosp to Garnons Conv Hospital wef 5 Oct 44
GEN Lt-col Colin RANKIN GEN LIST

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 248 7 Oct 44 Page 3

Daily Part II Orders issued by COL B R KERRED COMMANDER

THIS ORDER NO 249 18 Oct 44

Section "A"

OFFICERS

4 LEAVE OF ABSENCE

(a) Granted 7 days Privilege Leave plus 48 hrs pass (Total 9 days) with money allowance in lieu of rations for periods as shown

GEN Supvr George HEGGIE from 29 Sep 44 to 6 Oct 44
Capt Thomas Parker MESKETT from 9 Oct 44 to 18 Oct 44
RCAMC Capt Albert Jacob SOLWAY from 9 Oct 44 to 18 Oct 44

5 NEXT OF KIN

Verification of Next Of Kin

(a) Mrs Margaret WILKINSON (wife) 58 Ainslie Rd, Montreal, Quebec
GEN A/Major William Arthur WILKINSON GEN LIST

(b) Mrs Agnes Cathcart WILLIAMS (wife) 4131 Cote Des Neiges Rd Montreal, Quebec
GEN A/Major Charles George Richard WILLIAMS RCCS

6 HONOURS & AWARDS

(a) Awarded Cdn Volunteer Service Medal & Clasp wef as shown
INT SIL Lieut John Eric DORNAN wef 5 Aug 44
RCAMC Capt Francis Richard James DORSEY (Att 2 CMC) wef 12 Sep 44

7 STRENGTH DECREASED

(a) CTDA fap to 22 Cdn Gen Hosp & SOS on posting to YS List 1 CGRU on admission to Alderbrook Park Conv Hospital wef 8 Sep 44
Auth: 22 CGH DO 76 d/6 Sep 44
RCAMC Lieut (N/S) Mary Margaret CLARK RCAMC

(b) SOS on posting to 16 CBDC wef 17 Oct 44
Auth: CRU Dcmt 36 d/14 Oct 44
GEN Capt Hugh Neil MacKINNON CDC

(c) SOS on posting to 2 CRU wef 17 Oct 44
Auth: A 8643 d/14 Oct 44
GEN Capt Henry Miller ROWLINGS RCA

(d) SOS on posting to HQ 1 Cdn Army Civil Affairs Staff wef 2 Apr 44
Auth: CMHQ Obs MS 4/948 d/8 Sep 44
GEN Capt Arthur King REID GEN LIST

Amendments

(e) DO 148 (6A) d/22 Jun 44 insofar as it refers to the u/m Officer is amended to read "Lieut David Ira GREENSIDES"
GEN Capt David Ira GREENSHIELDS (RCAPC)

(f) DO 185 (5A) d/4 Jul 44 insofar as it refers to the u/m Officer is amended to read wef "1 Aug 44"
Auth: CMHQ Obs OFF 467 d/6 Sep 44
RCAMC Capt Phineas SHRIGGE RCAMC

(g) DO 196 (5A) d/17 Aug 44 insofar as it refers to the u/m Officer is amended to read wef "10 Aug 44"
Auth: CMHQ Obs OFF 480 d/8 Sep 44
RCAMC Lieut (N/S) Rita Clare MacDONALD
Lieut (N/S) Bertha Rebecca JONES
Lieut (N/S) Florence Olive May BRATTIE

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 248 17 Oct 44 Page 4

Daily Part II Orders issued by COL B R KER ED COMMANDER

THIS ORDER NO 249 18 Oct 44

Section "B"
OTHER RANKS

1 STRENGTH INCREASE

(a) SOS Cdn Army Canada — wef 3 Oct 44
TOS Cdn Army Overseas — 4 Oct 44
Disembarked in UK — 12 Oct 44
Reported for duty 1 CGRU — 13 Oct 44

GEN (No.1 Entertainment Unit)

B 41094	Pte	ANDREWS R F	B136778	Pte	BAKER G
D127154	Pte	BARKER J L	C 32427	Pte	BATES J
A 22845	Pte	BLUES H	B 98648	Sgt	CLARK E F
B 58574	Pte	CRARY R	B150182	Pte	CRINGAN R J
A108923	Pte	DAILEY D M	B114322	Cpl	DAVEY F R
C 77097	Pte	DEGAGNE G V	P 13255	Pte	FORD A J
H 40952	Cpl	GRANT G W	B138676	Pte	HARDESS J P
E105114	Pte	JOBIN P	C 43076	Tpr	JOHNSTON C E
K 88321	Cpl	JOHNSTON L B	B 77618	Pte	KELLY J W
B 53544	Pte	KORN N	C122709	Pte	LEA T G
B103244	Pte	MacLEAN D R	D135854	Pte	PHILLIPS K T
D137675	Pte	REDMOND R J	B 82955	Sgt	REID W
D175552	Pte	SWETLAND H R	K 40164	Pte	TAVERNO D T
B159752	Pte	TOWNLEY B F	B 44804	Pte	TROTMAN C E
C 77100	Pte	VILLENEUVE A L	A 67775	Pte	WEEMES G B

(Serial 5000)

D 6001	Sgt	ALLAN D D		RCA
C 16503	QMS	DAVIES G W K		RCEME
G 16595	A/Sgt	DOBSON R R	Fitter Sigs "A"	RCCS
B 33013	Sigmn	GREGORY J S		RCCS
A 31395	Bdr	CLAYTON W		RCA
B 94369	Cpl	HULBURT F A	Storeman "C"	RCEME
M 40647	Cpl	INGRAM W E	Clerk "B"	RCASC
B 74409	Sgt	KENNEDY W A		CIC
C122825	Pte	KERR L G		GEN LIST
D 91956	Sgt	LECKY A A		RCASC
D 81346	Tpr	LECLAIR M J P R		CAC
L 7004	CSM	LEONARD A		RCASC
C 27777	Pte	MOORE R S	Concretor "B"	RCE
M 10517	Sgt	MacDONALD R L		CIC
G 22873	Sgt	McLAUGHLIN G F		CIC
F 34900	Sgt	OAKLEY L C	Clerk "C"	RCAPC
A 3477	Pte	PARTRIDGE H L	Storeman "C"	CIC
C123982	Pte	RANDALL H W		GEN LIST
M 45222	Sgt	REID E A		RCA
D 76712	A/Cpl	RUNTE M	Op CAC "C"	CAC
H 26096	Sgt	SIMPSON A B C		CAC
H 8469	Pte	SKENE D G		GEN LIST
U 1961	A/Sgt	STRACCHINO E		CAC

INTELL

B 414	Pte	ALLEN N	D144064	Pte	BAIN J N
B162658	Pte	BOYD-BOWMAN P M	A116134	Sgt	FAST J
M 7565	Pte	GABRIEL A V	H204523	Cpl	GORNER A
L 22934	Pte	HAMES R B	K 568	Pte	HARDER G
C121168	Pte	HEIMPEL A M	H102893	Pte	KANE G C
A110582	Pte	KING M A	B162502	Pte	KLOPP V J
L 84694	Cpl	KONECSNI N S	H 42402	Pte	LYTLE A H
H 75226	Sgt	LUDWIG R	L102282	Pte	RODATZ F H
B 95285	Cpl	MORROW J L (Clerk "B")			
D144779	Pte	WHITE J G	M 60334	Cpl	WIENS B J
C123789	Pte	WRIGHT W A	K 51959	Pte	WYATT L R

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 248 17 Oct 44 Page 5

Daily Part II Orders issued by COL B R KERR ED COMMANDER

THIS ORDER NO 249 18 Oct 44

Section "B"

OTHER RANKS

1 STRENGTH INCREASE

(b) TOS on posting from 4 CIRU & att for duty to 12 Cdn Aux Serv Sect wef 18 Oct 44
Auth: 408/Aux/1(PTA) d/12 Oct 44
GEN C 21340 Pte LOUCHER L T

(c) TOS Nursing Sister Incre 1 CGRU on posting from 3 CIRU and att fap to 22 Cdn Gen Hospital wef 18 Oct 44
Auth: 444/Hosp/1(PTA) d/13 Oct 44
RCAMC C101061 Pte COULIS A V

(d) TOS on posting from 1 CASCRU wef 18 Oct 44
Auth: 408/Clerks/1(PTA) d/12 Oct 44
CLK POOL D 92704 Sgt CURRIE C Clerk "B"

(e) TOS on posting from 13 Cdn Gen Hospital wef 17 Oct 44
Auth: RHC/B24116 d/13 Oct 44
RCAMC B 24116 Pte DAVIDSON R B

(f) TOS on posting from Y3 List 1 CGRU wef 19 Oct 44
Auth: 408/Cas/1 d/7 Jan 44
RCAMC D 82502 Pte FERGUSON J S

(g) TOS on posting from Y3 List RCAMC wef 18 Oct 44
Auth: 408/Cas/1 d/7 Jan 44
RCAMC A 87200 Pte GARRY R J
B 5415 Pte POWER P M

(h) TOS on surrendering from desertion at 2200 hrs., 17 Oct 44
RCAMC D 76457 Pte KENNEDY W E T

(i) TOS on posting from 1 Cdn Reception Depot wef 18 Oct 44
Auth: 406/Re-alloc/1(Org)3 d/22 Aug 44
GEN L 56406 Sgt PHILLIPS R H D RCA

(j) TOS on posting from 1 Bn Cdn Fusiliers wef 18 Oct 44
Auth: 444/Remister/1(Org)1 d/22 Aug 44
RCAMC M103549 Fus SADOWAY E

(k) TOS on posting from 1 CIRU wef 18 Oct 44
Auth: 408/Clerks/1(PTA) d/12 Oct 44
CLK POOL M107097 Pte TOMARCHUK O W

Amendments

(l) DO 144 (1B) d/17 Jun 44 insofar as it refers to the w/m OR is amended to read wef "18 Jun 44"
Auth: CMHQ Obs OR 3311 d/6 Sep 44
PROVO A 68295 Cpl CECIL F

(m) DO 134 (1B) d/6 Jun 44 insofar as it refers to the w/m OR is amended to read "TOS on posting from 2 CIRU"
A WING L103185 Pte HERRICK D E

(n) DO 192 (1B) d/12 Aug 44 insofar as it refers to the w/m OR is amended to read "F 29443 Pte HUIT E"
RCAMC F 29443 Pte HUIT E

(o) DO 144 (1B) d/17 Jun 44 insofar as it refers to the w/m OR is amended to read wef "18 Jun 44"
Auth: CMHQ Obs OR 3312 d/6 Sep 44
PROVO A 61069 Pte FIELD F (SOS to Cdn Detn Bks)

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 248 17 Oct 44 Page 6

Daily Part II Orders issued by COL B R KERR ED COMMANDER

THIS ORDER NO 249 18 Oct 44

Section "B"

OTHER RANKS

1 STRENGTH INCREASE

Amendments

(p) DO 239 (1B) d/6 Oct 44 insofar as it refers to the u/m OR is amended by adding "Clerk C"

GEN L 97001 A/Sgt KELLY H T

(q) DO 232 (1B) d/30 Sep 44 insofar as it refers to the u/m OR is amended to read wef "1 Oct 44".

INT.LL D141148 Pte LAND S S

(r) DO 228 (1B) d/23 Sep 44 insofar as it refers to the u/m OR is amended by deleting "and att fap except regt'l duty to 12 Cdn Aux Serv Sect"

GEN C101142 Pte PETERSON A

(s) DO 144 (1B) d/17 Jun 44 insofar as it refers to the u/m OR is amended to read wef "16 Jun 44"

PROVO A 21172 L/Cpl TRAVIS J H

2 ATTACHMENTS

(a) CTBA fap to CMHQ (Records) wef 18 Oct 44

CLK POOL B 56582 Cpl HUNTER G H

(b) Att fap X regt'l duty to 4 CIRU & for regt'l duty to 12 Cdn Armd Sqn Auth: 406/Aux /1(PTA) d/20 Sep 44 wef 19 Oct 44

GEN C101142 Pte PETERSON A

Amendments

(c) DO 134 (2B) d/ 6 Jun 44 insofar as it refers to the u/m OR is amended to read 'CTBA fap from 2 CIRU"

A WING L103185 Pte HERRICK D E

(d) DO 242 (2B) d/11 Oct 43 insofar as it refers to the u/m OR is amended to read "Att fap from 2 CIRU"

A WING L103185 Pte HERRICK D E

(e) DO 215 (2B) d/8 Sep 44 insofar as it refers to the u/m OR is amended to read "att fap to HQ "2" Gp"

CLK POOL D 77148 A/CSM HYDE H

Cancellation

(f) DO 244 (2B)(d) d/12 Oct 44 insofar as it refers to the u/m OR is cancelled

GEN B133660 Spr BRODERICK S A

3 LEAVE OF ABSENCE

(a) Granted 7 days Sick Leave with money all'ce in lieu of rations for period from 6 Sep 44 to 13 Sep 44

PROVO C 4920 Cpl MITCHELL R J

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Daily Part II Orders issued by COL B R KERRED COMMANDER

Section "B"

OTHER RANKS

3 LEAVE OF ABSENCE

(b) Granted 7 days P L plus 48 hrs pass (total 9 days) with money all'ce in lieu of rations for period from 9 Oct 44 to 18 Oct 44

RCAMC
B 91261 Pte BURNHAM E L
B144056 Pte COUTLEE K C
D137107 Pte DUMONT J M A
B 85784 Pte FRANKLIN G B
F 853 Pte HARDY A A
C103174 Pte KEENAN H W
M 3820 Pte MacAULAY S
F 33424 Pte MacINTYRE N J
M 28464 Pte MILLER G A
K 51341 Pte OLSON A G
A107838 Pte PFEIFFER H F
B 45039 Pte SWIFT F
F 40820 Pte ZDRALEK J A
E 29455 Pte CHAREST L
B136343 Pte DRUTZ H
K fol Pte EARL W G
L105556 Pte FROSHAUG D H
D116255 Pte KEECH J A
A118034 Pte MacQUIRE W L
F 97194 Pte McINTYRE W H
B117124 Pte MIDDLESTEAD N L
B 91221 Pte MUNDIEK A
B 62047 Pte PANICCIA P
C 52124 Pte PICKERING H F
D148239 Pte WADE A F

4 PAY & ALLOWANCES

(a) Granted a daily regimental rate of pay of $1.40 having completed 4 months service with efficiency and good conduct wef 6 Oct 44

RCAMC
B120056 Pte LATULIPPE P H

(b) Granted a daily regimental rate of pay of $1.50 having completed 6 months service with efficiency and good conduct wef as shown

RCAMC
L108584 Pte ADAMS E B wef 29 Sep 44
D144888 Pte AUCLAIR J L 19 Oct 44
K 2741 Pte AITKEN J W 13 Sep 44
B160323 Pte ALLEN K R 30 Sep 44
G 5502 Pte ALLEN A V 6 Oct 44
A110095 Pte BROWN O M 17 Sep 44
A109977 Pte BERTZ L P 6 Sep 44
M 8855 Pte GOLDZEN J 27 Jul 44
B115584 Pte SHEA N C 6 Sep 44
D117158 Pte DALLAIRE J A H L 6 Jul 44
B158248 Pte HODGKINS L V 30 Jul 44

Amendments

(c) DO 218 (6B) d/13 Sep 43 insofar as it refers to the u/m OR is amended to read wef "8 Aug 43"

RCAMC
D139311 Pte SCHIFFMAN C

5 POSTINGS

HQ CLK POOL (a) Posted from Reinf Clk Pool to Basic WE HQ
D157842 Pte CHARETTE R A Clerk "B" wef 17 Oct 44

GEN CLK POOL (b) Posted from Reinf Clk Pool to Reinf GEN Coy
B 94403 Spr TRIVETT V wef 17 Oct 44

HQ CLK POOL (c) Posted from Basic WE of HQ to reinf Clk Pool
D157532 Gnr LAROSE P Clerk "C" wef 17 Oct 44

Amendments

(d) DO 246 (5D)(c) d/14 Oct 44 insofar as it refers to the u/m OR is amended to read "B124735 Pte HARQUAIL D E"

RCAMC
B124635 Pte HARQUAIL D E

(e) DO 240 (4D)(c) d/7 Oct 44 insofar as it refers to the u/m OR is amended to read "C 29557 Pte MAXWELL H L Electrician B"

A WING RCAMC
C 29557 Pte MAXWELL H L

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 248 17 Oct 44 Page 8

Daily Part II Orders issued by COL B R KERR ED COMMANDER

THIS ORDER NO 249 18 Oct 44

Section "B"

OTHER RANKS

6 APPOINTMENTS: PROMOTIONS: REVERSIONS

(a) Reverted to permanent grade of Pte — wef 16 Oct 44
To draw a daily regt'l rate of pay of $1.50 — wef 17 Oct 44
Auth: CAORO 3726
GEN L 36080 Cpl CLOUSTON J D

(b) To be L/Cpl with pay — wef 26 Sep 44
A WING A107651 Pte MacDONALD R E

(c) Ceases to hold appointment of A/L/Cpl — wef 28 Aug 44
To draw a daily regt'l rate of pay of $1.50 — wef 29 Aug 44
PROVO B 84880 A/L/Cpl SIGNORELLO S

7 TRADESMEN RATES OF PAY

(a) Ceases to draw tradesmen rates of pay as Clerk Gp " " in accordance with Art 147 (5) FR&I — wef 17 Oct 44
CLK POOL D 92704 Sgt CURRIE C

(b) Granted tradesmen rates of pay as Electrician Gp "C" in accordance with Art 147 (2b) FR&I — wef 5 Oct 44
A WING M 7120 Pte McKINLAY J A

(c) Granted tradesmen rates of pay as San Asst Gp "D" in accordance with Art 147 (5) FR&I — wef 3 Jul 44
RCAMC C 98440 Pte WALKER C S

Cancellation

(d) DO 245 (8B)(c) d/13 Oct 44 insofar as it refers to the u/m OR is cancelled
CLK POOL H 16127 Pte ELSWORTH J A

(e) DO 237 (7B)(c) d/4 Oct 44 insofar as it refers to the u/m OR is cancelled
RCAMC L107400 Pte RODGER D A

8 ABSENT WITHOUT LEAVE

(a) A/L from 2359 hrs., 15 Oct 44
GEN D105755 Pte GOTRO N F

(b) A/L from 2359 hrs., 13 Oct 44
GEN M 58687 Sgt OLYNYK T F (SSB)

9 PUNISHMENTS

(a) Admonished and forfeits 1 days pay vide Art 149 (1)(a) FR&I for A/L from 0900 hrs., 2 Jul 44 to 0755 hrs., 3 Jul 44 Absent 22 hrs, 55 minutes Sec 15 (1) A A — wef 5 Jul 44
Total forfeiture 1 days pay
Auth: CMH Obs RLC/34/DO 3/2 d/8 Sep 44
A WING L 34866 L/Cpl LADD H L

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued No 248 17 Oct 44 Page 9

Daily Part II Orders issued by COL B R KERR ED COMMANDER

Section "B"

OTHER RANKS

THIS ORDER NO 249 18 Oct 44

10 PERMISSION TO MARRY

(a) Granted permission to marry Mis Margaret WALKER 5 Gorseland Ave., Manton, Worksop, Notts, on or after 4 Dec 44
Auth: 406/Marry "J"/1(Pers 2) d/14 Oct 44

RC.MC K 57549 Pte JACOB R A

11 NEAT OF KIN

(a) Change of address N-of-K to Mrs Fleurette DUMONT (wife) 4303 St Ambroise St., St Henri, Montreal, Quebec

RC.MC D137107 Pte DUMONT J M .

(b) Change of address N-of-K to Mrs Clementine Irene LEE (wife) 18 Trent St., Gainsborough, Lincs, England

A WING B 68000 ACpl LEE J E

(c) Change of address N-of-K to Mrs Phyllis MacLEOD (wife) 29 York Rd., Aldershot, Hants, England

RC.MC M 8515 Pte MacLEOD G P

(d) Change of address N-of-K to Mrs Ethel May PHILIPS (mother) Fairvale Station, Kings County, N.B., Canada

RC.MC G 43097 Pte PHILIPS A

Verification of Next of Kin

(e) Mrs Evelyn May CRINGAN (mother) 186 Glenrose Ave, Toronto, Ont

GEN D150163 Pte CRINGAN R J

(f) Mrs Mildred DAILEY (wife) 298 George St., Sarnia, Ontario

GEN A100923 Pte DAILEY F R

(g) Mrs Dorcas M ALLEN (wife) 1052 Melrose Ave., Verdun, Quebec

GEN D 6001 Sgt ALLEN (RCA)

(h) Mrs Ada Muriel DAVIES (wife) 318 Barrie St., Kingston, Ontario

GEN C 16503 QMS DAVIES G W K (RCEME)

(i) Mrs Ruby HULBURT (mother) 56 Baldwin St., Dundas, Ontario

GEN D 94509 Cpl HULBURT F A

(j) Mr James BATES (father) 630 Centre St., San Marcos, Texas, USA

GEN C 32427 Pte BATES J

(k) Mrs Alice BLAIR (sister) 215 Cross St., Flint, Michigan, USA

GEN A 28045 Pte BLUES H

(l) Mrs Agnes KELLY (mother) 152 Simpson Ave., Toronto, Ontario

GEN B 77618 Pte KELLY J W

(m) Mr Howard KERR (brother) New Albany, Penn, USA

GEN C122825 Pte KERR L G

(n) Mrs Gladys LEONARD (wife) 1944 McIntyre St., Regina, Sask

GEN L 9004 CSM LEONARD A

(o) Mrs Alice Olive PARTRIDGE (wife) RR#3 Dlenheim, Ontario

GEN A 3479 Pte PARTRIDGE H L

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued NO 248 7 Oct 44 age 10

Daily Part II Orders issued by COL B R MACKER ED COMMANDER

THIS ORDER NO 249 18 Oct 44

Section "B"
OTHER RANKS

1 NEXT OF KIN

Verification Next of Kin

(p) Mr Edward Patrick RUNTE (father) c/o Atlas Const Coy, Botwood Newfoundland
GEN D 76712 A/Cpl RUNTE M

(q) Mrs Alice Augusta RANDALL (wife) 57 Putman Ave, Ottawa, Ontario
GEN C123982 Pte RANDALL G D

12 HONOURS & AWARDS

(a) Awarded one good conduct badge wef dates as shown
RCAMC L 65154 Pte AUSTIN E J wef 4 Mar 44
A102720 Pte SZALAI J 25 Aug 44

(b) Awarded the Cdn Volunteer Service Medal wef 19 Oct 44
RCAMC G 4983 Pte BEAULIEU J G

(c) Awarded Clasp to Cdn Volunteer Service Medal wef as shown
RCAMC H 66441 Pte LAMOUREUX A wef 21 Sep 44
A102720 Pte SZALAI J 5 Oct 44

(d) Awarded the Cdn Volunteer Service Medal & Clasp wef 3 Sep 44
RCAMC C 60869 Pte HAYWOOD W J (Att 2 CMC)

(e) Awarded the Cdn Volunteer Service Medal wef dates as shown
RCAMC C120373 Pte JOWETT A E wef 12 Jul 44
K 15880 Pte WHITNEY C G 15 Jan 44
D142257 Pte WITTEN E P 15 Jan 44

(f) Awarded Clasp to the Cdn Volunteer Service Medal wef as shown
RCAMC C120373 Pte JOWETT A E wef 25 Aug 44
K 15880 Pte WHITNEY C G 5 Oct 44
D142257 Pte WITTEN E P 2 Aug 44

13 STRENGTH DECREASE

(a) SOS on posting to 17 Cdn Gen Hospital wef 17 Oct 44
Auth: REC/34/Units/1100 (R4) d/11 Oct 44
RCAMC H 9479 Pte DIESICK C

(b) At a Court of Inquiry held in the Field on 10 Oct 44 the u/m OR was declared to be absent without leave from 2359 hrs., 26 Jul 44 (Still absent) and is struck off strength as a deserter wef 10 Oct 44
RCAMC A 3711 Pte DAVIDSON W J

(c) CTDA & SOS on posting to 1 P R Gp Film & Photo Sect CLK wef 10 Oct 44
Auth: REC/5646 d/17 Oct 44
CLK POOL M 17375 Sgt EWART K G Clerk "B"

(d) SOS on posting to CLK wef 17 Oct 44
Auth: REC/5522 d/5 Oct 44
RCAMC M 4055 Pte GUSTAFSON M I

(e) CTDA fap to HQ CRU & SOS on posting to CTO Lancaster wef 18 Oct 44
Auth: 8/CTO/1(M2c) d/12 Oct 44
CLK POOL C 14417 Gnr NICHOLSON D L Clerk "C"

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued No 248 17 Oct 44 Page II

Daily Part II Orders issued by COL D R KER ED COMMANDER

THIS ORDER NO 249 18 Oct 44

Section "B"
OTHER RANKS

13 STRENGTH DECREASE

(f) SOS on posting to 2 Incre 1 NETD wef 14 Oct 44
Auth: 408/1 NETD/1(PTA) d/13 Oct 44
CLERKS H 52048 Pte SHELNE J H Clerk "C"

(g) SOS to YS List 1 CGRU on cdn to 4 Cdn Gen Hosp wef 15 Oct 44
Auth: 406/Cas/1 d/7 Jan 44
CMC H 26096 Sgt SIMPSON A D C CMC

(h) SOS on posting to 1 NETD wef 16 Oct 44
Auth: CMHQ AT 1944(A62A) d/4 Oct 44
CMN D133023 Pte WHITE D G

(i) SOS on posting to CTO wef 16 Oct 44
Auth: CMHQ B/CTO/1(A62c) d/12 Oct 44
CLERKS D 71236 Sgt FOLARD J H
D 79901 Cnr McLEOD K W
H 50322 Pte MARTIN G T

Amendments

(j) DO 176(11D) d/25 Jul 44 insofar as it refers to the u/m OR is amended to read wef "22 Jul 44"
Auth: CMHQ Obs OR 3191 d/7 Sep 44
UNTELL M147122 Spr LANG H M

(k) DO 246(10D)(n) d/14 Oct 44 insofar as it refers to the u/m OR is amended to read "D132345 Pte PRYCE N M"
CMN D132435 Pte PRYCE N M

CANADIAN WOMENS' ARMY CORPS

Section "A"
OFFICERS

NIL

Section "B"
OTHER RANKS

1 STRENGTH INCREASE

(a) SOS Cdn Army(Canada) on embarkation wef 3 Oct 44
TOS Cdn Army(Overseas) wef 4 Oct 44
Disembarked in UK wef 12 Oct 44
Reported for duty to 1 CGRU wef 13 Oct 44

CWAC	W 40335	Pte	MEATTIE M E	Army Show Entertainer "C"
	W 6691	U/A/Sgt	BRADLEY M A	Army Show Entertainer "C"
	W 80278	Pte	BISHOP T M	Army Show Entertainer "C"
	W 20922	Pte	CAMPBELL E	Army Show Entertainer "C"
	W 6673	Pte	CROSS M E	Army Show Entertainer "C"
	W 20591	Pte	CUMMING D S	Army Show Entertainer "C"
	W 80190	Pte	GADDERRY C E	Army Show Entertainer "C"
	W 10022	Pte	GARSON Y J	Army Show Entertainer "C"
	W 20633	Pte	GORDON J E	Army Show Entertainer "C"
	W 22544	Pte	GREEN M F	Army Show Entertainer "C"
	W 6921	Pte	HANLEY Z T	Army Show Entertainer "C"
	W 4885	Cpl	JOHNSON Z A	Army Show Entertainer "C"
	W 80444	Pte	KERR M P	Army Show Entertainer "C"
	W 40301	Pte	LEGER M	Army Show Entertainer "C"
	W 80366	Pte	LEONARD M M	Army Show Entertainer "C"
	W 80301	Pte	MARTIN M	Army Show Entertainer "C"
	W 22119	Pte	MAY A E	Army Show Entertainer "C"
	W 1568	Pte	MYERS E M	Army Show Entertainer "C"
	W 1995	Pte	OKENSON N J	Army Show Entertainer "C"
	W 3273	Pte	O'TOOLE N M	Army Show Entertainer "C"
	W 22348	Pte	VANDE-MARK L V	Army Show Entertainer "C"

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

Last Order issued	Daily Part II Orders issued by	THIS ORDER
No 248		NO 249
17 Oct 44	COL D R KER MD COMMANDER	18 Oct 44
Page 12	CANADIAN WOMENS' ARMY CORPS	
	Section "D"	
	OTHER RANKS	

1 STRENGTH INCREASE
Amendment

(b) DO 245(1R)(c) d/13 Oct 44 insofar as it refers to the u/m OR is amended to read wef "14 Oct 44"

CWAC W 15032 Pte SANDER N

2 NEXT OF KIN

(a) Next of kin verified as Mrs Caroline Johnson(mother) 10574 Lauzanne St., Montreal, P.Q. Canada

CWAC W 4835 Cpl JOHNSON E A

(b) Next of kin verified as Mrs Florence Victoria Vande-Mark (mother) 317 Davisville Toronto, Ontario, Canada.

CWAC W 22348 Pte VANDE-MARK L V

(D R KER)Col
Commander
No 1 Cdn Gen Reinf Unit

CERTIFIED TRUE COPY OF THE ORIGINAL DOCUMENT IN MY POSSESSION

(W.E. McNaughton), Capt.,
Adjt No. 1 Cdn Gen Rft Unit,
Canadian Army Overseas.

NO. 1 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY (OVERSEAS)

Exhibit G.

23 October
1944

Sir,

Re: A.3711 Pte. Davidson, V.J.

I was on duty in Unit guard room at Corunna Barracks No. 1 C.G.R.U. at 1120 hrs 23 Oct 44 when the a/m soldier was handed over to me by 7687227 L/Cpl. Blamey, B of C.M.P. Pte. Davidson, an absentee, was improperly dressed, wearing a Beret, rubber knee boots and coveralls. I took his particulars and placed him in guard detention room, Sir.

Robert Talbot

F.55311 Cpl. Talbot, R.

M.F.B. 355
22M—5-41 (573-3)
H.Q. 1772-39-6(3)
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-3711	Pte.	Davidson, V.J.	#1 CGRU

1. The following is a fair and true summary of the entries in the ~~Service and General Conduct sheets~~ Regimental and ~~Squadron, Battery, or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec 15(1) A.A.	2 times	4 times
For Sec 40 A.A.	times	1 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

~~or~~ Nil

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~

~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in ~~Air Force~~ custody awaiting trial on the present charges, for [illegible] days in civil custody, and [illegible] days in military custody, making a total of [illegible] days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is MFM 4 34 Years.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is MFM 4 19 Feb 40

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~no air force decoration, or air force reward (or is in possession of or entitled to).~~ State any air force decoration or reward. military CVSM and Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— .....Date of promotion.

In the rank of .....years.

In the rank of .....years.

In the rank of .....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number A-3711 Rank Pte. Unit

Name Davidson, V.J. of #1 C.G.R.U. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.C.C.M.	Field 11 Aug 43	1.Sec.15(1)AA. 2.Sec.40A.A. 3.Sec.40 A.A.	150 days detention Stoppages of pay in amount of 2s.4d.	50 days.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of October 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(W.E. McNaughton) Capt. & Adjt.

No 1 Can Gen Hft Unit

RECONSTRUCTED FROM MFM 4 - ORIGINAL NOT AVAILABLE.

No. A-3711 Name Davidson, V.J. Sqn, Battery, or Company — Corps R.C.A.M.C. Date of enlistment 19Feb40 GC Badges — Service or Proficiency Pay — 3/17 MFM 4

Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc — Character

Date of last entry in Company Conduct Sheet: Place	Date of offence	Rank	No. and date of last drunk: Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
Field	12Sep40	Pte.		Sec. 15 (1) A.A. - A.W.L. from 1600 hrs to 2400 hrs 12 Sep 42 and missing a military duty. Absent 6 hrs.	Documentary	10 days CB	14Sep42	C.O.	Forfeits 1 days pay vide art 149(1)(a) FR&I.
Field	29Jan43	Pte.		Sec. 15 (1) A.A. - A.W.L. from 2001 hrs 29 Jan 43 to 2400 hrs 30 Jan 43. Absent 22hrs., 30 Mins.	Documentary	5 days forf of pay. 14 days CB	2Apr43	C.O.	
Field	1Apr43	Pte.		Sec 40 A.A.	Documentary	28 days FP			

(PTO)

No. Name | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29Dec43	Pte.		Sec 15 (1) A.A. - A.W.L. from 1300 hrs 29 Dec 43 to 2150 hrs 25 Jan 44. Absent 27 days, 8 hrs., 50 Mins.	Documentary	27 days FP Forfeiture of 27 days pay.	26Jan44	C.O.	Forfeits 28 days pay vide Art. 149 (1)(a)FR&I.

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT IN MY POSSESSION.

[signature] Capt.
(W.E. McNaughton) Capt.
Adjt. No 1 Cdn Gen RftUnit

8 Nov 44 [illegible]

FORM No. 68.

WESTERN UNION

(THE WESTERN UNION TELEGRAPH COMPANY)

(INCORPORATED IN THE STATE OF NEW YORK, U.S.A., WITH LIMITED LIABILITY.)

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REFERENCE YOUR CABLE A3711 VERNON JOHN DAVIDSON UNABLE SUPPLY CHARACTER REFERENCE MAN PATIENT WESTMINSTER FOUR DAYS AUGUST 40 DIAGNOSIS PRIMARY MENTAL DEFICINECY WITH HISTORY SUGGESTED EPILEPSY=

DISTRICT ADMINISTRATOR DEPT VETERANS AFFAIRS.

691

Please send your Reply "Via WESTERN UNION" You may telephone us for a messenger

Exhibit "A" 116.

SUMMARY OF EVIDENCE

in the case of

No. A-3711, Private Vernon John DAVIDSON, Royal Canadian Army Medical Corps, on strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS FOR THE PROSECUTION

Captain W.E. McNaughton, Royal Canadian Army Service Corps, No. 1 Canadian General Reinforcement Unit, having been duly sworn, states:

I am Captain W.E. McNaughton, Royal Canadian Army Service Corps, Adjutant No. 1 Canadian General Reinforcement Unit. I have custody of documents. I offer in evidence documents purporting to pertain to the accused:

(1) Certified True Copy of Record of a Declaration of a Court of Inquiry.

(2) Certificate of apprehension of the accused by Military Police.

The accused declines to cross examine the witness.

W.E. McNaughton Captain
No. 1 Canadian General Reinforcement Unit.

QUESTION TO THE ACCUSED.

"Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

After the above caution, the accused does not wish to make any statement or give evidence on oath.

The accused does not call any witnesses.

I certify that the above Summary of Evidence consisting of one page was taken down by me in the hearing and presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

G.E. Mann Lieutenant,
No. 1 Canadian General Reinforcement Unit.
Officer detailed to take Summary.

In the Field
This 20th day of October 1944.

Signed at Field
THis. Day of

.....1944

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of ..... if he is available.

V J Davidson Private

LIST OF EXHIBITS

"A" Certified True Copy of Record of a Declaration of a Court of Inquiry.

"B" Certificate of apprehension of the accused by Military Police.

Officers Under in Instruction

Lieut J. A. Wilson - 1 CSRV.

C. I. Lawton - 1 CERV

NN.106
PTE DAVIDSON U.J.

A3711 Pte Davidson, V.J.
Increment Establishment,
#15 Gen Hosp RCAMC.

NN-106

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this NINTH day of AUGUST, 19 FORTY-THREE

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

jul.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~[I am unable to appoint:—~~
~~*(1) Three Officers to form the Court.~~
~~*(2) A Field Officer as President.~~
~~for the following reasons, namely:—]~~

jul.

*Omit if not applicable.

Received
15 AUG 1943
15th General Hospital
RCAMC (CA)

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	N.D. THEOBALD, MC.	5 CIRU

Members.

Rank.	Name.	Regiment.
A CAPTAIN	FROM	3 CIRU.
A LIEUT.	FROM	3 CIRU.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.H. Roberts
(J.H. Roberts) Maj-Gen.,
~~Commanding~~ Cdn Rft Units.
Convening Officer.

2

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
3711 Pte Davidson, J., Increment Establishment, No.15 Can Hosp, RCAMC.	FIRST CHARGE 15(1) A.A.	Guilty	Guilty	
	SECOND CHARGE Sec 40 A.A.	Guilty	Guilty	Confirmed. J.u.l.
	THIRD CHARGE Sec 40 A.A.	Guilty	Guilty To undergo detention for 150 days & to be placed under stoppages of pay in the amount of 2/- p. cpt. forthwith.	
	See Attached Charge Sheet.		11 Aug 43. K.D. Thestrald major President	

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J.H. Roberts Maj-Gen., Commanding Can Rft Units. (Signed) K.D. Thestrald major, Convening Officer (a) / President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

3

I certify that the above Court assembled on the 11th day of Aug 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. B. Certificate of President as to proceedings.

I also certify that :—
1. The members of the Court
2. The witnesses
~~3. The Interpreter~~ K.D.T.
~~4. The officers under instruction~~ K.D.T.
were duly sworn.

*Omit if not applicable.

Signed this 11th day of Aug 19 43

K. D. Thestrald major
President of the Court Martial.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. C. Certificate in case of death sentence.

*See footnote (i) on page 762 of M.L. 1929.

Signed this day of 19

K.D.T.
President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. D. Confirmation.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 12 day of Aug 1943. J.u.l.

J.u.l.
Confirming Officer.
J. H. ROBERTS, Maj-Gen.,
Comd. Can. Rft. Units.

Promulgated and extracts taken in the case of AS-3711 PTE DAVIDSON J. T.

(a) (Dated) 16 Aug 43. (Signed) [illegible] Capt
No. 1 Can. Gen. Rein. Unit, C.A. (O.S.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(2000) W.L.(2000/43) 30,000 12/42 A.E.F. & S.W. Ltd. 65-4708

CHARGE SHEET

The accused, A3711 Pte. Davidson, V.J., Increment Establishment #15 General Hospital RCAMC, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — While on Active Service absenting himself without leave

ARMY ACT SECT 15(1)

In that he at approx. 2359 hrs 19 Jun 43 did absent himself without leave from his Unit #15 General Hospital R.C.A.M.C., remaining so absent until he was apprehended by the Military Police in Horley, Surrey att approx. 2015 hrs. 30 Jul 43, thereby incurring apprehension expenses in the amount of two shillings and four pence (2/4).
(Absent 40 days 20 hrs. 16 min.)

Second Charge — While on Active Service conduct to the prejudice of good order and military discipline

ARMY ACT SECT 40

In that he on 30 Jul 43 at Horley, Surrey, was in possession of a document purporting to be a genuine leave pass, well knowing it was not genuine.

THIRD CHARGE — While on Active Service conduct to the prejudice of good order and military discipline

ARMY ACT SECT 40

In that he on 30 Jul 43 at Horley Surrey, did wear the rank chevrons of a full corporal, well knowing that he was not entitled to do so

D.G. Balsillie

(D.G. Balsillie) Captain
Officer Commanding
Increment Establishment
#15 General Hospital RCAMC

Bramshott 2 Aug 43

To be tried by Field General Court-Martial.

(J.H. Roberts) Maj-Gen.,
Comd. Cdn Rft Units.

In The Field,
9 Aug 43.

K. A. Chesterfield Major

MEDICAL OFFICER'S REPORT

I certify that No. A3711. Pte. Davidson. V.J.
of 15th. Gen. Hosp. R.C.A.M.C. *is in a* Fit. *state of health,*
and Able. *to undergo Trial by Court Martial.*

Medical Officer

Station Bramshot.

Date 11th Aug. 1943.

M.F.B. 266
WT A 8379

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Maida Barracks
ON THE 11 DAY OF August 1943

The accused A 3711, Pte Davidson V J ... Unit Incr Est. 15 Cdn Gen Hosp

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. N. D. Theobald M.C. ... Unit ... 5 C I R U ...

Members. Capt. J. P. Robinson ... Unit ... 3 C I R U ...

Lieut. G. A. Hampson ... Unit ... 3 C I R U ...

The officers under instruction are duly sworn:-

... Unit ...

... Unit ...

Prosecutor. Maj. F. C. Jennings ... Unit R.C.A.M.C. 18 Cdn Gen Hosp.

Defending Officer Capt. W. M. Toone ... Unit R.C.A.M.C. 18 Cdn Gen Hosp.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

N.D.T. ~~(a) Makes a statement in mitigation of punishment.~~ N.D.T.
~~(b) Calls witnesses as to character.~~
~~(c) Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

See enclosed statement

N. D. Theobald Major

A. 3711 Pte Davidson V. J.

Capt W. M. Toone

Pleads for mitigation on behalf of the accused

(1) On behalf of his long service record militia since 1921 Active Army Feb 1940 to date

(2) He was influenced in taking leave of absence in feeling he could not work with the sisters of # 15 Gen Hosp having worked with them in peace time.

(3). His action in staying away 40 days and with a forged pass and his attitude towards his crime suggest that he is of a sub normal intelligence.

4. His action in putting on corporals stripe is in keeping with (3) in as much as it shows a definite psychotic trend. Being a Pte since 1921 he has developed grandiose ideas and so paraded as an N. C. O when away from the sub of authority

H. D. Churchill Major

Wm Toone Capt
R. C. O. W. C.

Exhibit "A"

NO 15 CANADIAN GENERAL HOSPITAL R.C.A.M.C.
INCREMENT ESTABLISHMENT
DAILY ORDERS PART II

Sheet 1
No. 10
29 Jun 43

Last Part II Order No. 9 dated 26 June 43

SECTION "A"

1. ATTACHED

1-A Part II Order #9 para 1-A insofar as it affects the u/m Officer is cancelled and the following substituted;
"Att'd from #1 Gen R.U. f.s.p. w.e.f. 23 Jun 43. (Auth D.A.H. C.M.H.Q. letter 10/Conover, K.I. (M.S.1) d/25 Jun 43
Major K.I. Conover

1.B Att'd from #1 Gen R.U. f.s.p. w.e.f. 25 Jun 43. (Auth 10/alleyn, N.C./1 (M.S.6) d/25 Jun 43)
Lieut. (N/S) N.C. Alleyn

2. APPOINTMENTS

2.A Teh u/m Officer is detailed to command Rear Party #15 General Hospital RCAMC (Auth: 10/Balsillie, D.G./1 (A.G.1) 6 Mob Order #81/1 d/27 May 43.
Lieut. A/Capt. D.G. Balsillie.

SECTION "B"

1. STRENGTH INCREASE

1.A T.O.S. from 1 Gen R.U. w.e.f. 25 Jun 43 (Auth: CMHQ Letter REC/G5274 d/25 Jun 43)
G.5274 Pte. Stewart, H.J.

1.B Part II Order #7 para 1-B d/18 Jun 43 insofar as it refers to the u/m is amended to read:
T.O.S. from #1 Gen R.U. w.e.f. 15 Jun 43
(Auth: CMHQ Letter, Officer i/c Records, d/25 Jun 43)
B.93584 Pte. Walker, J.

1.C T.O.S. from #15 General Hospital w.e.f. 29 Jun 43
A.3711 Pte. Davidson, V.J.

2. TRANSFERS

2.A T.O.S. from #1 R.C.C.S. R.U. on transfer to R.C.A.M.C. w.e.f. 12 May 43
(Auth: C.M.H.Q. Letter REC/C30004 d/26 Jun 43)
C.30004 Sgt. Thatcher, L.A.

3. ATTACHED

3.A Att'd from #6 C.C.S. f.s.p. w.e.f. 26 Jun 43
D.122127 L/C Turner, A.J.

3.B C.T.B.A. from #3 C.I.R.U. on attachment to D.M.S. Branch C.M.H.Q. w.e.f. 26 Jun 43
(Auth: C.R.U. Letter 408/RCAMC/1 (SCA) 408/5 Inf.R.U./1 d/23 Jun 43)
A.3935 Pte. Gallagher, A.J.

3.C C.T.B.A. from 6 C.I.R.U. w.e.f. 27 Jun 43
D.57548 Pte. Sansoucy, H.

3.D C.T.B.A. from #3 C.I.R.U. on admission to Cdn Detention Barracks w.e.f. 23 Jun 43
A.22415 Pte. Campbell, M.

4. ABSENT WITHOUT LEAVE

4.A A.W.L. from 2359 hrs. 19 Jun 43. Still absent 2359 hrs. 27 Jun 43 (8th. day)
A. A.3711 Pte. Davidson, V.J.

W. D. Thistle Major

5. STOPPAGE OF PAY

5.A Part II Order #9 para 6.A d/26 Jun 43. insofar as ti refers to the u/m is cancelled.
B.93671 Pte. Reynolds, H.

5.B Part II Order #36 (#15 General Hospital) para 10.A insofar as it refers to the direction concerning the u/m is cancelled w.e.f. 31 May 43 (Authority D.A.G. Directic d/10 Jun 43) and the following directions substituted.

"To be placed under stoppage of pay in the amount of $7.75 monthly under Art 761(c) w.e.f. 1 Jun 43"
B.93671 Pte. Reynolds, H.

6. PUNISHMENTS

6.A On 23 Jun 43 tried by F.G.C.M.
Charge: Sect 20(2) A.A.
Findings: Guilty
Sentence: 28 days Detention
Confirmation: Findings and Sentence confirmed by Commander (Major-General) C.R.U. on 23 Jun 43.
Close Arrest: In Close Arrest from 0930 hrs. 11 Jun 43 to 1100 hrs. 23 Jun 43 (12 days, 1 hr. 30 mins.)
Forfeiture: Forf. 28 days pay under Art. 149(1)(b) F.R. & I. Forf. 12 days pay under Art. 149(1)(c) Total forfeiture 40 days pay.
A. A.22145 Pte. Campbell, M.F.

6.B On 23 Jun 43 tried by F.G.C.M.
Charge: Sec. 20(2) A.A.
Findings: Guilty
Sentence: To forfeit all ordinary pay for a period of twenty-eight (28) days.
Confirmation: Findings & Sentence confirmed by Commander (Major-General) C.R.U. on 23 Jun 43.
Close Arrest: In close arrest from 0930 hrs. 11 Jun 43 to 1100 hrs 23 Jun 43.
Forfeiture: Forf. 28 days pay under Art. 149(1)(b) F.R. & I. Forf. 12 days pay under Art. 149 (1)(c) Total Forf. 40 days pay.
L.64385 Pte. Creeley, G.L.

EBW.

.....Captain.
(D.G.Balsillie) Officer Commanding.

/EBW. Certified true Copy of Original.

.....Capt.,
O.C.,Inc. 75,No.15 Cdn Gen Hosp.

H. D. Chisholm Major

Exhibit "B"

File No. 31/37. . .

Officer Commanding, 15th.Cdn.Gen.Hospital RCAMC.

Re:- L-5711 Pte.DAVIDSON V.J.

1. Forwarded for your information and necessary action, please, and disposal under C.A.R.O. No. 368 dated 29 Oct. 40.

London.
31-July 43.

No Complaints

for (W.Fern) D. A. P. M.,
London Area.

CHARGE 3073

Army Form B 252
(See King's Regulations)

R.C.A.M.C. Regiment

15th. Cdn. General Hospital — Battery / Squadron / Troop or Company

CHARGE against No. A.3711 Rank Pte.

Name Davidson, V.J.

Place Horley, Surrey. Date of Offence 30/JUL/43

OFFENCE W.O.A.S. was absent from his Unit without leave from 2359 hrs. 19 [illegible] until apprehended by the Canadian Provost Corps at 2015 hrs.30/Jul/43, in the Town of Horley, Surrey.

(2) W.O.A.S. was in possession of a document purporting same to be a genuine leave pass, knowing it not to be genuine.

(3) W.O.A.S. did impersonate a superior officer in that he did wear the rank of full Corporal, when his rank at the time in question was that of Pte.

Names of Witnesses :— L/Cpl. Onofrychuk
L/Cpl. Rose
No. 3 Cdn. Provost Coy.

Signature of O.C. Battery, Squadron, Troop or Company — [illegible] Capt.

Punishment Awarded — [illegible]

By whom Awarded — for W. [illegible] LONDON [illegible]

[illegible] Adjutant.

P.T.O

EVIDENCE

EVIDENCE FOR THIS CHARGE SHEET / ATTACHED.

(altered pass - attached to Original charge sheet.)

REMARKS

If a calling-out of the whole Army Reserve is ordered, every soldier on pass must return immediately to his unit without waiting for instructions.

No. 2 Regd. 16th GENERAL HOSPITAL

PASS

Army Form Bay (In pad of 100)

No. A3711 (Rank) Ste (Name) Davidson V. J.

has permission to be absent from his †quarters/duty from

1000. [redacted] July 43 to 2359. [redacted] July 43.

for the purpose of Horley

(Station) Field

(Date) [redacted] July 43

J. Bherlson Major

for Commanding

† Delete address if not practicable.
Distinction [illegible] when [illegible] to [illegible] ticket or [illegible]

H. A. Thurtadd Major

GROWN COPYRIGHT RESERVED

SCHEDULE-F.

certificate in accordancewith P.C. 2797 of 10 Apr 42.

I certify that No. A.3711 Rank. Pte. Name. Davidson, V.J.

Unit. 15th. Cdn. Gen. Hosp. RCAMC. was arrested at. Horley.

Surrey (place) at. 2015 (hour) on. 30/Jul/43. (date)

and that at the time of his arrest he was wearing (military uniform) or(~~xixxixxxxixxixxx~~).

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of his Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

LIEUT
(R.P. HARRISON)
No. 3 Cdn. Provost Coy.

Strike out part inapplicable.

H. A. Chestatel major

Expense Voucher Re—

Ref: K.R. & O. (Can) 539

Reg. No. R3711 Rank Pte. Name Davidson, W. J. Unit 15 Gen. Hosp. R.C.A.M.C.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Three Bridges

Date	Particulars	Amount		
1 Aug 43	Escorts return fare from LONDON To Three Bridges Own Ticket			
	Prisoners single fare to LONDON From Three Bridges		2	4
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		2	4

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

H. D. Theobald Major

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London. Capt.

CMHQ 1000-38
60/P & S/482

Summary of Evidence

Summary of Evidence in the case of A3711 Pte. Davidson V.J. Increment establishment #15 General Hospital, R.C.A.M.C.

The Commanding Officers directs that the evidence be taken under oath.

1st. Witness - B. 93556 S/Sgt. Cook, C. #15 Gen Hosp Incr. RCAMC having been duly sworn states -

I am chief clerk of the increment establishment #15 Gen. Hospital R.C.A.M.C. On the 29th June '43 I had shown on Part II Order No. 10 that #A3711 Pte Davidson. V.J. was T.O.S. as of that date and on the same order showed him as absent at 23.59 hrs 19 June 43 and to be still absent at 23.59 hrs. 27 June 43., eighth day of absence. That information for the order was received from Major Neilson, registrar #15 General Hospital. I hereby submit a certified true copy of Part II Order No 10 for 29 June 43.

(Received and marked exhibit "A"

The accused declines to question the witness.

[signature]

2nd Witness. - C18636 B.S.M Laney J.G. No 1 C.A.R.U., attached #15 Gen Hospital having been duly sworn states

I am the N.C.O in charge of attached guards at #15 Gen Hospital and at approximately 15.00 hrs 1 Aug. 43. the accused was placed in my custody by an escort from No 3 Provost Coy. for safe keeping with the accompanying documents which I herewith submit.

Documents received and marked exhibit "B"

The accused declines to question the witness.

[signature]

The accused was asked "Do you wish to make any statement or to give evidence under oath? you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement.

I certify that the foregoing evidence consisting of one page was taken down by me in writing in the presence of the accused and that the Rules of Procedure (C) (D) (E) (F) and (G)

Bramshott, Hants. W.D. Theobald Major Deed of [illegible] Maj. R.C.A.M.C.

Aug 2/43.

ADDITIONAL SUMMARY OF EVIDENCE

Additional Summary of Evidence in the case of A3711, Pte. Davidson, V.J., Increment Establishment #15 General Hospital R.C.A.M.C.

First Witness for the prosecution

No. M76 L/Cpl Onofrychuck, J., No. 3 Cdn Provost Coy. Canadian Army Overseas, - a written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "A" Having regard to the exigencies of the service, the attendance of this witness cannot, in my opinion, be readily procured.

(Fred C. Jennings) Major RCAMC

The accused does not demand the attendance of this witness for cross-examination.

Second Witness for the prosecution

No. A9127 L/Cpl Rose, A. No. 3 Cdn Provost Coy Canadian Army Overseas, a written statement of this witness's evidence, purporting to be signed by him, has been read to the accused and is included in this summary of evidence and marked Appendix "B".
Having regard to the exigencies of the service the attendance of this witness cannot in my opinion be readily procured.

(Fred C. Jennings) Major RCAMC

The accused does not demand the attendance of this witness for cross-examination

(Fred C. Jennings) Major RCAMC

Bramshott, Hants
6 Aug 43.

EVIDENCE FOR NO. 3 CDN. PROVOST COY. CHARGE #3073.:

On the night of 30/Jul/43, I was informed by the Horley Civil Police, that there was a Canadian soldier working on a farm near Horley, whom said Police thought to be an absentee.

Appendix "A"

In company with L/Cpl. Rose, A. and the Horley Civil Authorities, I proceeded to the farm in question. On arriving at the farm the soldier was contacted and his particulars were obtained. This soldier proved to be Reg. No. A.3711 Pte. Davidson, V.J., of the 15th. Canadian General Hospital R.C.A.M.C. Pte. Davidson was asked whether or not he was in possession of a pass, the soldier replied that he had a pass; however when he attempted to produce same he was unsuccesful. I then placed Pte. Davidson under close arrest and escorted him to the Horley Civil Police Station.

After arrival at the Police Station Pte. Davidson was advised to turn his possessions over to me, it was then that I discovered a pass amongst the soldier's possessions that had been altered. Pte. Davidson made a statement to the effect that he was an absentee. At the time Pte. Davidson was wearing the rank of full Corporal on his tunic; upon checking his pay-book and other possessions no verification of said soldier having been promoted to the rank of Cpl. could be ascertained. The farmer Mr. F. Grey of 16 Station Road, Horley, for whom the accused worked, stated that Pte. Davidson had been employed by him since 5/Jul/43.

A statement was received from a Mrs. E. Jeeves of 35 Meath Avenue, Horley, whom the accused had been staying with, to the effect that Davidson had come back to stay on the 1/Jul/43 and that he had remained there until this date 30/Jul/43.

~~Pte. Davidson's Unit was contacted and advised of the matter through No. 3 Cdn. Provost Coy., Orderly Room.~~

FIELD:
31/JUL/43.

L/CPL.
M.7[illegible] Onopiuk, J.
No. 3 Cdn. Provost Coy.

Appendix "B"

I have read over and corroborate the above statement.

L/CPL.
A.912[illegible] A. Rose
No. 3 Cdn. Provost Coy.

No. 3 PROVOST COY. ORDERLY ROOM 31 JUL 1943 FILE No. C A A

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A3711	Pte	Davidson, V.J.	Incr. Estab. #15 Gen Hos RCAMC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for Drunkenness the entries for drunkenness must be stated separately and dated.

	• Within last 12 months.	•Since Enlistment.
For A.W.L. (Sect 15(1) A.A.	2 times	4 ~~2x~~ times.
For Sect 40 A.A.	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, or

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for _____ days in civil custody, and _____ days in military custody, making a total of _____ days, of which _____ days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 34 yrs (8 Nov 1909)

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 19 Feb 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 5 mths

8. The accused is entitled to deferred pay or gratuity in respect of nil service.

9. The accused is entitled to reckon 3 yrs 5 mths service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(or is in possession of or entitled to [state any military decoration or award])~~.

11. ~~(If the accused is a warrant officer.) The accused holds, he was made a warrant officer, has held the appointment~~ rank of _____ dated _____

12. ~~(If the case of an officer.) The accused holds in the army the rank of~~ _____ dated _____ and in his regiment (or corps or department) the rank of _____ dated _____

(7)8/40 W1,600,000 11/40 A.& E.W.Ltd. Gp.698

L. A. Theobald major

A3711 Pte Davidson, Vernon John.

M.F.M. 6 not being available, the following extracts are taken from the M.F.M. 14:

NATURE	PART II D.O.	REMARKS
(1 CI(R)TC)		
Forfeits 105 days pay	237 23.9.40	AWL & AA 46
Stoppage of pay	243 30.9.40	Tr.War.#22379, 5.76
D0237 amended	308 14.12.40	To read "forfeits 13 days pay"
6 Arm Regt		
AWL forfeits 2 days P&A	191 8.10.41	
14 Gen Hos RCAMC		
AWL 6 hrs	50 15.9.42	Forf 1 days pay - 10 days C.B. on 14 Sep 42
AWL 22 hrs 30 min	9 3 Feb 43	6 days pay & 14 days CB on 2 Feb 43
Sec 40 AA	28 6 Apr 43	28 days Fld Punishment and aut forf 28 days pay
15 Gen Hos RCAMC		
A.W.L. over 8 days	10 29 Jun 43	

Certified that the above is a true summary of the entries relative to offences shown on the M.F.M. 14 of A3711 Pte. Davidson, V.J.

Bramshott 2 Aug 43.

D.G. Balsillie
.....
(D.G. Balsillie) Captain
Officer Commanding
Increment Establishment
#15 General Hospital RCAMC

N. D. Theobald Major

QQ 69
CPL DAVIE T.C.

H 65426 Cpl Davie, T.C.
To Cdn Inf Bde Coy RCASC

PQ-69

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 15th day of September, 1943

Whereas it appears to me, the undersigned, an officer in Command of 4 Cdn Armd Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

*(1.) Three Officers to form the Court.)

*(2.) A Field Officer as President.)

for the following reasons, namely :—].

*Omit if not applicable.

JUDGE ADVOCATE

Major W.A.D. GUNN Hq 4 Cdn Armd Div

11 Oct 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.F. MOGILL	Linc & Welld Regt

Members.

Rank.	Name.	Regiment.
Capt	G.E. ARMSTRONG	A & S Highrs of C
Capt	J.A. MASON	Alg Regt
Waiting Member Capt	A.M. GILLES	Linc & Welld Regt

*Signed J.F. Mortimer-Stone (J.F. MORTIMER-STONE) Maj-Gen
Commanding 4 Cdn Armd Div
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
65426 Cpl Thomas Charles DAVIE 10 Cdn Inf Bde Coy RCASC	First Charge Sec 15(1) Army Act See charge sheet att.	Not Guilty	Guilty. To be reduced to the ranks.	The finding & sentence is hereby confirmed. 77 Worthington C.O.C. 4 Cdn Armd Div SEP 23 1943

In the field this 18 day of Sep 1943.

J. M. J. Madill Major
President
W. T. Gunn Major
Judge Advocate

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary): No.

(Signed) 77 Worthington (F. F. WORTHINGTON) Maj-Gen (Signed) J. M. J. Madill Major
Commanding 4 Cdn Armd Div
Confirming Officer (e)
W. T. Gunn Major Judge Advocate President

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of Sep 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) the Shorthand Writer and Judge Advocate
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 18th day of Sep 1943.

J. M. J. Madill Major
President of the Court Martial.
W. T. Gunn Major Judge Advocate

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~ 77th

Signed this 23 day of Sep 1943

77 Worthington
Confirming Officer.
C.O.C. 4 Cdn Armd Div
SEP 23 1943

Promulgated and extracts taken in the case of H65426 Cpl. Thomas Charles Davie, 10 Cdn Inf Bde Coy. RCASC
(a) (Dated) 28 September 1943 (Signed) H. [illegible] Major
Officer Commanding
10th Cdn. Inf. Brigade Coy., R.C.A.S.C. C.A.O.C.

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, H.65426 Cpl DAVIE THOMAS CHARLES 10 Cdn Inf Bde Coy RCASC, a soldier of the Canadian Army Overseas is charged with when on Active Service:

FIRST CHARGE
Sec 15(1) AA

Absenting Himself Without Leave

In that he

In the Field on 27 Aug 43 absented himself without leave from his unit 10 Cdn Inf Bde Coy RCASC from 2200 hrs 27 Aug 43 until 2100 hrs 29 Aug 43.

(Absent 47 hours)

H. Miller

(H E MILLER) Maj
Officer Commanding
10 Cdn Inf Bde Coy RCASC

In the Field
Aug 43.

HQ 4 Cdn Armd Div
15 Sep 43
To be tried by FGCM
F.F. Worthington
(F.F.WORTHINGTON) Maj-Gen
GOC 4 Cdn Armd Div

J. W. Madill Maj
President F.G.C.M.
Wm Gunn Wright
Judge Advocate

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can.) Para 552

I certify that I have this morning examined No. H65426

Cpl. Davis, T.C. of 10 Cdn Inf Bde Coy, RCASC,

and in my opinion he is fit/~~unfit~~ to undergo trial by court-martial.

Station In the Field.

Date 18 Sept. '42.

H.L. Sills Capt.
Medical Officer.

PAGE I

Record of Proceedings of a Field General Court Martial

Held in the Field in England. (Country) on 18 Sep 43 (Date) to try

Accused H65426 Cpl Thomas Charles Davis 10 Cdn Inf Bde Coy RCASC
(Number) (Rank) (Christian Names) (Surname) (Unit)

	Rank	Name	Unit
President	Major	J.F. Madill	Linc & Welld Regt.
Member	Capt.	J. A. Mason	Alg R.
Member	Capt	G. E. Armstrong	A & S Highrs of C.
Judge Advocate (if any)	Major	W.A.D. Gunn	HQ & Cdn Armd Div
Officers Under Instruction (if any)	Lieut	D.K. Fried	A & S Highrs of C.
	Lieut	C.W. MacDonald	A & S Highrs of C.
	Lieut	L. DeRosiers	A & S Highrs of C.
	Capt.	A.A. Gilles	Linc & Welld Regt

Prosecuting Officer Capt. NRV Faries 10 Cdn Inf Bde Coy RCASC

Lawyer? Ans No.

Defending Officer Lieut. C D Glover 10 Cdn Inf Bde Coy RCASC.

Lawyer? Ans No.

(The following procedure must actually be carried out)

1. The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs.P.17(E), 22(A)). WOOT

   (If a waiting member substituted, record is on separate sheet, initialled by the President and attached hereto). (For form of record see M.M.L. p.742 top).

2. The President, in closed court (R.P.22, fn 1) reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted (A.A.49: Rs.P.106, 107), that the accused is (are) amenable to Military Law, and that each charge discloses an offence (Rs.P.23,108). WOOT WOOT

3. The accused is (are) brought before the Court and at 1010 hours the trial commences. WOOT

4. The Prosecuting Officer produces a Medical Certificate under K.R.(Can) 557 (See CMHQ Circular Letter 173) that the accused has (have) this day been examined and is (are) fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings. WOOT WOOT

(Over)

5. President to accused:

Q - Do you object to N.A. as interpreter?
A - N.A.

The interpreter is duly sworn. (Form of oath on Page "D").

Q - Do you object to M14436 Sgt Elliott F.W. as shorthand writer?
A - No Sir

The shorthand writer is duly sworn. (Form of oath on Page "D").

6. The Convening Order is read in the hearing of the accused. The names of the President and Members of the Court are read to the accused and they severally answer to their names (R.P.25).

7. President to accused:

Q - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A - No Sir

(If objection is made it is recorded on separate sheet, initialled by the President and attached hereto. (R.P.25). (For form of record see M.M.L. p. 742 Variation).

8. The President, Members, Judge-Advocate and Officers under Instruction are duly sworn (Rs.P.26, 27). (Forms of oath on page "D").

9. The Charge Sheet(~~s~~) is (~~are~~) signed by the President. WVSY

10. The Prosecuting Officer informs the Court that the accused ~~has~~ (has not) elected trial by Court Martial (A.A.46(8)). WVSY

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130; R.P.57), such plea and evidence (if any) are recorded on separate sheet(s), initialled by the President and attached hereto). (For form of record see M.M.L. p. 744, 745, Variations).

11. Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	Not Guilty	Fifth Charge	
Second Charge		Sixth Charge	
Third Charge		Seventh Charge	
Fourth Charge		Eighth Charge	

(For procedure on alternative charges, see R.P. 37(A) and fn. 2). (For form of record see M.M.L. p. 744 Instructions).

Further proceedings are recorded on pages hereto attached.

0101

(2 Cin Corps 15-A-[illegible])

WVSY

PAGE 'B'

(For use when accused pleads "Not Guilty" to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. The accused is asked the question set out below the Schedule on p.2 of A.F.A.3 and his answer there recorded. (R.P.39(A)).

2. The Prosecutor's opening address (if any) (R.P.39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.

(See RECORD OF EVIDENCE on Page 'D').

3. The Prosecution is closed.

(If submission is made by Defence that no prima facie case has been established, such submission, Prosecutor's reply and decision of the Court are recorded on separate sheet, initialled by the President and attached hereto). (Rs.P.40, fn 1; 70, fn 1).

4. The accused is informed that he may, if he wishes give evidence but if he does so he will be liable to cross-examination (R.P.40, fn 2) or that he may, if he wishes, make an unsworn statement upon which he can not be cross-examined. (R.P.40(D) (ii) (a)).

5. President to accused:

Q - Do you apply to give evidence yourself as a witness?
A - ~~Yes Sir~~
Q - Do you intend to call any other witness in your defence?
A - ~~Yes Sir~~
Q - Is he a witness as to character only?
A - ~~Yes Sir~~

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of same see Rs.P.40,41,42).

8. The Court is closed to consider the finding(s). (Rs.P.43,44,117).

9. The finding(s) of the Court is (are) recorded on p.2 of A.F.A.3.

10. The Court being re-opened, the accused is again brought before it.

11.(A) ~~(If finding(s) "Not Guilty" on all charges)~~

~~The finding(s) is (are) announced and the accused is released.~~

OR

(B) ~~(If finding(s) "Not Guilty" on one or more charge(s) and finding(s) "Guilty" on one or more charge(s)).~~

~~The finding(s) of "Not Guilty" are announced and the President states "The finding(s) of the Court on the ____, ____ and ____ charge(s) being subject to confirmation, will be promulgated later".~~

OR

(C) (If finding(s) "Guilty" on all charges).

The President announces "The finding(s) of the Court being subject to confirmation, will be promulgated later".

(Over)

12. Statement of Character and Service (A.F.B.296 or M.F.B.355) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163 (1) (h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, marked "X" and "X", signed by the President and attached to the proceedings. (R.P.46; Overseas R.O.3131).

13. President to accused:

Q - Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)).

A - Yes sir

(Address (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

14. The President announces:

" The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

15. The Court is closed to consider the sentence.

16. The sentence is recorded, dated and signed by the President (R.P.50) on p.2 of A.F.A.3.

(Punishments, A.A.44; M.M.L. p.130-134; K.R.(Can)563-566; Overseas R.Os.309,2323).
(One sentence is awarded in respect of all offences, R.P.48).
(For form of sentence see M.M.L.p.756-759).

17.

[signature]
(Signature of President)

W.V.A. Gunn Major
Judge Advocate

(2 Cdn Corps 15-6-43)

Opening address by the Prosecuting officer

Sir, and members of the court, it has fallen my lot to do a very unpleasant job of prosecuting a good Cpl. The facts that I shall present to you will be brief and I think to the point, so I will leave the opening address out.

First witness for the Prosecution

K 75465 CSM Wilson, G.E. 10 Cdn Inf Bde Coy RCASC being duly sworn is examined by the Prosecutor.

Q.1 Identify yourself to the court giving your number, rank, name and unit?
A.1 I am K 75465 CSM Wilson G E of the 10 Cdn Inf Bde Coy RCASC.
Q.2 Will you tell the court what you know of the alleged absence without leave of Cpl Davie, T.C.?
A.2 In our company, 10 Cdn Inf Bde Coy, of which I am the Sgt Major, it is my duty to issue all leave passes to personnel proceeding on leave. I issued one to Cpl Davie on the 18th of August 43 inthe company of other men going on leave. I pointed out to Cpl Davie there was an address on the back of the pass to which they would return if the unit had moved. I also pointed out that the pass expired at tattoo and warned them of the train times from London toWadhurst where we were in order that they could get back in time.
Q.3 Do you recognize the accused?
A.3 Yes sir,(identifies the accused)
Q.4 Do you recognize this?
A.4 Yes sir, it is the pass I issued to Cpl Davie on the night in question.
Pass is tendered to the court, marked Exhibit A and signed by the President.

Cross examined by the Defence

Q.5 Have you known Cpl Davie for long?
A.5 Ever since he joined our unit, about August, 1941 sir.
Q.6 In your capacity as CSM you would have direct dealings with your junior NCOs?
A.6 Not at all times.
Q.7 You do at times?
A.7 Yes sir.
Q.8 What are some of the duties allotted by you to Junior N.C.Os?
A.8 The only duty that comes under my control is that of orderly Sgt.
Q.9 Any duty you have given to Cpl Davie in what manner were they carried out
A.9 He has always carried them out efficiently.
Q.10 In any report that has ever been given to you, or any statement, by Cpl Davie, has there ever been the slightest doubt that they were false?
A.10 No sir, it has not.
Q.11 Have you at any time ever had any complaints made to you by your subordinates as to the actions of Cpl Davie?
A.11 I cannot recollect any sir, none of military importance.

Questioned by the court

Q.12 What is the hour of tattoo?
A.12 2200 hrs sir.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Second witness for the Prosecution

Major H.E. Miller, Officer Commanding, 10 Cdn Inf Bde Coy RCASC being duly sworn is examined by the Prosecutor

Q.1 Will you identify yourself to the court?
A.1 I am Major H.E. Miller, Officer Commanding the 10 Cdn Inf Bde Coy RCASC,
Q.2 Do you recognize Cpl Davie T.C. in this room?
A.2 Yes I do(Identifies the accused)

Q.3 Will you tell the court what you know of the alleged absence of Cpl Davie T.C.?
A.3 Cpl Davie phoned me the week he was on leave, I cannot recall the exact date, and asked me if he could have an extension of leave from Friday to Sunday. I informed him that owing to the fact that a number of the NCOs were away and there was something else in the air I could not allow him the extension and he would have to return on the day his leave expired.

Cross examined by the Defence

Q.4 Sir, can you remember in the conversation with Cpl Davie on the phone if there was anything said by Cpl Davie that he did not mean to comply with your wishes about coming back?
A.4 No there was not.
Q.5 As Commanding Officer of the unit have you ever had reason to believe that this NCO's work has been unsatisfactory?
A.5 I would say that he was a good average Cpl.
Q.6 Would you say he was a good soldier?
A.6 Yes I would
Q.7 Has Cpl Davie, to your knowledge, and using what would be slang, ever attempted to pull a fast one in the unit?
A.7 Not to my knowledge.

In the opinion of the court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Third Witness for the Prosecution

K 42285 Cpl Wilson, W.E.L., 10 Cdn Inf Bde Coy RCASC being duly sworn is examined by the Prosecutor.

Q.1 Will you give your number, rank, name and unit to the court?
A.1 I am K 42285 Cpl Wilson, W.E.L., of the 10 Cdn Inf Bde Coy RCASC.
Q.2 Do you recognize Cpl Davie T.C. in this room?
A.2 Yes sir (Identifies the accused).
Q.3 Will you tell the court what you know of the alleged absence without leave of the accused?
A.3 I received a phone call the night of the 27 Aug 43 from Cpl Davie stating that he had missed his train from Richmond toWaterloo and would be unable to catch a train until 0700 hrs the following morning. I then turned this information over to Capt Richards.
Q.4 Do you remember what time this phone callcame in?
A.4 Approximately 2100 hrs sir.

Cross examined by the Defence

Q.5 When Cpl Davie phoned to you what request did he make?
A.5 He just gave me that information sir.
Q.6 Did he ask you to get in touch with anyone?
A.6 Yes sir.
Q.7 Who did he ask for?
A.7 He asked for the orderly room and I was on duty there and he then asked for Capt Richards who was not there at the moment and I turned the information over to him.
Q.8 Did he ask for Capt Richards first?
A.8 I don't believe he did sir.
Q.9 He asked you to get in touch with Capt Richards?
A.9 Yes sir he did.

Questioned by the court

Q.10 Did the accused make any explanation as to why he missed the train?
A.10 He did not sir.
Q.11 He just reported he missed the train?
A.11 Yes sir.

Fourth Witness for the Prosecution

WOSF

H 65454 L/Cpl Hamaberg L.R., 10 Cdn Inf Bde Coy RCASC being duly sworn is examined by the Prosecutor

Q.1 Will you identify yourself to the court, giving your number, rank, name and unit?
A.1 I am H 65454 L/Cpl Hamaberg, L.R., 10 Cdn Inf Bde Coy RCASC.
Q.2 Do you know the accused?
A.2 Yes sir (Identifies the accused)
Q.3 Will you tell the court what you know of the alleged absence of Cpl Davie?
A.3 Sir, in my capacity as guard commander from 1800 hrs to 0800 hrs on the evening of 29-30 Aug I received Cpl Davie as he entered the guard house at 2100 hrs.
Q.4 What day was it that Cpl Davie reported in the guard house at 2100 hrs?
A.4 I am not sure of that.
Q.5 Was it that night?
A.5 Yes sir, the night of 29 Aug sir.

Cross examined by the Defence

Q.6 Do you know Cpl Davie very well?
A.6 Yes sir.
Q.7 Would you say he was perfectly normal when he returned?
A.7 Yes sir.

Questioned by the Court

Q.8 Was the Cpl sober?
A.8 Yes sir.
Q.9 Was he under escort?
A.9 No sir.
Q.10 Did he hand in his pass to you?
A.10 Yes sir.
Q.11 Do you recognize this Exh A?
A.11 Yes sir.
Q.12 You made no note on the back the time it was handed in?
A.12 No sir, just took it.

In the opinion of the court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

The Prosecution is closed

First Witness for the Defence

The accused, H 65426 Cpl Davie, T.C., 10 Cdn Inf Bde Coy RCASC being duly sworn is examined by the Defence.

Q.1 Will you identify yourself to the court?
A.1 I am H 65426 Cpl Davie, T.C. 10 Cdn Inf Bde Coy RCASC.
Q.2 How long have you been with the 10 Cdn Inf Bde Coy?
A.2 Ever since I joined the army sir,
Q.3 That was when?
A.3 June 25th, 1941 sir.
Q.4 What ranks have you held in this unit?
A.4 L/Cpl and Cpl sir.
Q.5 How many charges of which you have been found guilty have you to your credit?
A.5 I have never had a crime in the army sir, this is the first one.
Q.6 Have you ever had any trouble with your superiors or your subordinates or lower ranks in an official capacity?
A.6 Not as far as my superiors are concerned, but with the lower ranks I have had some trouble but have usually been able to straighten that out.
Q.7 Are you married?
A.7 Yes sir.
Q.8 When and where did you get married?
A.8 I was married on Saturday the 17 July 43 at Mortlake.
Q.9 How much leave did you have at the time you got married?
A.9 I was married on the Saturday and returned to the coy on the 16th to continue sports.

Q.10 If you had pressed the subject could you have had leave?
A.10 Yes sir, I cancelled it because of the sports.
Q.11 Who wanted you to participate in these sports?
A.11 Capt Ford was the one who asked me.
Q.12 When was your seven days leave due?
A.12 The 14th of July sir, 1943.
Q.13 You allowed your leave to pass so as to participate in the sports?
A.13 I cancelled my leave more or less for the request. There was a big sport day coming up and they wanted me totake part.
Q.14 The cancelling of your leave, did that cause any domestic friction of any kind?
A.14 It was my first argument with my wife.
Q.15 Did you feel you were doing right?
A.15 In a way yes, because if I took my leave it would just throw the sports day out and they would have had to move more men around.
Q.16 Would you explain the circumstances in connection with your missing the bus at Mortlake?
A.16 On the evening of 27 Aug Mrs Davie and myself went out to a town called Kingston to visit some friends. We stayed there for supper and left after supper to get the bus back to Mortlake where I was to catch my train. We arrived at the bus stop and there was a queue there and we missed the first bus and had to wait for another one. We arrived in Richmond approximately 2015 hrs and I had to continue out to Mortlake. By the time I had got my pack I would have been too late to get the train to catch the train to destination.
Q.17 Did you know from past experience or through some check, the exact time the bus left that stop?
A.17 Yes sir.
Q.18 Why did you not proceed to take the next train?
A.18 I would have had to stay in Waterloo allnight sir.
Q.19 How do you know this?
A.19 Other times when I had been up there before I caught the last train back.
Q.20 May I ask why you phoned the unit?
A.20 Yes sir, to inform them I was coming the first thing in the morning, I knew I was A.W.L. and I phoned to clear myself.
Q.21 Why after all this trouble of phoning the unit, why did you not leave in time to get back?
A.21 It was through the condition of the wife I stayed sir.
Q.22 Could you clarify that a bit, as to what happened?
A.22 Before I came up on leave, Mrs Davie had heard from one of the fellows of the unit, he asked her if I had been up on leave and when she said no, he told her she could expect me any time because we were all leaving and had to finish our leave by the end of the month. She then took it that it was my last leave. On Saturday morning the 28th of August I was getting ready to go home and I walked out of the bed room and left Mrs Davie in there. I returned about ten minutes later and asked if she was ready. She was lying on the bed crying. I asked her what was the matter and she told me. The more we tried to stop her, her mother and I, the worse she got. This kept for an hour and a half I would say and we put her to bed. I knew then that even if I did get the train I would not arrive back in camp until Saturday night, and the next day being Sunday was the reason I stayed.
Q.23 Did you feel at the time that by staying with your wife you could do any good?
A.23 Yes sir, she practically begged me to stay.
Q.24 Did she know the trouble you would get into?
A.24 I think she did more or less not know what she was doing.
Q.25 Has she at any time before lost control in this way?
A.25 No sir, before she always made sure that I got the train, and got back in time.
Q.26 How soon did you get away on Sunday?
A.26 I left home at 1700 hrs on Sunday, and left for my destination at 7:26.

The Prosecutor declines to cross-examine

Questioned by the court

Q.27 Is Exhibit A the leave pass you had Cpl?
A.27 Yes sir.

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Q.28 The empiry time on that pass is 2200 hrs on the night of the 27 Aug?
A.28 That is right sir.
Q.29 Were you back at the unit lines at that time?
A.29 No sir.
Q.30 Did you have any further leave after you were married?
A.30 I had one week end and one forty eight hour sir.
Q.31 The week end would be from Saturday after duty?
A.31 Yes sir, I returned on the Sunday night.
Q.32 What was the duration of the 48 hrs pass?
A.32 From noon on Saturday until noon on Monday.
Q.33 Why did you not return Saturday afternoon?
A.33 Through the condition of the wife sir.
Q.34 You state this condition was bad for an hour and a half, this was Saturday A.M. I presume?
A.34 She was in a bad condition all day Saturday sir.
Q.35 Did you go out on Saturday night?
A.35 No sir.
Q.36 Why did you wait until 1700 hrs Sunday before you left?
A.36 The wife and I got out of bed around noon and we had dinner and then talked for a while and then I got the train.
Q.37 What was the date of your leave?
A.37 From 17 Aug to 27 Aug?
Q.38 What year?
A.38 1943 sir.

In the opinion of the court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Second Witness for the Defence

K 75798 Sgt Powell, T.I. 10 Cdn Inf Bde Coy RCASC being duly sworn is examined by the Defence

Q.1 Will you identify yourself to the court?
A.1 I am K 75798 Sgt Powell, T.I., of the 10 Cdn Inf Bde Coy RCASC.
Q.2 What is your position?
A.2 I am R.D.I. Sgt of A Pl sir.
Q.3 Have you worked with Cpl Davie for any length of time?
A.3 Over two years sir.
Q.4 May I ask your opinion as Sgt of Cpl Davie as section Cpl?
A.4 All the time that I have known Cpl Davie I have found him to do his work to the best of his ability, have never once had cause to pull him up for anything. He has displayed fine leadership and his section has always proven it.

The Prosecutor declines to cross examine

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Third Witness for the Defence

Lieut E.W. Maloney, 10 Cdn Inf Bde Coy being duly sworn is examined by the Defence

Q.1 Will you identify yourself to the court?
A.1 I am Lieut E.W. Maloney, 10 Cdn Inf Bde Coy RCASC.
Q.2 Might I ask what is your opinion of the accused Cpl Davie?
A.2 I am an increment officer attached to the 10 Cdn Inf Bde Coy for a period of three months. I was in charge of A Platoon for a period of 6 Jun to the middle of August and Cpl Davie was a section leader for a period of four or five weeks. He carried out his duties well and he was anxious to do his work

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Q.3 Would you say that Cpl Davie was a good soldier?
A.3 I would.
Q.4 As an officer in charge of A Pl would you say that A Pl would benefit by hating Cpl Davie as a section Cpl?
A.4 I feel that Cpl Davie is of more value to the Pl than to the Coy as a Cpl

The Prosecutor declines to cross examine

In the opinion of the court and the Judge Advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Closing address of the Prosecution

Mr President, and Gentlemen, in fairness to everyone regardless of certain extenuating circumstances that appear in this case it has nevertheless been proven, (1) that Cpl Davie is a person subject to military law (2) it was in fact his duty to be with his unit at tattoo on the 27th of August, 1943 (3) that he was not there at that time.(4) that he remained absent until 2100 hrs 29 Aug 43 and then returned of his own accord.
This the Prosecution has proven and the Prosecution rests.

Closing address of the Defence

May I first point out this, an action such as this one, a Cpl who has been of great value to his unit, who has absolutely nothing behind him except good work, a clean crime sheet, certainly in the opinion of the defence this should not have been brought to a court martial. Cpls could be made to do extra duties and made to give up leave. If an example is to be made of anyone surely that example could be made of one who deserves it rather than one who has stumbled over some slight block that was put there through circumstances beyond control. I know that this Cpl was in line for promotion. He has carried out his duties as A Pl Sec Comd and he is the senior Cpl in the Platoon. He has never had any complaints. I myself have quite a bit to do with administration, and any reports, or any work done by Cpl Davie, there never was a cause forcomplaint. I believe that Cpl Davie had every reason to and every intention to return at the right time as was told to him by Major Miller when he phoned. As has been brought out Cpl Davie was married on the 17 Jul, and for the good of the unit, and I am sure for no other reason, he only took a honeymoon of a day and a half, because people begged him, and he came back to participate in the sports, so that something might be secured by his unit as a record. Cpl Davie did this in spite of the argument he put up I am sure. May I also point out that it would hardly be expected of any man, to turn around and walk out of the house when his wife is hysterical. We might say that he should get back to the unit, but would any of us do that under the same circumstances. He had not been married long and as he saw it his duty lay with his wife, and he was under the impression that once the circumstances were explained it would be allright. It has also been brought out the amount of leave he has had since his marriage, but at the same time I want to bring out that he has pulled for this unit and worked for this unit, and I know what I am speaking of. He has carried out every duty which has been given to him and he certainly is one of our best Cpls. He would be missed if he were takendown from his present rank and he would not be missed if he were put up. This may sound as if I were attempting to build him up to the court, but that is not the case, he is a good man. All this should be taken into consideration when the court is considering their finding.

In the opinion of the President and the Judge Advocate it is not necessary for the Judge Advocate to sum up

Statement by the Defence in further Mitigation of Punishment

I think perhaps enough has been said other than one or two words. I would very much like to point out that consideration might be given to his past record his past conduct and the value to the unit that he has been, and the value to the unit at present as a very competent section commander.

Ex "A"

CANADIAN ARMY OVERSEAS

LEAVE PASS

Date 8 Aug 43

Pass No. 1

No. H65436 Rank Cpl. Name Davie J.C.

has permission to be absent from his unit from A.D. hrs. 18 Aug 43

to TATOO hrs. 27 Aug 43 for the purpose of proceeding to

Richmond

70th Cdn. Inf. Bde. Coy.
R.C.A.S.C. CA (A)
AUG 16 1943
ORDERLY ROOM
Orderly Room Stamp

J. H. Richards Capt.
(Unit Signature Stamp)

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. 1

Date 18 Aug 43

No. H 65436 Rank Capt. Name Davis J.C.

has permission to be absent from his unit from A.D. hrs 18 Aug 43

to 7 1700 hrs 27 Aug 43 for the purpose of proceeding to Richmond

10th Cdn. Inf. Bde. Coy.
R.C.A.S.C. CA-1(A)
AUG 26 1943
ORDERLY ROOM

Orderly Room Stamp

J. H. Richards Capt.

(Unit Signature Stamp)

ENDORSEMENTS

	Sec. 18(d)	R.T.O.—Station Master—Local Police

INSTRUCTIONS

1. If you are travelling with free warrant have this pass stamped or endorsed in the space provided above by the R.T.O. station-master or local police at the place where you spend your leave. If you are unable to return to your unit due to interruption of transportation facilities have it endorsed to that effect by one of these officials.

2. Arms and equipment will not be checked at railway stations except [illegible] between trains.

3. Carry this pass and your pay book (M.F.H.Q.) at all times while on leave.

4. **Illness on leave.**
(a) Apply to the nearest unit of the Canadian Army, or
(b) If none in the area, apply to the nearest unit of the British Army, [illegible] treatment and that the O.C. communicate the facts to your unit. If [illegible] unit before the end of your leave obtain a written report from the M.O. [illegible] C.O. on rejoining, or
(c) If no military unit in the area, apply to a civilian [illegible] Medical service Hospital, obtain a letter certifying [illegible] If convenient telegraph your unit before the end of your leave [illegible] your C.O. on rejoining.

5. Turn this pass in on rejoining your unit.

CFA 24
40/P 4 × 1500
(In pads of 100)(2421)

Summary of evidence in the case of H65426 Cpl. Davie, T.C., 10 Canadian Infantry Brigade Company, Royal Canadian Army Service Corps, 4 Canadian Armoured Division, is charged with:

1. A.A. 15-1 Absence Without Leave.

The Commanding Officer directs that the evidence be taken on oath.

First Witness:

K75465 C.S.M. Wilson, G.E., 10 Cdn.Inf.Bde.Coy.,R.C.A.S.C., sworn, states:

In my capacity as C.S.M. of this Company, I issue all the leave passes to men proceeding on leave. On the night of 18 Aug 43, I issued Cpl. Davie with a pass and had him sign for Train Warrant and Ration card in a book kept for that purpose. In the company of other men proceeding on leave I pointed out an address on the back of the pass to which members of the Unit would go in the event the Unit had moved. I warned them of train times in order to be back in the Unit Lines by Tattoo of the date the pass expired. That is all Sir.

The accused declined to cross-examine.

Second Witness:

Major H.E.Miller, Officer Commanding, 10 Canadian Infantry Brigade Company, R.C.A.S.C., sworn, states:

One day last week Cpl. Davie phoned and asked if it would be possible for him to extend his privilege leave 48 hrs. This would mean instead of returning to the Unit Lines Friday at Tattoo, he would be returning Sunday at Tattoo. I informed Cpl. Davie that due to the fact that there were things in the air and that there was a shortage of N.C.O.'s at the present time, I was sorry but he would have to return on the date his pass expired. ~~That is all I have to say.~~

The accused declined to cross-examine.

Third Witness:

K42285 Cpl. Wilson, W.E.L., 10 Cdn Inf Bde Coy, R.C.A.S.C. sworn, states:

I received a phone call on the night of 27 Aug 43 at approximately 2100 hrs from Cpl. Davie, saying that he had missed his train from Richmond to Waterloo Station, and the first train that he could catch would be the next morning at 0700 hrs. I then turned this information over to Capt. Richards the Administrative Officer. That is all Sir.

The accused declined to cross-examine.

Summary of evidence in the case of H65426, Cpl. Davie, T.C., 10 Canadian Infantry Brigade Company, Royal Canadian Army Service Corps, 4 Canadian Armoured Division, is charged with:-

1. A.A. 15-1 Absence Without Leave.

The Commanding Officer directs that the evidence be taken on oath.

Fourth Witness:

H 65454 L/Cpl. Hamaberg, L.R. 10 Cdn Inf Bde Coy, R.C.A.S.C. sworn, states:

In my capacity as Guard Commander between the hours of 1800 and 0600 on the 29-30 Aug 43 Cpl. Davie reported at the Guard House at 2100 hrs 29 Aug 43. That is all Sir.

The accused declined to cross-examine.

L. R. Hamaberg.

The accused was warned as follows:
" Do you wish to make any statements or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given as evidence."

H 65426 Cpl. Davie, T.C. 10 Cdn Inf Bde Coy, R.C.A.S.C., sworn, states:

On the afternoon of Friday 27 Aug 43 Mrs. Davie and I went to a town out of Richmond called Kingston and stayed at some people's house for supper. We left the house and figured we had a lot of time to get bach to Mort Lake Station in time for me to catch my train back to Waterloo. It took us longer than we had figured in returning to Mort Lake by bus. I could have got a train out of Mort Lake that evening but I would have had to stay in Waterloo Station all night because of no trains moving between Waterloo and my final destination. I then phoned my Unit. On Saturday morning when I was packing my kit bag to return to my Unit Mrs. Davie could not get it out of her head that it was my last leave which she had heard previous to my arrival from one of the fellows in the 4th Division. We were just about ready to leave the house when Mrs. Davie broke down. Her mother could do nothing with her and neither could I. By the time we got her settled it meant that I would not arrive back at my Unit until Saturday night. I then figured the next day being Sunday, the way she was, I would stay over and go back Sunday night. I reported into the Unit at approximately 2100 hrs the night of 29 Aug 43. That is all Sir.

The accused declined to call any further witnesses in his ownbehalf.

T. C. Davie.

I certify that the forgoing summary of evidence was taken down by me in the presence and hearing of the accused, and that Rules of Procedure four (C), (D),and (E) and (F) have been complied with.

In the field this thirty-first day of August, 1943.

J.M.Baxter capt

J.M.Baxter, Capt.

Ex "X"
M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. H65426 Name Cpl. DAVIE, T.C. Sqn., Battery, or Company 10 Cdn Inf Bde Coy. RCASC. Corps Date of enlistment 25-6-41 G.C. Badges Nil Service or Proficiency Pay Nil

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. One Signature O.C. Company, etc. [signature] Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Nil					

Certified true copy

[signature] Major
(H.E.Miller) Major
Officer Commanding
10 Cdn Inf Bde Coy. RCASC.

Jno Martin
Pres
[illegible]
[illegible]

(P.T.O.)

Ex. "Y"

M.F.R. 588
40/P A/S/678

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H65426	Corporal	Davie, T.C.	10 Cdn Inf Bde Coy. RCASC

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	Nil	times	Nil	times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct.~~

or,

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for ---------- beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and ~~2~~ 20 days in military custody, making a total of ~~20~~ 20 days in custody (open arrest) of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 22 years 10 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 25 June 1941

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon ---------- service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to). State any air force decoration or reward.~~ military

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ ~~Permanent Force~~ unit

.....dated....., ~~and in his regiment (or corps), the rank of~~

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— 30th September 1942 Date of promotion.

In the rank of Corporal 11 months ~~years~~.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Of convictions by a court martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number~~ Air Force Rank

Name..... of..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N.J.			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~[illegible]~~ 18th day of ~~August~~ September 1943 [signature] Major O.C., 10 Cdn Inf Bde Coy

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked..... signed by the president, and annexed to the proceedings.

LIST OF WITNESSES FOR THE PROSECUTION

K75465 C.S.M. Wilson, G.E., 10 Cdn Inf Bde Coy. RCASC

Major H.E. Miller, Officer Commanding, 10 Cdn Inf Bde Coy. RCASC

K42285 Cpl. Wilson, W.E.L., 10 Cdn Inf Bde Coy. RCASC

H65454 L/Cpl Hamaberg, L.R., 10 Cdn Inf Bde Coy. RCASC.

Dated at Wadhurst Hall, Sussex this 31st day of August 1943.

Major
(H.E.Miller) Major
Officer Commanding
10 Cdn Inf Bde Coy. RCASC

I, H65426 Corporal Davie, T.C., desire to have an officer assigned to represent me at my trial by Court-Martial.

(I desire the services of LIEUTENANT CHARLES DONALD GLOVER if he is available.)

31 August 1943 T C Davie.

H.D. 70

PTE DAVIES E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H.17521 PTE. ERNEST DAVIES 8BN 2CBRD.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 116 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned without hard labour for two (2) years

(Sgd) W. B. Bate Capt — Judge-Advocate, if any.
25 SEP 44 — Date awarded.
(Sgd) E W George Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence of the Court but remit 6 months imprisonment

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) Coutlandenby Brig

Date 21 Oct 44 — Commanding COMMANDER 1 CDN [illegible]

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

H17521 Pte Ernest DAVIES 23 Oct 44 L J Marshall, Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 4D-70

FIELD GENERAL COURT-MARTIAL

CFAAR (To Bks of AFAR) 40/P & R/1808 (10/01) 4/38B

RECEIVED 1 NOV 44 AG BRANCH 8 BHQ

Convened by BRIG. E.W. HALDENBY Comd 1CBRGp dated 21 & 23 SEP 44

ACCUSED.

(For separate trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, (as, KR Can 308, 328, 330.)

PROCEEDINGS REVIEWED 16 Nov 44

Number.	(a) Permanent Rank and (b) Apptmt, if any, or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H.17521	PTE.	ERNEST	DAVIES	8BN 2CBRD

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 25 SEP 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2C 107

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 22, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Con 557. 2. AA 46(2), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to as interpreter? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJ.	E.W. GEORGE	(CAC)	7BN 2CBRD
Member	LT.	R.A. PICHE	(CIC)	1BN 1CBRD
Member	LT.	E.R. STAUFFER	(CIC)	2BN 1CBRD
Judge-Advocate	CAPT.	W.B. BATE	ADJA	HQ 1CBRGp
Prosecutor	CAPT.	G.T. GALE	(CAC)	8BN 2CBRD
Defending Offr	CAPT.	J.H. WELLS	(RCA)	8BN 2CBRD

Court adjourned 0940 hrs Court re-opened 1050 hrs

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 106, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 31.)

A8. The accused before arraignment makes(s) (his) (a) plea(s) (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or for one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A6 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A65 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. L69

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*B*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *securing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO SIR. .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3. *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex G, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence will be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File large Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*) *see* 86*A*(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86*A*(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The Court is re-opened.(2) The finding(s) of the Court is (are) recorded in Part I of the Schedule.
(1. *RP* 44, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans CALL TWO CHARACTER WITNESSES
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (*copies*) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex H and Ex I respectively.(3)
(1. *MFB* 355 *or MFB* 294. 2. *MFB* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES BY MY DEFENDING OFFR .....(2)
(1. *RP* 37(*C*), 44(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(4), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and so grouped, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 40. *As to sentences see AA* 44, 138, 140, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 306, 335, 563-566, *Overseas RO* 309, 2323, *MML p* 66, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), (*d*)(*i*), *KR Can* 564. 2. *RP* 50. *As to release from arrest for Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see matters on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

W.B.C.
cmt

The accused, H.17521, Pte Ernest DAVIES, 8 Bn., 2 C.B.R.D., a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Section 18(4)
Army Act.

When on Active Service STEALING PUBLIC PROPERTY

in that he

in the Field, in Italy, between 12 June 1944 and 13 August 1944 stole six (6) pairs of boots, the same being public property.

F.B. Conrad
(F.B. CONRAD) Lt-Col.
Commanding,
8 Bn., 2 C.B.R.D.

Field
19 Sept 44

Approved for trial
under K.R. (Can) 540
W. B. Gate Capt
ADJA HQ, 1 CBRDp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
21 Sep 44

E W Haldenby
(E. W. HALDENBY) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army-CMY

W.G.B.
Encl.

O R D E R

By the Convening Order issued by me in the Field in Italy on the 21st day of Sep 1944, in the matter of a Field General Court Martial for the trial of H17521 Pte Davies E 8 Bn 2 CBRD, Major W E Dunbar (CAC) 5 Bn 2 CBRD, was appointed President of the said Court.

Such appointment of Major W E Dunbar as President of said Court is hereby cancelled and Major E W George (CAC) 7 Bn 2 CBRD, is hereby appointed President of said Field General Court Martial in his place and stead.

Dated in the Field, in Italy, this 23rd day of Sep 1944.

E W Haldenby

(E. W. HALDENBY) Brigadier
Commander
1 Cdn Base Rft Group

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H17521	Pte		Ernest	DAVIES	8 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 21 Sep 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (*Rank.*)	W E DUNBAR (*Must be named. RP 106.*)	(CAC)	5 Bn 2 CBRD (*Unit.*)

MEMBERS.

Lieut	R A FICHE	(CIC)	1 Bn 1 CBRD
Lieut (*Rank.*)	E R STAUFFER (*Named or detailed. RP 106.*)	(CIC)	2 Bn 1 CBRD (*Unit.*)

WAITING MEMBER.

Capt (*Rank.*)	W B GARDNER (*Named or detailed, if any. RP 106.*)	(RCA)	2 Bn 1 CBRD (*Unit.*)

JUDGE-ADVOCATE.

Capt (*Rank.*)	W B BATE (*Must be named, if any. RP 106.*)	ADJA	HQ 1 CBRDp (*Unit.*)

On Active Service in the Fd

in Italy (*Country.*)

E W Haldenby (*Signed personally. RP 105 fn 2.*)
(E. W. HALDENBY)

Brigadier (*Rank.*)

Commanding 1 Cdn Base Rft Cp-CMF
Convening Officer.

Date 21 Sep 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (*Forms (1)a (2)a of AFAG 40/F & S/1st*)

(*See overleaf for oaths and notes for use on trial.*)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-43 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 90(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On sep.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(v) Exhibits numbered Ex A, Ex B, etc.

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 729.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE
(KR (Can) 557)

W.B.A.
[illegible]

I CERTIFY that I have this morning examined

No. H. 17521 ... Rank .. pte ..... Name ... Davies ..... E .....

of 8 Bn., 2 C.B.R.D., and in my opinion he is fit/~~unfit~~ to undergo

trial by Court Martial.

In the Field

Date. 25 Sept. 44 ...

[illegible] Capt.
(N.S. ~~[illegible]~~) Capt.,
Medical Officer, 8 Bn., 2 CBRD.

E.

First Witness Defence } B. 88751 C.S.M. Joice C.T.W. 8 Bn 2 CBRD duly sworn is exam by Defend Offr.

I recognise the accused. I first met acc. on avg. 3 Mar 44. I have known him continuously since that date. He has always carried out his duties in soldierly manner. To the best of my knowledge he has never been in any trouble except on 2 occasions for minor offences. After his trial I will be willing to take him back in my employ.

No cross-exam.

R.P. 83(B) complied with.

Second Witness Defence } K. 52460 A/RSM Reid, D. 8 Bn 2 CBRD duly sworn is exam. by Defend Offr.

I know the accused, a former member of 8 Bn R.P. staff. I first met acc. around 6 Apr. 44. I made him a member of RP staff at that time. Excepting for 2 occasions in which he got into a slight bit of trouble I found him capable, willing & able to carry out his duties in Legtl. Police. He was always smartly dressed: willing to volunteer for extra duties. Reports I received from his NCO's were that he was always dependable. I have never known him to do any heavy drinking. In any dealings I've had with acc. he has always been a gentleman & a well disciplined soldier. In connection with his two spots of trouble, I wish to add that on recommendation of his 2 'K acc. was returned to duty with RP. A short time ago his name was put forward for promotion to L/Cpl.

No cross-exam.

R.P. 83(B) complied with

E3.

25 Sep 44.

PLEA IN MITIGATION OF PUNISHMENT IN THE CASE OF H17581 PTE. DAVIES, E., 8 Bn. R GRNR.

The accused, Pte. Davies, has pleaded GUILTY to an offence under the ARMY ACT. Until a late hour it was the intention of the accused to plead NOT GUILTY, not because he denies the offence but because there are certain extenuating circumstances in connection with the case which must be given consideration. The case of Davies is one of a series of cases to be tried before this Court. Many offenders will be tried and of them all Davies is one of the least guilty in my opinion. If, in the opinion of the accused, one or more of the more guilty parties (that is, more guilty in the opinion of the accused) elect to plead NOT GUILTY and are acquitted the accused feels that he too should plead NOT GUILTY . At the last moment the accused has decided to plead GUILTY and submit to the Court mitigating circumstances which should influence the Court in the awarding of punishment.

In connection with the statement made by Davies at the time of apprehension I submit to the Court that it was NOT given as voluntarily as it would appear. On the way to the office where the statement was made, Sgt. McCaffrey told Davies he had better "come clean" as all the others implicated in this and other cases had told everything and that they "had the goods" on Davies. As this statement of McCaffrey implies a threat I submit that the statement in no way implies voluntary effort and should be disregarded. Furthermore, Sgt. McCaffrey has on oath signed a statement to the effect that he was present when Davies' statement was made. That is a deliberate untruth. Sgt. McCaffrey was NOT present at the time as he had left to see a patient in the sick bay and did not return to the same office until the statement had been completed. Davies was alone with Lieut. Evans.

Insofar as the charge itself is concerned, the accused does not deny selling six pair of Canadian Army boots. However, in the first instance the accused did not sell the boots with the idea of personal gain albeit he did receive a commission when the sale was completed. He made the sale in order to help a friend. His friend Plourde was in need of money and appealed to Davies for assistance. Plourde was insistent that the money was needed urgently and immediately. In each instance the boots were given to Davies by Plourde and the monies received were equally divided. Prior to the first offence Pte. Davies was in a troubled state of mind due to letters received from his wife. The accused was married in England and up to the time of his leaving the U.K. for this theatre of war his married life was exceptionally happy. But once Davies arrived in Italy his wife continually complained to him that while British soldiers on a much lower rate of pay were sending home souvenirs to their wives, he, the accused was sending none. This upset the accused as after normal expenses were deducted from his pay he never at any one time had sufficient money to purchase such souvenirs. Had he been criminally inclined he might then have resorted to theft in order to restore his wife's estimation of him. But he did not do so. It was only after persuasive arguments and the manner in which easy money might be squired were shown him by his friend that at last he was persuaded to join his friend in the disposition of W.D. boots. He was not so persuaded until after he had been approached on several occasions and during which time he saw with his own eyes several other persons so trafficking. Once involved in ventures of this nature it is far more difficult to quit than to continue as there is always present the threat of exposure by any or all of the other parties concerned.

Another error occurs in the previous statement of the accused. The boots in question were not delivered out of the camp area. They were disposed of solely to transient British troops who were at that time living in 8 Bn. Quarters. This tends to prove nothing except that the statement of the accused could not have been taken down verbatim and consequently other errors might likewise be contained therein.

Again, the accused never actually benefitted financially by his one step. All the money he received was placed by him in a locked kit-bag ready for the time he might go on leave and make the purchases his wife had requested of him. His kit bag was later slit open by some person, not necessarily unknown, and the money removed.

The AFW6 of the accused is certainly no worse than that of any average soldier. It shows two or three minor charges over a period of 4½ years. There have been no serious offences, which tends to prove that Davies was indeed a good soldier, usefully employed, and had never previously been guilty of dishonesty.

Davies is still a very young man. He regrets his recent misconduct and is more than willing to make amends. He enlisted at the age of 19 with the PPCLI with which unit he served for 13 months. He went on attachment to

the Winnipeg Rifles in July 41 and arrived with that Unit in the UK in September of the same year. In October 43 he transferred to the RCOC and it was with this latter Unit that he arrived in Italy. For his service he was awarded the CVSM and clasp, whilst attached to 8 Bn. and with the exception of the one offence his conduct has been meritorious as verified by the witnesses as to character who were his superior officers.

Since his apprehension the accused has been in custody for nearly two months, a fact which must be taken into consideration when awarding punishment. This period of confinement without trial has not been an easy one but it HAS given the accused more than sufficient time to make up his mind that henceforth he will commit no further offences. It is his firm decision to again become and remain a good soldier. In view of the fact that he is married he ~~is~~ greatly desires that his wife shall not suffer in the matter of pay and allowances. If such a thing did occur it is not without the bounds of possibility that his future married life would become indeed a disaster.

I would again ask the Court to review the mitigating circumstances in synoptic form:

(1) The youth of the accused.
(2) This is his first serious offence.
(3) His record of service.
(4) His previous good conduct.
(5) Errors in the statement of the accused in the Summary of Evidence.
(6) The accused was improperly warned before making statement.
(7) The statement of Sgt. McCaffrey must be regarded as untrue.
(8) The accused, in the first instance, had no initial intent but erred to help a friend.
(9) He did not benefit financially by his misconduct.
(10) His worry over his wife's demands.
(11) The fact he is married.
(12) His desire that his wife shall not suffer financially.
(13) His fear that his wife's affection would be lost for him should her allowances cease or if she knew he were confined.
(14) His long confinement awaiting trial.
(15) His earnest desire to once again become a good soldier.

In view of the facts outlined and others which may be obvious to the Court I would at this time respectfully request the Court to give the case of Davies its utmost consideration and bearing the facts in mind to be most lenient in the awarding of punishment.

(T.H. Wells), Capt.,
8 Bn., 2 CWRD.,
Defending Officer.

EXHIBIT "G"
Ewbrange Major Pres.
W. B. Bate Capt
Judge Advocate.

Summary of Evidence in the Case of H17521 Pte Davies Ernest ——— a soldier of the Canadian Army Overseas on strength 8 Bn 2 C B R D

The Commanding Officer directs that the evidence be taken on oath.

First Witness for the Prosecution.

H 16836 Sgt. McCaffrey C.C. a soldier of the Can Army Overseas on strength 8 Bn. 2 C B R D having been duly sworn states:—

I am the R.P. Sgt. of 8 Bn. On the 13 Aug 44 I was present when Lieut R. D. Evans took a voluntary statement from the accused whom I now recognize. Before saying anything he was cautioned according to law and as appears by the caution at the top of his statement signed by him. After making his statement ~~[illegible]~~ it was read over to him and he was given the opportunity to make any changes he wished in it. I saw the accused sign the original and later some typewritten copies presented to him for signature. I produce original statement of the accused (which is attached hereto as Exhibit A).

The accused declines to cross examine this witness.

C. McCaffrey.

The accused was cautioned as follows:—

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence on oath.

The accused declines to call any witnesses for the defense.

I certify that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with

Geo Tate, Capt.
Offr detailed to Take the Summary.

4 Sep. 44
8 Bn 2CBRD.
Com Army: CMF.

NOTICE

To: H.17521, Pte. DAVIES, E.

Take notice pursuant to R.P. 76 that at your trial by F.G.C.M., Lieut R.D.Evans, C Pro C, will testify that on 13 Aug 44 he did in the presence of H.16836, S gt. McCaffrey, C.J., after giving you the usual caution take down your statement made voluntarily by you. A copy of this statement is attached to the Summary of Evidence in your case as Exhibit "A".

(Geo. Gale) Capt.

19 Sept 44
8 Bn 2 CBRD

I acknowledge receipt of acopy of the above notice and of a copy of the revised charge sheet dated 19 Sept 44 this 19th day of Sept 44.

E Davies
(E. Davies) Pte.
Accused

Witnessed:

I, H17521 Pte Davies. E. have been cautioned by Lieut Evans, R.D. (C PROV C) 8 Bn 2 C.B.R.D. that I am not obliged to say anything unless I wish to do so, and that whatever I do say will be taken down in writing and may be given in evidence, and to show that I understand the caution and make the following statement voluntarily, I hereby sign my name.

WRB.
Qwd.

(Davies. E. Pte
Davies. E.) Pte

Approximately in the middle of June, 15th. I was approached by Pte. Plourde who was employed at Barrack Stores. He asked me if I would like to make some money and I replied that it all depended what sort of money it was. He approached several times on the same subject and I refused to do what he suggested and then he approached me again and said "Davies please help me as I need the money." I replied that I would do it to-day but would take them out to-morrow but he replied that he had to have the money right away. I went into Barrack Stores with him and he handed me two pair of W.D. boots which I took out. I took them to Town Orellana and received 1200 lire for them. I returned to camp and gave Pte Plourde 600 lire and kept 600 for myself. Approximately a week later we did the same thing again and this time it was also 2 pr. We made the same split and this occurred once more with the same division of money. Altogether we disposed of 6 pr. of boots for which I received 3600 lire and gave Plourde 1800 of it. I would get them out of barracks by wearing a pair of boots out and carrying my running shoes in my shirt front. Altogether I made 6 trips out of barracks

wearing a pair of new W.P. boots each time.

DAVIES E Pte
(DAVIES. E) Pte.

Witnessed by
R.M. Evans. Pte.

C. J. McCaffrey. Sgt.

I, H 17521 Pte. Davies. E. have been ~~[illegible]~~ given the opportunity of reading over the above statement and making any changes that I deem necessary. To the best of my knowledge it is the truth.

DAVIES E Pte.
(DAVIES. E) Pte

In the Field.
Aug. 13/44

~~This is Exhibit A attached to Summary~~

1800

EXHIBIT "H"
E.W. Greene Major. Pres.
W. B. Bate Capt
Judge Advocate

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
H.17521	Pte.	DAVIES, E.	8 Bn 2 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheets mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 637, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, premonitions being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 15(1)	0 times	1(one) times.
For A.A. Sec 40 Failed to comply with an order	0 times	1(one) times.
For A.A. Sec 11 Broke Mil Cur- few	1 times	1(one) times.
[illegible]	[illegible]	[illegible] times.
[illegible]	[illegible]	[illegible] times.

[illegible]

2. The accused has not been previously convicted, or

[illegible]

3. The accused is not under sentence at the present time [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and ~~[illegible]~~ 46 ~~[illegible]~~ days in military custody, making a total of — 46 days. + 26 Sep.

[illegible]

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 24 years Nov 20

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 28 Jun 40

[illegible]

10. The accused is in possession of, or entitled to, [illegible] One good conduct badge. C.V.S.M. & CLASP

[illegible]

[illegible]

(P[illegible]) [illegible] A.S.E.W.Ltd. Gp.[illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of September, 1944

C Armstrong Capt & Adj
8 Bn 20 BRD

[redacted]

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years .....

In the rank of ..... years, ...

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

M.F.M. 6
(A.F. B.122)
40/P & /B136 (2965)

No. H17521 Name DAVIES, E. Sqn., Battery, or Company Corps RCOC Date of enlistment 28/6/40 G.C. Badges 28/6/42 Service or Proficiency Pay 175

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. Signature Of Company, etc. Character

EXHIBIT 1

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order of sing. with	By whom awarded	Remarks
Field				Previous sheet destroyed	28/12/40			Cr. George Major-Gen. W. B. Bate Capt Judge Advocate	
Field	23/5/42	RFN.	Nil	Failed to comply with an order. A.A.Sec 40.	Cpl. Sharpe	7 days C.B.	24/5/42	Capt W.W. Hughes	
Field	21/1/43	RFN.	Nil	AWL 2200 hrs 24-1-43 to 2215 24-1-43. Total 15 mins AA Sec 15(1)	Cpl. Sheppard Sgt. Twomey	7 days CB	27/1/43	Capt EADIE C.F.	
Field	30/3/44	Pte.		AA Sec 11: WOAS neglecting to obey Standing Orders, - Broke Military Curfew at 2200 hrs 30 Mar 44.	DOCUMENTARY	7 days CB	3-4-44	Lt-Col FB CONRAD	

BLOOD DONOR -- VOLUNTARY -- CDN ARMY -- CMF -- 22 May 1944 from the Regtl Books in my custody

Certified to be a true copy

(C. ARMSTRONG) Capt & Adjt 8 Bn 2 C.B.R.D.

Officer having custody of Regtl Books

In the case of: H.17521 Pte. DAVIES, E.

LIST OF WITNESSES

For the Prosecution

1. H.16836, Sgt. McCaffrey, C.J. (PE) 3 Bn 2 CBRD

For the Defence

Nil

LIST OF EXHIBITS

"A" Statement of Accused

STATEMENT OF THE ACCUSED RE: DEFENDING OFFICER

In the event that my case should be brought before a Field General Cour t Martial or General Court Martial, I request that an officer be appointed to defend me and that if possible he be legally qualified.

Capt Mudgan requested

E Davies

(E. DAVIES) Pte.
(accused)

ACKNOWLEDGEMENT OF SERVICE

Receipt is acknowledged of copy of Summary of Evidence and of Charge Sheet.

E Davies

(E. DAVIES) Pte.
(accused)

Witnessed:

In the Field
14 Sep 44

...TIONS ON PROCEDURE AFTER ARRAIGNMENT.

...ind or be found *Guilty on more than one of two or more charges laid in the alternative* **...of** *alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn* **...ose** *Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser,* **...ftraud** *may change a plea of Not Guilty to Guilty during trial. (RP 38.)* **...ightly** *see RP 35(A). As to plea when sentence may be death see RP 35(D). As to refusing*

...ch *each charge sheet (RP 62) after arraignment will be conducted as follows in the respective*

...ll *charges are GUILTY, see Record Form B below.*

...ll *charges are NOT GUILTY, see Record Form D on p* ■ *3.*

...some *charges are GUILTY and to other charges are NOT GUILTY and,*

...ich *mixed pleas occur when, there are no alternative charges in the Charge Sheet, see Record Form C*

...some *charges are GUILTY and to other charges are NOT GUILTY and,* (RP 37(4))

...ich *mixed pleas occur is a set of two or more charges laid in the alternative, see RP 37 (4) and fn. 2 as*

...discretion *of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty*
...thereto, or, (ii) *to record the plea as the findings of Court. After deciding between (i) and (ii), Court will*
proceed under foregoing instructions as may be appropriate to result of its decision. See M.M.I. p 744 Ladies (2).

...to responsibility *of President to ensure see RP 59, 60(C); powers and duties of JA see RP 60(C), 87(C), 91, 92; duty of*
...see RP 80(A) (B); *duty and privileges of accused and Defending Offr see RP 80, 87(C), 92(B), end of sentence*
...removal *of witnesses from Court see RP 81, 82; questioning of accused see RP 90(C), 87(C), 91, 92; swearing*
...(81-82); *calling or re-calling of witnesses by Court etc see RP 75-79, 80, 116; use of Summary of Evidence of Trial*
...17(B) fn 6; *and responsibility of JA or Pres to record proceedings see RP 94, 96.*

...CEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES

...complies with RP 35(B) *by explaining to the accused the nature and consequences of a plea of*
...Guilty there will be no regular trial but merely a consideration of the
...given an opportunity to make a statement in reference to the charge or
...case in mitigation of punishment.(f)

...receive any statement you desire to make in reference to the
...there are circumstances which indicate that you do not under-
...prosecution or extenuation in respect of which in your interest
...shall advise you to change your plea to Not Guilty. In
...examination; and anything you say will not be used
...however, it appears to the Court that your statement
...will not be advised to change your plea and you
...so desire.(g)

...RECORD FO...

...Bl...
...of the...

...Guilty in T...
...(f. RP [illegible]

B5. The Summary of Evidence ...
(f. if there is no Summary, or if it is ...
standing as Guilty, Court will advise accused to change such ...
paras D5 to D6 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the ...
using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

by ... the charges on which accused pleaded NOT GUILTY the ...
... Form D on p 3 before proceeding with C 2.(f)

C3. The accused ...
Record Form E on p 3. ...cused pleaded GUILTY are read ...

PRESIDENT OR ... ...in B above.(f)
... Summary of Evidence are read as ...
... proceeding with paras D5 ...

CERTIFIED TRUE COPY

(D.M. Owen) Capt.
dn Sec 2Nd Ch AJ

4D-70

CPA96 (In lieu of AFA3) 40/P & S 1608 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig E.W. Haldenby Comd 1 CBRGp dated 21-23 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H-17521	Pte		Ernest	DAVIES	8 Bn 2 CBRD

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ITALY on (*date(s)*) 25 Sept 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~as interpreter?~~ ~~Ans~~

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(2)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 88, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	E.W. GEORGE (CAC)	7 Bn 2 CBRD
Member	Lt	[illegible] PICHE (CIC)	1 Bn 1 CBRD
Member	Lt	E.R. Stauffer (CIC)	2 Bn 1 CBRD
Judge-Advocate	Capt	W.B. Bate (ADJA)	HQ 1 CBRGP
Prosecutor	Capt	G.T. Gale (CAC)	8 Bn 2 CBRD
Defending Offr	Capt	[illegible] (DCA)	8 Bn 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans yes. Is the Defending Offr a lawyer? Ans no.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) ~~(an)~~ (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : [illegible]

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st			
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 46 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : [illegible]

(Sgd) [illegible] Judge-Advocate, if any. 25 [illegible] Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(S), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 758-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : [illegible]

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date [illegible]

Commanding [illegible]

Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

[illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

"B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(X)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(X), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

"B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(X).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 4. 3. *RP* 35(*D*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete where or part not used.*)

"B4. On the charge(X) to which the plea(X) of Guilty is (are) not changed the President records finding(X) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. C, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(X)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(X), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(X).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans: [illegible] (4)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement(1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(X) to which the plea(X) of Guilty is (are) not changed the President records finding(X) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras B3 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

"APB"
"EWH"

The accused, H.17521, Pte Ernest DAVIES, 8 Bn., 2 C.B.R.D., a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Section 18(4)
Army Act.

When on Active Service STEALING PUBLIC PROPERTY

in that he

in the Field, in Italy, between 12 June 1944 and 13 August 1944 stole six (6) pairs of boots, the same being public property.

Sgd. "F.B. Conrad"

(F.B. CONRAD) Lt-Col.
Commanding,
8 Bn., 2 C.B.R.D.

Field
19 Sept 44

Approved for trial
under M.R. (Can) 540

F.B. Bate, Capt
ADJA HQ 1 CBRGp

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

Sgd "E.W. Haldenby"

(E.W. HALDENBY) Brigadier
Cond 1 Cdn Base Tft Gp
Cdn Army - CMF

In the Field
In Italy
21 Sep 44

O R D E R

By the Convening Order issued by me in the Field in Italy on the 21st day of Sep 1944, in the matter of a Field General Court Martial for the trial of N.17521 Pte Davies E 8 Bn 2 CRRD, Major W.E. Dunbar (CAS) 5 Bn 2 CRRD, was appointed President of the said Court.

Such appointment of Major W E Dunbar as President of said Court is hereby cancelled and Major [illegible] George (CAS) 7 Bn 2 CRRD, is hereby appointed President of said Field General Court Martial in his place and stead.

Dated in the Field, in Italy, this 23rd day of Sep 1944.

Sgd. [illegible]

([illegible] Brigadier)
Commander
[illegible] Base Rft Group

"WBB"
"BWB"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.17521	Pte		Ernest	Davies	8 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Sept 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial". "EWH"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr) "EWH"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto. "EWH"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.E. D[illegible] (CIC)	2 Bn 1 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	R.A. F[illegible] (CIC)	2 Bn 1 CBRD
Lieut	E.R. [illegible] (CIC)	2 Bn 1 CBRD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	W.R. [illegible] (RCA)	2 Bn 1 CBRD

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W.R. B[illegible] ADJA	HQ 2 CBRGD

On Active Service in the Fd

in Italy (Country.) E.W. Haldenby (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 21 Sep 44 Commanding 1 Cdn Bnd Rft Gp-CBF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
(KR (Can) 559)

"WER" "EWO"

I CERTIFY that I have this morning examined
No H 17521 Rank Pte Name DAVIES E
of 8 Bn, 2 C.B.R.D., and in my opinion he is fit to undergo trial by Court Martial.

In the Field

Date 25 Sept 44

"C.C. Preece Capt"
Medical Officer, 8 Bn, 2 CBRD.

R.P. 23(8)

able to carry out his duties in Regtl police. He was

LEA IN MITIGATION OF PUNISHMENT IN THE CASE OF H17521 Pte DAVIES, E., 8 Pn 2 CERD.

The accuse, Pte Davies, has pleaded GUILTY to an offence under the ARMY ACT. Until a late hour it was the intention of the accused to plead NOT GUILTY, but because he denies the offence but because there are certain circumstances [illegible]

Cont'd

The MFM6 of the accused is certainly no worse than that of any average soldier. It shows two or three minor charges over a period of 4½ years. There have been no serious offences, which tends to prove that Davies was indeed a good soldier, usefully employed, and had never previously been guilty of dishonesty.

Davies is still a very young man. He regrets his recent misconduct and is more than willing to make amends. He enlisted at the age of 19 with the PPCLI with which unit he served for 13 months. He went on attachment to

DAVIES, cont'd.
-2-

the Winnipeg Rifles in July 41 and arrived with that Unit in the UK in September of the same year. In October 43 he transferred to the RCOC and it was with this latter unit that he arrived in Italy. For his service he was awarded the CVSM and clasp & one good conduct badge, whilst attached to 8 Bn. and with the exception of the one offence his conduct has been meritorious as verified by the witnesses as to character who were his superior officers.

Since his apprehension the accused has been in custody for nearly two months, a fact which must be taken into consideration when awarding punishment. This period of confinement without trial has not been an easy one but it HAS given the accused more than sufficient time to make up his mind that henceforth he will commit no further offences.
It is his firm decision to again become and reamin a good soldier. In view of the fact that he is married he greatly desires that his wife shall not suffer in the matter of pay and allowances. If such a thing did occur it is not without the bounds of possibility that his futmre married life would become indeed a disaster.

I would again ask the Court to review the mitigating circumstances in synoptic form:

(1) The youth of the accused.
(2) This is his first serious offence.
(3) His record of service.
(4) ~~(4)~~ His previous good conduct.
(5) Errors in the statement of the accused in the Summary of Evidence.
(6) The accused was improperly warned before making statement.
(7) The statement of Sgt. McCaffrey must be regarded as muntrue
(8) The accused, in the first instance, had no initial intent but erred to help a friend.
(9) He did not benefit financially by his misconduct.
(10) His worry over his wife's demands.
(11) The fact he is married.
(12) His desire that his wife shall not suffer financially.
(13) His fear that his wife's affection would be lost for him should her allowances cease or if she knew he were confined.
(14) His long confinement awaiting trial. 46 days.
(15) His earnest desire to once again become a good soldier.

In view of the facts outlined and others which may be obvious to the Court I would at this time respectfully request the Court to give the case of Davies its utmost consideration and bearing the facts in mind to be most lenient in the awarding of punishment.

"J.H. WELLS" Capt.
(J.H. Wells) Capt.
8 Bn 2 CBRD.,
Defending Officer.

Exhibit 'G'
"E.W.Geoggs Major Pres"
"W.B. Bate Capt."
Judge Advocate.

SUMMARY OF EVIDENCE in the Case of H17521 Pte Davies Ernest a Soldier of the Canadian Army Overseas on strength 8 Bn 2 CIRD

The commanding Officer directs that the evidence be taken on oath.

First Witness of the Prosecution — H16036 Sgt McCaffrey, C.J. a Soldier of the Cdn Army Overseas on strength 8 Bn. 2 CIRD, having been duly sworn states:-

I am the R.P. Sgt of 8 Bn. On the 13 Aug 44 I was present when Lieut R.D. Evans took a voluntary statement from the accused whom I now recognize. Before saying anything he was cautioned according to law and as appears by the caution at the top of his statement, signed by him after making his statement it was read over to him and he was given the opportunity to make any changes he wished in it. I saw the accused sign the original and latter same typwritten copies presented to him for signature. I produce original statement of the accused (which is attached hereto as Exhibit A)

The accused declines to cross examine this witness.

"C.J. McCaffrey"

The accused was cautioned as follows:-
Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence on oath.

The accused declines to call any witnesses for the defence.

I certify that Rules of Procedure 4(c),(d),(e) and (f) have been complied with

"Geo Gale Capt"
Offr detailed to take the Summary.

4 Sep 44
8 Bn 2 CIRD
Cdn Army-OMY

"EWC" "WBS"

NOTICE

To:- H. 17521, Pte. DAVIES, E.

Take notice pursuant to R.P. 76 that at your trial by F.G.C.M., Lieut R.D. Evans, C Pro C, will testify that on 13 Aug 44 he did in the presence of H.16836, Sgt. McGaffrey, C.J., after giving you the usual caution take down your statement made voluntarily by you.
X(A copy of this statement made voluntarily by you.
A copy of this statement is attached to the Summary of Evidence in your case as Exhibit "A"

"Geo. GALE"
(Geo. Gale) Capt.

19 Sept 44
8 Bn 2 CBRD

I acknowledge receipt of a copy of the above notice and of a copy of the revised charge sheet dated 19 Sept 44 this 19th day of Sept 44.

"E. DAVIES"
(E. Davies) Pte.
Accused

Witnessed:

"GEORGE GALE"
Capt.

I, H17521 Pte DAVIES, E. have been cautioned by Lieut Evans, R.D. (C PROV C) 8 Bn 2 C.B.R.D. that I am not obliged to say anything unless I wish to do so, and that whatever I do say will be taken down in writing and may be given in evidence, and to show that I understand the caution and make the following statement voluntarily, I hereby sign my name.

"EWG" "WBB"
DAVIES E PTE
(Davies E.) Pte.

Exhibit A in the Summary of Evidence in the Case of H17521 Pte DAVIES Ernest. "Geo. Gale" Capt...

Approximately in the middle of June 15th I was approached by Pte. Plourde who was employed at Barrack Stores. He asked me if I would like to make some money and I replied that it all depended what sort of money it was. He approached me several times on the same subject and I refuded to do what he suggested and then he approached me again and said " Davies please help me as I need the money". I replied that I couldn't do it to-day but would take them out to-morrow but he replied that he had to have the money right away. I went into Barrack Stores with him and he handed me two pair of W.D. Boots which I took out. I took them to down town Avellino and received 1200 lire for them. I returned to camp and gave Pte Plourde 600 lire and kept 600 for myself. Approximately a week later we did the same thing again and this, time it was also 2 pr. We made the same split and this occured once more with the same division of money. Altogether we disposed of 6 pr of boots for which I was received 3600 lire and gave PLOURDE 1800 of it. I would get them out of bounds by wearing a pair of boots out and carrying my running shoes in my shirt front. Altogether I made 6 trips out of bounds,

---

wearing a pair of new W.D. boots each time.

"DAVIES E Pte"
(DAVIES E) Pte.

Witnessed by R.D. Evans, Lt.

"C McCaffrey" Sgt.

I, H17521 Pte DAVIES E. have been given the opportunity to read of reading over the above statement and making any changes that I deem necessary To the best of my knowledge it is the truth.

"DAVIES E Pte"
(DAVIES E) Pte.

In the Field
Aug 13/44

EXHIBIT "H"
"E.W.George Major Pres.

"WBB BateCapt.
Judge Advocate.

ARMY FORM B.213.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H17521	Pte	DAVIES E.	8 Bn 2 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—If a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement for examination by the accused and counsel.

† See Para. 427, K.R., 1940.

* The authority hereto should carefully compare with the entries in the conduct sheet(s) produced, any statements being given by the court relative thereto, and to any recognised record of military service, and to undisputed evidence.

Immediately after the charge is preferred against the accused, the statement should be signed and dated.

	* Within last 12 months.	* Since Enlistment.
For A.A. Sec 15(1)	0 times	1(one) times.
For A.A. Sec 40 failed to comply with an order	times	1(one) times.
For A.A, Sec 11 Broke Mil Curfew 1	time	1(one) times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

- - or

There are no entries in the conduct sheet(s) produced. "CA"

2. The accused has not been previously convicted, or

[illegible] by court martial or a civil court, summary awards under section 47 of the Army Act, "CA" and dispensations with trial under section 73 of the Army Act, [illegible]

3. The accused is not under sentence at the present time, [illegible] "CA"

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 46 days in military custody, making a total of 46 to Sep. 25 days. "CA" [illegible] "CA"

5. The present age of the accused according to his [illegible] attestation paper is 24 Years [illegible] NOV 20

6. The date of his "ATT" attestation specified in his [illegible] attestation paper is 28 JUN 40

7.—[illegible] "CA"

8. [illegible] "CA"

9. [illegible] "CA"

10. The accused is in possession of, or entitled to, [illegible] "CA" entitled to wear any military decoration or medal.) One good conduct badge CVSM & Clasp

11. [illegible] The accused before he was made a warrant officer last held the regimental rank of [illegible]

12. (*In the case of an officer.*) The accused holds in the army the rank of [illegible] dated [illegible] and in his regiment (or corps or department) the rank of [illegible] "CA"

[illegible]

MFM 6 (AFB 122) 40/P&S/136 (3438)

No. H17521 Name DAVIES E. Sqn. Battery or Company Corps RCOC Date of enlistment 28/6/40 GC Badges 28/6/42 Service or Proficiency Pay 1.75

Exhibit I

Company Conduct Sheet Date of last entry in Nil No and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc "E.W. George" Character Major Pres.

"W.B. Bate" Capt Judge Advocate.

Place	Date of offence	Rank	Cases of drunken ness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Privious		sheet destroyed 28/12/40					
Field	23/5/RFN 42		Nil	Failed to comply with an order. A.A. Sec 40	Cpl. Sharpe.	7 dys CB	24/5/42	Capt WW Hughes.	
Field	21/1/42	RFN	Nil	AWL 2200 hrs 24-1-43 to 2215 24-1-43 Total 15 mins AA Sec 15(1)	Cpl. Sheppard Sgt Twomey	7 dys CB	27/1/43	Capt EADIE C.F.	
Field	30/3/44	Pte		AA Sec 11:WOAS neglecting to obey standing Orders, Broke Military Curfew at 2200 hrs 30 Mar 44.	Documentary	7 days CB	3-4-44	Lt-col FB CONRAD	

BLOOD DONOR VOLUNTARY CDN ARMY CMF 22 May 1944 from the Regtl Books in my custody

"C. ARMSTRONG" Certified to be a true copy

Officer having custody of Regtl Books. (C. ARMSTRONG) Capt & Adjt 8 Pn " 2 C.B.R.D.

(PTO

In the case of: H 17521 Pte DAVIES, E.

LIST OF WITNESSES

For the Prosecution

1. H16836, Sgt. McCaffrey, C.J. (PE) 8 Bn 2 CBRD

For the Defence

Nil

LIST OF EXHIBITS

"A" Statement of Accused.

STATEMENT OF THE ACCUSED RE: DEFENDING OFFICER

In the event that my case should be brought before a Field General Court Martial or General Court Martial, I request that an Officer be appointed to defend me and that if possible he be legally qualified.
Capt Mulligan requested.

"E.E. Davies"
(E. DAVIES) Pte.
(Accused)

ACKNOWLEDGEMENT OF SERVICE

Receipt is acknowledged of copy of Summary of Evidence and of Charge Sheet.

"E. Davies"
(E. DAVIES) Pte.
(accused)

Witnessed:

"Geo. Gale" Capt.
In the Field
14 Sep 44.

B-31

Inv: Davies, E. J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: LEDAD - LNR. ERNEST JOHN DAVIES 6 RN - 2 CBRD

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 24 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To suffer field punishment for a period of ninety (90) days and to forfeit all ordinary pay for a period of ninety (90) days.

(Sgd) ..... 7.11.44 (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 66(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed Ewt

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

Date 11 Oct 44 (Sgd) Commanding

COMMANDER
ON BASE RF3 GROUP
Commanding Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
D 6020 Lnr Davis E.J.	13 OCT 44	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 30 OCT 1944 JAG BRANCH C.M.F.

RECORDED AT CMHQ IN AB 160 413-31

FIELD GENERAL COURT-MARTIAL

CF A68 (To Issue of AF A3); 40/P & B/1268 (40/11); 4/38B

Convening Order of Con. S.A. LEE 17 Comd 1 CBRA CMF dated 6 OCT 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D 6020	LNR	ERNEST JOHN	DAVIES	6 RN 2 CBRD

PROCEEDINGS REVIEWED
31 Oct 44
JAG
29 Oct 44
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 7 OCT 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns' ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to CAPT. A. NORRESTON as interpreter? Ans NO SIR.

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer?~~ Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO SIR.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	T.M. STEMMER (RCA)	2 Bn 1 CBRD.
Member	CAPT	W.D. WEIMORE (RCA)	1 Bn 2 CBRD.
Member	LIEUT	W.R. SUTTON (RCA)	2 Bn 2 CBRD.
Judge-Advocate		THS.	
Prosecutor	CAPT	A. NORRESTON (RCA)	6 Bn 2 CBRD.
Defending Offr	CAPT	B.W. SCOTT (RCA)	6 Bn 2 CBRD.

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Qs p 3.)

A8. The accused D 6020 - LNR. ERNEST JOHN DAVIES before arraignment make(s) (no) ~~(a)~~ plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea where sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*II*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*II*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. N.D. (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ —

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex [illegible], initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. (1)

(*1. If "yes", see RP 29(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Do you intend to call witnesses on your behalf ? Ans. Are they witnesses as to character only ? Ans.

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AF5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(7) (b), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. [illegible]

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex [illegible] and Ex [illegible] respectively.(3)

(*1. MFB 355 or MFB 294. 2. MFM 4. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. [illegible]

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 142, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 1203, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), (d)(i), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D.6020 Gnr. Ernest John DAVIES, 6 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 24 (1)
Army Act

WHEN ON ACTIVE SERVICE, MAKING AWAY WITH BY SELLING HIS CLOTHING AND REGIMENTAL NECESSARIES

in that he

In the field in Italy, at 6 Bn. 2 CBRD, on or about 24 Sept. 1944, sold to Fiorello Rocco, an Italian civilian, for the sum of three hundred lire one suit of overalls, combination, articles of his clothing and regimental necessaries.

Lt.Col.
(E.W.(Stewart-Jones),
Comd. 6 Cdn Base Rft Bn.
2 Cdn Base Rft Depot.

In the Field
28 Sep 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(S. [illegible]) Colonel
T/Comd 1 Cdn Base Rft Dp-Ctr

In the Field
In Italy
6 Oct 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D6020	Gnr		Ernest John	DAVIES	6 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 6 Oct 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Major	P H STEVELIN	(CIC)	2 Bn 1 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Capt	N C [illegible]	(CAC)	7 Bn 2 CBRD
Lieut	N R SUTTON	(RCA)	8 Bn 2 CBRD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)		(Unit.)
Capt	S C F [illegible]	(C INT C)	8 Bn 2 CBRD

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 in 2.)
(S. [illegible])

Colonel (Rank.)

Date 6 Oct 44

T/Commanding 1 Cdn Base Rft Sp-CMF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

9 Oct 44

R-6020 Gnr Davies, E.J.

This is to certify that , in my opinion.....

is fit to undergo trial by Field General Court Martial .

Capt.

(J.R. Fowler) Medical Officer
6 Cdn Base Hft Dn - 2 CBRD

Ex B. 4

Tibbetts Res.

My client has been in the army since 5 Sept 39 overseas since 5 Sept 40 - during which time his only crimes have been for drunkenness & one short AWL

It assuredly was not with the intention of obtaining money that prompted the disposal of the overalls. - Gur Davies had money of his own in his possession at the time and to ~~further~~ prove his integrity - during ~~the~~ the week previous to the incident ~~week~~ Gur Davies found a pocket-book in the British Lines containing money which he voluntarily turned over to No 9 troop of an RATD Battery which was eventually delivered to owner. Unfortunately the owner of the said pocket book (British) has proceeded on draft to the front lines and is unobtainable as witness.

The one and only reason that the unfortunate transaction took place is due to Davies having imbibed too freely (which he admits) ~~and~~ he was under the influence of liquor, ~~—~~ his one failing - and he did not realize what he was doing due to drink. - 1 Good Conduct badge accrued Feb '43

I trust the court will consider ~~the~~ the accused's ~~[illegible]~~ one failing sheer drink - and that ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ had dealings with the Italian because ~~[illegible]~~ ~~[illegible]~~ not in possession of his proper mental faculties ~~[illegible]~~

[illegible]

[illegible]
Capt.

SUMMARY OF EVIDENCE

E1 B1 TM2

In the case of D. 6020 Gnr. Davies E.J. 6 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS

14594661 - Gnr. Roberts A., 2 AA Depot and Training Regt. RATD having been duly sworn states:

I am 14594661 Gnr. Roberts A., 2 AA Depot and Training Regt. RATD. On the 24 Sept. 44 I was on police patrol with 1621823 Gnr. Robinson G. in the vineyard at the N.W. corner of the camp at RATD. At about 1645 hrs. I saw the accused whom I now recognize as Gnr. Davies in conversation with 2 Italian civilians. I kept them under observation and saw the accused take off his coveralls and hand them to one of the Italians. He then came out on to the backroad of Eboli and I followed him and questioned him and he admitted that he had sold the coveralls for three hundred lire. (Exhibit "B".) We then took the accused and the Italian civilian who had bought the coveralls and reported the matter to the Bdr. i/c of Regimental Police of 2 AA Depot. He told me to report to Lieut. Thomas of 9 Troop Office. Lieut. Thomas gave us instructions to hand the accused over to the NCO i/c compound.

Q1 Is the Italian Civilian available?
A1 No sir, we took him to the civil prison in Salerno.

Q2 Do you know his name?
A2 No, sir.

Q3 Do you know his address?
A3 I know where he lives.

Q4 Are these the coveralls? (Exhibit "A")
A4 Yes sir.

Q5 Can you identify them?
A5 There were some holes in them sir.

Q6 Did you see the accused accept any money?
A6 No sir. One of the Italians had a roll of bills in his hand when the accused handed over his coveralls. Accused, when questioned by me, admitted that he had sold the coveralls and handed me the money he had received for them, the sum of 300 lire. The accused wanted to return the money to the Italian and get his coveralls back.

FIRST WITNESS (cont'd)

Q7 Did the accused see you while you were keeping him and the Italians under ~~over~~ observation?
A7 No sir. I don't think he did. I was lying on the ground about 30 ~~pased~~ yards away.

Q8 Was the accused drunk or sober?
A8 You could smell drink on him, but I couldn't say that he was drunk.

A Roberts
(A. Roberts)

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

SECOND WITNESS

1621823 - Gnr. Robinson G., 2 AA Depot and Training Regt. RATD having been duly sworn states:

I am 1621823 Gnr. Robinson G. 2 AA Depot and Training Regt. RATD. About 1645 hrs. the 24 Sept. 44 I was on police duty. I saw the accused whom I now recognize enter the vineyard at the bottom of the Canadian Camp. He was wearing coveralls. A few moments after, we, Gnr. Roberts and myself saw the accused in conversation with 2 Italians. We walked past them and we kept them under observation from a distance of about 50 yeards. I saw the accused exchange his coveralls and take money from the Italians. The accused came walking towards us. Gnr. Roberts stopped the accused and asked him what he had done with his coveralls. He admitted to both of us that he had sold them to the Italians and he handed over to me the money he had received for them, 300 lire. Gnr. Roberts asked him for his paybook. I then recovered the coveralls from the Italians after finding out that only one of the Italians was the purchaser. We let the other one go. After conversation with our Bdr. of the R.P. we had instructions to take him to Lieut. Thomas, Officer i/c R.P. and we then had furtherorders to take him to the Canadian R.P.

Q9 Was the accused drunk or sober?
A9 Sober.

Q10 Did you see the accused actually accept money?
A10 Yes sir.

Q11 You were with Gnr. Roberts all the time?
A11 Yes sir.

Q12 Can you identify the coveralls?
A12 Yes sir, it is in very good condition and there are straps and buckles on the wrists.

Q13 Did the accused know that he was under observation?
A13 I don't think so - we were concealed behind a hedge.

(G. Robinson)

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

THIRD WITNESS M. 4155 - BQMS Docherty M.G. having been duly sworn states:

I am the BQMS of 26 Battery, 6 Bn, 2 C.A.R.D. of which the accused, whom I now recognize is a member. I produce accused's Pt. III Paybook (Exhibit "C") showing that the accused was issued with one suit of coveralls, bombination.

M.G. Docherty

(M.G. Docherty)

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

FOURTH WITNESS Fiorello Rocco, Eboli, Italian Civilian (father dead - roadworker) having been duly sworn states:

I was working in the street and a Canadian Soldier came and asked me whether I would buy a coverall. I asked him how much he wanted for it, and the soldier asked 300 lire. I took out 300 lire and gave it to him. At the moment when I gave him the 300 lire the Military Police came and took both of us in custody. I and the soldier were brought to the camp. The soldier remained in the camp and I was brought to the Carabinieri barracks in Eboli. The Military Police spoke to the Sgt. Major of the Carabinieri and I was brought to the prison in Eboli. I remained there that night and I was then brought to the prison here in Salerno.

Q14 Is the soldier who sold you the coveralls in the room now?
A14 Yes (witness points to accused.)

Q15 What happened to the 300 lire?
A15 I gave the 300 lire to the soldier.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

Fiorello Rocco

QUESTION TO THE ACCUSED:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINES TO MAKE ANY STATEMENT AND RESERVES HIS DEFENCE.

XXXX

I certify that the foregoing Summary of Evidense consisting of ~~two~~ four pages (4) was taken down before me in the presence and in the hearing of the accused, and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

In the Field,
27 Sept. 44

A. Noblston Capt.
(A. Noblston) Officer detailed to take Summary of Evidence.

EXHIBIT "B"

3 – 100 lire notes AMC
returned to H & 1 CBR Sp
for disposition 20 Oct 44

[illegible]
Major
DSA.
Cdr Sec 2 Hq 26 RAI



300 Lines

Evidence in the case against D6020 Gen. Harris

MILITIA BOOK M. 1

PART III

EXHIBIT "C"

CANADIAN ARMY

Clothing and Equipment Statement --

Regt No. D. 6020.

Rank L/BDR.

Name DAVIES. E.J.

INSTRUCTIONS TO SOLDIER

1. You will always carry this book on your person and are responsible for its safe custody. (Officers need not carry this book on their person but will be responsible for its safe custody.)

2. You will initial at the bottom of each page to signify that you understand its contents and have received the quantities entered.

3. Do not alter or make entries in this book. Disobedience of this order will be treated as a serious offence and disciplinary action will be taken.

4. You will at once report the loss of this book to your Commanding Officer.

INSTRUCTIONS TO QUARTERMASTERS

1. This statement will be used to record articles of personal clothing and equipment issued to each soldier.

2. Unit equipment (e.g., compasses, binoculars, special clothing for scouts, motorcyclists etc) will not be recorded on this statement.

3. All entries will be made in ink. Blank spaces in columns will be ruled through. All columns used will be initialled in the space provided by soldier and by the QM, or his representative.

4. Items withdrawn from soldier will be marked off by an "X" in ink, over the entry and initialled by the QM, or his representative.

5. New issues will be recorded in the next open column. The remaining entries in old column on page affected will be carried forward into new column. Old column will be ruled out in ink.

6. No entry will be made on this statement when unserviceable articles are exchanged for serviceable ones or when issues are made on repatriation.

7. See instructions re kit inspections on inside of back cover.

ARTICLE	QUANTITY					
Anklets, wrl, prs	1					
Blouses, Battle-dress	1					
Bonnet, tam-o'shanter						
Boots, ankle, prs	2					
Boots, rubber, high, prs						
Boots, leather, high, prs						
Bonnet, drab, Irish						
Cap, field service	1					
~~Cap, forage~~ Beret GS.	1					
Cap, tank battalion						
Drawers, Cellular short, prs	2					
Drawers, Woollen, prs	1					
Gloves, knitted, drab, prs	1					
Greatcoat, drab	1					
Initials of Soldier						
Initials of QM or Rep						

ARTICLE	QUANTITY
Jacket sweater, or jersey pullover	1
Overalls, combination	1
Overalls, blouses, denim	
Overalls, trousers, denim	
Shirts, Aertex, drab	2
Shoes, canvas, pr	1
Socks, pr	4
Trousers, battle-dress, pr	1
Vests, woollen	1
Badges, cap	1
Badges, arm, drab, crowns	
Badges, arm, drab, crown in wreath	
Badges, arm, Tank Bn	
Badges, shoulder, "CANADA", pr	3
Initials of Soldier	
Initials of QM or Rep	

ARTICLE	QUANTITY
Badges, arm, drab, Royal Arms	
Badges, arm, drab, Royal Arms in Wreath	
Bags, kit, universal	1
Brasso	1
Brass, cleaning	1
Brush, button, brass	1
Brush, clothes	1
Brush, hair	1
Brush, shaving	1
Brush, shoe, blacking	
Brush, shoe, polishing	1
Brush, tooth	1
Cap, comforter	1
Chevrons	
Initials of Soldier	
Initials of QM or Rep	

ARTICLE	QUANTITY					
Combs, hair	1					
Discs, identity, [illegible], with cord, steel	3					
Dressing, field	1					
Fork, NS Table	1					
Holdall	1					
Housewife, complete	1					
Knife, clasp	1					
Knife, table	1					
Lanyard, knife	1					
Razor, safety, with blade	1					
Patches, distinguishing, prs	/					
Shorts, gymnasium	2					
Spoon, NS dessert	1					
Vest, cotton, gym	2					
Initials of Soldier	[illegible]					
Initials of QM or Rep	[illegible]					

ARTICLE	QUANTITY					
Towels, hand	2					
Unit or Corps titles, prs	[illegible]					
	/					
Attachments, brace	[illegible]					
Bag, ration	/					
Belts, waist	1					
Bottles, water	1					
Braces, WE Right	1					
Left	1					
Carriers, cartridge	2					
Carriers, waterbottle	1					
Cases, binoculars	/					
Cases, pistol	/					
Covers, breech, rifle	1					
Initials of Soldier	[illegible]					
Initials of QM or Rep	[illegible]					

ARTICLE	QUANTITY				
Cover, mess tin					
Frogs, web, bayonet, 4 tab					
Haversack	1				
Helmet, steel	1				
Net camouflage helmet	1				
Packs	1				
Pockets Compass					
Pouches, ammo, pistol					
Pouches, basic					
Pouches, utility { Front / Rear					
Slings, rifle, web					
Straps, shoulder, haversack { left / right	2				
Straps, web supporting	2				
Tins, mess, TP	1				
Initials of Soldier					
Initials of QM or Rep	EC	EC			

ARTICLE	QUANTITY				
Veil, face, camouflage	1				
~~Yoke~~					
Capes, A/G	1				
Respirators, A/G, complete with haversack	1				
Outfits, A/D	1				
Ointment, A/G	2	2			
Eyeshields, A/G, pk of 6	1				
Detectors, Individual, prs	3				
Wallet, A/G					
Blanket G. 1098.	2				
Mug, drinking	1				
Sheet, ground	1				
Initials of Soldier					
Initials of QM or Rep	EC	EC			

R. J. Campbell 1

ARTICLE		QUANTITY
Rifle No. 321. 1022.	Reg'd No.	
Bayonet No.	Wrist-band	
Bottles, oil		
Pulling-rough, single		
Ammo. 303 Rnds.		50
Razor Blades	Reg'd No.	10
Soap Tablets		4
Laces Leath. Pos.	Reg'd No.	1
Nat. Mosquito Brown		1
Detector Gas Gd.		
Cleaner Web	tins	2
Dubbin	tins	2
Cotton Waste	oz	1
Cloth Disinf Face		2
Initials of Soldier		
Initials of QM or Rep.		EC

CERTIFICATE TO BE SIGNED BY INSPECTING OFFICER AT EACH KIT INSPECTION

Certified that the record detailed in this statement has been checked with the articles in possession of the soldier and found correct.

Signature	Date	Signature	Date
E.W. Connor	2 Feb 44		
E.W. Connor	10-2-44		

Ex. B2

Army Form B.[illegible] (War)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
D.6020	Gnr.	Ernest John DAVIES,	6 Bn. 2 CHRD.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For A.A.Sec. 19 ..... 2 times.

For A.A.Sec. 40 ..... 1 times.

For A.A.Sec. 11 ..... 1 times.

For ..... times.

Date of first entry in Field Conduct Sheet 23 June 44

Date of last entry in Field Conduct Sheet 1 Aug. 44

—2. [redacted]

*Strike out if not applicable.

*3. [redacted] day of

4. The accused has been awaiting trial on the present charges for — days in civil custody; and for ..... days in military custody, *i.e.*, ... days in open arrest, 15 [redacted] days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 41

6. The date of his attestation is 5 Sept.1939

—7. [redacted]

*State the military decorations (if any) held by accused.

8. The accused is in possession of: Gen Vol Service Medal & Clasp.

9. [redacted]

Date of Promotion

[redacted] of .....

[redacted] of .....

[redacted] .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[illegible]

D.6020 Gnr. DAVIES, Ernest John. RCA. Date of enlistment 5-9-39. GC Badges Service of Proficiency Pay

MFM 6 (AFB 122) AC/PAS/136 (5438)

No Name Sqn. Battery or Company Corps

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine N/A. Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Awarded	one Good Conduct badge WEF. 12 Feb. 43 O.O. 238 1 CARU. d-7 Oct. 43.								
Field	23 Jun 44	Gnr.		A.A. 19 Drunkeness.	Doc.	Admonished.	7 Jul44	Lt.Col. H.E.Wright.	
Field	15 Jul 44	L/Bdr.		A.A. 19 Drunkeness.	Doc.	Referts to Gnr.	17 Jul 44	Lt.Col. H.E.Wright.	
Field	1 Aug. 44	Gnr.		1. A.A. Sec. 11 Out of Bounds. 2. A.A. Sec. 40 Improperly Dressed.	Doc.	14 Days C.B. 14 Days Pay. FR&I 149 (2)	7 Aug.44	Lt.Col.E.W. Stewart-Jones	

R.D. Hutsell .....Capt.
(R.D.Hutsell).
Cf. i/c. Regtl Books & Records.

(PTO)

I, D.3080 Cmr. Davies, E.J. request that my Commanding Officer
a point CAPT. B.W. SCOTT 6 BN to defend me at my forthcoming
trial by RMC.

E.J. Davies
(E.J. Davies,) Cmr.

Sep 44

I, D.6020 Gnr. Davies,E.J. 6 Bn. 2 CBRD. hereby acknowledge receipt of a copy of Charge Sheet and Summary of Evidence in connection with my forthcoming trial by FGCM.

E.J. Davies

(Gnr. Davies,E.J.)

15.Q.

Bdr. DAVIES, J.

O. H. M. S.

15.Q

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Tenth day of October, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 2nd Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ PCT

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*I am unable to appoint~~ — PCT

*(1. ~~Three Officers to form the Court.~~)

*(2. ~~A Field Officer as President.~~)

*(3. ~~Three Officers having more than one year's~~ service.) PCT

~~for the following reasons, namely:—]~~ PCT

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED

[signature]
Reviewing officer (ERA) CMHQ
28 Oct 42

President.

Rank.	Name.	Regiment.
Major	J.H.R. Thomson	3 Cdn Lt. A.A. Regt. RCA

Members.

Rank.	Name.	Regiment.
A Captain	Capt. B.C. Thomson To be detailed by	2 Cdn A Tk Regt R.C.A.
A Lieutenant	Lt. H.P.M. Smith To be detailed by	2 Cdn A Tk Regt R.C.A.
A Lieutenant (Waiting Member)	To be detailed by	2 Cdn A Tk Regt R.C.A.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding R.C.A. 2 Cdn Div.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D6032 Bdr. Davies J., 5 Cdn Fd Bty 5 Cdn Fd Regt R.C.A.	FIRST CHARGE. A.A. Sec 9(2) W.O.A.S. Disobeying a lawful command given by his superior officer. (See charge sheet attached)	not Guilty	case dismissed on motion by defending officer on grounds that no prima facie case had been produced — 12.10.42 J Thomson President	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No

Answer (to be recorded on separate sheet if necessary):—

(Signed) P.C. Tees (P.C. Tees) Brigadier
Commanding R.C.A. 2 Cdn Div.
Convening Officer (c)

(Signed) J Thomson major
President

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12th day of October 1942 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 12th day of October 1942

J Thomson
President of the Court Martial Major

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

Signed this day of 19 .

Brigadier
C.R.A. 2 Cdn Div. Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, No D6032, Bdr John Davies, 5 Fd Bty, 5 Cdn Fd Regiment, R.C.A, a soldier of the Canadian Army, while on active service, is charged with,

First Charge
Sec 9(2)
Army Act.

Disobeying a lawful command given by his superior officer,

in that he

in the field between 1630 hrs and 1800 hrs 30 Sept-42 having been ordered by D6038 L/Sjt Norman George Bruce, his superior officer, to turn in "B" Troop, 5 Fd Bty, M.T. Work Tickets completed up to date, failed to do so.

(E.D.Nighswander)Lt/Col,
Comd 5 Cdn Fd Regt, R.C.A.

In the Field
To be tried by F.G.C.M.
This 2nd day of October 1942

(P.C. Tees) Brigadier.
C.R.A. 2 Cdn Div.

I hereby request that Lieut.P. Bingham,11 Fd Regt,RCA.
be appointed to defend me at my trial.

John Davies

D6032 Bdr J. Davies.

MEDICAL [illegible] CERTIFICATE

K.R. (Can) PAGE [illegible]

I certify that I have this morning examined

No. D6032 Bdr. DAVIES J

of 5th Field Regt. RCA

is fit to undergo Trial by Court Martial.

Station Field

Date Oct. 12/42

H. Scott Capt RCAMC

Medical Officer

B3

[illegible]

President

*N.B.—As this form is applicable to any Board of Officers or Committee or Court of Inquiry, the blank is to be filled in accordingly.

The signature of each Officer composing the Board, etc., should be attached to the end of the proceedings.

PROCEEDINGS of a* Field General Court Martial

assembled at Headquarters, 2 Cdn. A. Tk. Regt., R.C.A.

on the 12 Oct. 1942

by order of P.C.Tees, ~~Brigadier~~ Commanding R.C.A. 2 Cdn Div

for the purpose of trying

D6032 Bdr. Davies J., 5 Fd Bty., 5 Fd. Regt., R.C.A.

PRESIDENT

Major J.H.R.Thomson 3 Cdn Lt. A.A. Regt., R.C.A.

MEMBERS

Capt. R.C.Thomson 2 Cdn. A. Tk. Regt., R.C.A.

Lieut. H.P.M.Smith 2 Cdn. A. Tk. Regt., R.C.A.

The having assembled pursuant to order, proceed to

The order convening the Court, the charge-sheet and the abstract of evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor Capt. D.H.Montgomery 5 Fd Regt., R.C.A.

Defence Lieut. Newman 5 Fd Regt., R.C.A.

The order convening the Court is read and is marked A, signed by the president and attached to the proceedings.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

The accused does not object to being tried by the Court.

The President, and Members are duly sworn.

The charge-sheet is signed by the president, marked B2, and annexed to the proceedings.

M.F.B. 168

*I have satisfied myself that none of the officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge before this Court-Martial.

Major President

The accused is arraigned upon the charge in the above-mentioned charge sheet and pleaded not guilty.

The accused was asked if he wished to apply for an adjournment on the ground that any of the rules relating to procedure before trial had not been complied with, or that sufficient opportunity for preparing defence had not been given him and he replied in the negative.

The prosecutor addressed the Court stating that Bdr. Davies had failed to carry out the order of his superior officer in the matter of the submission of some work tickets and called the first witness.

First Witness for the prosecution Capt. W.F. Hadley, 5 Fd Regt., R.C.A., having been duly sworn gave evidence as shown in the abstract attached hereto. Ex. 4.

Second Witness for the prosecution D6038 L/Sgt. Bruce N.G., 5 Fd. Regt., R.C.A., having been duly sworn, gave evidence as shown in the abstract attached hereto.

Third Witness for the prosecution D6049 L/Bdr. Knox R.L., 5 Fd Regt., R.C.A., having been duly sworn, gave evidence as shown in the abstract attached hereto.

The defence questioning L/Bdr. Knox brought out the fact that the job was taken away from Bdr. Davies at 1745 hours and that being the case he had not had time to complete it. L/Bdr. Knox admitted the accused had made an effort to have the work tickets completed and he was not certain that his evidence given in the abstract was correct regarding Davies' intention of having the job completed the next morning. The defence submitted that it took L/Bdr. Knox two further hours to complete the work and pointed out that the vehicles were a mile away from the tent lines, that the drivers would have to be called, taken away from their suppers, and that altogether the order was one which could not have been executed in the time, namely an hour and a half. The defence there ore moved that the case be thrown out on the grounds that no prima facie evidence had been produced that the accused had been given sufficient time and opportunity to carry out the order. The prosecutor had not shown that Bdr. Davies did not intend to comply with the order and the fact that the job was given to Bdr. Knox at 1745 hours when Bdr. Davies was still available could be taken to mean that had been relieved of his responsibility in the matter.

The Court felt that there was a reasonable doubt that Bdr. Davies was given sufficient time to carry out the order and after due consideration allowed the motion of the defence and dismissed the case.

PRESIDENT Major D.H.R. Thomson [illegible] R.C.A.

R.60a

ABSTRACT OF EVIDENCE

in the case of

D6032 BDR JOHN DAVIES

5 Fd Bty, 5 Fd Regt.R.C.A.

Capt. T.H. Montgomery, 5 Fd Regt.R.C.A.has been detailed by C.O. 5 Fd Regt,R.C.A. to take an abstract of evidence in the above case in accordance with D.R.O. No 772 App "A".

FIRST WITNESS:
Capt.W.F.Hadley

According to Bty Order No.588 d/30/9/42, commencing 1-9-42 new work tickets were to be issued at the start of each month.

At approx 1630 hours 30-9-42 I sent the Sept Bty work tickets to L/Sjt Bruce, Bty NCO i/c M.T. with instructions to have them completed so that I could make out the petrol return & new work tickets after supper. When I returned to Bty Office at approx 1850 hrs,with a few exceptions all work tickets had been returned,and with the exception of B Troop, work tickets had been completed up to date.

As Bdr Davies B Troop NCO I/C M.T. could not be found, the work was given to L/Bdr Knox, an NCO in B Troop M.T, to complete.

SECOND WITNESS:
D6038 L/Sjt Bruce.N.G.

At approx 1630 hrs 30-9-42,D.R. from Bty Office, Gnr Komisaruk, turned over the work tickets to me with instructions from Capt Hadley that they be returned to the Bty Office completed up to date. I went to find Bdr Davies "B" Troop NCO I/C M.T. and found him in the K of C canteen. I instructed him to have his work tickets returned to me by 1800 hours. He told me that that was impossible and could not be done,or words to that effect. I said "You have them returned to me by 1800 hours" or words to that effect. At this time all of "A" Troops work tickets had been completed without special instrucions having been necessary,except one. At approx 1800 hrs B Tp work tickets had not been returned, and I met L/Bdr Knox and asked him to round up the missing work tickets. L/Bdr Knox then brought the work tickets to the Bty Office where he completed them.

THIRD WITNESS:
D6049 L/Bdr KNOX.R.L.

At approx 1800 hrs 30-9-42, Sjt Bruce came to me and asked me to bring in "B" Troop work tickets, I told him they were not completed, and he told me to bring them in anyway. I found Bdr Davies and he told me that he had given some of the tickets out to the drivers to be completed by morning, and that the rest were in his tent. I got the tickets out of his tent, and turned them into the office. About half an hour later Capt W.F.Hadley sent for me and told me that he wanted all the "B" Troop work tickets turned in, and all completed up to date. I collected the work tickets which had been given out to the drivers and completed those which had not already been done. By the time I had finished this job it was about 2000 hours.

The foregoing abstract of evidence was taken by me, in the field, on the sixth day of October-1942.

(T.H.Montgomery) Capt. RCA.
5 Cdn Fd Regiment. RCA.

R.C.A.
R-18
Defence Officer
Prosecuting Officer.

EXHIBIT 1

Copy of 5 Fd Bty Pt 1 Order 4/30-8-42,No.598.

Parades for Aug-31-42.

Reveille	0630 hours	Roll call	0645 hrs.
Breakfast	0700 hours	Parade	0830 hrs.
Dinner	1200 hours	Parade	1330 hrs.
Supper	1700 hours	Lights out	2215 hrs.

Tattoo roll call 2359 hours.

DUTIES:

1. Guard: to fall in at 1725 hours outside stables.
N.C.O. I/C BDR DAVIES.J

D13656	Gnr	Rollins.C.	D13652	Gnr	Cook.H.G.
M36999	"	Dupilka.J	G3835	"	Urquhart.J
D118773	"	Blondell.A	D6932	"	Garaughty.T.
L234	"	Dodman.H.			

2. Fire piquet: 30th August-42.

D106905	Gnr	Groleau.C.	H35475	Gnr	Johnson.H.
D16084	"	Fiset.S.	D6043	"	Morgan.C.

3. Kitchen: to report at 0630 hrs 31 August-42.

D106835	Gnr	Olsen.B.	D13531	Gnr	Rawlings.L
G8054	"	Malley.A.			

4. WORK TICKETS: Commencing 1 Sept-42,new work tickets will be issued at the start of each month.
On first receipt of work ticket,driver will fill in secs 11 and 12. He will fill in 9 at end of each trip. Secs, 10,13,14,will be filled in when ticket is completed.
The losse of a ticket will give rise to disciplinary action.
No,repeat,No, excuses will be accepted.
Work tickets will be used for all trips. Signed chits will not longer be used. This is necessitated by the new petrol accounting instructions. Atk the end of trips, work tickets will be handed to NCO's I/C M.T. who will be responsible for turning them into the Bty Office.

Signed(W.F.HADLEY)CAPT.RCA.
for(F.H.BAKER) Major.RCA.
O.C.5(Wes[illegible])Fd Bty.

Certified true copy.
12/10/42 W.F. Hadley Capt.

[illegible]-45.

[illegible]r. Davies. J.C.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D91032 Bdr John Carter DAVIES

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 18(4)	GUILTY	GUILTY	
2nd AA Sec 40	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to Findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 45 days, of which NIL days were spent in hospital.(2)

(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of two (2) years.

(Sgd) ..... Judge-Advocate, if any. 24 NOV/44 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 66(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(1). Sending back finding or sentence for revision by Court : AA 54(7), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed~~ to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

(Sgd) C B Connelly Brig

Date 1 Dec 44 Commanding 61 CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused D-91032 Bdr John Carter Davies Date. 2 Dec 1944 Signature of Offr. Lt Col

DO 289 d/4 Dec 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

IN REPLY PLEASE QUOTE 60/1 4.6.45

RECD - 9 DEC 1944 D.M.S. W.A.N.C.

FIELD GENERAL COURT-MARTIAL

CFAMS (To take the place of AFAM) 40/F & S/1608 (8144) 4/38B

Convened by Brigadier A B Connelly Coond 1 Gp CRU dated 14 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D91032	Bdr		John Carter	DAVIES	1 CGRU

PROCEEDINGS REVIEWED 9 Dec 44 W C Dunbar Capt

REVIEWING OFFICER

JCdC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date) 21, 23 & 24 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, ~~if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of each variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95 for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ~~the Interpreter being sworn.(1)~~ as interpreter ? Ans ~~—~~

~~The Interpreter is sworn.(1)~~ Do you object to Sjt SINCLAIR AH. as shorthand writer ? Ans No

The shorthand writer is sworn.(1) Sjt SCHULTZ J

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No, Sir.(2)

(1. RP 120. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 16, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-col	D.L.	REDMAN	HQ CRU
Member	Capt	W.E.	JAMES	1 CASCRU
Member	Lt	J.S.	MELBOURNE	1 CASCRU
~~Judge-Advocate~~				
Prosecutor	Capt	M.L.	MAGILL	3 CACRU
Defending Offr	Capt	B.G.	SAUNDERS	1 CGRU
	Lt	A.M.	WILDING-WHITE	1 CGRU

Lt A.M. WILDING-WHITE

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans Yes.

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See D1 p 33.)

A8. The accused before arraignment make(s) (no) ~~(a)~~ plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see ~~(2. Delete if not applicable.)~~ and some of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is about to~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form A and B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO - SIR (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO 2nd ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO - SIR (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.(1) NOTE ATT DM
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 92(C).)

D3. The evidence for the Prosecution is taken.(1) NOTE ATT
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not ~~establish a prima facie case~~ against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s)~~.(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. NEITHER Do you intend to call witnesses on your behalf? Ans. NO - SIR Are they witnesses as to character only? Ans.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, ~~and states to the accused that the finding(s) of the Court on the~~ charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The ~~accused having been found Guilty on one or more of the charges~~, the proceedings are concluded by using Record Form E ~~below~~. B above

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. TO call their witnesses and to Fix Evidence NOTE ATT
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 255 or AFB 295. 2. ~~and fn 6~~. 3. RP 44, KR Can 556. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. By A/Offr NOTE ATT
(1. RP 37(C), 46(2). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or rebut anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and him J.A., if any~~.(2)
(1. ~~Where several accused tried separately see RP 71 (D).~~ One sentence only, comprised of the punishment or punishments ~~listed in AA 40, 44 and its proviso~~, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 70. ~~As to sentences see AA 44, 138, 182, RP 44-50, 68, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, Manual p 137-139.~~ As to sentences consigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused under ~~sentence of imprisonment or detention see AA 44(18), 46(1), KR Can 564.~~ 2. RP 50. As to release from arrest by Custody Off see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The Accused, D-91032 Bdr. John Carter DAVIES, Clerks Coy., No 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE SEC 18(4) AA

WHEN ON ACTIVE SERVICE, STEALING PUBLIC PROPERTY

in that he

At No 1 Canadian General Reinforcement Unit, on 5 Oct 44, stole 700 blankets, public property, from the accommodation stores No 1 Canadian General Reinforcement Unit.

SECOND CHARGE SEC. 40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

On or about 3 Oct 44 attempted to bribe D-90040 MSM Ennor, C., on the strength of No 1 Admin Transport Coy., RCASC, to permit the improper use of a Canadian Military Vehicle.

(R.R. Ker) Colonel
Comd
No 1 Cdn Gen Rft Unit
Canadian Army Overseas.

Field
10 Nov 44.

Approved on behalf of the J.A.G.
Cdn Army Overseas pursuant to
K.R. (Can) 540 and Overseas RO
4756 (13)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(A B Connelly) Brig
Comd B Gp
Cdn Rft Units

14 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D91032	Bdr		John Carter	DAVIES	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 14 Nov 44 endorsed by me, "~~[illegible]~~" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable that the trial should be held at a place and time at which the ordinary Courts-Martial could be assembled and could sit~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	D L Redman VD		HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by	1 CASCRU
Lt	to be detailed by	1 CASCRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

In England
(Country.)

(AB Cornelly)
(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Date 14 Nov 44

Commanding HQ B Gp Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAES) (To take place of AFAS) 40-7 & 8-1944 (4001)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. D.91032 Bdr. DAVIES, J.C.

of No.1 C.G.R.U. is in a good state of health,

and fit to undergo Trial by Court martial.

J Ad

J Anderson Capt Captain
Medical Officer
No.1 C.G.R.U.

Station Field

Date 21 Mar. 44

M. F. B. 246
[illegible]

MEDICAL OFFICER'S REPORT

I certify that No. D-91032 Bdr. Davies, J.C.

of #1 CGRU is in a fit state of health,

and is able to undergo Trial by Court martial.

Captain
Medical Officer

Station Field

Date 23 Nov 44

M. F. B. 246

MEDICAL OFFICER'S REPORT

I certify that No. D-91032 Bdr. Davies, J.C.

of _____ is in a fit Gen. state of health,

and able to undergo Trial by Court martial.

[signature] Captain
Medical Officer

Station Field

Date 24 Nov 44

M. F. B. 246
25M—6-41 (792)
H.Q. 1172-39 480

F.G.C.M. IN THE CASE OF

D 91032 Bdr DAVIES, J.C., 1 CGRU

23 & 24 Nov 44
Defended by Capt BG Saunders and Lt A.M.Wilding-White.

TRIAL ON THE 2ND CHARGE

EVDENCE FOR THE PROSECUTION NOTE D-3

1st WITNESS FOR THE PROSECUTION
D 91040 MSM C ENNOR, on strength No 1 Cdn Adm Tpt Coy, having been duly sworn states:

I am the mechanist sgt major at 1 Cdn Adm Tpt Coy, I know Cpl Davies, he is there, the accused, I have known him a short time in this country and in Canada I knew him for about a year. He visited me in the sgts mess a couple of months ago, somewhere around the end of Sep, I just don't remember the exact date, there was another sgt with him, I do not know this other man's name, nor do I think I could mcognize him if I were to see him. I was out that evening and I came into the mess around 9:00 pm that evening and was met by these two chaps, we went up to the bar and had a drink. The accused asked me if there was any chance of getting a truck, I told him I had nothing to with tpt. He said there would be £20 or £25 in it for me, and I said I was not interested. We had another drink and as I had an appointment that evening I left.

Q Was any purpose mentioned for which the veh was required?
A There was not very much talk about the veh after I refused to try and get one. I do not recall them telling me of any purpose. There was some talk about blankets.

Q Did you gather from the accused remarks that if you supplied the truck he would give you £20 or 25£?
A I think that is what he meant.

Q Did you supply a truck?
A No sir.

Q Did he pay you any money?
A No sir.

CROSS EXAMINATION BY THE DEF OFFR (Capt Saunders)

Q Did you report the accused alleged topic of conversation to anyone?
A No sir.

Q Why not.
A I just let it go, I was not interested, I forgot the whole matter for a month or so.

Q You are a responsible WO in charge of tpt?
A I have nothing to do with tpt, I am in charge of the wksps.

Q You are a responsible WO and you thought it quite a light matter?
A No I did not so I dismissed it all from my mind.

Q Did anyone else approach you with a similar proposition?
A no sir.

Q Were there any other sgts from 1 Adm Tpt Coy present when this conversation took place?
A There was only the three of us standing by the bar, I never spoke to the other chap.

Q If I was to bring in a certain sgt, do you think it might re fresh your memory?
A It possibly would.

Q Have you a veh at your disposal?
A No sir.

BY LT WILDING-WHITE

Q The accused said to you "there will be £20 or £25 in it for you"?
A Yes sir.

Q He did not say "I will give you £20 or 25£?
A No sir.

Q In other words if you joined into something you would get 20 or 25 pounds as a result?
A Yes, I took it that if I supplied a truck I would get 20 or 25 pounds.

Q In other words you did not know how you were going to get that 25 pounds, whether it would come from somebody else or from something that the truck was to be used for or by other people?
A Yes

Q It might depend on the [redacted] success of the venture that the truck was to be used for?
A I cannot say as to that.

Q Did you understand then that he was not himself directly offering you 25 pounds of his own, but that after whatever happened, if it happened, you stood to get 20 or 25 pounds?
A That is the way I took it, that if I supplied the truck I would get 20 or 25 pounds.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

23 Nov 44.

Court adjourned at 1730 hours/until 0930 hours 24 Nov 44.

THE PROSECUTION IS CLOSED

Court Re-assembled at 0930 hrs, 24 Nov same members present
Sgt Sinclair replaced Sgt Shultz as shorthand writer

STATEMENT BY THE PROSECUTOR ON THE FINDING

The charge on which the accused is being tried is that of offering a bribe, to permit the illegal use of a veh. Only one witness has been called as to the facts of this case. The reason for this is that Ennor himself is the only possible witness. It might appear that the Court could not convict upon the evidence of only one witness, but there is no law laying this down, in fact it is definitely laid down that the Court may convict upon the uncorroborated evidence of one witness provided that they believe the evidence given by that witness. I refer the Court to Page 45, Page 83, MML. The evidence of Ennor is quite clear. At sometime towards the end of Sep 44 Ennor states that Davies came to see him in the Mess and that he asked him for a veh, that he stated that if he, Ennor, would supply the veh there would be 20-25 pounds in it for him. Is that the offer of a bribe? I think the Court must conclude it is. Ennor was offered a sum of money to permit the doing of an illegal action. The Defence in their X-examination of Ennor tried to raise this point, that what Davies was really doing was offering Ennor a share in the proceeds of an action and that Davies himself was not directly making the offer or promising to pay. I think that the evidence given by Ennor is to the relationship between himself and Davies disposes all of that objection. Ennor stated that two sergeants came to see him, that the only one of the two with whom he was acquainted with was Davies, that he [redacted] would not recognize the other man if he was him. Now it is merely common sense to think that Davies was the only possible person from whom Ennor could expect payment.

Even if Ennor had been disposed to agree to this proposition he certainly would not have entered upon the say-so of a man absolutely unknown to him or upon the promise of receiving part of the proceeds of a very vague deal, the only thing that he knew about was that the deal concerned blankets. Davies came to him, offered him a bribe provided he would permit the illegal use of a vehicle. Since this is what the charge complains of, I feel that the Court should have little difficulty that the accused is guilty of the offence as alleged.

STATEMENT BY THE DEFENDING OFFR ON THE FINDING

I think I made it clear in X-examination of Sjt Ennor the exact nature of this approach. It was not an offer by Sjt Davies to give him twenty or twenty five pounds if he would do something. This is emphasized by the fact that another Sjt was with him at the time. In other words they went there with the object of making him join their group, and they said there will be or may be $20-25 in it for you. That is not a direct offer, and is not a bribe at all, or an attempt to bribe. I think this sort of thing has appeared in the trial of the accused all the way through. This is obviously multiplicity of charges as outlined in MML. There is no doubt in my mind but that improper methods were taken in getting the statement. Last of all we have got these extra charges put in should the other charges fail to get them in some sort of way. I think that is the type of attitude which MML severely disapproves of. Further, my main point is that this was in no sense an attempt to bribe even and I think that is very clear to everybody that that is so.

THE COURT IS CLOSED TO CONSIDER THE FINDING

THE COURT IS REOPENED AND THE PRESIDENT ANNOUNCES THAT THE COURT FINDS THE ACCUSED NOT GUILTY ON THE SECOND CHARGE.

CHARACTER WITNESS

Capt GA PENCHARD, RCA, 2 CARU, having been duly sworn, states:

The accused came to "I" Wing of 2 CARU about July or Aug of 43. He was with us for a period of approx 11 mths, and during that time he served the Wing efficiently in every respect, was found to be very trustworthy and carried out every duty which was assigned to him, cheerfully, accurately and willingly. His ability, Sir was outstanding. On many occasions he would be asked to construct a letter to answer to some subject and we found that he was outstanding as a clerk in the Orderly Room. It has often been mentioned by many of the Staff that he was the best clerk that ever came to our Wing We require an Orderly Room clerk of very high standard. He was covering a vacancy of a Sjt Gp "B" and during this time around Spring of 44 promotion within the RU's were frozen and consequently we could not bring him up to the rank he was fully deserving of. Through contacts made to CRU an offr asked if we would be willing to release him for a posn at CRU which would give him a rank of Sjt, to which we agreed. In passing I might mention that at the time he left the unit he owed small amounts of money and I endeavoured to get in touch with the Pmr to settle these accounts. However the Pmr could not advance him the money as he didn't have it in his paybook, so I loaned him the money. Some 2 wks later he made a spec trip to 2 CARU in order to pay this money back to me, and left it there which I recd at a later period as I [redacted] was away at the time he came to pay me. I mention this to confirm my previous statement in regarding him as fully trustworthy. I know the accused to come from a family of very high standing and cannot believe that through any wish of his own he was been involved in these circumstances.

NO CROSS-EXAMIN TION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

STATEMENT BY THE ACCUSED
(E-1) (NOTE ATT)

PLEA IN MITIGATION
(DEF OFFR)

There are just two things I would like to express to the Court. I want the Court to consider the character evidence given, the fact of the accused's service of 5 yrs without any tries upon his 6, and the accused's own statement himself. Thank you.

Statement by D 91032 Cpl Davies J.C.

E-1

During the last few days, I have been undergoing a form of self-analysis trying to get at the root of the causes resulting in my being in this predicament - in no sense do I wish to unload any blame other than on my own shoulders for my part in the incident - but I am quite definite that contibuting causes are beyond my control.

Prior to joining the Army in September 1939, I enjoyed a normal and active life. I had played representative cricket for Quebec, football for various clubs in Montreal and the Eastern Townships of Quebec, tennis and golf, had no domestic worries and suffered no ill-health. My record as a civilian was without blemish and I still have excellent references from my few employers.

As a contrast - October 1944.

I am employed at a trade(Clerk) which I strove to avoid for three years in the army, my physical disabilities prevent me from partaking in any outdoor sport, my domestic affairs are far from happy and my temperament changed to the extent that my stability, since 1942, confines my reading to the daily newspaper, and entertainment consisting in fostering a temporary elation from the solace of a few pints of beer.

I enlisted with the RCASC - became a PT Instructor, was promoted and attached for duty to HQ MD 4. I reverted to be transferred to the 1 Cdn Svy Regt RCA in order to come overseas, and promises I received that my education would be adaptable to the requirements of the Survey Regt (as a Surveyor). My second day with that Regiment brought a demand to work in the Orderly Room "just to help out for a few days" but continual complaining brought forth the promise that my technical training would commence just as soon as we arrived in England. I was in charge of the Orderly Room until we moved to this country. I was paraded soon after arrival and again stressed dissatisfaction with clerical employment and asking that they fulfill their promises. It was agreed that I undergo survey training but at no time was there any suggestion of putting the promise into effect. A hernia operation in 1942 was only partially successful. I returned to the hospital a few months later, but the suggested operation was delayed, and further complaints at regular interyals resulted in a category, but no cure. During this time I was employed at clerical duties, quite contented knowing that manual labor was physically impossible. I was sent on the Clerks' Course and a pay-book entry supports the fact that I qualified with 96.5%. A sojourn in hospital followed and in 1943 I attended a Shorthand Steno Course in 1 CGRU. Domestic events had not improved my morale and I made an official application for compassionate leave to Canada. A copy of my letter is attached. The application was concurred in by Major Lawrence, OC Clerks' Trg Wing, and forwarded to higher authority. I did NOT receive the courtesy of a decision.

I was posted to No. 2 CARU, a thoroughly "Browned off" individual, In "C" Bty at that Unit, it was recommended by the OC that I be returned to Canada. That suggestion came to nought. I was paraded to OC Adm Wing some time later and stated my case for return to Canada but received no encouragement, and my general outlook on the Army was very unwholesome. Through the results of the "I" Test, CMHQ recommended that I make an application for OCTU. The local selection board apparently frowned on category aspirants(even though I had expressed preference for the

Forestry Corps). I could not be used on the Permanent Establishment of No. 2 CARU, as I was qualified "B" Clerk (both general duty and shorthand steno) and the establishment was very limited for such tradesmen. I came up for re-test and failed both tests simply by signing the blank sheet of paper. I thus managed to become employed on the PE of 2 CARU as a Clerk "C".

I again went to the hospital in the spring of this year, but I was told that because of impending operations no bed space was available and the Medical Officer expressed the opinion at the time that, even though an operation be performed, I was unlikely to become a "fighting soldier". It was the desire to go overseas that actuated my plea for something to be done as I felt that more than 2 years in a Rft Unit was having a very unsettling effect - that apart from the physical discomfort I had(and still have) to endure. The War Establishment at 2 CARU was amended and I came back before the Trade Test Board and I requalified Clerk "B". I covered off a Sergeant's vacancy in "I" Wing for several months as a Bdr, but promotions were "frozen" in the Artillery. I was offered the rank of Sergeant with the Trade Test Board, and eventually came on the strength of HQ CRU-Trades Test Section.

As custodian of the office eqpt I live in the office building by myself, but a hermit's life was incompatible with my personality and I felt the need of "mixing" to a marked extent. In September, Lieut Benson, my OC, suggested that I move into other quarters, and that was my intention before my arrest.

Rather than undergo an unpleasant session in seclusion, I formed the habit of drinking as an excape from solitude, but I do not blame the few weeks of that existence as responsible, but rather the effect of the causes I have outlined.

The culmination was that the slightest opportunity to relieve the monotony, which severely taxed my nervous system, was a welcome respite from the dubious entertainment of the bar -room and the opportunity to help engineer the crime was not so much to defeat the law as it was a perverted attempt to occupy my intellect starved by restricted and what has always been unsuitable employment.

I have continually expressed my concern over my physical condition and less than a month ago I was told by the Unit Medical Officer that anything strenuous would be dangerous and he confirmed what I had been told at Bramshott in the spring.

John C Davies

D 2[illegible]32 ~~Gnr~~ Bdr. Davies J.C.

18 Oct 44.

CERTIFICATE

I certify that the copy of the Summary of Evidence and of the Exhibits thereto, which are returned with, or are included in these Proceedings, and which are initialled by me, are a true copy of the original summary or of the original exhibits, withwhich I have compared them, which original summary and which original exhibits are of record in the FGCM Proceedings of B 64113 Rfn Dudley, R.D.C.

(D.L. Redman) Lt Col
President, F.G.C.M.

This is exhibit " C " referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns R.T
Rifleman Dudley R.D.C.
CONS Mickimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M

taken before me this First and second days of November, 1944

Officer taking summary

A.F.G. 2816 (Revised 1942)
43/P&S/400(1749)

TRANSPORT WORK TICKET

MAKE OF VEHICLE: Ford
CLASS: 60cwt
UNIT: 71 C.G.R.U.
SECTION: [illegible]
DRIVER'S NAME: [illegible] Dudley
[illegible] Rasmussen
No. [illegible]
W.D. No.: 762820
MONTH AND YEAR: Oct 44

DATE (1)		FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Kms (17)	SPEEDOMETER Day (18)
	A			Brought forward from Work Ticket No.														
1.	B	Own Unit	Records	Ald	Ash	Return	Keen Cap									20736		
2.	C	Own Unit	C.T.W.	Ald	Farnborough	Return	Cpl Sudd							1400	1515	20772	15	
3.	D	Own Unit	Ed Coy	Ald	Guildford	"	Cpl Bauer							0800	1530	20800	14	
3.	E	Own Unit	Records	Ald	Ald Stn	"	Cpl Bauer							0815	0930	20820	20	
3.	F	Own Unit	Ed Coy	Ald	Guildford	Return	Keen Cap											
5.	G	Own Unit	Records	Ald	as directed		Keen Cap							1615	1730	20848	20	
5.	H	Own Unit	Records	Ald	Alton	Return	Keen Cap							0130	0200	20851	3	
5.	J	Own Unit	Mob Stores	Ald	Farnham	Farnborough	Keen Cap							1230	1330	20856	25	
	K													1230				
	L																	
	M																	

M.P.G. for week _____ or totals carried over _____

This is exhibit " D " referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J.
Sgt Gemmell, E.A.
Sgt Johns R.T.
Rifleman Dudley R.D.C.
CQMS Mishimmons, W.
Sgt Davies, J.C.
Cpl Joynes, J.C.M

taken before me this First and second days of November, 1944

Officer taking summary

TRANSPORT WORK TICKET

A.P.O. 2510 (Revised 1942)
[illegible]

MAKE OF VEHICLE: Ford

CLASS: 60 cwt

UNIT: 1 C.S.R.U.

SECTION: [illegible]

DRIVER'S NAME: [illegible] Fn.K. [illegible]

W.D. No.: [illegible]ley 762820

MONTH & YEAR: Oct 44

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
A	Authority	Hospital	Brought forward from Work Ticket No.														
B	C.S.R.U.	Blankets	Aldershot														
C				Watford		Return											
D													1600				
E																	
F																	
G																	
H																	
J																	
K																	
L																	
M																	

M.P.G. for week

or totals carried over

1 CGRU/9-4
5 Oct 44

Commanding Hospital,
No 23 Cdn Gen Hosp RCAMC
WATFORD

DESPATCH OF BLANKETS

1. Ref CRU/911/BLANKETS/14 dated 3 Oct 44.

2. In accordance with the instructions outlined in the above mentioned letter, arrangements have been made to supply to your Unit one thousand (1000) blankets.

3. This consignment will be picked up from the Laundry 5 Oct 44 and will be delivered to your Unit by tpt supplied by 1 CGRU.

4. As the blankets will be delivered direct from the Laundry, it is not considered necessary that the certificate stipulated in CRU instructions be supplied, as the methods of cleansing automatically free the blankets of the possibility of lice or other contaminations being present.

5. Issue Voucher will be forwarded through the normal channels.

for Sgd. L. Skinner Lt.
(B.R. Kor) Colonel, RCA
Commander,
1 Cdn Gen Rft Unit
Cdn Army (Overseas)

L/S

This is Exhibit "E" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Riflemand Ludley, R.D.C.

taken before me this First and Second days of November, 1944

Officer taking summary

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

6 OCT 44

STATEMENT of:

Regt. No. B-64113, Rfn. DUDLEY, R.D.C.
"A" Wing, M.T. Sect., No.1 C.C.R.W., C.R.H. Command.

BEGINS:

I have been cautioned by S/Sgt. NIXON, of S.I.S. that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) R. DUDLEY

STATES:

On 4 OCT 44 around dinner-time I was working on my truck, No. L-762820 in the workshop at my Unit when one of the other men in the M.T. Section came to me and asked me if I would like to make myself some extra money. He is a friend of mine and I don't want to say his name and maybe get him into trouble. I was broke and wanted to get some money so as to be able to go on leave, so I said "Yes I would", and asked him how it could be done. He told me there was some stuff to go to London next day and if I would take it in my truck I'd get out of the deal. I said I'd do it, and he told me that if I'd take the truck round to the Blanket Hut sometime during the afternoon next day the Staff-Sergeant in charge of Mob. Stores would get the fatigue men to put on a load of blankets. All I had to do then was drive up to the Garrison Theatre where somebody would be waiting to go in to LONDON with me and look after things from there on. My friend also told me I'd better take out a Work Ticket showing a load of Hospital Blankets for WATFORD.

I had two trips next morning - one to the Gov't.Siding in ALDERSHOT at 01:30 hrs. and one from 11:30 hrs. to 13:30 hrs. to ALTON and return. When I got back I was detailed by Cpl. JEYNES for a journey to FARNHAM and FARNBOROUGH. He made out my Work Ticket for 15:30, signing it "Keen, Capt." and initialling it "W.J.", as the N.C.O. Despatcher usually does.

After lunch I didn't go to FARNHAM, but took my truck round to the Blanket Store at about 15:30 hrs. and backed up to the door. S/Sgt. FITZSIMMONS (I think that's his name - he's i/c Mob. Stores) came out, I opened up the back of the truck and got in. The S/Sgt. told the fatigue man to start loading blankets. I only said "Hallo" to him, and nothing much more was said. He told the man to count out so many blankets for Despatch Coy., and so many for other Coys. in the Unit. They were all in bundles of 10, and I'm sure the fatigue man didn't know anything about the deal. They only helped me. I stacked the blankets inside my truck.

During the Break Period that morning from 10:00 to 10:30 hrs. I went into the M.T. office while no-one was in there and took a Work Ticket which I made out as instructed, signing it "Keen Capt.". I kept it with me for the trip to LONDON in the afternoon.

I didn't know how many blankets I had in the truck, but when the S/Sgt. said "O.K., that's the lot", or words to that

(Contd. OVER)

words to that/
effect, I tied up the tarpaulin and drove up to the Garrison Theatre as arranged. I stopped there, and another Staff-Sergeant I didn't know came up and got in the truck. I know now his name is S/Sgt. GRATRIX. He told me where to go from there on, as I didn't know the road past SUNNINGDALE. We headed straight for LONDON. I know we went through STAINES and KINGSTON, according to the road signs, but I don't remember much about the roads. I think we were pretty well into LONDON when he said to turn off and after a lot of turns round fair-sized roads he said to pull up in a street where there were car-tracks. He said "Wait here", and got out for 5 or 10 minutes. I don't know where he went. After that we did a lot more turns, and I was completely lost. Once we passed a place where he said: "I was pinched over in there once". We didn't stop any more until we got to the place where the Police found us. I guess it was about 19:30 hrs. when we got there. I know it was getting dark. S/Sgt. GRATRIX got out and told me to wait. About half-an-hour later another soldier got into the cab with me and gave me 5/- and said "We'll be a little while yet. You'd better go and get something to eat". I couldn't see his face in the dark and wouldn't recognize him again. I couldn't tell from the way he spoke whether he was Canadian or not. I didn't notice what sort of uniform he was wearing. I went to a snack-bar a little way down the street and when I came back a few minutes later the soldier got out of the cab and said:"We'll be back".

I waited a long time and then both doors of the cab opened, somebody grabbed me by the arm and asked me what I was doing. I said I was waiting for my chum and he'd gone to get something to eat. They said they were Police Officers and that they'd wait too. After a while S/Sgt. GRATRIX came back and the Police grabbed him too. I didn't see any other civilians and didn't know who was supposed to get the blankets. The Police told me to drive to a Police Station nearby, which I did. One of them drove with me. They took S/Sgt. GRATRIX in their car.

I can honestly say that I have never been mixed up in anything like this before in the Army or in civil life, and my crimes in the Army have all been trivial. I only agreed to do it on a sudden impulse because I wanted to make a little money to go on Leave, as I'd lost a bit over being 5 days A.W.L. a little while ago. I was only in ALDERSHOT with a girl. Nobody talked me into taking blankets to LONDON. I just didn't stop to think how serious a thing it was. I figured it was safe enough, too, because somebody else was doing the job and I was just driving my truck and didn't even know where the stuff was going. I'm sorry now I had anything to do with the business.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true. /ENDS.

(SGD) R. DUDLEY 6/10/44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is exhibit "F" referred to in the summary of evidence in the case of S/Sgt Grantrix, R.J. - C.M.S Miskimmons, W. - Sgt Gemmell, N.A. - Sgt Davies, J.C. - Sgt Johns, D.T. - Cpl Jeynes J.C.M. - Rifleman Dudley, R.D.C. taken before me this First and Second days of November, 1944.

Officer takings summary

(COPY)

SPECIAL INVESTIGATION SECTION 7 OCT 44.

STATEMENT of:

Regt. No. I-1161, S/Sgt. GRIMMIA, R.J.,
Clerks' Coy., No.1 C.C.R.U., C.M.F.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S. that I do not have to say anything unless I wish to do so, but that whatever I may will be taken down in writing, and may be given in evidence. To show that I understand this caution, I sign my name here.

(SGD) R. J. GRIMMIA

STATES:

One day last week, I think it was Saturday Sep 30, 1944, I was in the N.A.A.F.I., Stanhope Theatre, Clarendon, at lunch time in company with, Sgt. Gosnell, ..., Sgt. Davies, J. and Sgt. Johns, D.T. All of No.1 CCRU. Sgt. Gosnell stated that he knew of some blankets which we could make some money if we could dispose of them.

On Sunday, 1 Oct 44, we were all in the Sgt's Mess (No.1 CCRU) and in the course of the afternoon the blanket transaction. Sgt Davies said that he might know someone in London that would be interested. It was decided that Sgt Davies and I would go to London. It was arranged that we could get a car and go up in the Elephant and Castle district. Later that night we arrived in the Elephant and Castle district about 2000 hours. In the taxi Sgt Davies and I made inquiries in the bars and offices about blankets. The first person I knew of someone who would be the right person to see was in the Kings Head, Public House. We went for there to the Black Prince Public House, where Sgt Davies went up to a man called Leicester and they had a whispered conversation together. Leicester did not overhear what was said but Sgt Davies said that he would take around 500 blankets if we could deliver them for that he would pay 7/6 a piece for them. He told Sgt Davies that he would be here at 8 pm on Thursday night to meet him to the conversation. We were to bring them up on Thursday Night and meet him in the Black Prince. This Civilian would be about 40 years old, five feet Eight Inches, stocky build, ruddy complexion, ginger stubble, thick lips, I noticed the hands with brown coat sleeves and would not like to see in the dark. He was wearing grey check cap with light brown stripes running through, a check dirty blue suit (light) of cloth, white collar and brown shoes.

We left the Black Prince and proceeded to the Kings Head where we saw the man called Pop. Sgt Davies told him he had already seen the man he wanted to talk to. "Pop" is quite an old man about 5' 6". He was wearing a shiny light grey stubble. He was wearing a black coat. I think he is known in the Elephant and Castle pubs as Tich but he said that he had been sick and that he expected to get discharged soon, on this account.

After a couple of drinks we went back to the Black Prince with "Pop" and Sgt Davies had a couple more words with Ginger there was another civilian with him but I would not recognize him again. We spent the night in London and returned to Aldershot the next morning.

That morning I saw Sgt Gemmell and told him everything had been arranged. He said arrangements would have to be made for transport. Later in the day he saw me and said that arrangements were being made for the blankets to be ready on Thursday. Sgt. Gemmell, Sgt Johns, Sgt Davies and myself usually go into the Stanhope N.A.A.F.I. every day at lunch time and one day I think it was Wednesday Sgt. Johns said that transport had been arranged for the blankets on Thursday. We were together that day at noon, and Sgt Gemmell went over to talk to CQMS Miskimmins. He then called us over and Miskimmins said that everything was all arranged. Sgt Davies was to go to London with the truck load of blankets and Sgt Johns and I were to meet him in the Black Prince. He had a letter addressed to No 23 Cdn Gen Hosp [illegible] Watford, covering shipment of 1000 blankets which would safeguard him on his journey. Later it was arranged that I should go to London with the truck and the letter was handed to me, I don't know where it came from. Sgts Johns and Davies would meet me on arrival at about 1830 hours in the Black Prince, I was to meet truck No L 762820 outside the Garrison Theatre, Aldershot at 1600 hours and show the driver how to get there. I didn't know where the blankets were coming from all I knew was that CQMS Miskimmins was arranging to get them.

I met the truck at 1600 hours as arranged and proceeded via Stains, Kingston, Clapham Junction to the Elephant and Castle area where I had some difficulty in finding the Black Prince Pub, driving around for approximately half an hour in that area before finding the right pub. I stopped once at a Black Prince Pub but found it closed and decided it was the wrong one. We then drove back following the tram lines and stopped again to ask inquiries in the tube station after which I found my bearings and arrived at the [illegible] place at about 1830. I told the driver to wait and found Sgt Davies and Sgt Johns inside the pub, they said there was [illegible] there yet but a civilian who knew Ginger was trying to get him on the phone. He came in about an hour later and went [illegible] to make some arrangements but sent word back by another civilian between 20 and 2030 hours that arrangements could not be made that night. I would recognize Ginger again if I saw him but not the two other civilians.

While we were in the pub I gave Sgt Davies 5 shillings for the driver to go for supper, Sgt Davies stayed with the truck while he was away at about 1930 hours, he came back about 20 minutes time and I took him out some cigarrets and matches, I don't know the lad and never saw him before in my life.

After we got "Ginger's" message Sgt Johns, Sgt Davies, and I went by tube to the west end to see if we could find a place to store the blankets, we tried in a pub near Oxford Circus without success and took a Taxi to some club or other that Sgt Johns knew about and left him there while Sgt Davies and I went back on the truck by Taxi, I was to follow the Taxi back in the truck. I left Sgt Davies talking to the driver and when I crossed over to the truck a couple of plain-clothes policemen stopped me and asked me what I was doing, I said I was going back to Aldershot but they said I had better come with them and took me to a police station near by. Another officer followed with the driver in the truck. Later S/Sgt Nelson of the SIS came and took me and the driver back to No 6 Provost Detention Room, he cautioned me and then asked me if I had any business in London with the truck and blankets to which I replied "No".

I have never been concerned in anything of this kind before except one case of selling 1000 cigs. but I was due to go on leave

STATEMENT OF:

Regt. No. L-1161, S/Sgt. GRATRIX, R.J.,
Clerks' Coy., No. 1 CGRU., CRU Command.

Continued from Page 2.

and needed money, and knowing that I was not directly concerned with the taking of the blankets, and did not know the persons to whom they were going, I thought I could get enough money to go on leave. It was my job to direct the driver to the correct place, the arrangements being left to the others. I did not realize how serious an offence of this kind could be, or I would not have had anything to do with it.

I have read over the above statement which has been made voluntarily without fear of any threat or hope of favour to come and it is true.

(L 1161 GRATRIX, R.J.) S sgt.,
Clerks Coy., No 1 CGRU

(U-1889 F.H. WILSON) S sgt.,
SIS Cdn Pro Corps CMHQ.

LONDON
7 OCT 44.

This is exhibit "G" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.	CQMS Miskimmons, W.
Sgt Gemmell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.T.	Cpl Jaynes J.C.M.
Rifleman Dudley, E.E.C.	

taken before me this First and Second day of November, 1944

Officer taking summary

my

This is Exhibit " H " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.	CQMS Miskimmons, W.
Sgt Gammell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.P.	Cpl Jaynes, J.C.M.
Rifleman Dudley, R.D.C.	

taken before me this First and Second day of November, 1944

Officer taking summary

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

10 Oct 44.

STATEMENT OF:

Sgt. No. L-18134, Sgt. GEMMELL, W.A.,
Clerks' Coy., No. 1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here

(SGD) W.A. GEMMELL

STATES:

At some time after the return of 1 CGRU to ALDERSHOT it came to my knowledge that there were in the Unit three or four thousand surplus blankets. I am not sure who first told me about it. It may have been COMS MISKIMMINS; but I was under the impression that this was common knowledge. The [illegible] it mentioned several times.

Ever since last August when we were at [illegible] Sgt. GRATRIX, Sgt JOHNS and I have been drinking somewhat heavily. About a month ago I asked Maj. LAWRENCE, O.C., Clerks' Coy if he would post me to the Field. This was to get away from the associations and drinking habits I had formed. I was afraid that sooner or later it would get me into trouble. As I was Chief Instructor he wouldn't consider this possibility at that time.

On Thurs., 28 SEP 44, after 13:15 Parade, Sgt JOHNS and I went down to the "Wellington" Public House for a quiet drink as two of us had got in the habit of going occasionally for some time. We had a few too many and didn't return to the Unit until about 18:0 hrs., when we learned that LAWRENCE had been enquiring for us and we'd be in trouble over it. Next morning Maj. LAWRENCE informed us that we were posted to Reinforcement Strength. Automatically I had to revert from A/S/Sgt. to Sgt., and commenced Basic Training on 4 OCT 44.

On Saturday, 30 SEP 44, between 15:00 and 17:00 hrs. Sgt. JOHNS and I were alone together in our quarters at [illegible] Bks. when S/Sgt. GRATRIX and Sgt. DAVIES came in. They had been drinking, but we had not had a drink all day. We were all just about broke and the question of how to raise some money cropped up. I said: "Well, there's some bloody blankets over in the Quarters' Stores" and from there on there was just some general conversation about the possibilities, although I think no-one had any serious idea of doing anything with it. Certainly I didn't myself.

Next afternoon, Sunday, 1 OCT 44, the four of us were together drinking again in the Sergeants' Mess. JOHNS had borrowed a couple of Pounds. The subject of selling blankets cropped up again and we were discussing the possibilities of disposal. Sgt. DAVIES said he knew of a man in LONDON who might take them. Later he and S/Sgt. GRATRIX went off together to LONDON and next day in the Mess at noon they told me that the arrangement for disposing of 1000 blankets had been made in LONDON and asked me to see COMS MISKIMMINS about it. I did not

(cont'd)

STATEMENT OF: (cont'd)
Regt. No. L-181134, Sgt GRENELL, N.A.
Clerks' Coy., No. 1 C.C.R.U., C.R.U. Command.

see him until next day, Tuesday, 3 OCT 44, in the NAAFI, when all I said to him was: " If you're interested in disposing of some blankets those guys over in the corner will handle it", indicating S/Sgt. GRATRIX and Sgt. DAVIES. I had not discussed the subject previously with CQMS.MISKIMMINS, and that is all I said to him at the time. I had one drink with him and left the NAAFI, as I was due for Parade. Sgt JOHNS was there with the other two. CQMS MISKIMMINS said that it was OK with him if they could arrange it, and that he would see them next day about it. That night in the Mess I told them what he had said when they asked me about it.

Next day Wednesday, 4 OCT 44, I went along to the NAAFI at noon and joined S/Sgt GRATRIX, Sgt. JOHNS, and Sgt DAVIES at their table for a glass of beer. Later CQMS MISKIMMINS came in and joined us. The matter of disposal of blankets was discussed and I was told when I asked that transport had been arranged. MISKIMMINS suggested that they be picked up at the laundry next day, as had been arranged, but I didn't know when I left them where they were to come from or at what time.

Next day, Thursday, 5 OCT 44, at noon in the NAAFI, I was looking over a Racing Sheet with MISKIMMINS and figuring if I could place a good bet with a Bookie who comes in there. S/Sgt GRATRIX, Sgt. JOHNS, and Sgt. DAVIES came over and final arrangements about the blankets were made. S/Sgt. GRATRIX had a letter which I recognize as the one in your possession. I had not read it, but I knew its contents. I do not know who wrote it. A truck was to pick up the blankets that afternoon, and S/Sgt. GRATRIX or Sgt. DAVIES was to go up to LONDON with the driver. I did not know what driver or what transport would be used. Next day I learned that GRATRIX went with the truck and that Sgt. DAVIES and Sgt. JOHNS went up together by train to meet him in LONDON. I heard also that GRATRIX and the driver of the truck got pinched.

On Friday noon in our room, Sgt. JOHNS told me that the civvy in LONDON who was going to take the blankets didn't turn up. He went over to a Club in the West End to try and find some other way of disposing of them, but when he got back the truck was gone.

I did not go to LONDON and had nothing to do with the deal other than stated above. I didn't know exactly how much money was in it, or how it was to be divided. Some time during the week Sgt. DAVIES said there was 7/6 apiece coming in for the blankets, and GRATRIX said Six Shillings. To my knowledge no detailed division of the proceeds was discussed. Had they chosen to give me a cut out of the deal no doubt I would have accepted it, as I was pretty well broke. I had no doubt that they would come through with something, as I had knowledge of the project from the start, although I took no active part in the business once the others got started on it. I have been living and working with S/ Sgt. GRATRIX and Sgt. JOHNS over a period of two years, and have always been on the best of terms with them. It is only natural, therefore, that I would not give them away when I knew what was in the wind. After the arrangements had been made I did not like the set-up too much, and did not myself wish to become too deeply involved. By then, however, there was little I could do about it. I am sorry now that I had anything to do with it at all, as I have never been mixed up in anything of this kind before.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to some and it is true. (SGD) N.A. GRENELL 10 OCT 44

(WITNESSED) F.R. WELSON, S/Sgt, S.I.S.

This is Exhibit " 1 " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, W.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking summary

(COPY)

SPECIAL INVESTIGATION SECTION

SECOND STATEMENT of:

Regt. No. B-64113, Rfn. DUDLEY, R.D.C.,
"A" Wing, M.T. Sect., No.1 C.C.R.U., C.R.W. Command.

STATES:

I have read over the statement made by L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44, and having been again cautioned by S/Sgt. NELSON as before I wish to state that everything in it concerning our journey to LONDON, as far as I was concerned, is true. I don't know anything about the other things that happened.

(SGD) R.DUDLEY 7/10/44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

LONDON
7 OCT 44

This is Exhibit " J " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
Rifleman Dudley, R.D.C.
COMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.

taken before me this First and Second day of November, 1944

Officer taking summary

This is Exhibit " J " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, M.A.
Sgt Johns, R.T.
Rifleman Dudley, R.D.C.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.

taken before me this First and Second day of November, 1944

Officer taking summary

SECOND STATEMENT OF:

Rept. No. L 1161 S Sgt GRATRIX, R.J.,
Clerks Coy., No. 1 CGRU, CRU Command.

I have read over the statement made by B 64113 Rfn [illegible]LEY, R.D.C., dated 6 OCT 44, and having been again cautioned by [illegible] Sgt NELSON as before I wish to state that everything in it is true to the best of my knowledge.

(L 1161 GRATRIX, R.J.) S Sgt.,
Clerks Coy No. 1 CGRU.

(J 1889 F.R. NELSON) S Sgt.,
SIE Cdn Pro Corps CMHQ.

LONDON
7 OCT 44

This is Exhibit " K " referred to in the summary of evidence in the case of:-

S/Sgt Crestrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CWMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jaynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944.

Officer taking summary

(COPY)

SPECIAL INVESTIGATION SECTION

SECOND STATEMENT of:

L-18134, Sgt. GRISHILL, N.A.,
Clerks' Coy., No.1 C.C.R.V., C.R.V. Command.

STATES:

I have read over the statement made by L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44, and having again been cautioned by S/Sgt. NELSON as before I wish to state that those parts referring to me or to things which I already know about are true.

(SGD) N.A.GRISHILL 10 OCT 44.

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

ALDERSHOT
10 OCT 44

(CONT'D)

SPECIAL INVESTIGATION SECTION

11 OCT 44

STATEMENT of:

Regt. No. D-91032, Sgt. DAVIES, J.C., Trade Test Board No. 10 (Clerks), H.Q. C.R.U., Att: 1 CGRU. C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.C., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(Sgd) J.C. DAVIES

STATES:

On Sunday, 1 OCT 44, during the afternoon, I was in the Sergeants' Mess, No. 1 C.G.R.U., in company with S/Sgt. GRATRIX, Sgt. JOHNS, and Sgt. GEMMELL. We had all had quite a few drinks by then, and being more or less broke, the question of how to get some money became the subject of conversation. I remember that someone mentioned that there were 4,000 buckshee blankets to be had in the area. I don't remember who said this, and I never did hear where the blankets were supposed to be. There was quite a crowd in there, and the matter was not discussed at any length. No-one else heard this conversation. I suggested that I thought the Black Market was rife around the Elephant & Castle and so without any delay, S/Sgt Gratrix and myself were delegated to pound out the possibilities.

About a year ago I was in the Elephant & Castle district and there was a man who had suggested that any time I had anything to sell it was possible to make connections in that locality. He was addressed by one of his friends at the time as Ginger Cheek and was wearing a grey check cap. He would be about fifty years of age and about five feet nine inches in height. He had light hair and reddish complexion with a gingerish whiskers (stubble). He was clean shaven and I think he had a cauliflower ear. I know he was rather uncouth looking and wore a blue suit with a white scarf.

That evening S/Sgt Gratrix and I went to the Elephant and Castle district and after having a few drinks at various pubs entered the "Black Prince" and the "Ginger Cheek" (described above) was in the pub. It was suggested to him that we had a number of blankets to sell, and he replied that he was not in a position to handle them. Another man entered the pub and I would describe him as follows:-

Foreign appearance but spoke with a Cockney accent, middle age, height about 5' 9", black hair swarthy complexion, thin face, clean shaven, wearing trilby hat and dark overcoat. He came over to our table and commenced a conversation with S/Sgt Gratrix. I did not hear the topic of the conversation and once when I made a remark I was told to "shut-up" by the civilian. At this stage I was quite drunk having been drinking since 12 o'clock noon. Gratrix was comparatively sober as he had not been drinking to any extent owing to stomach trouble. We left the pub at closing time and went to Streatham, to spend the night, and on the way home I understood that it had been arranged that the blankets could be disposed of.

(cont'd)

STATEMENT OF:

Regt. No. D-91032, Sgt. DAVIES, J.C.,
Trade Test Board No. 10 (Clerks), H.Q. C.R.U., Att: 1 CGRU.
C.R.U. Command. (cont'd)

On Monday or Tuesday S/Sgt Gratrix, Sgts Johns and Gemmell and I discussed the matter again and it was decided that some effort be made to obtain transport for the blankets. On Tuesday Sgt Gemmell and I went to see a friend of mine at another unit who might have been able to help but he refused to have anything to do with the transaction. The person who was eventually responsible for arranging the transport I do Not know. There was some talk about getting the blankets from a laundry.

On Thursday morning, October 5th, 1944, I drafted a letter addressed to No 23 Cdn Gen Hospital concerning an imaginary shipment of blankets to that Unit. I thought it would cover the load of blankets en route to London. On it I used a fictitious file number and signed it L. Skinner Lt. I know of no such Officer and used the first name that came into my head. The letter you have in your possession is the one referred to in the previous sentence. In the NAAFI at noon I saw S/Sgt Gratrix and the two other Sgts and passed round the letter for their comments. It was suggested that I accompany the load of blankets to London, but for various reasons I declined and S/Sgt Gratrix volunteered to do this, and he took the envelope (which I had addressed) and the letter. I was not aware of the final arrangements for picking up the blankets. At approximately 2.30 p.m. S/Sgt Gratrix came to my office and requested permission from QMS Martin to have me leave early as he wanted me to assist him with some clerical work he was doing at Woking. At 3.30 p.m. I left the office to go to the Clerks Training Wing and it was then arranged that I go by rail to London with Sgt Johns to meet S/Sgt Gratrix at the Black Prince. We left on the 4.16 p.m. train and met S/Sgt Gratrix, as arranged soon after opening time.

For some time we sat in the pub drinking beer, and I took five shillings from Staff Gratrix to the driver of the truck which was outside in the street to let him get some supper. Ginger came in about 7.30 p.m. and said 'hasn't he turned up' - no name was mentioned, meaning the man who was to take the blankets. He left the pub, apparently to find the man in question, but sent back a message by a stranger, that he couldn't be found. I suggested that the truck and blankets return to Aldershot where they came from, but owing to the difficulties of that procedure it was decided to explore the possibility of making other connections. We visited several pubs and finished up in the West End at some pub or other where Sgt Johns met some people who were interested. He stayed there with them while Staff Gratrix and I went back to get the truck, hiring a taxi for the journey. When we got there, S/Sgt Gratrix went over to the truck and I gave instructions to the driver of the cab to turn around so that the truck could follow us back. We went round the block to do this and when I got back the truck and Staff Gratrix had gone. I returned to Sgt Johns and told him what had happened, so we went to Streatham for the night, returning to Aldershot in the morning.

The agreed price was 7/6d each for the blankets. Transport was to have cost £40 or £50 and I understood that the remainder of the proceeds was to be split between Staff Gratrix, Sgts Gemmell and Johns, myself, and whoever supplied the blankets.

The whole plan was evolved whilst I was under the influence of liquor, and it was through drinking activities that I had got behind financially and seized on this method of getting myself straightened out. If I had been in a sober frame of mind, I would not, under any circumstances, have considered being a party to any such undertaking, as I have never been connected

(cont'd)

STATEMENT OF:

Regt. No. D-91032, Sgt. DAVIES, J.C.,
Trade Test Board No. 10 (Clerks), H.Q. C.R.U., Att: 1 CGRU.
C.R.U. Command. (cont'd)

as I have never been connected/

with any criminal activities, and may Army Record will bear that out. I deeply regret that I have been involved and can only say that it is due to the abnormal circumstances.

I have read over the above statement which has been made voluntarily, without fear of any threat or hope of favour, and it is true.

(Witnessed)

F.R. NELSON, S/Sgt., S.I.S.

Aldershot, 11 Oct 44

(Sgd)

J.C. DAVIES 11 Oct 44

This is exhibit "L" referred to in the summary of evidence in the case of:-

L/Sgt Greatrix, R.J.
Sgt Gemmell, M.A.
Sgt Johns, A.T.
CQMS Hawkins, W.
Sgt Davies, J.C.
Cpl Haynes, J.C.H.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer taking summary

Quote No. S/S/T-1-311

CANADIAN PROVOST CORPS
LONDON AREA

CANADA

TELEPHONE: TEMPLE BAR 2818.

A. P. M.'s OFFICE,
30, HENRIETTA STREET,
COVENT GARDEN,
LONDON, W.C.2.

IX

SPECIAL INVESTIGATION SECTION

11 OCT 44

STATEMENT of:

Regt. No. D-91032, Sgt. DAVIES, J.C.,
Trade Test Board No.10 (Clerks), H.Q. C.R.U., Att: I CGRU.
C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

J.C. Davies

STATES:

On Sunday, 1 OCT 44, during the afternoon, I was in the Sergeants' Mess, No.1 C.C.R.U., in company with S/Sgt. GRATRIX, Sgt. JOHNS, and Sgt. GEORGE. We had all had quite a few drinks by then, and being more or less broke, the question of how to get some money became the subject of conversation. I remember that someone mentioned that there were 4,000 blankshee blankets to be had in the area. I don't remember who said this, and I never did hear where the blankets were supposed to be. There was quite a crowd in there, and the matter was not discussed at any length. No-one else heard this conversation. I suggested that I thought the Black Market was rife around the Elephant & Castle and so without any delay, S/Sgt Gratrix and myself were delegated to sound out the possibilities.

About a year ago I was in the Elephant & Castle district and there was a man who had suggested that any time I had anything to sell it was possible to make connections in that locality. He was addressed by one of his friends at the time as 'Ginger Cheek' and was wearing a grey check cap. He would be about fifty years of age and about five feet nine inches in height. He had light hair and reddish complexion with a gingerish whiskers (stubble). He was clean shaven and I think he had a cauliflower ear. I know he was rather uncouth looking and wore a blue suit with a white scarf.

That evening S/Sgt Gratrix and I went to the Elephant and Castle district and after having a few drinks at various pubs entered the "Black Prince" and the "Ginger Cheek" (described above) was in the pub. It was suggested to him that we had a number of blankets to sell, and he replied that he was not in a position to handle them. Another man entered the pub and I would describe him as follows :- Foreign appearance but spoke with a Cockney accent, middle age, height about 5' 9", black hair swarthy complexion, thin face, clean shaven, wearing trilby hat and dark overcoat. He came over to our table and commenced a conversation with S/Sgt Gratrix. I did not hear the topic of the conversation and once when I made a remark I was told to "Shut-up" by the civilian. At this stage I was quite drunk having been drinking since 12 o'clock noon. Gratrix was comparatively sober as he had not been drinking to any extent owing to stomach trouble. We left the pub at closing time and went to Streatham, to spend the night, and on the way home I understood that it had been arranged that the blankets could be disposed of.

(Continued Overleaf)

On Monday or Tuesday S/Sgt Gratrix, Sgts Johns and Gemmell and I discussed the matter again and it was decided that some effort be made to obtain transport for the blankets. On Tuesday Sgt Gemmell and I went to see a friend of mine at another unit who might have been able to help but he refused to have anything to do with the transaction. The person who was eventually responsible for arranging the transport I do Not know. There was some talk about getting the blankets from a laundry.

On Thursday morning, October 5th 1944, I drafted a letter addressed to No 23 Cdn Gen Hospital concerning an imaginary shipment of blankets to that Unit. I t hought it would cover the load of blankets en route to London. On it I used a fictitious file number and signed it "L. Skinner Lt." I know of no such Officer and used the first name that came into my head. The letter you have in your possession is the one referred to. ~~in the previous sentence~~. In the NAAFI at noon I saw S/Sgt Gratrix and the two other Sgts and passed round the letter for their comments. It was suggested that I accompany the load of blankets to London, but for various reasons I declined and S/Sgt Gratrix volunteered to do this, and he took the envelope (which I had addressed) and the letter. I was not aware of the final arrangements for picking up the blankets. At approximately 2.30 p.m. S/Sgt Gratrix came to my office and requested permission from QMS Martin to have me leave early as he wanted me to assist him with some clerical work he was doing at Woking. At 3.30 p.m. I left the office to go to the Clerks Training Wing and it was then arranged that I go by rail to London with Sgt Johns to meet S/Sgt Gratrix at the Black Prince. We left on the 4.16 p.m. train and met S/Sgt Gratrix, as arranged soon after opening time.

For some time we sat in the pub drinking beer, and I took five shillings from Staff Gratrix to the driver of the truck which was outside in the street to let him get some supper. Ginger came in about 7.30 p.m. and said 'hasn't he turned up' - no name was mentioned, meaning the man who was to take the blankets. He left the pub, apparently to find the man in question, but sent back a message by a stranger, that he couldn't be found. I suggested that the truck and blankets return to Aldershot where they came from, but owing to the difficulties of that procedure it was decided to explore the possibility of making other connections. We visited several pubs and finished up in the West End at some pub or other where Sgt Johns met some people who were interested. He stayed there with them while Staff Gratrix and I went back to get the truck, hiring a taxi for the journey. When we got there, S/Sgt Gratrix went over to the truck and I gave instructions to the driver of the cab to turn around so that the truck could follow us back. We went round the block to do this and when I got back the truck and Staff Gratrix had gone. I returned to Sgt Johns and told him what had happened, so we went to Streatham for the night, returning to Aldershot in the morning.

The agreed price was 7/6d each for the blankets. Transport was to have cost £40 or £50 and I understood that the remainder of the proceeds was to be split between Staff Gratrix, Sgts Gemmell and Johns, myself, and whoever supplied the blankets.

The whole plan was evolved whilst I was under the influence of liquor, and it was through my drinking activities that I had got behind financially and seized on this method of getting myself straightened out. If I had been in a sober frame of mind, I would not, under any circumstances, have considered being a party to any such undertaking, as I have never been connected with any criminal activities, and my Army Record will bear that out. I deeply regret that I have been involved and can only say that it is due to the abnormal circumstances.

I have read over the above statement which has been made voluntarily, without fear of any threat or hope of favour, and it is true

Fredk R Nelson S/Sgt.
S.I.S.

[signature]
11 Oct 44

Aldershot, 11 Oct 44

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

11 OCT 44

SECOND STATEMENT of:

Regt. No. D-91032, Sgt. DAVIES, J.C.,
Trade Test Board No.10 (Clerks), H.Q., C.R.U., Att: 1 CGRU.
C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) J.C.DAVIES

STATES:

I have read over the statement of L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44. I see we don't agree about several small matters. I met the Warden named "Pop" to whom he refers about a year ago last Summer, when he found a bed for myself and a pal of mine down the "Elephant and Castle" tube station one night when we were stranded. To the best of my knowledge he has never been mixed up in anything criminal. The man named "Ginger" did not agree to take the blankets, and S/Sgt. GRATRIX is definitely wrong when he says so. Otherwise, as far as it concerns me, and to the best of my knowledge, his statement is correct.

I have also read the statement of L-18134, Sgt. GEMMELL, N.A., dated 10 OCT 44, and wish to state that apart from a few minor details the essence of his statement seems to be correct.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true./ENDS

(SGD) J.C.DAVIES 11 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is exhibit "M" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, L.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Lifleman Dudley, R.D.C.

taken before me this First and Second days of November, 1944

Officer taking summary

Quote No. S15/T-1-311

CANADIAN PROVOST CORPS
LONDON AREA

CANADA

TELEPHONE: TEMPLE BAR 2618.

A. P. M.'s OFFICE,
30, HENRIETTA STREET,
COVENT GARDEN,
LONDON, W.C.2.

SPECIAL INVESTIGATION SECTION

11 OCT 44

SECOND STATEMENT of

Regt. No. J-91032, Sgt. DAVIES, J.C.
Trade Test Board c/o 10 (Clothg) H.Q., C.R.U. Att: 1 C.S.R.U.
C.R.U. Command.

BEGINS.

I have been cautioned by S/Sgt. NELSON, S.I.S. that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

J. Davies

STATES:

I have read over the statement of L-1161, S/Sgt. PRATER, R.J., dated 7 OCT 44. I see we don't agree about several small matters. I met the Warden named "Roy" to whom he refers about a year ago last Summer when he found a bed for myself and a pal of mine down the Elephant and Castle tube station one night when we were stranded. To the best of my knowledge he has never been mixed up in anything criminal. The man named "Ringer" did not agree to take the blankets, and S/Sgt. PRATER is definitely wrong when he says so. Otherwise as far as it concerns me, and to the best of my knowledge, his statement is correct.

I have also read the statement of L-10134, Sgt. COMMEE, R.A. dated 10 OCT 44 and wish to state that apart from a few minor details the essence of his statement seems to be correct.

I have read over the above statement which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true.

J. Davies - 11 Oct 44

Witnessed / Fredk R. Nelson S/Sgt.
S.I.S.

N O T E S

"I have been told by a friend of mine who is an officer at No 1 Canadian General Reinforcement unit not to make any statement and I guess I won't be making any. I owe £8-0-0 to Sgt Brooks £5-0-0 to Tpr Richardson, the barber, and £1-0-0 to Mr Lucas down in the Wellington Pub. Other guys owe me 20 Or 30 pounds and I have got plenty of money back home if I want it. I had nothing to do with the blanket deal but I knew it was coming off. I only went to London for a steak supper at Greatrix's place. I went to a club in the West End and got a girl friend of mine to phone up a garage to store the truck. When I told her there were blankets in the truck she phoned again and none of them would have no part of it. I had nothing to do with arranging transport. I have been drinking heavy for the past three or four months since leaving Witley. I remember being with the others but did not always know what they were talking about. When I am drinking I can do my job but forget what people say to me. I figure Greatrix is O.K. Gemmell is close as can be. Gemmell always talked along to Iskinmons. Davies is O.K. I guess, he was only trying to find a place to park the truck not to sell the blankets he never tried to sell anything. I figure Gemmell was principally responsible he has done previous jobs in Aldershot.

This is Exhibit "M" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix R.J. CQMS Iskinmons, W.
Sgt Gemmell R.A. Sgt Davies, J.C.
Sgt Johns, R.T. Cpl Jones, J.C.W.
Rifleman Dudley, R.D.C.

taken before me this First and Second days of November, 1944.

Officer taking summary

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

12 OCT 44

STATEMENT of:

Rgt. No. B-88451, COMS MISKIMMINS, W.,
"A" Wing, No.1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) W.MISKIMMINS

STATES:

I am C.Q.M.S. I/C Accommodation Stores, No.1 C.G.R.U., where I have been for 4 years in the same position. I have always worked hard to keep all Barrack Stores in good order, and have never at any time disposed of stores to outside individuals. Before the war I worked for 16 years for T. EATON & Co., TORONTO, in the Creamery Dept., and left there in excellent standing.

About two weeks ago a new Reception Coy. was formed in 1 CGRU and my O.C., Capt. LAKE, instructed me to collect all surplus blankets throughout the Unit for the use of this Coy. These are all accounted for on the "Long Roll". We do not as yet keep Coy. Inventories. I started at the beginning of last week with Medical, General, and Despatch Coys., keeping over 1000 in the Blanket Store to be laundered. Next morning, 4 OCT 44, I took 1000 of these blankets to the Hale Laundry in FARNHAM. I don't remember which truck or driver was detailed. I made two journeys. My Storeman, Pte. GOLD, and Mr. SHORT, i/c R.S.A. Stores and his staff knew I was going to do this, and of course our M.T. Section knew what I was doing.

The following day, Thursday, 5 OCT 44, at about 13:30 hrs., I took the truck and driver I had all morning round Unit Lines to FARNHAM, where I collected 800 clean blankets, in bundles of ten, leaving 200 to be collected later. I put them in the Blanket Store.

Upon my return Pte. GOLD told me that Reception Coy. required a lot more blankets, and as I had requested another truck at lunch-time, when I was told I could have the first one that came in, and having despatched the one I had to another job, I told Pte. GOLD to remain in the Blanket Store, where he was working, and to start loading the first truck which arrived. I went back to my office and on my return at about 15:30 hrs., I found a truck there and gave Pte. GOLD and the Driver a hand in loading on the blankets. I'm not sure how many were there, but I kept back about 150 in the hut. I distinctly remember telling the driver to take them to Reception Coy., within Unit Lines, and Pte. GOLD heard what I said. I went off then about my business, and the first I heard that anything was wrong was next morning, when Capt. LAKE asked me what trucks I had had booked out to me and said that one had been found up in LONDON the night before. I had no reason to think that any blankets were missing, and the first I heard of this was when my Charge was read by Maj. MacLEAN.

Contd.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour to come, and it is true./ENDS

(SGD) W.MISKIMMONS 12 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is exhibit "O" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, L.J. — CQMS Miskimmons, W.
Sgt Gemmell, W.A. — Sgt Davies, J.C.
Sgt Johns, L.T. — Cpl Jeynes, J.C.M.
— Fleman Dudley, J.C.

taken before me this First and second day of November, 1944

Officer taking summary

This is Exhibit " P " referred to in the summary of evidence in the case of:-

S/Sgt Crestrix, R.J.	CQMS Miskimmons, W.
Sgt Gemmell, N.A.	Sgt Davies, J.C.
Sgt Johns, R.T.	Cpl Joynes, J.C.H.

Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944.

Officer taking Summary

SIS/C[illegible]-44

SPECIAL INVESTIGATION SECTION

SECOND STATEMENT of: 18 OCT 44

Regt. No. B-83451, CONS MISKIMMINS, W.
"A" Wing, No.1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) W. MISKIMMINS.

STATES:

I have read over the statements of B-84113, Rfn. DUDLEY, R.D.C., dated 6 OCT 44, L-1161, S/Sgt. GRATRIX, R.J., dated 7 OCT 44, and L-16134, Sgt. GRIMSELL, R.A., dated 10 OCT 44, and wish to state that I don't know Rfn. DUDLEY by name, but would no doubt recognize him as the driver who took the blankets last Thursday. I did not tell him to take the blankets anywhere but to Reception Coy. Blankets never go to Despatch Coy. in any case.

I would know S/Sgt. GRATRIX, Sgt. GRIMSELL, and Sgt. DAVIES if I saw them no doubt, but I do not know them by name, and have never had anything to do with them. I have known Sgt. JOHNS as "SNOOKS" for about a year, but have never had much to do with him. Never at any time did I even mention the subject of blankets to any of these men, nor [illegible] discuss with them their disposal and sale. Neither [illegible] of them ever bring up the subject to me or in my presence. It's possible that they may have [illegible] for me, but I don't think for a minute that [illegible] no suspicions of anyone else in my department, [illegible] the theft of the blankets was entirely [illegible] to the best of my knowledge.

I do remember being in the NEAFF last Monday or Tuesday week at noon (2 or 3 OCT 44). I had a newspaper showing the runners in a horse-race last Saturday, and went over to a table where "SNOOKS" and three or four of his friends were sitting. I sat down for a minute on the [illegible] stool beside their table and told them I had a good thing for the Third Race - "CADET". I don't know what they said; but I finished my beer and went to dinner. I was only in there a few minutes. I wasn't taking any bets - just passing on a good tip. I'm interested in horses, but don't play them much just a shilling here or there when I get hold of a good thing.

I want to repeat that this whole business has been a shock to me because never at any time have I been guilty of disposing of stores to a my unauthorized person whatsoever.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true.

(SGD) W. MISKIMMINS 18 OCT 44
(WITNESSED) F.A. NELSON, S/Sgt., S.I.S.

MM

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

13 OCT 44

THIRD STATEMENT OF:

Regt. No. L-1161, S/Sgt. GRATRIX, R.J.
Clerks' Coy., No. 1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) R.J. GRATRIX

STATES:

I have read over the statements of L-18134, Sgt. GEMMELL, N.A., dated 10 OCT 44, D-91032, Sgt. DAVIES, J.C., dated 11 OCT 44, and B-88451, CQMS MISKIMMINS, W., dated 12 OCT 44, and wish to state that prior to the occasion I mentioned, lunch-time on Thursday, 5 OCT 44, I never discussed the question of blankets with CQMS MISKIMMINS, nor did he discuss it in my presence. Further, the letter which Sgt. GEMMELL says I had - the one which you took from me in LONDON - was passed round amongst the five of us. Who all read it I don't know, but it was not in my possession until later in the afternoon, when it was given to me by Sgt. DAVIES.

On the Sunday night DAVIES and I went to LONDON (1 OCT 44) I visited the Black Prince and Kings Arms Public Houses, Elephant and Castle, for the first time in my life, I had never frequented that area. To my knowledge arrangements were completed that night between "Ginger" and Sgt. DAVIES, "Ginger" was certainly arranging the disposal of the blankets. The civilian described by Sgt. DAVIES when "Ginger" called over held a short conversation with "Ginger", and when Sgt. DAVIES interrupted, this man told him to "shut up" and left. The topic of conversation I do not know. I had never seen "Ginger" before and had no part in the arrangements for disposing of the blankets.

CQMS MISKIMMINS was at the same conversation at which the letter mentioned above was produced, and certainly knew of all the arrangements as to the loading and the intended destination (LONDON) of the blankets.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour, and it is true./ENDS.

(SGD) R.J. GRATRIX 13 OCT 44
(Witnessed) F.R. NELSON, S/Sgt., S.I.S.

This is exhibit "Q" referred to in the summary of evidence in the case of :- S/Sgt Gre[illegible], R.J. - Sgt Gemmell, N.A. CQMS Miskimmons, W.- Sgt Davies, J.C. - Sgt Johns, L.T. - Lifleman Dudley, JC.M. Cpl Jeynes, R.D.C. taken before me this first and Second day of November, 1944

Officer taking summary

MY

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION 13 OCT 44

THIRD STATEMENT of:

L-18134, Sgt. GEMMELL, N.A.,
Clerks' Coy., No.1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) N.A.GEMMELL.

STATES:

I have read over the statements of D-91032, Sgt. DAVIES, J.C., dated 11 OCT 44, and B-30451, CQMS MISKIMMINS, dated 12 OCT 44. I have no comments to make concerning the first.

Concerning the statement of CQMS MISKIMMINS I can only say that he was fully aware of the arrangements to get the blankets away from the Unit as I stated before. He was more responsible than anyone.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour to come, and it is true.

(SGD) N.A.GEMMELL 13 OCT 44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is exhibit "B" referred to in the summary of evidence in the case of :-
S/Sgt Greatrix, R.J. CQMS Miskimmons, W.
Sgt Gemmell, N.A. Sgt Davies, J.C.
Sgt Johns, R.T. Cpl Jeynes, J.C.M.
Rifleman Dudley, L.D.C.
taken before me this first and second day of November, 1944.

Officer taking summary

This is Exhibit " S " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, W.T.
Rifleman Dudley, R.D.C.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jaynes, J.C.M.

taken before me this first and Second day of November, 1944

Officer taking summary

A.P.G. 1810 (Revised 1962)
48/P&S/400(2749)

TRANSPORT WORK TICKET

No. 1. - 5789

MAKE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	W.D. No.	MONTH & YEAR
Ford	60 cwt	No. 1 [illegible]	[illegible]	[illegible], M.B.	765903	Oct 44

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
	A		Brought forward from Work Ticket No.												18[illegible]		
2	B Own Unit	[illegible] check	Ald	Ald [illegible]	Fleet	[illegible] Capt							11	15[illegible]	55	18[illegible]	6
2	C Own Unit	Records	Ald	Station	Return	[illegible] Capt								1600		18509	4
3	D Own Unit	Job Stores	Ald	Tonghan	Farnham	[illegible]							08[illegible]	16[illegible]	[illegible]	18[illegible]	15
4	E Own Unit	Job Stores	Ald	Tonghan	Farnham	[illegible] Capt							08[illegible]	17[illegible]	15	18560	16
5	F Own Unit	Job Stores	Ald	[illegible]	Directed	[illegible] Capt							08[illegible]	16[illegible]	50	18583	23
5	G Own Unit	Records	Ald	Aldershot	Return	[illegible] Capt							1[illegible]	20[illegible]	15	18585	2
6	H Own Unit	Records	Ald	Alton	Bramshott	[illegible] Capt				13			14[illegible]	16[illegible]	[illegible]	18[illegible]	46
7	J Own Unit	Messing	Ald	Bordon	? ???	[illegible] Capt	77	1					[illegible]	1[illegible]	[illegible]	18630	5
	K																
	L																
	M																135
							77	1		17			-	-			

M.P.G. for week 7 or totals carried over

[illegible] GENERAL [illegible] UNIT

[illegible] DRIVERS CALL SHEET

[illegible] SECTION

Vehicle	Time Out	Time In	Speedometer Out	Speedometer In	Duty performed and places visited	Drivers Signature
4201[illegible]	1300		16611		Records to Alton	??????????
4207169	1230	1530	17576	17598	??????????	??????????
762820	1130	1330	20831	20856	Records to Alton	Dunn
764196		1315	20989	21012	" "	???????
4202095	1130	1330	[illegible]	4449	" "	J. [illegible]anderson
4202056		1[illegible]5	719	749	" "	??????
195916	1[illegible]5	1[illegible]00	150[illegible]	15097	" "	Maddell
765812	1400	1700	18352	18405	???????	??????????
4208412	1320	1500	20[illegible]	20[illegible]2	Records to ???????	Dudley
422820	1530		20856		Boot shop to Goelham	Armett
[illegible]02[illegible]9	1320	1730	16635	16673	[illegible] to Farnham & Farnborough	??????????
[illegible]04812	1630	1830	[illegible]422	20[illegible]59	[illegible] to Liphook	[illegible]anderson [illegible]
[illegible]01813	1615	1645	24791	24797	Gen Gov ??????	[illegible] Anderson
[illegible]02065	1[illegible]00	1950	749	780	[illegible]	
964196	0930				Jaw [illegible] Mcnnell	

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

13 Oct 44

STATEMENT of:

H-59092, Pte. OLSEN, C.R.,
M.T. Sect., "A" Wing, No. 1 C.G.R.U.

STATES:

On 5 Oct 44, at 01:30 hrs., I was detailed for Government Siding, ALDERSHOT, but the detail was cancelled and my next detail, with Mob. Stores, at 08:30 hrs., was over-written on the same line of my Work Ticket. I was driving all morning within Unit Lines for CQMS MISKIMMINS. I was not particularly busy. I didn't handle any furniture.

After lunch at about 14:00 hrs., at the direction of CQMS MISKIMMINS, I drove him to the Hale Laundry near FARNHAM and picked up 800 blankets which we brought back to Blanket Stores at 1 C.G.R.U. Pte Harry THOSS went with me and also Pte. GOLD. They work in the Mob. Stores.

After I delivered the blankets, CQMS MISKIMMINS told me I would not be needed further, but to pick up another S/Sgt near FARNHAM where he was working on stores, and bring him back to the Unit. That was around 15:00 hrs. I did this, and checked in my vehicle, No. L-765783, at 16:30 hrs. I had one more trip to ALDERSHOT Station that day.

I knew nothing of what was going on concerning theft of blankets that day, and know nothing much about it now.

I have read over the above statement, and it is true.

(SGD) C.R.OLSEN 13 of Oct 1944.

(WITNESSED) F.R. [illegible], S/Sgt., S.I.S.

This is Exhibit "T" referred to in the summary of evidence in the case of :-

S/Sgt Groatrix R.J.	CQMS Miskimmons, W.
Sgt Gemmell [illegible]	Sgt Davies, J.C.
Sgt Johns, R.T.	Cpl. Jeynes, J.C.M.

Riflemen Dudley, [illegible]

taken before me this First and Second days of November, 1944.

Officer taking summary

my

No. 1 [illegible] REINFORCEMENT UNIT

DRIVERS CALL SHEET

BOTCH TRANSPORT SECTION

Vehicle	Time Out	Time In	Speedometer Out	Speedometer In	Duty performed and places visited	Drivers Signature
					Records to Alton	
4201844	1300		16611	17598	?????????	?????????
4207169	1230	1530	17576	20856	Records to Alton	?????????
762820	1130	1330	20831	21012	" "	Dunn
764196	"	1315	20989	[illegible]49	"	???????
4202095	1130	1330	[illegible]	749	"	[illegible] Anderson
4202056	"	1545	719	15097	???????	??????
195916	1245	1[illegible]00	150585	18405	Records to ???????	[illegible]ddell
765812	1400	1700	18352	20[illegible]2	Boot shop to Goolhas	?????????
4206412	1320	1500	20[illegible]		Job Stores to Farnham & Farnborough	Dudley
422820	1530		20856		R C Padre to Liphook	Arnott
[illegible]	1520	1730	16635	16673	Gen Coy ?????	????????
[illegible]04812	1630	1830	20422	20459	[illegible]	[illegible]
[illegible]04813	1615	1645	24791	24797	[illegible]	[illegible] Anderson
[illegible]02065	1[illegible]0	1950	749	780	[illegible]	
964196	0930					

No 1 Gen Reinf Unit C.R.
Despatched
Oct 5 1944
Canadian Army Overseas

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT

DRIVERS CALL SHEET

VOTOR TRANSPORT SECTION

VEHICLE	TIME OUT	TIME IN	SPEEDOMETER OUT	SPEEDOMETER IN	DUTY PERFORMED AND PLACED VISITED	DRIVERS SIGNATURE
4202849	1815	2000	1673	16678	Records - Aldershot	???????????
42-3463	1815	2130	18677	18682	" Officer	R Smith
4425354	1815	2130	7792	07797	" "	????????????
4204814	1815	2130	26081	26086	" " Still out	????????????
764196	1815	2015	21012	21015	" CR	Dunn
765812	1815	2030	18405	18408	" "	Mandell
765783	1815	2015	18583	18585	" "	C Olsen
764666	1815	2015	19777	19740	" "	F Roy
4203169	1815	2000	17598	17599	"	
4203095	1815	2000	4449	4452	" "	Hatte
497281	1815	2000	11229	11231	" "	Forsyth
4203407	1815	2100	29032	29037	" "	L Jeffrey
4204813	1815	2000	24796	24799	" "	????????
4206193	1815	2015	12689	12692	" "	????????
4208713	1815		25009	25795	" "	Wood A C
4203463	0730	1645	18664	18677	Rations Ald	R Smith
4203407	0730		29017	29032	" "	L Jeffrey
25132	0745	1630	11669	11691	Sick parade Ald	?????????
764196	0745	0845	20985	20989	Mail "	Dunn
4204814	0800	1930		26081	Chat Terrace "	Darlson
4208714	0815	1630	23994	24004	Sanitary "	??????????
4204812	0815	1130		2041	" "	??????????
4206193	0815	1630	12679	12689	Coal "	??????????
4202765	0740	1130	22734	22770	CAC Cove	??????????
4202849	0900	1100	16575	16617	N.C. Padre Liphook	Arnott, E.
4425354	0720	1430	4251	7792	??????????	Lavert C
765783	0830	1630	18562	18583	Dot Stores area	C Olsen
4207813	0815	2045	27789	29791	[illegible] Stores Ald	Anderson ?
4203169	0900	1220	17560	17578	[illegible] to ???????	??????????
765812	0900		18332			
4402065	0900	1630	56802	56935	Post to Bramshetto	Borg
4208713	0900	1000	25787	25791	Ord to Ald area	Wood A C
4202056	0900		711		??? office to Ald area	S.A. Anderson 4402095
4402095	0930	1130	4394	4424		?????????
193956	1030		5053		????????????????????	

(COPY) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

13 OCT 44

STATEMENT of:

Regt. No. B-96927, Cpl. JEYNES, J.C.M.,
Trnspt. Sect., "A" Wing, No. 1 C.G.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here. (SGD) J.C. JEYNES.

STATES:

I am Corporal Despatcher in the Transport Office, No. 1 C.G.R.U. On Thursday, 5 OCT 44, just before dinner, Rfn. DUDLEY, who drives L-762820, saw me as I was leaving the office and said CQMS MISKIMMINS would be needing another truck that afternoon to get blankets from the Hale Laundry near Farnham and asked if he could have the detail. I had no suspicion of any ulterior motive on his part, and just said "OK".

At approximately 15:00 hrs. in the Despatch Office I received the request for another 60 cwt. truck for FARNHAM and FARNBOROUGH from CQMS MISKIMMINS. He already had one 60 cwt. with Pte. OLSEN at Mob. Stores. He said he wanted another one to get blankets at the Hale Laundry. He seldom uses more than one big truck at a time, but I put it down to an incoming draft. I said I'd have a truck over in about 15 minutes. He did not request any particular driver, but I had DUDLEY in mind because of his request, and despatched him at about 15:30 hrs. I made out his Work Ticket for the journey. I know nothing about the other Work Ticket you have in DUDLEY's particulars for WATFORD. It is not genuine. He must have pinched it and made it out himself. I still had no reason to suspect his actions, and the first I heard that he'd been mixed up in any trouble was next morning, when he was reported to have been picked up in LONDON. I was definitely not in on the deal, and have never at any time been mixed up intentionally in any crime where Unit transport may have been used.

I have read over the above statement, which has been made voluntarily, without fear of any threat, or hope of favour, and it is true./ENDS

(SGD) J.C. JEYNES October 13th 44.
(WITNESSED) F.R. NELSON, S/Sgt., S.I.S.

This is exhibit "U" referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, L.T.
CQMS Miskimmons, M.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, L.L.C.

taken before me this First and Second day of Novmeber, 1944

Officer taking summary

This is Exhibit " V " referred to in the summary of evidence in the case of:-

S/Sgt Greetrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CSMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944.

Officer taking summary

8th Aug/44.

Statement by:- B-11[illegible], Gnr Wood, A.C.

Sir:-

On the 5th of Aug/44 I was detailed to take the Mob. Stores Sgt to Witley. We went to Witley and arrived there about 0900 hrs. He did numerous Barracks duties around the Camp. We then came back to Aldershot. We arrived back at Aldershot at about 1200 hrs. When we got back to Aldershot the Sgt said that he had to have the vehicle in the afternoon and would have to think up some way to wangle it. He then told me to report back to the garage and he would want me again at 1300 hrs. Then he said after you park the truck come to the N.A.A.F.I. and I will buy you a beer. I went to the N.A.A.F.I. and I had three (3) pints. I bought myself a pint and him. He bought the others. I then received a late meal chit from the Messing Sgt for a late lunch at Corunna Man's Mess. After lunch I picked up the Mob. Stores Sgt at his quarters in Corunna Barracks. He then got in the vehicle and said take me to Camberly. I drove him to where he wanted to go. I had explained to him that my Work Ticket was not to go out for Camberly. He replied; Oh that won't matter we won't be stopped anyway. The route I took to Camberly was via Cove. This brought us out by the Public House known to me now to be called by a name like Ellis. The Sgt said pull in here. This I did. We then said come on and have a drink. We went inside and he bought me two (2) pints of beer. The time was about 1400 hrs. We then left the Pub and he said take me this way. He directed me to a Teashop near Camberly where I understand the Mother of his girlfriend lives. We went inside and had a glass of lemonade. After this the Sgt said take me into Camberly to the girlfriends and I will only be about 10 min. After he came out from talking to the girl he directed me to return to Aldershot. We arrived back in Aldershot at about 1530 hrs. The Sgt then started to look around the Barracks for the Messing Sgt. We first went into Corunna Sgt's Mess. While there, the Messing Sgt bought me a half (½) pint of beer. The Sgt then said that we had to go to Maida Sgt's Mess. When we got there he told me to come in. The Mob. Stores Sgt then bought me a pint of beer and after I tasted it I noticed that there had been Gin put in it. We then left the Mess and went to the Messing Stores. The Messing Sgt then went away and got his pass. When he came back I drove the Two Sgts to Corunna Sgt's Mess and they bought some beer. They brought this out to the truck in a box. The Mob. Stores Sgt then told me to take the Messing Sgt to Witley. This I did. When we got to Witley I was directed by the Sgt to a house near the Priorsee Lumley. The Sgt got out; took the box that contained the beer with him and went in the house. He then called me. He gave me two half pints of beer. The time was about 1630 hrs. I then returned to Aldershot and the Mob. Stores Sgt as he had directed that I do this when I returned. I found him at his quarters. He was just getting cleaned up. When he had finished he told me to come and have my supper. This I did in the Man's Mess Corunna. The time by now was about 1830 or 1900 hrs. The Sgt then said he wanted to go to Camberly. When we got to Camberly he took me to Pub where we had a pint of beer that he bought. He then said take me to the Red Lion. He then directed me to it. (We had tried another one before this but it was shut). When we got to the Red Lion he bought me three Gins and Three pints of beer. I then took him to his girl friend's house in Camberly. The time was about 2130 hrs. He then said thats all I want. I then started for home. I came home via Cove. On the way to Cove I stopped the vehicle as I did not feel very well and thought I had better straighten myself up. I must have gone to sleep for a short while. When woke up I started right back for Camp. I arrived back at about 2320 hrs.

Signed A.C. WOOD

(COPY)

SIS/C-4-44

SPECIAL INVESTIGATION SECTION

STATEMENT of:

18 OCT 44

Regt. No. B-112533, Gnr. WOOD, A.C.,
M.T. Sect., "A" Wing, No.1 CGRU, CRU Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, any may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) A.C.WOOD

STATES:

I have been a driver at No.1 C.G.R.U. for over a year. I have never had much trouble in the M.T. Section, but on 5 AUG 44 I was driving CQMS MISKIMMINS who is N.C.O. i/c Mob. Stores at the Unit. He got me into trouble by taking me on a lot of unauthorized journeys and also getting me drunk. On 6 OCT 44 I was paraded before Capt. KEEN, my O.C. I made to him a statement which he typed out and which I signed. It is the statement you have in your possession. The Mob. Stores Sgt. referred to is CQMS MISKIMMINS.

While I was driving him that day (I can't remember just when), CQMS MISKIMMINS said to me: "Some day when we get a chance you and I are going to make ourselves some money on some blankets. We'll get about Forty or Fifty Pounds apiece out of it". He meant that he wanted to get me to deliver some blankets for him some place where he would sell them. I didn't know what the set-up was, and made no promises. I didn't think very serious of the idea and heard no more about it from him or anybody else. He never sold anything that day when I was with him; but when I heard last week that my friend Rfn. DUDLEY was caught with a load of blankets I figured who it was who got him to take them in his truck.

I have read over the above statement, and it is true.

(SGD) A.C.WOOD. Oct. 18/44.

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is exhibit "W" referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944

Officer [illegible]

my

This is Exhibit " X " referred to in the summary of evidence in the case of:-

S/Sgt Crestrix, R.J.
Sgt Gemmell, N.A.
Sgt Johns, R.T.
CSMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Joynes, J.C.W.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944.

Officer taking summary

(SECRET) SIS/C-4-44

SPECIAL INVESTIGATION SECTION

STATEMENT of:

Regt. No. L-414, Gnr. GOULD, E.G., 12 OCT 44
"A" Wing, 1 C.G.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) E.G.GOULD

STATES:

I am attached to Accomodation Stores, 1 C.G.R.U., where, with one short absence of about 5 weeks last Summer I have been for about a year. I am a Storeman in that Department.

On Thursday, 5 OCT 44, I was working at the Accomodation Stores all day. I can't quite remember what I was doing during the morning, but after lunch I was at the Blanket Store emptying palliasses in company with Pte. TOZER, D., another Storeman. C/MS MISKIMMINS came over and told us to load 1000 dirty blanks into a 60cwt. truck driven by Dvr. OLSEN. We had about 1300 there in bundles of 10. At about 14:00 hrs. C/MS MISKIMMINS, Pte. TOZER and I went with the truck-load of blankets to the R.C.I. Laundry near ZAMMIT and left the blankets there to be cleaned. We then loaded 900 clean blankets for return to the Unit. We always exchange 1000 blankets at a time at the Laundry.

The reason why we did not bring the full 1000 back was that TOZER made a bad job of loading at the start, it was raining hard, and we couldn't see what we were doing without getting the last ones wet. C/MS MISKIMMINS made arrangements to collect the remaining 200 due on the following morning.

We got back at about 16:00 hrs., and TOZER and I unloaded the blankets into the store. Dvr OLSEN drove his truck away. About half-an-hour later another 60cwt. backed up to the store. C/MS MISKIMMINS arrived on his bicycle about the same time and said we had to load 900 clean blankets for Reception Coy. TOZER & I were a bit sore, having just unloaded them, but C/MS MISKIMMINS and the driver, to whom I paid no attention, gave us a hand, and I counted out the bundles. The driver stacked them in the truck.

I distinctly remember C/MS MISKIMMINS telling the driver: "Take that to Reception". They had a few words over there, so we didn't go with the truck, but C/MS MISKIMMINS followed the truck away on his bicycle. The driver never said anything at all. We worked fast because it was getting late. I do know that Reception Coy. had been hollering for blankets for several days. TOZER and I just went on working with the palliasses, and that's all I know about it.

At no time had I any reason to suppose that the blankets were to be taken elsewhere than to Reception Coy.

I have read over the above statement, and it is true.

(SGD) E.G.GOULD 12/10/44

(WITNESSED) F.R.NELSON, S/Sgt., SIS

This is Exhibit " Y " referred to in the summary of evidence in the case of:-

S/Sgt Greatrix, R.J.
Sgt Gammell, N.A.
Sgt Johns, R.T.
CWM3 Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.C.

taken before me this First and Second day of November, 1944.

Officer taking summary

(COPY) SIS/C-1-44

SPECIAL INVESTIGATION SECTION

THIRD STATEMENT of: 19 OCT 44

Rgt. No. B-64113, Rfn. DUDLEY, R.D.C.
M.T. Sect., "A" Wing, No. 1 C.C.R.U., CRU Command.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

STATES: (SGD) R. DUDLEY

I have read over the statement of B-96927, Cpl JEYNES, J.C.M., dated 13 OCT 44, and wish to state:

The man who asked me if I wanted to take the blankets to LONDON, and arranged it all for me was Cpl. JEYNES. I was willing to take the rap myself, and the only reason for not saying who he was at first was to keep him out of trouble if I could. I'm no squealer.

All I said in my other statement is true, except that I didn't steal the Work Ticket. During the afternoon after he spoke to me about the job Cpl. JEYNES came to me and gave me two work tickets. One he had made out as a sample for me to copy, and the other, which is the one you have, was blank. He told me to fill it in like the one he made out, and to destroy the sample for his protection. I did this that afternoon, and put the one he made out down the toilet in the Provost Lines opposite the Garage.

Cpl. JEYNES also told me I'd get about £15 for the job, and I figured he'd get a good cut out of it as well. He said: "You know who's running this, don't you?", and I said: "I have a pretty good idea" and left it at that. I figured it was COMS MISKIMMINS, and I'm sure that's who he meant. Next day he told me to fix up my truck and make sure I had enough.

I was busy that day like I said on a draft job. The first idea was to get the blankets from the laundry at FARNHAM, but when I didn't get back till 14:00 hrs. he said: "Never mind, you can pick them up at the Blanket Store", and made out my Work Ticket for 15:30 hrs. He knew I had the other one to cover me for the LONDON trip.

I never asked Cpl. JEYNES for the job - he asked me in the first place and fixed it all up himself. I never did any jobs before for COMS MISKIMMINS (taking stuff out, I mean) but I kind of figure others have, and I know Gnr. WOODS got caught over him once on a buckshee run when they got him drunk and he got back late.

I have read over the above statement, which I have made of my own accord, without fear of any threat or hope of favour to come, and it is the truth./ENDS

(SGD) R. DUDLEY 19/10/44

(WITNESSED) F.P. NELSON, S/Sgt., S.I.S.

SIB/3-4-44

SPECIAL INVESTIGATION SECTION

19 OCT 44

SECOND STATEMENT of:

Regt. No. B-96927 Cpl. JEYNES, J.C.M.,
Trnspt. Sect., "A" Wing, No. 1 C.C.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) J.C. JEYNES.

STATES:

On Thursday, 5 OCT 44, at about 09:30 hrs., Sgt. JOHNS, of Clerks' Coy., 1 CCRU, came to me in the Despatch Office, M.T. Section, where I am in charge, and asked me if I could fix him with a big truck to take some blankets to LONDON. I asked him how long it would be needed and he said from about 16:00 hrs to 19:30 hrs. I said I'd let him know later, but he said he'd have to know before 2 o'clock. He said there would be about 700 blankets and that the driver and I would receive about £40 between us, depending on what they got for them. He didn't say who else was in the deal, but as the blankets were coming from Mob. Stores, I concluded that CQMS MISKIMMING was in it. I told him I'd fix it for him unless some emergency arose and I'd have to cancel it. He gave instructions that the truck was to be at the stop-lights in FARNHAM just below the Hale Laundry at exactly 15:55 hrs., when a Sergeant would be there to direct the driver. He didn't say what Sergeant. I stipulated that there was to be no drinking on the trip. I told Sgt. JOHNS to expect No. L-762820, as that was the logical vehicle for the job. He said "O.K.", and left the office.

I immediately left the office to contact Rfn. DUDLEY, the driver of the 60 cwt, L-762820, and met him outside the office. I asked him if he wanted to take a buckshee trip to LONDON, and mentioned that there would be roughly £15 in it for each of us. He agreed to take the trip, and I told him I'd fix up a sample of a work-ticket for him to make out to cover his journey. I gave him his directions as instructed, warning him also against drinking, and be careful with his driving. I picked DUDLEY because I knew him and knew I could trust him. He doesn't know LONDON, but I figured somebody would show him the way.

I returned to the office, and when I was alone I stamped two blank Work Tickets, making one out for DUDLEY to copy. I stamped it several times so that it would be unusable. At about 10:00 hrs. I met Rfn. DUDLEY at the Workshop door and gave him the two work-tickets with the warning that the sample work-ticket must be destroyed after he had copied it. He agreed to do this, and I told him that he was on his own hook once he was on the road with his vehicle. I later advised him to see he had enough gas. He did a trip to ALTON, and I gave him his Work Ticket for FARNHAM and FARNBOROUGH to cover him through the area at 15:20 hrs. I can remember no change of plan, and he must have received instructions elsewhere to go to Blanket Stores.

The driver for Mob. Stores that day was Pte. OLSEN, who was on that job the day before, and was warned that night

(cont'd)

SECOND STATEMENT of:

Regt. No. B-96927, Cpl. JEYNES, J.C.M.,
Trnspt. Sect., "A" Wing, No. 1 C.G.R.U. (cont'd)

and was warned that night/

that he would be needed again at 08:30 hrs., 5 OCT 44. At no time during that day was any call received at the Transport Office from Mob. Stores for another vehicle. Rfn DUDLEY was sent solely in consequence of the request of Sgt JOHNS that morning. I knew nothing of any further arrangements connected with the deal.

When I made my first statement on 13 OCT 44 I figured that to tell all I knew would do nobody any good. Now I feel it isn't fair for Rfn. DUDLEY to take all the blame. I have read his statements, dated 6 OCT 44 and 19 OCT 44, and with the exception of the differences I have pointed out above, his statement is correct to the best of my knowledge. I am quite sure that he has never been mixed up in anything of this kind before. Neither have I.

I have read over the above statement, which has been made voluntarily, without fear of any threat or hope of favour to come, and it is the truth./ENDS

(SGD) J.C. JEYNES, Oct. 19/44.

(WITNESSED) F.R. NELSON, S/Sgt . S.I.S.

This is Exhibit "Z" reverred to in the summary of evidence in the case of:-

S/Sgt Greatrix R.J.
Sgt Gammell N.A.
Sgt. Johns, R.T.
CQMS Miskimmons, W.
Sgt Davies, J.C.
Cpl Jeynes, J.C.M.
Rifleman Dudley, R.D.E.

taken before me this First and Second days of November, 1944.

Officer taking summary

(COPY)

SIS/C-4-44

SPECIAL INVESTIGATION SECTION

STATEMENT of: 20 OCT 44

Regt. No. H-102347, Pte. TOEWS, D.,
"A" Wing, No.1 C.G.R.U.

BEGINS:

I have been cautioned by S/Sgt. NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

(SGD) D. TOEWS

STATES;

I am attached to Accomodation Stores, 1 CGRU, where I have been working since JUNE, 1944.

On Thursday, 5 OCT 44, I was working in connection with Accomodation Stores all day. I was with Gnr. GOULD all morning at the Blanket Store emptying pallisses. At noon CQMS MISKIMMINS, who was i/c Accomodation Stores, told us to beat the Blanket Store at about 14:00 hrs., as we were going to get blankets from the Hole Laundry, FARNHAM, having taken a thousand there to be cleaned a couple of days before. When the truck arrived, driven by Pte. OLSEN, CQMS MISKIMMINS, Gnr. GOULD and I went with it to the laundry at FARNHAM, where we started to load clean blankets in bundles of ten. C.Q.M.S. MISKIMMINS said we were going to take 700, so I wasn't too fussy now I started loading. When I had loaded about 800 he said we'd better take 1000, but I hadn't piled them very tightly in the 30 cwt. we had, and could only get 800 on. I'd have had to empty the truck again to have taken the full thousand, but he said not to bother. It was raining that day, and if I'd put on more than 800 they'd have got wet at the back of the truck.

We brought the 800 blankets and unloaded them into the Blanket Store, and the truck went away. Gnr GOULD and I went on working on the pallisses for a half-hour or so, when another 60 cwt. truck, driven by Pte. DUDLEY, pulled up. I asked him what he wanted, but he didn't seem to know, and said CQMS MISKIMMINS wanted him to report there. A minute or two afterwards CQMS MISKIMMINS came up on his bicycle and told us to load up 700 blankets for Reception Coy. We thought that kind of funny because we could have taken them straight over in the first place; but he said that's what they wanted now, so we just got busy and loaded them and the driver stacked them in the back of his truck. Gnr. GOULD counted them, on CQMS MISKIMMINS's instructions. I didn't hear any instructions given to the driver, but when we had finished loading at about 16:30 hrs. the truck pulled away with the blankets, and that's the last I saw of them. I figured they were for Reception Coy., and CQMS MISKIMMINS said we didn't have to go with the truck because there was a Fatigue down there to unload it. I had no reason at all to suspect that there was anything wrong, and just went on with my work.

(Contd OVER)

with my work/.

I didn't know anything had happened until next day, when I heard some talk around the Camp that the truck-load of blankets had been picked up in LONDON.

I have read over the above statement, and it is correct./ENDS

(SGD) D. TOEWS 20-10-44

(WITNESSED) F.R.NELSON, S/Sgt., S.I.S.

This is Exhibit "Z 1" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix R.J.
Sgt Gemmell N.A.
Sgt Johns, R.T.
C.S.M. Makimmons, W.
Sgt Davies, J.C.
Cpl Joynes, J.C.M.
Rifleman Dudley, R.P.C.

taken before me this First and Second Days of November, 1944.

Officer taking summary

SPECIAL INVESTIGATION SECTION 24 OCT 44

STATEMENT of:

Rank, No. B-88461 C.W.A. WILKINS, W.,
and Wing, No. 1 C.B.W.U., C.A.F. Command.

BEGINS:

I have been cautioned by S/Sgt. WILSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this position, I sign my name here.

STATES:

Having [illegible] true statement to civil police concerning [illegible] chairs, tables, [illegible] sheets which I [illegible] from Wait St[illegible] Sgt. Orvill[illegible] civilian in [illegible] you the truth [illegible] blankets which S/S[illegible] JEYNES, and Pte. LUNDY, [illegible] which I [illegible]

[illegible] chairs, tables [illegible] sheets referred to [illegible] as if I had [illegible] easy, tables, writing [illegible] I had previously returned their equivalent [illegible] Dump at TORCH, [illegible] I kept this furniture for several weeks [illegible] furniture surplus I had, [illegible] receiver telling me, in effect, [illegible] Records in the Quartermaster's Office [illegible] feet, I am certain [illegible] ever [illegible] night [illegible] clear.

[illegible] or two later Sgt. Orvill[illegible] told me that he [illegible] blankets. He didn't tell me [illegible] it would be worth [illegible] the 700 blankets when it [illegible] first week of October, 1944. [illegible] in the [illegible] the cost when I [illegible] of the deal, [illegible] Sgt. Orvill[illegible] the blankets in [illegible] transport, but I know [illegible] week. [illegible] and as I thought [illegible] I told Sgt. Orvill[illegible] day. I changed [illegible] 700, so I brought [illegible] after dinner that [illegible] n't get any more [illegible] his truck back to [illegible] pull in there, kept [illegible] COVILL and TORCH [illegible] truck was [illegible] chairs, [illegible] C.C.R.A.F. [illegible] surplus. [illegible] were only [illegible] surplus blankets. I [illegible] letter of [illegible] carefully collected [illegible] which [illegible] any shortages [illegible] in the [illegible] R.C.A.F.I. [illegible] seven hundred [illegible] what [illegible] let him have [illegible] early in the [illegible] with this last [illegible] pick up [illegible] truck to pick up [illegible] earlier in the [illegible] Hole in Surrey, [illegible] pick them up from [illegible] 16:00 hrs., that there-[illegible] only wanted [illegible] 1000, but only [illegible] 16:00 hrs. I saw it [illegible]

111

When the truck was/
loaded I began to feel a bit guilty and said to the driver, Pte. DUDLEY: "Slim, take them to Reception Coy. To Hell with it!" He said: "O.K., Bill", and drove off. He looked a bit scared, too. I thought he was going to do as I said, and even went down to Reception Coy. on my bike to see if he was there. I would have had them unloaded right there, the way I was feeling, honest to God, but he didn't show up. Neither Ptes. GOULD or TOEWS knew what was going on, and I really meant what I said to the driver. I knew something had gone wrong next morning when Capt. LANE called me into his office to ask me about the truck which was missing. That is all I had to do with the deal, and I'm sorry now that I ever had any part in it. I was not short of money, and I honestly don't know whatever made me consent to it.

It is true that Reception Coy. needed more blankets, as those I had previously sent were dirty, and had to be replaced by clean ones. Some fellow I don't know tipped me off a few days previously that the police in ALDERSHOT were watching for a blanket deal that was supposed to be coming off, and that is why I was getting a bit scared about the whole thing.

The statements I previously made are partly untrue, because I know I had a surplus to cover the loss and I thought that I might be relieved of blame.

I admit that for a long time past I have been scrounging stuff to make good deficiencies in the Unit, but I can truthfully say that apart from the above two instances, when I disposed of stores to Sgt. GEMMELL, I have never sent anything to unauthorized persons, or sold or disposed of stores to civilians. I don't think that a complete Unit inventory would show any shortages in my department. It might even show a surplus.

I have read over the above statement, which has been made voluntarily, of my own free will, without fear of any threat, or hope of favour from any person or persons, and it is all true.

(SGD) _____ C.Q.M.S.,
B-86451, W. MISKIMMONS,
"A" Wing, No.1 C.G.R.U.

(WITNESSED) _____ S/Sgt.
U-1869, F.R.NELSON
S.I.S., Cdn. Provost Corps, CMHQ.

ALDERSHOT
24 OCT 44

This is Exhibit "Z2" referred to in the summary of evidence in the case of:-

S/Sgt Greatrix R.J.	C.Q.M.S. Miskimmons, W.
Sgt Gemmell N.A.	Sgt Davies, J.C.
Sgt Johns, R.T.	C.Q.M.S. Jaynes, J.C.M.

Rifleman Dudley, R.D.C.
taken before me this First and Second days of November, 1944.

_____
Officer taking summary

SIS/ C-4-44

SPECIAL INVESTIGATION SECTION

25 OCT 44

STATEMENT of:

Regt. No. L-181134, Sgt, GEMMEL, N.A.
Clerks' Coy , No. 1 C.G.R.U., C.R.U. Command.

BEGINS:

I have been cautioned by S/Sgt, NELSON, of S.I.S., that I do not have to say anything unless I wish to do so, but that whatever I do say will be taken down in writing, and may be given in evidence.

To show that I understand this caution, I sign my name here.

_____

STATES:

I have read over the statement of CQMS MICKIMMINS, dated 24 OCT 44. There is one thing I want to say, and that is that I was never concerned at any time with anyone in disposing of tables or a leather-backed chair which I saw yesterday in the Police Station at ALDERSHOT. At the present time I have no comments to make on the remainder of his statement.

I have read over the above statement, which has been made voluntarily, and it is true.

(SGD) _____ SGT.
L-181134, N.A. GEMMEL,
Clerks' Coy., No. 1 C.G.R.U.

(WITNESSED) _____ S/SGT.
C-1469, P.R. NELSON,
S.I.S., Cdn. Provost Corps, CMHQ.

ALDERSHOT
29 OCT 44

This is Exhibit "Z3" referred to in the summary of evidence in the case of:-
S/Sgt Grant in R.J. CQMS Miskimmons, T.
Sgt Gemmell N.A. Sgt Davies, J.C.
Sgt Johns, R.T. Cpl Joynes, J.C.A.
Rifleman Dudley, R.D.C.
taken before me this First and Second days of November, 1944.

_____
Officer taking summary

No D-91032 Name DAVIES J.C. Sqn, Battery, or Company — Corps R.C.A. — Date of enlistment 13 Sep 39 — OC Badges 1 — Service or Proficiency Pay NA — MPH 6 (AFB 132)

Date of last entry in Company Conduct Sheet NA — No and date of last drunk NA — Period not reckoning towards freedom from extra fine NA — Sheet No 1 — Signature OC Company, etc (SGD) (H.J. Kirk) Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	27 Apr 43			Blood Donation	(SGD) (H.J. Lake) Major				

Certified true copy of original document in my possession

(W.E. McNaughton) Capt
Adj. No. 1 Cdn Gen Hft Unit (PTO)

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-91032	Bdr	John Carter DAVIES	#1 C.G.R.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 577, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	NIL times	times.
For	times	times.
For	times	times.

[redacted]

2. The accused has not been previously convicted. NIL

[redacted]

3. The accused is not under sentence at the present time, or [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for 42 45 NIL days, and 42 45 NIL days in military custody, making a total of 42 45 NIL days, of which —— days were spent in hospital.

5. The present age of the accused according to his [redacted] M.F.M. 4 [redacted] is 33 years

6. The date of his [redacted] attestation specified in his [redacted] M.F.M. 4 [redacted] is 13 Sep 39

7. [redacted]

8. [redacted]

9. [redacted]

10. The accused is in possession of, or entitled to, [redacted] C.V.S.M. & Clasp

11. [redacted]

12. [redacted]

[redacted]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D-91032 Rank Bdr Name DAVIES J.C. of #1 C.G.R.U Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

Nil

Ex B
My

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this [illegible] day of November 1944

23 Nov 44

[illegible]

Capt & Adj
#1 C.G.R.U.

13. The accused has served as a non-commissioned officer continuously without reduction, to the present date.

Date of Promotion.

In the rank of Bdr 6 months Date 5 May 44

In the rank of years

In the rank of years

(Insertion.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

COPY

27 Nov 44

Lt Col D.L. Redman,
PERMANENT PRESIDENT, Courts Martial
HQ CRU.

F.C.C.M. - Tpr Dudley

1. At the recent Court Martial of the m/n CR, he declared that he had been threatened by myself, as officer taking the Summary of Evidence. He called, as witnesses, six CRs on whom a Summary was also being taken.

2. I feel that in view of his evidence, an explanation is required.

3. The nature of this threat was that I had stated that I would make a pitchfork out of the evidence against them by laying a great number of charges.

4. The facts are: when Dudley and the remainder of the accused appeared before me 1 Nov 44 for the purpose of taking a Summary of Evidence, I carefully explained to them their rights at the Summary; told them that if they had witnesses for the defence they could call them or not as they pleased; told them that in due course they would be given an opportunity of making a statement in regard to the charges but that they did not have to do this and also advised them as to their rights in cross-examining the witnesses. I then read the charge sheets to them; explained to them that the charges now laid against them were not necessarily the charges which would finally be laid; explained also that it was quite probable that more than one charge would be laid against them depending upon the evidence brought out at the summary.

5. At this point Dudley himself asked me why more than one charge would be laid and whether it was legal to do this. I told him that it was and in order to make the position clearer to him I stated that Law was like a pitchfork, that in committing a crime a man frequently runs afoul of one time of the fork and at the same time runs ~~xfxxx~~ into another, pointing out to him that he was charged with stealing blankets, that apparently his share in the crime was to drive a veh to London and that in doing so he laid himself open to a possible charge of illegal use of the veh. This is an explanation of the 'pitchfork' phrase, about which the accused talked at Dudley's trial.

6. I have taken a great many Summaries of Evidence and have always been particularly careful to explain the exact position of the accused. In this case I was even more careful than usual because of the serious nature of the charges. I took the precaution to see that all the accused thoroughly understood what was going on. Whenever any witnesses testified to any of the accused by name or when any evidence was brought out mentioning any of the accused, or in any way affected them, I invariably called the attention of the man concerned to the fact and made sure everything to him that at the end of the witnesses' evidence, he had the right to cross-examine him. I was particularly careful to do this in the case of Tpr Dudley, who obviously had only a vague idea of what was going on, and in the case of Sgt Jones, against whom the evidence was not particularly strong, but who was affected. [illegible] all the witnesses mentioned his name and all of the accused, [illegible] himself, had made statements involving him. None of the accused were in any way prejudiced in their defence by anything stated or done at this Summary. All of them were handled with great fairness and consideration and the entire Summary was taken in the strictest accord with the Rules of Procedure.

7. For your information, please.

(Signed) M.L. Magill, Capt
3 C.A.C.R.U.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Capt. B.C. Saunders if he is available.

C Dawes.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lieut. Wilding White if he is available.

W. Mitchell

LIST OF EXHIBITS FOR THE PROSECUTION

A - Statement of Det Sgt E. Cook New Scotland Yard 6/9 Oct 44

B - Statement of Det Sgt A. Webb New Scotland Yard 6/9 Oct 44

C - Transport Ticket

D - Transport Ticket

E - Copy of letter d/9 Oct 44 re despatch of blankets

F - Statement of B64118 Mfn Dudley, R.D.C. No. 1 C.C.R.U. 6/6 Oct 44

G - Statement of L1161 S/Sgt Gretrix R.J. No. 1 C.C.R.U. 6/7 Oct 44

H - Statement of L1016 Sgt Gemmell W.A. No. 1 C.C.R.U. 6/10 Oct 44

I - Second Statement of B64118 Mfn Dudley R.D.C. No. 1 C.C.R.U. 6/

J - Second Statement of L1161 S/Sgt Gretrix R.J. No. 1 C.C.R.U.

K - Second Statement of L1016 Sgt Gemmell W.A. No. 1 C.C.R.U. 6/11 Oct 44

L - Statement of D01088 Sgt Davies J.C. No. 1 C.C.R.U. 6/11 Oct 44

M - Second Statement of D01088 Sgt Davies J.C. No. 1 C.C.R.U. 6/11 Oct 44

N - NOTES of S/Sgt NELSON

O - Statement of C2MS Hinxmans W. No. 1 C.C.R.U. 6/12 Oct 44

P - Second Statement of B04021 C2MS Hinxmans W. No. 1 C.C.R.U. 6/12 Oct 44

Q - Third Statement of L1161 S/Sgt Gretrix No. 1 C.C.R.U. 6/13 Oct 44

R - Third Statement of Sgt Gemmell W.A. No. 1 C.C.R.U. 6/13 Oct 44

S - Transport Form Ticket, Drivers Call Sheet

T - Statement of B05088 Pte Olsen C.R. No. 1 C.C.R.U. 6/13 Oct 44

U - Statement of B06927 Cpl Jeynes J.C.M. No. 1 C.C.R.U. 6/13 Oct 44

V - Statement of B112033 Gnr Woods A.C. No. 1 C.C.R.U. 6/13 Oct 44

W - Statement of B112033 Gnr Woods A.C. No. 1 C.C.R.U. 6/6 Aug 44

X - Statement of L414 Gnr Gould R.C. No. 1 C.C.R.U. 6/13 Oct 44

Y - Third Statement of B64118 Mfn Dudley R.D.C. No. 1 C.C.R.U. 6/13 Oct 44

Second Statement of B06927 Cpl Jeynes J.C.M. No. 1 C.C.R.U. 6/13 Oct 44

Statement of H102747 Pte Tozer D. No. 1 C.C.R.U. 6/10 Oct 44

Statement of B04021 C2MS Hinxmans W. No. 1 C.C.R.U. 6/12 Oct 44

Statement of L10134 Sgt Gemmell W.A. No. 1 C.C.R.U. 6/13 Oct 44

Lenzets

SUMMARY OF EVIDENCE DAVIES

In the case of:-
L 1161 S/Sgt Greatrix, R.J. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
B 68451 C.Q.M.S. Miskimmons, W., - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
L 18134 Sgt Gemmell, M.A. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
D 91032 Sgt Davies, J.C., - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
A 9243 Sgt Johns, R.T. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
B 96927 Cpl Joynes, J.C. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit
B 64113 Rifleman Dudley, R.D.C. - a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit.

By direction of the Commanding Officer this summary is taken on oath

I 11436 S/Sgt Elliott, F.W., is sworn as shorthand writer

First Witness - Prosecution

Arr Sgt Cook, Detective Sergeant, New Scotland Yard

I certify that owing to the loss of time and expense involved the attendance of this witness is not readily procurable and a statement of his evidence purporting to have been signed by him has been read to the accused, marked by me as Exhibit "A" for the prosecution and attached to the summary.

(J.W. Magill) A/Capt
Officer detailed to take summary of evidence

We the accused persons do not require the attendance of this witness for the purpose of cross examination

L 1161 S/Sgt Greatrix, R.J.

B 68451 C.Q.M.S. Miskimmons, W.

L 18134 Sgt Gemmell, M.A.

D 91032 Sgt Davies, J.C.

A 9243 Sgt Johns, R.T.

B 96927 Cpl Joynes, J.C.

B 64113 Rfn Dudley, R.D.C.

Second Witness - Prosecution

Albert Webb, Detective Sergeant, New Scotland Yard

I certify that due to the loss of time and expense involved the attendance of this witness is not readily procurable and a statement of his evidence purporting to be signed by him has been read to the accused and marked by me as Exhibit "B" for the prosecution and attached to the summary

(M.L. Magill) A/Capt
Officer detailed to take summary of evidence

We the accused persons do not require the attendance of this witness for the purpose of cross examination

L 1161 S/Sgt Greatrix, R.J.

B 88451 CQMS Miskimmons, W.

L 16134 Sgt Gemmell, N.A.

D 91032 Sgt Davies, J.C.

A 9234 Sgt Johns, R.T.

B 96927 Cpl Joynes, J.C.M. B 64113 Rfn Dudley, R.D.C.

Third Witness - Prosecution

U 1889 S/Sgt Nelson, F.R., Can Provost Corps, SIS CMHQ having beenduly sworn states that:-

On the 5th of October sir, at about 2220 hrs at the Special Investigation Section office in London a telephone message was received from Detective Sergeant Cook of the Flying Squad, Metropolitan Police, New Scotland Yard, to the effect that he had detained at Carter Street Police Station London, South East 17, a Canadian Staff Sergeant and a driver in possession of a Canadian Army lorry containing a large quantity of War Department blankets. Acting on the instructions of Major R.R. Holmes, Assistant Provost Marshall, Canadian Military Headquarters, I proceeded immediately to Carter Street Police Station where I saw Detective Sergeant E Cook and Detective Sergeant Albert Webb, both of the Flying Squad, New Scotland Yard. In the station yard I saw a Canadian Army Vehicle Ford 60 cwt No L 762620 bearing the unit sign of No 1 Canadian General Reinforcement Unit. I looked in the rear of this vehicle which was covered by a tarpaulin secured at the rear with ropes and saw a large number of army blankets which I later counted and found 700 in bundles of ten. Detained in the police station I saw S/Sgt Greatrix, whom I now recognize as one of the accused, and Rifleman Dudley, whom I also recognize as one of the accused. I said to Dudley, are you the driver of the truck outside and he said yes. I said to S/Sgt Greatrix are you with the truck and he said yes. I said to them, had you any authority to bring the truck load of blankets to London. Both soldiers answered no. At about 2245 hrs I place S/Sgt Greatrix and Rifleman Dudley under close arrest and escorted them together with the War Department vehicle

and contents to No 6 Area Provost Coy Detachment office, where I handed both soldiers over to the N.C.O. in charge to be detained. Detective Sergeant Cook handed to me a work ticket which I here present

> The work ticket produced by the witness is shown to the accused, marked by me as exhibit "C" for the prosecution and attached to the summary.

In the possession of Rifleman Dudley I also found a work ticket No 820 which I now produce

> The work ticket produced by the witness is shown to the accused, marked by me as exhibit "D" and attached to the summary.

In the possession of S/Sgt Greatrix I found a letter dated 5 October 1944 and signed L. Skinner for D.R. Kerr, Colonel, RCA, Commander 1 Canadian General Reinforcement Unit

> This letter has been read to the accused marked by me as Exhibit "E" for the prosecution and attached to the summary

On 6 Oct 44 at about 0620 hrs I informed Capt Itter, duty officer No 1 Canadian General Reinforcement Unit of my actions and findings and about 1400 hrs on the authority of Lieutenant W. . Murray, Acting Adjutant No 1 Canadian General Reinforcement Unit, the War Department vehicle No L 762020 was released to Sgt Childs, W.C. of No 1 Canadian General Reinforcement Unit. The 700 blankets which I found in the rear of the vehicle, I have retained at Special Investigation Section office at Canadian Military Headquarters for safekeeping. On 6 Oct 44 at about 1400 hours in the Special Investigation Section office Canadian Military Headquarters I saw Rifleman Dudley. I cautioned him and he made to me a voluntary statement which I took down in writing and which he signed in my presence, a copy of which I here produce.

> This statement having been read to the accused Rifleman Dudley is marked by me as Exhibit "F" for the prosecution and attached to the summary

At about 1900 hrs on 6 Oct 44 I telephoned Lieutenant W. Murray, Acting Adjutant No 1 Canadian General Reinforcement Unit and informed him of the contents of the statement made by Rifleman Dudley and requested the immediate arrest of U.S. Dickinsons. At about 1320 hrs on the 7th of October, 1944 at the Special Investigation Section office, Canadian Military Headquarters I saw S/Sgt Greatrix. I cautioned him and he made to me a voluntary statement which he typed out himself and which he signed in my presence. I now produce a copy of this statement.

> This statement consisting of two pages has been read to the accused S/Sgt Greatrix, marked by me as Exhibit "G" for the prosecution and attached to the summary

MM

At 1645 hours on 7 Oct 44 I again interviewed Rifleman Dudley. I confronted him with the statement of S/Sgt Greatrix, Exhibit "G". I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and which I here produce.

This statement has been read to the accused marked by me as Exhibit "H" for the prosecution and attached to the summary.

I then submitted the statement of Rifleman Dudley, exhibit "F" to S/Sgt Greatrix. I cautioned him and he made a voluntary statement in writing which he signed in my presence a copy of which I produce here.

This statement has been read to the accused S/Sgt Greatrix, marked by me as exhibit "I" for the prosecution and attached to the summary.

On 10 Oct 44 at about 1050 hrs I place Sgt Johns, whom I recognize as one of the accused under close arrest and handed him over to the N.C.O. in charge of the guard room No 1 Canadian General Reinforcement Unit. At about 1120 hrs I placed Sgts Gemmell and Davies, whom I now recognize as two of the accused under close arrest and escorted them together with CQMS Miskimmons, whom I also recognize as one of the accused to No 9 Provost Company Detachment, where at about 1300 hrs I interviewed Sgt Gemmell. I cautioned him and he made to me a voluntary statement which I took down in writing and which he signed in my presence, a copy of which I here produce.

This statement having been read to the accused Sgt Gemmell is marked by me as Exhibit "J" and attached to the summary.

I then confronted Sgt Gemmell with the statement of S/Sgt Greatrix, Exhibit "G". I cautioned him and he made to me a voluntary statement which I took down in writing and which he signed in my presence a copy of which I here produce

This statement having been read to the accused Sgt Gemmell is marked by me as Exhibit "K" for the prosecution and attached to the summary.

I then escorted Sgt Gemmell to the guard room of No 1 Canadian General Reinforcement Unit and handed him over to the N.C.O. in charge to be detained.

I escorted Sgt Davies and CQMS Miskimmons to the Central Police Station Aldershot, where with the approval of the Superintendent of the police, I lodged them in police custody. On the 11th of October, 1944 at about 1000 hrs at the police station I interviewed Sgt Davies. I cautioned him and he typed out in my presence a voluntary statement which he signed in my presence. I hereby submit a copy of this statement.

On hearing the above statement read the accused Sgt Davies requested that the word "declined" line 17 page 2 of his statement be changed to the word "demurred"

M.L. Magill/ A/Capt
Officer detailed to take summary of evidence

This statement has been read to the accused Sgt Davies, marked by me as exhibit "L" and attached to the summary

I then confronted Sgt Davies with the statements of S/Sgt Greatrix, Exhibit "G", and Sgt Gaswell, Exhibit "J". I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence, a copy of which I here produce.

This statement having been read to the accused is marked by me as Exhibit "M" and attached to the summary.

On 12 Oct 44 at about 1800 hrs in the guard room at No 1 Canadian General Reinforcement Unit I interviewed Sgt Johns who I identified as one of the accused. I cautioned him and confronted him with the statements of S/Sgt Greatrix, Sgt Gaswell and Sgt Davies, Exhibits "G" "J" and "L" respectively. He stated when the trouble broke he was advised by an officer who was a friend of his not to make any statement as therefore he did not wish to do so. He did not state who this officer was and he was not urged to make any statement, but he did say certain things to me which I noted down roughly at the time. I produce a copy of these notes made at the time. I wrote out the formal caution and Sgt Johns said he did not wish to make a statement and did not sign the caution.

The copy of the notes having been read to the accused Sgt Johns is marked by me as Exhibit "N" and attached to the summary

At about 1400 hrs at the Central Police station, Aldershot, I interviewed C/Sgt Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence.

This statement having been read to C/Sgt Miskimmons is marked by me as Exhibit "O" and attached to the summary

I then confronted C/Sgt Miskimmons with the statements of S/Sgt Greatrix, Sgt Gaswell and Sgt Davies. I cautioned him and he made a voluntary signed statement in writing a copy of which I here produce.

This statement having been read to the accused C/Sgt Miskimmons is marked by me as exhibit "P" and attached to the summary

On 13 Oct 44 I obtained a formal release from civil custody of C/Sgt Miskimmons of Sgt Davies and escorted them to the guard room of No 1 Canadian General Reinforcement Unit and handed them over to the R.S.M. in charge to be detained. Here I again interviewed S/Sgt Greatrix and confronted him with the statements of Sgt Gaswell, Sgt Davies and C/Sgt Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence a copy of which I here produce

This statement having been read to the accused S/Sgt Greatrix is marked by me as exhibit "Q" and attached to the summary.

At about 1100 hrs in his quarters I saw Sgt Gemmell. I confronted him with the statements of Sgt Davies and CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and he signed it in my presence, a copy of which I here submit.

> This statement having been read to the accused Sgt Gemmell is marked by me as Exhibit "R" and attached to the summary

At about 1400 hrs at the Motor Transport Office No 1 Canadian General Reinforcement Unit, I saw Captain R.M. Keene, officer commanding Motor Transport Section and he handed to me a drivers call sheet for 5 Oct 44 and also Work Ticket No. 5783 which I now produce

> The call sheet and work ticket having been shown th the accused is marked by me as Exhibit "S" and attached to the summary

In the presence of Capt Keene I interviewed H 59092 Pte Olsen, C.R. Motor Transport Section, A.Wing. He gave me a statement which I took down in writing and which he signed in my presence and in the presence of Capt Keene

> This statement having been read to the accused is marked by me as exhibit "T" and attached to the summary

In the presence of Capt Keene I then interviewed B 96927 Cpl Joynes, whom I now recognize as one of the accused. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and in the presence of Capt Keene.

> This statement having been read to the accused Cpl Joynes is marked by me as exhibit "U" and attached to the summary.

About 1630 hrs I proceeded to the orderly room of No 1 Administrative Transport Company, Royal Canadian Army Service Corps, where I saw D 91040 MSM Ennor, C. I questioned him and he gave me certain information which I noted. On 18 Oct 44 as the result of inquiries on my part Major McLean, Officer Commanding A Wing, No 1 Canadian General Reinforcement Unit, handed to me an original statement made in writing on 6 Oct 44 in connection with disciplinary action taken in another case against B 112533 Gnr Wood, A.C. of No 1 Canadian General Reinforcement Unit., I present this statement.

> This statement having been read to the accused is marked by me as exhibit "V" and attached to the summary

I thereupon interviewed Gnr Wood. I cautioned him and he made to me a statement which I took down in writing and which he signed in my presence and which I here submit.

> This statement having been read to the accused is marked by me as exhibit "W" and attached to the summary.

At about 1300 hrs the same date in the presence of Capt Lake, Quartermaster, No 1 Canadian General Reinforcement Unit, I interviewed L 414 Gnr Gould, E.G., storeman. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and in the presence of Capt Lake.

> This statement having been read to the accused is marked by me as exhibit "X" and attached to the summary

At about 1400 hrs on 19 Oct 44 I interviewed Lieutenant J.G. Dunlap, Officer in charge Reception Wing, R1 & D1 Coy, and questioned him concerning demands for blankets. He gave me certain information which I noted. On 20 Oct 44 in the presence of Capt Lake Quartermaster, I questioned Lieutenant J. Bristow on the same matter and he gave me information corroborating that of Lieutenant Dunlap which I noted. On 19 Oct 44 at about 1000 hrs in the guard room of No 1 Canadian General Reinforcement Unit I again interviewed Rifleman Dudley. I confronted him with the statement of Cpl Joynes, exhibit "W", and he gave me a voluntary statement which I took down in writing and which he signed in my presence.

> This statement having been read to the accused Rifleman Dudley is marked by me as exhibit "Y" and attached to the summary

At about 1350 hrs in the Motor Transport Office I placed Cpl Joynes under close arrest and escorted him to the Special Investigation Office, Canadian Reinforcement Units where I confronted him with the statement of Rifleman Dudley exhibit "Y". I cautioned him and he made a voluntary statement and which he signed in my presence. I produce a copy of this statement.

> This statement having been read to the accused Cpl Joynes is marked by me as exhibit "Z" and attached to the summary

I then escorted Cpl Joynes to the guard room No 1 C.R.U. and handed him over to the N.C.O. in charge to be detained. On the 20th of October, 1944, at about 1020 hrs in the presence of Capt Lake, Quartermaster, I interviewed H 102347 Rfn Toewes, D. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence and in the presence of Capt Lake. I submit a copy of this statement.

> This statement having been read to the accused is marked by me as Exhibit "Z1" and attached to the summary.

I then questioned Capt Lake concerning the movement of blankets within unit lines on or about 5 Oct 44 and he gave me certain information which I noted. On 24 Oct 44 at the Central Police station, Aldershot, I again saw Cpl3 Miskimmons. He said to me, I want to tell you the truth and make a complete statement about the blankets. I cautioned him and he made to me a statement which I took down in writing and which he signed in my presence. I present a copy of this statement.

> This statement having been read to the accused Cpl3 Miskimmons is marked by me as exhibit Z2 and attached to the summary.

I then confronted Sgt Gemmell with the statement exhibit Z2" of CQMS Miskimmons. I cautioned him and he made a voluntary statement which I took down in writing and which he signed in my presence. I submit a copy of this statement

> This statement having been read to the accused Sgt Gemmell is marked exhibit "Z2" by me and attached to the summary

At about

At about 1600 hrs I escorted CQMS Miskimmons and Sgt Gemmell to the guard room No 1 Canadian General Reinforcement Unit handing them over to the N.C.O. in charge to be detained. I made several inquiries to substantiate the statement of CQMS Miskimmons, who informed me that D 96310 Sgt Beecher, E., might remember his visit to reception on 5 Oct 44 after Rifleman Dudley had left the blanket stores with the blankets. At about 1100 hrs on 28 Oct 44 in response to a telephone inquiry I was informed by Sgt Beecher that he had no recollection of the appearance at Reception Company of CQMS Miskimmons on the specific date and time mentioned by CQMS Miskimmons. At about 1800 hrs on 24 Oct 44 at the guard room I again interviewed Sgt Johns. I confronted him with the statements of Cpl Jaynes and CQMS Miskimmons. I cautioned him and he said, I have got a chance of beating this rap and if I don't make any statement it will give my defending officer a chance. I am in possession of all original exhibits of which I have presented copies.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness.
The accused B 88451 CQMS Miskimmons, W. declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies, J.C. declines to cross examine this witness
The accused A 9243 Sgt Johns, R.T. declines to cross examine this witness
The accused B 96927 Cpl Jaynes, J.C.M. declines to cross examine this witness
The accused B 64113 Rifleman Dudley declines to cross examine this witness

U 1885 S/Sgt Nelson, F.R.

Fourth Witness - Prosecution

B 51699 Sgt Childs, W.C. a soldier of the Canadian Overseas Strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am employed as transport sergeant in the motor transport section of No 1 Canadian General Reinforcement Unit. On Friday 6 Oct 44 I was instructed by the Assistant Adjutant No 1 Canadian General Reinforcement Unit to go to London to pick up truck No. L 762820 which was being held by the Provost in London. I reported in to the Provost Headquarters and gave them my authority for picking up the vehicle and brought the vehicle back to the unit. The vehicle was empty at the time.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness

The accused D 91032 Sgt Davies declines to cross examine this witness
The accused . 9243 Sgt Johns R.T. declines to cross examine this witness
The accused B 96927 Cpl Joynes, declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

B 51699 Sgt Childs, W.C.

Fifth Witness - Prosecution

Captain R.N. Kuono, an officer of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit, having been duly sworn states that:- I am the transport officer No 1 Canadian General Reinforcement Unit. On 6 Oct 44 I was recalled from a twenty four hour pass and told that truck No L 762026 had been stolen and was in London. I was told also that the permanent driver of the vehicle, Rifleman Dudley, whom I now recognize as one of the accused, was detained in London. I questioned my despatching staff as to what duties the vehicle had been on. The only permanent personnel on that staff are L/Cpl Warren, W.T. and Cpl Joynes, whom I now recognize as one of the accused. I found that the vehicle had been detailed to go to accomodation stores. That evening I brought to the attention of Cpl Joynes there was a letter written by the Quartermaster to the effect that vehicles would not be despatched to the accomodation stores unless a duit, signed by an officer had been presented [illegible] to that effect. He informed me that he had signed one and asked that the vehicle be despatched to the accomodation stores. He informed me it was a forgery. That caused me, who I now recognize as one of the accused. I was present when Cpl Joynes was interviewed by the S/Sgt Nelson from the Special Investigation Section and I was present when Rfn Dixon was brought in and interviewed, and I was present when L/Cpl Warren was interviewed. These people denied any knowledge of the circumstances.

The witness is shown exhibit "P"

That is a transport work ticket, army form 3518 made out from Aldershot to Watford on return detailed for the purpose of taking hospital blankets authorized by O.B.U. and it is alleged to have been signed by myself. It is not my signature and I did not sign it. I did not know of any authority for this trip as I was on a 24 hr pass. The only authority received would be correspondence direct to my second in command Lieut Draper, by the Adjutant.

The witness is shown Exhibit "D"

That is a transport work ticket army form 3518. To all intents and purposes as far as I am concerned it is made out correctly. The last trip is Lieutenant Robertson Farnham and Farnborough which my signature made by Cpl Joynes with his initials above it

The witness is shown Exhibit "E"

One is a transport work ticket army form 3518 and the other sheets are what I call drivers' call sheets on which all vehicles dispatched by the despatching office are supposed to be entered or with the exception of staff cars

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 86451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell, N. . declines to cross examine this witness
The accused D 91082 Sgt Davies, declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley, declines to cross examine this witness

R.F. Keane, Capt

Sixth Witness - Prosecution

Lieutenant J.C. Dreger, an officer of the Canadian Army Overseas on strenght of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am second in command of the Motor Transport Company No 1 Canadian General Reinforcement Unit. On 5 Oct 44 Capt Keane who is officer commanding Motor Transport Section was away on a 24 hr pass.

Witness is shown Exhibit "C"

I have never seen this work ticket before. I did not sign it nor did I authorize anyone else to sign it.

Witness is shown exhibit "_"

I have never seen this letter before nor do I know any Lieutenant Skinner in this unit. In any event I would not have acted on this letter because it is neither signed nor initialled by the Adjutant of No 1 Canadian General Reinforcement unit. No authority for the movement of vehicles outside the twenty mile area is valid in this unit unless it is signedor initialled by the Unit Adjutant or the Commanding Officer. I recognize Cpl Jeynes who is one of the accused as being the Cpl despatcher in the Motor Transport Section.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 86451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91082 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

J.C. Dreger, Lieut

Seventh Witness - Prosecution

H 59092 Pte Olsen, C.R., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- On the 5th of October, 1944 I was driving a truck for the accomodation stores. The forenoon is very hazy to me but in the afternoon the main detail was down to the Hale Laundry near Farnham to pick up blankets, I believe it was seven or eight hundred. They were taken to the accomodation store-room at Corunna Barracks and unloaded there. After that Itook S/Sgt Miskimmons over to the accomodation stores. After that he told me I was not needed any more with the exception of picking up another S/Sgt at Group Headquarters. The S/Sgt Miskimmons I speak of is one of the accused, whom I now recognize. I was told shortly after three o'clock I was not needed any more. That was early and I waited around for a while then went down to pick up this S/Sgt and took him up to the accomodation stores and then returned to the garage. Normally I would be dismissed from the accomodation stores between 4:30 and 5 o'clock.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 78451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Joynes declines to cross examine this witness
The accused B 54712 Rfn Dudley declines to cross examine this witness

H 59092 Pte Olsen, C.R.

Eighth Witness - Prosecution

D 91040 MSM Ennor, C., a soldier of the Canadian Army Overseas on strength of No 1 Administrative Transport Company having been duly sworn states that:- I am a mechanist sergeant major on strength of No 1 Administrative Transport Company. Around the end of September I came into the mess one night at Administrative Transport Company and found Sgt Davies, whom I now recognize as one of the accused waiting for me. He had another Sgt with him who I would not recognize again. I knew Sgt Davies and had not seen him for some time, although I had met him in Aldershot a month or so previously. We had a drink to other and he then asked me if there was any possibility of getting a truck and mentioned there would be twenty or twenty five pounds in it for me if I could do so. I told him that I had nothing to do with the transport and was not interested in the matter. We talked for a while then left the mess. There was some talk about blankets but I don't know who brought it up or the exact details.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 78451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness

The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 90927 Cpl Joynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

D 91040 WSM Ennor, C.

Ninth Witness - Prosecution

B 112583 Gnr Wood, A.C., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Units having been duly sworn states that:- I am a driver for the Motor Transport Section, No 1 Canadian General Reinforcement Unit. On 8 Aug 44 I was detailed to drive for the Mob stores. In the course of the day I drove S/Sgt Miskimmons, whom I now recognize as one of the accused, to various places. Some of these trips were authorized but after the authorized trips I drove him to various places including Camberley, in the afternoon and evening. We had a good many drinks and eventually I fell asleep in the vehicle and did not get back to camp until around midnight. I was arrested on a charge of drunken driving and improper use of the vehicle. During the course of our driving S/Sgt Miskimmons said we could make some money sometime by some blankets. I did not pay much attention to this remark

The witness is shown Exhibit "Y"

This is a statement made by me on the 8 Aug 44 and signed by me. Everything contained in it is true to the best of my knowledge

The accused B 90927 Cpl Joynes, does cross examine the witness
Q.1 That trip you went on that day was legitimate from the office?
A.1 Yes
The accused L 11161 S/Sgt Brietrix, declines to cross examine this witness
The accused B 88451 CSM Miskimmons declines to cross examine this witness
The accused L 16104 Sgt Connell declines to cross examine this witness
Theaccused D 91052 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

B 112583 Gnr Wood A.C.

Tenth Witness - Prosecution

L 414 Gnr Gould, L.C., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am employed in the accomodation stores No 1 Canadian General Reinforcement Unit. I do all manner of jobs, anything that is to be done, including the loading and unloading of blankets. On 5 Oct 44 we went to the laundry at Uhle and brought back a truck load of blankets. There were eight hundred blankets in this load. About 1600 hrs the same day I was told by S/Sgt Miskimmons, whom I now recognize as one of the accused, to

help Pte Toows load seven hundred blankets [illegible] truck to go to Reception Company. Pte Toows, myself and S/Sgt Miskimmons loaded these blankets. There were seven hundred in all. S/Sgt Miskimmons then told the driver to take them to Reception Company. The driver drove off and I did not see the blankets again. This truck was not then driven by Pte Olsen, which was the truck we had used to get the blankets from Hale. It was a different truck but belonged to No 1 Canadian General Reinforcement Unit

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns R. declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The aaccused B 64113 Rfn Dudley declines to cross examine this witness.

L 414 Cnr Gould, E.G.

Eleventh Witness - Prosecution

M 12347 Pte Toows, D. [illegible] Canadian Army Overseas on strength of No 1 [illegible] Reinforcement Unit, [illegible] been duly sworn [illegible] I work in the accommodation stores at [illegible] Reinforcement Unit. I was working there on [illegible] 1944. Among other things [illegible] blankets. [illegible] Gould and S/Sgt Miskimmons [illegible] brought back a load [illegible] brought back to [illegible] Hale was driven by Pte Olsen [illegible] to load seven hundred blankets [illegible] Dudley, whom I now recognize [illegible] told to do this by S/Sgt Miskimmons, whom I also recognize as one of the accused. We were told that these blankets were for reception company, we were told this by S/Sgt Miskimmons. Cnr Gould and I loaded the blankets and the truck was driven away by Pte Dudley. I have not seen the blankets from that day to this, for so I know what has become of them.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

M 12347 Pte Toows D

help Pte Toows load seven hundred blankets on a truck to go to Reception Company. Pte Toows, myself and S/Sgt Miskimmons loaded these blankets. There were seven hundred in all. S/Sgt Miskimmons then told the driver to take them to Reception Company. The driver drove off and I did not see the blankets again. This truck was not then driven by Pte Olsen, which was the truck we had used to get the blankets from Hale. It was a different truck but belonged to No 1 Canadian General Reinforcement Unit

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 QMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused B 91032 Sgt Davies declines to cross examine this witness
The accused A 9245 Sgt Johns H. declines to cross examine this witness
The accused B 96927 Cpl Joynes declines to cross examine this witness
The aaccused B 64113 Rfn Dudley declines to cross examine this witness.

L 714 Cnr Gould, E.G.

Eleventh Witness - Prosecution

H 12347 Pte Toows, D., a soldier [illegible] Canadian Army Overseas on strength of No 1 Canadian [illegible] Reinforcement Unit, having been duly [illegible] accommodation stores at [illegible] Unit. I was working there on the 5th of [illegible] 1944. Among other things it is my duty [illegible] blankets. On the afternoon [illegible] Gould and S/Sgt Miskimmons [illegible] brought back [illegible] brought back to the Unit. [illegible] Hale was driven [illegible] to load seven hundred blankets [illegible] Dudley, whom I now see [illegible] the accused. We were told to do this by S/Sgt Miskimmons, whom I also recognize as one of the accused. We were told that these blankets were for reception company, we were told this by S/Sgt Miskimmons. Cnr Gould and I loaded the blankets and the truck was driven away by Pte Dudley. I have not seen the blankets from that day to this, nor do I know what has become of them.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 QMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused B 91032 Sgt Davies declines to cross examine this witness
The accused A 9245 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Joynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

H 12347 Pte Toows D

Twelth Witness - Prosecution

Lieut J Simister, an officer of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- On or about the 1st of October, 1944 the Officer Commanding asked me to assist in organizing a Reception office to the new Reception Basic DM Coy. On 3 Oct 44 I started to set up the office in Corunna Lines and we were advised on the afternoon of that day to expect a draft in from Canada on the night of the fourth. Myself, Lieut Dunlap, and one of the Sgts went to the accomodation stores and told the CQMS in charge we needed four hundred and fifty blankets. He told us to go along to the storeman and we could draw the blankets we wanted. We went along and saw the storeman and draw I believe four hundred blankets. That was sufficient for the draft we expected and I ceased my connection with the company on the afternoon of 5 Oct 44 and at the time we did not order any more blankets nor did anyone else in the company. I know nothing of any seven hundred blankets ordered for the Reception Company on the afternoon of 5 Oct 44

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gemmell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jaynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

J. Simister, Lieut

Thirteenth Witness - Prosecution

Capt C.E. Lake., and officer of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states:- "I am the quartermaster at No 1 Canadian General Reinforcement Unit and as such I am in charge of all stores in Maida and Corunna barracks where No 1 Canadian General Reinforcement unit is located. Blankets are kept in the blanket stores in Corunna barracks. This blanket stores is in charge of the Assistant quartermaster who is also in charge of the accomodation stores. CQMS Miskimmons, whom I now recognize as one of the accused is the senior N.C.O. in the accomodation stores and has been for some considerable time. As senior N.C.O. he would have access to the blankets in the blanket stores. In the absence of the assistant quartermaster he would have authority to issue blankets to any coy authorized to receive them. Having heard that blankets belonging to this unit had been found in a truck in London the Commanding Officer ordered me to have the blankets counted in this unit. Canadian Barracks services performed this duty and on the 11 Oct 44 the count was duly made. A discrepancy was discovered of between seven and eight hundred blankets.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness

The accused B 88431 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jaynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

C.E. Lake, Capt

Fourteenth Witness - Prosecution

M 7113 Sgt Brooks, A.E., a soldier of the Canadian Army Overseas on the strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I know Sgt Johns, whom I now recognize as one of the accused. He has been in the habit of borrowing money from me which he usually pays back at the end of the month. He has been borrowing money in this fashion off and on for the last three years during which time I have known him. He has owed me at various times sums as large as £8-0-0 or occasionally larger.

. He paid me around seven or eight pounds at the end of September. He is said to receive money from such sources as the Canadian Legion for his services as an instructor.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88431 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jaynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

M 7113 Sgt Brooks, A.E.

Fifteenth Witness - Prosecution

M 27256 Tpr Richardson, H., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am the Regimental Barber of No 1 Canadian General Reinforcement Unit. I often lend money to various people around the unit and among other people I have loaned money to Sgt Johns who I now recognize as one of the accused. At the present time he owes me £5-0-0 and has owed it to me since the end of September. He borrowed this money while he was on leave and has not since been in a position to repay me. Some of other accused here present owe me any money

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 98451 CQMS Miskimmons declines to cross examine this witness
The accused L 18134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 90927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

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Sixteenth witness - Prosecution 27236 Tpr Richardson, H.

D 93614 Sgt Beecher, E., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:- I am the senior N.C.O. in the Reception Company. This company started to operate on 4 Oct 44. We got in a large number of blankets that day. I went with the truck to get these blankets. On the 5th of October 44 more blankets came in in the afternoon. S/Sgt Miskimmons whom I now recognize as one of the accused was over at the reception company several times that day. I do not recall him being there between 1600 hrs and 1700 hrs.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 98451 CQMS Miskimmons declines to cross examine this witness
The accuse 118134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 90927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

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D 93614 Sgt Beecher, E.

The officer detailed to take the summary of evidence recalls a witness for the purpose of clearing up an ambiguity in the evidence given by this witness.

CAPT C E LAKE. Examined by the officer detailed to take the summary

Q.1 You have been recalled to clear up an ambiguity in your evidence in regard to the shortage in blankets. You stated in your evidence that a blanket check showed there were seven to eight hundred short, It is not clear to me whether you mean that there are seven to eight hundred blankets short including the blankets alleged to have been discovered in London, or whether you mean there are an additional seven to eight hundred missing.

A.1. I have here a recapitulation of the blanket check taken by Canadian Barrack Services, submitted to me by Lieut Fraser, Assistant Quartermaster. The actual amount of blankets checked totals 8900 even. There were approximately 50 blankets that were not checked in the pioneers quarters and 50 blankets with the medical company which they had out on a scheme that day. That makes a grand total of 9000 checked

The unit long roll figures were 6824 as of that date
left a surplus of of 176 blankets. Taking into consideration
the 700 already in London not checked by the Canadian
Barrack Services makes a total SURPLUS of 876 blankets
Mr Fraser and I calculated as closely as possible the
of G 1098 blankets belonging to individuals on unit
all of whose G 1098 blanket were counted in the check.
Taking the units strength as of that date less the incoming
drafts in Reception Company we calculated that there were
approximately 966 G 1098 blankets in possession of the
individuals. This can only be approximate as in the
length of time that the check was made it was impossible to
get the exact figure. The surplus of 876 blankets against
our approximation of 966 G 1098 blankets showed an apparent
shortage of 90. This figure could of course be wrong to
the extent of 200 either way, depending upon how accurate
our estimation was of G 1098 blankets. When I speak of
this day I mean Oct 11th, 1944, the day of the check.

The accused I 110 S/Sgt Greatrix declines to cross examine
this witness
The accused B 88491 CQMS Miskimmons declines to cross
examine this witness
The accused I 1010, Sgt Gemmell declines to cross examine
this witness
The accused B 91032 Sgt Davies declines to cross examine
this witness
The accused J 9248 Sgt Young declines to cross examine
this witness
The accused B 90987 Cpl Jaynes declines to cross examine
this witness
The accused B 94113 Rfn Dudley declines to cross examine
this witness

--- E.J. Lake, Capt

The accused B 94113 Rfn Dudley, R.D.C. is cautioned as
follows:-
"Do you wish to give any evidence upon oath or to make
any statement not on oath? You are not obliged to give
evidence on oath or make any statement not on oath, but any
evidence you may give or any statement you may make may be
taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any
evidence upon oath.
The accused does not wish to call any witnesses.

The accused B 90987 Cpl Jaynes, R.C.A.M. is cautioned as
follows:-
"Do you wish to give any evidence upon oath or to make
any statement not on oath? You are not obliged to give
evidence upon oath or make any statement not on oath, but any
evidence you may give or any statement you may make may be
taken down in writing and may be given in evidence.

The accused elects to give evidence upon oath:

The unit long roll figures were 8824 as of that date. This left a surplus of of 170 blankets. Taking into consideration the 700 already in London not checked by the Canadian Barrack Services makes a total SURPLUS of 876 blankets. Mr Fraser and I calculated as closely as possible the number of G 1098 blankets belonging to individuals on unit stength all of whose G 1098 blanket were counted in the check. Taking the units strength as of that date less the incoming drafts in Reception Company we calculated that there were approximately 966 G 1098 blankets in possession of the individuals. This can only be approximate as in the length of time that the check was made it was impossible to get the exact figure. The surplus of 876 blankets against our approximation of 966 G 1098 blankets showed an apparent shortage of 90. This figure could of course be wrong to the extent of 200 either way, depending upon how accurate our estimation was of G 1098 blankets. When I speak of this day I mean Oct 11th, 1944, the day of the check.

The accused L 1161 S/Sgt Greatrix declines to cross examine this witness
The accused B 88451 CQ S Miskimmons declines to cross examine this witness
The accused L 10134 Sgt Gammell declines to cross examine this witness
The accused D 91032 Sgt Davies declines to cross examine this witness
The accused A 9243 Sgt Johns declines to cross examine this witness
The accused B 96927 Cpl Jeynes declines to cross examine this witness
The accused B 64113 Rfn Dudley declines to cross examine this witness

C.J. Lake, Capt

The accused B 64113 Rfn Dudley, R.D.F. is cautioned as follows:-
"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses.

The accused B 96927 Cpl Jeynes, J.C.M. is cautioned as follows:-
"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence upon oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused elects to give evidence upon oath:

The accused B 96927 Cpl Joynes, J.C.M., a soldier of the Canadian Army Overseas on strength of No 1 Canadian General Reinforcement Unit having been duly sworn states that:-

"On the morning of the 5th of October, 1944, at about 0930 hrs, Sgt Johns, whom I now recognize, came to me in the motor transport office and asked me if he could get a vehicle to handle some blankets going up to London. These blankets were to be delivered in London at exactly 1830 hrs. I understood that these blankets were to be sold to someone in London. Sgt Johns told me that if I would arrange the vehicle, the driver and I would get approximately £15-0-0 each, depending upon the price received for the blankets. I said that I would do so provided I could get a driver and provided that an emergency demanding the use of a lot of transport did not come up during the day. I had in mind Rifleman Dudley as the driver of the vehicle. Sgt Johns said he would have to know by 1400 hrs that day and was not satisfied unless I could tell him right away, so I said I would let him have the vehicle, intending that if anything came up that I could not use it, not to bother letting him know differently. Sgt Johns told me to have the vehicle just below the stop-lights on the Upper Hale road at exactly 1555 hrs, where it would pick up another Sgt. I understood that the blankets were to be obtained from the Hale laundry. I went out into the yard, met Dudley and asked him if he would do this. He agreed to do so. I then made out a ticket for the trip, filling it out, and then stamping it several times with the unit motor transport stamp, so that that particular ticket could not be used. I then gave Dudley a blank work ticket already stamped and told him to copy on it exactly what I had written on the first ticket. He was then to destroy the first ticket, the reason for this was so that if he was stopped or anything went wrong, my handwriting would not show up on the work ticket. I also told Dudley that once he set out he was strictly on his own and that I had no knowledge of the deal whatsoever. I also told him to make sure his tanks were full so that he would have enough gas to get to London and back, and so that he would not have to draw any anywhere. About 1500 hrs I got Dudley's genuine work ticket on which he had been operating on legitimate business, and made an entry on it for a journey via Farnham and Farnborough. The purpose of this was to protect him until he met the Sgt at the stop-lights in Hale, pick up the blankets, and was out of the immediate area of Aldershot. Once out of the immediate area of Aldershot his London ticket would protect him. As far as I know Dudley has never been mixed up in any illegal involving transport before. The only reason I approached him was I knew he was broke and going on leave soon. I have never been mixed up myself in anything like this before either.

B 96927 Cpl Joynes, J.C.M.

The accused does not wish tocall any witnesses.

The accused L 11el S/Sgt Greetrix, R.J. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.

Theaccused does not wish to call any witnesses

The accused D 91032 Sgt Davies, J.C. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses.

The accused L 18134 Sgt Gemmell, N.A. is cautioned as follows:

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence on oath.
The accused does not wish to call any witnesses.

The accused A 9243 Sgt Johns, R.T. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses

The accused B 88461 CQMS Miskimmons, R.J. is cautioned as follows:-

"Do you wish to give any evidence upon oath or to make any statement not on oath? You are not obliged to give evidence on oath or make any statement not on oath, but any evidence you may give or any statement you may make may be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give any evidence upon oath.
The accused does not wish to call any witnesses.

I certify that the foregoing summary of evidence consisting of nineteen pages was taken down by me in the presence and hearing of the accused persons on the First and Second days of November, 1944, and that R.P. 4 (C)(D)(E)(F) and (G) have been complied with.

(M.L. Magill) Lt/Capt
Officer detailed to take the summary of evidence

In the Field
3 Nov 44

This is exhibit "A" referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J. — CQMS Riskinsons, W.
Sgt Gemmell, N.A. — Sgt Davies, J.C.
Sgt Jones R.T. — Cpl Haynes, J.C.M.
Rifleman Dudley R.D.C.

taken before me this First and second days of November, 1944

Officer taking summary

New Scotland Yard.
9th. October, 1944.

STATEMENT of Ernest Cook, Detective Sergeant, New Scotland Yard, who saith:-

At about 8.15 pm., on 5th, October, 1944, I received information that a soldier in the Canadian Army had been endeavouring to dispose of a load of blankets which he had brought on a lorry to Walworth. With Detective Sergeant Webb and other Officers I went to Walworth Road, Walworth, S.E., and after searching the vicinity saw an Army lorry Index No. CL 762820 parked by the side of the road about 100 yards from the Elephant and Castle and facing South. The lorry was covered with a terpaulin sheet secured by ropes.

We went up to the lorry and saw DUDLEY who was in the drivers seat. I said to him, "We are Police Officers. What are you doing here?". He said "I am waiting for my Sergeant who has gone to get something to eat". I said to him "Where are you from. Where are you going and what load have you got on?". DUDLEY replied, "I'm from Aldershot and I am taking a load of blankets to Watford". I said "What are you doing here, you are miles off your route". He said "I am only acting on instructions". I then asked him where his Sergeant had gone to and he said "I haven't any idea".

I looked under the terpaulin covering and ascertained that there was in fact a large quantity of blankets on the lorry. I told DUDLEY that I was not satisfied with his explanation and that I was going to make enquiries with a view to verify his statements. He then handed me a printed form showing particulars of a load of blankets to be taken from Aldershot to Watford, saying, "This is my authority". I told him that I was still not satisfied and that enquiries would be made. DUDLEY then said "I will tell you the truth. The blankets are stolen. I made the particulars out myself and my Sergeant told me what to do and where to go".

We then left an Officer in the lorry with DUDLEY whilst we kept observation in the vicinity. At about 10.15 pm., I saw GRATIX, who had come from the direction of the Elephant and Castle, endeavouring to climb into the cabin of the lorry. [illegible] "We are Police Officers, are you in charge of this lorry?". He said "Yes". Sergeant Webb said "Can you explain what you are doing with it". GRATIX said "I am taking a load of blankets to Watford". He was then asked if he would care to say where he had come to during the past two hours and he replied "I have been drinking with some friends". Sergeant Webb asked him who his friends were and GRATIX said "I don't know. I have only met them casually to-night". He paused and then added "As a matter of fact I have been with another soldier from my Unit but I am not saying who he is". Sergeant Webb then said "I have reason to believe that the blankets are stolen". GRATIX said "I don't think so".

I then said to DUDLEY and GRATIX "I am not satisfied with your explanation, you are going to be arrested and taken to the Police Station where you will be detained pending enquiries". I cautioned them. GRATIX said "I don't know what it is all about". DUDLEY did not reply. They and the lorry were taken to Carter Street Police Station.

The Canadian Military Police Headquarters were then informed of the detention of DUDLEY and GRATRIX and later Staff Sergeant Nelson, S.I.R. Canadian Military Police attended and took both men into his custody. I handed to Staff Sergeant Nelson the printed form obtained from DUDLEY.

This statement is true.

(Signed) E. Cook Det.Sergt.

MY

This is exhibit " B " referred to in the summary of evidence in the case of :-

S/Sgt Greatrix, R.J.
Sgt Gemmell, W.
Sgt Johns R T
Rifleman Dudley R.D.C.
CWO Miskimmons, W.
Sgt Davies, J.C.
Cpl Joynes, J.C.M

taken before me this First and second days of November, 1944

Officer taking summary

Flying Squad Office,
New Scotland Yard.
9th October, 1944.

STATEMENT of Albert WEBB, Detective Sergeant, New Scotland Yard, who saith:-

At 8-15 p.m., 5th October, 1944, I went with Detective Sergeant Cook and other officers to Walworth Road, S.E., where I saw an Army lorry Index No. GL-762820.

We approached the lorry and saw Dudley in the driver's seat. Sergeant Cook told him we were police officers and said, What are you doing here?" Dudley said, "I am waiting for my sergeant. He has gone to get something to eat." Sergeant Cook said, "Where are you from, where are you going, and what load have you got?" Dudley replied, "I've come from Aldershot and I'm taking blankets to Watford." Sergeant Cook pointed out that Dudley was miles out of his route and Dudley said, "I am only acting on instructions." Asked where his sergeant had gone to he said, "I haven't any idea."

We looked under the tarpaulin covering of the lorry and saw piles of blankets. Sergeant Cook told Dudley he was not satisfied with his story and that he would have to verify his statements. Dudley then handed Sergeant Cook an Army Form giving particulars of a load of blankets to be taken from Aldershot to Watford. Dudley said, "This is my authority." Sergeant Cook told him that further enquiries would have to be made and Dudley said, "I will tell the truth. The blankets are stolen. I made the particulars out myself. My sergeant told me what to do and where to go."

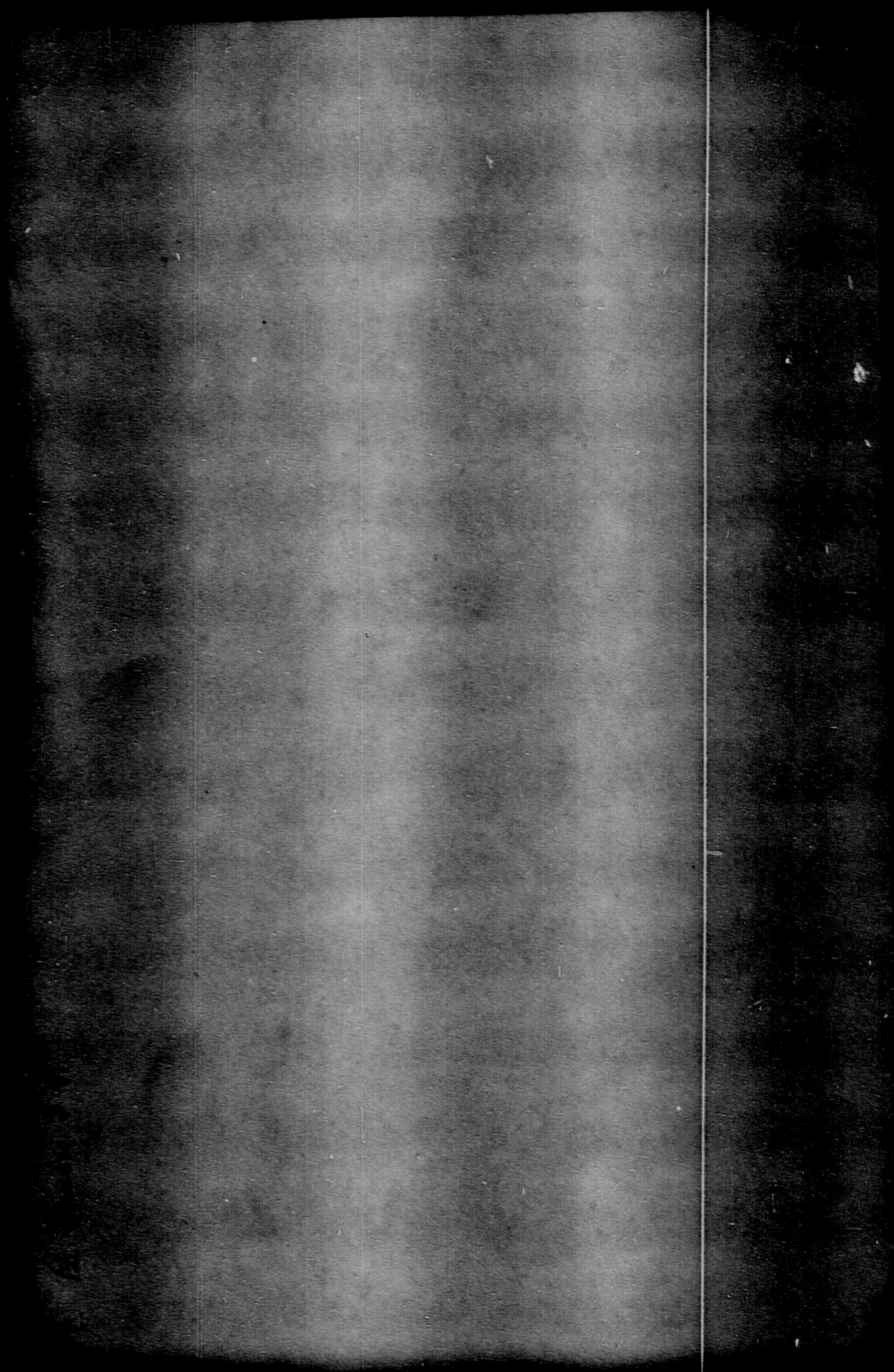
Leaving an officer in charge of the lorry we kept observation in the vicinity and at about 10-15 p.m. Gratrix came from the direction of the Elephant & Castle and endeavoured to climb into the lorry. We approached him and I said to him, "We are police officers. Are you in charge of this lorry?" He said, "Yes." I asked him to explain what he was doing with it and he said, "I am taking a load of blankets to Watford." I then asked Gratrix if he would give an explanation as to where he had been during the previous two hours and he said, "I have been drinking with some friends. I asked who his friends were and Gratrix said, "I don't know. I have only met them casually to-night." He then added, "As a matter of fact I have been with another soldier from my Unit. I am not saying who he is." I then said to him, "I have reason to believe that the blankets are stolen," and Gratrix replied, "I dont think so."

Sergeant Cook then said to Dudley and Gratrix, "I am not satisfied with your explanations. You are going to be arrested and detained pending enquiries." He continued then and Gratrix said, "I dont know what it is all about." Dudley made no reply.

They were both then taken to Carter Street Police Station with the lorry and later Staff Sergeant Nelson, S.I.B., Canadian Military Police, attended and took both men into custody.

SIGNED "ALBERT WEBB"

Sergeant.



D-91911 Pte. Davies, G.L.
No.1 Cdn A.S.C. Hldg Unit

Army Form A.3.

Correspondence is to be PINNED here.

PROCEEDINGS REVIEWED.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 13th day of September, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*[redacted]

*(1. [redacted]

*(2. [redacted]

*(3. [redacted]

[redacted]

President.

Rank.	Name.	Regiment.
Major	E. Carson	No.1 Cdn Gen Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	A.S. Whitacre	No.1 Cdn M.G. Hldg Unit
Lieutenant	M.J. Gray	No.1 Cdn Gen Hldg Unit
Lieutenant	R.S.J. Sealy	No.1 Cdn M.G. Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [redacted] Brigadier

Commanding Cdn Base Units, Cdn Army,
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-91911 PTE. DAVIES, G.L. No.1 Cdn. A.C.C. Hldg Unit.	First Charge A.A. sec 15(1) See charge sheet attached.	GUILTY	GUILTY TO UNDERGO DETENTION FOR A PERIOD OF NINE MONTHS.	Confirmed [illegible] Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [illegible] Brigadier (Signed) [illegible] Major
Commanding Cdn Base Units, Cdn Army. President.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of September, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter) Court Stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 16th day of September 1941.

[illegible] Major
President of the Court Martial

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1939.

Signed this day of 19

President of the Court Martial

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

Signed this 26th day of Sept 1941.

[illegible] Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of Dvgn Pte Davies, G.L. 1 Cdn A.C. Hold. Unit.

(*a*) (Dated) 30 Sep 41 (Signed) [illegible]
OFFICER I/C RECORDS
1 P.C.A.S.C. HOLDING UNITS.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, D-91911 Pte. Davies, George Lloyd of No. 1 R.C.A.S.C. Holding Unit, Canadian Army, (Overseas.) is charged with, when on Active Service,

SEC. 15 (1) A.A.

ABSENTING HIMSELF WITHOUT LEAVE

in that he, at New Martinique Barracks, Bordon, Hants, absented himself without leave from 2230 hrs 30-6-41 until 1225 hrs 2-9-41 when he voluntarily surrendered himself to the guard room at Blenheim Barracks, Farnborough, Hants.

(J.M. Pocock) Lt. Col.
Commanding,
No. 1 R.C.A.S.C. Holding Unit,
Canadian Army, (Overseas.)

Blenheim Barracks,
Farnborough, Hants.
10 Sept 41

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

This 13th day of Sept 41.

President

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT ALDERSHOT ON THE 16th DAY OF SEPT. 41.

TRIAL OF:- No. D-91991, Pte. Davies, J.L., No. 1 R.C.A.S.C. Hldg. Unit.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lieut. W.D. Careless (Unit) No. 1 RCASC H.U.

Defending Officer:- (Name) 2/Lt. P. McWhirter (Unit) "

At 1000 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1.- no, sir.

The President, members ~~and judge advocate (if any)~~ are duly sworn.

The officers under instruction are duly sworn.

Q2. ~~Do you object to~~

A2.- ~~acting as shorthand writer?~~

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- No, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Lieut. W.D. Careless (sworn) produces A.F.B. 296 and M.F.M. 6.

Defending Officer -- Up until Davies committed the civil offence the military offences are really of a minor character. He feels his position keenly and knows that his actions since that time have been hard on his mother. He is sole support of his mother. By reason of his being confined in a civil jail his leave was put back three months. He just couldn't take it. He has now committed himself to further responsibilities which will make him settle down. He is category "A" and a good man and wants to be a good soldier. These added responsibilities he wants to assume will, I think, steady him down and make him think longer before taking any action in the future.

The Court is closed for the consideration of the sentence.

[signature] Major
President

SUMMARY OF EVIDENCE

SUMMARY OF EVIDENCE in the case of D-91911 Private Davies G. a soldier of No.1 R.C.A.S.C. Holding Unit at Blenheim Barracks, Farnborough Hants.
The Commanding Officer Lt.Col. J.M. Pocock of No.1 R.C.A.S.C. Holding Unit Blenheim Barracks Farnborough, Hants directs that the evidence shall be taken down on oath.

1st WITNESS

C-30190 Cpl. Corr L.F. having been duly sworn states.

I am C-30190 Cpl. Corr L.F. of No.4 Training Coy., No.1 R.C.A.S.C. Holding Unit at Blenheim Barracks, Farnborough, Hants. I was Company Orderly Corporal on the 30 June 41. I called the roll at 2230 hours. D-91911 Pte Davies G did not answer his name. I marked him absent. He did not answer his name on any subsequent tattoo. That is all I know about this case.

Accused declined to cross-examine witness.

.....L.F. Corr.....Cpl.
C-30190 Cpl. Corr L.F.

2nd WITNESS

U-1737 Private Appleton D.M. having been duly sworn states.

I am U-1737 Pte. Appleton D.M. orderly room clerk of No.4 Coy., No.1 R.C.A.S.C. Holding Unit, Blenheim Barracks, Farnborough, Hants.
At approximately 1225 hours 2 Sept. 1941., Pte. Davis G. D-91911 reported to me and was told to report to the Regimental Police which he did.

Accused declined to cross-examine witness.

..D.M. Appleton..Pte.
U-1737 Pte. Appleton D.M.

Eb

Date. 18/9/41.....

This is to certify that Regt. No D91991 ..Ex. Pte. Name. DAVIES ... C.L..

is ...fit.....to undergo Court-Martial.

Signed [illegible] R.C.A.M.C.

COPY

No D91991 Name DAVIES George Lloyd Sqn., Battery or Company 2 Div Corps RCASC Date of enlistment 8 Mar 40 G.C. Badges Service or Proficiency M.1 MTVRH. RCASC CAST

Date of last entry in Company Conduct Sheet | Date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon Camp	4-27-40	Pte.		Absent without Leave from 2359 hrs Apr 27 to 0030 hrs Apr 28 AA Sec 15 (1)	Lieut. T. Hobbs. CSM St George	Not Guilty -Dismissed	1-5-40	Lieut. SA German. -Adj.	
Bordon Camp	7-6-40	Pte.		Did disobey in such a manner as to show wilful defiance of an order given by his Superior Officer. AA 9 (1)	Cpl. Grant Sgt. Wishart	Dismissal with Reprimand	7-6-40	Major G.C. McArthur	
Bordon Camp	4-8-40	Pte.		Absent without Leave from 1000 hrs 4-8-40 till 0130 hrs 5-8-40 (Time AWL 13 hrs & 30 mins. AA 15 (1)	Sgt. Steele	One days pay forfeiture Sevens days detention	5-8-40	Major H.P. Bonnick. O.C.	
Bordon		Pte.		Civil Offence		Awarded 3 Months Hard Labour	17-2-41	Civil Judge	

Certified true Copy

[illegible] RECORDS

[illegible] HOLDING UNIT

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of Sept, 1941

G. R. MacFarlane
OFFICER I/C RECORDS
I R.C.A.S.C. HOLDING UNIT.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D 91911 Pte. Davies, of the No. I RCASC Holding Unit C.A.O. G.L.

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be entered to the proceedings.

†See Para. 664, K.R. 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For A.W.L. 15 (1)	times	2 times.
For Wilful Defiance 9 (1)	times	1 times.
For Civil Offence	1 times	1 times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~ ARM

or,

~~There are no entries in the Conduct sheets of the accused.~~ ARM

2. ~~The accused has not been previously convicted.~~ ARM.

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~ ARM
~~beginning on the~~ ARM ~~day of~~ ARM

4. The accused has been in confinement, awaiting trial on the present charges

for 0 days in Civil Custody,

and 16 days in Military Custody.

Total 16 days.

Of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ ARM attestation paper is 25

6. The date of his ~~[illegible]~~ ARM. attestation specified in his ~~[illegible]~~ ARM attestation paper is 8 March 40.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of years' service.

9. The accused is entitled to reckon years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

ARM

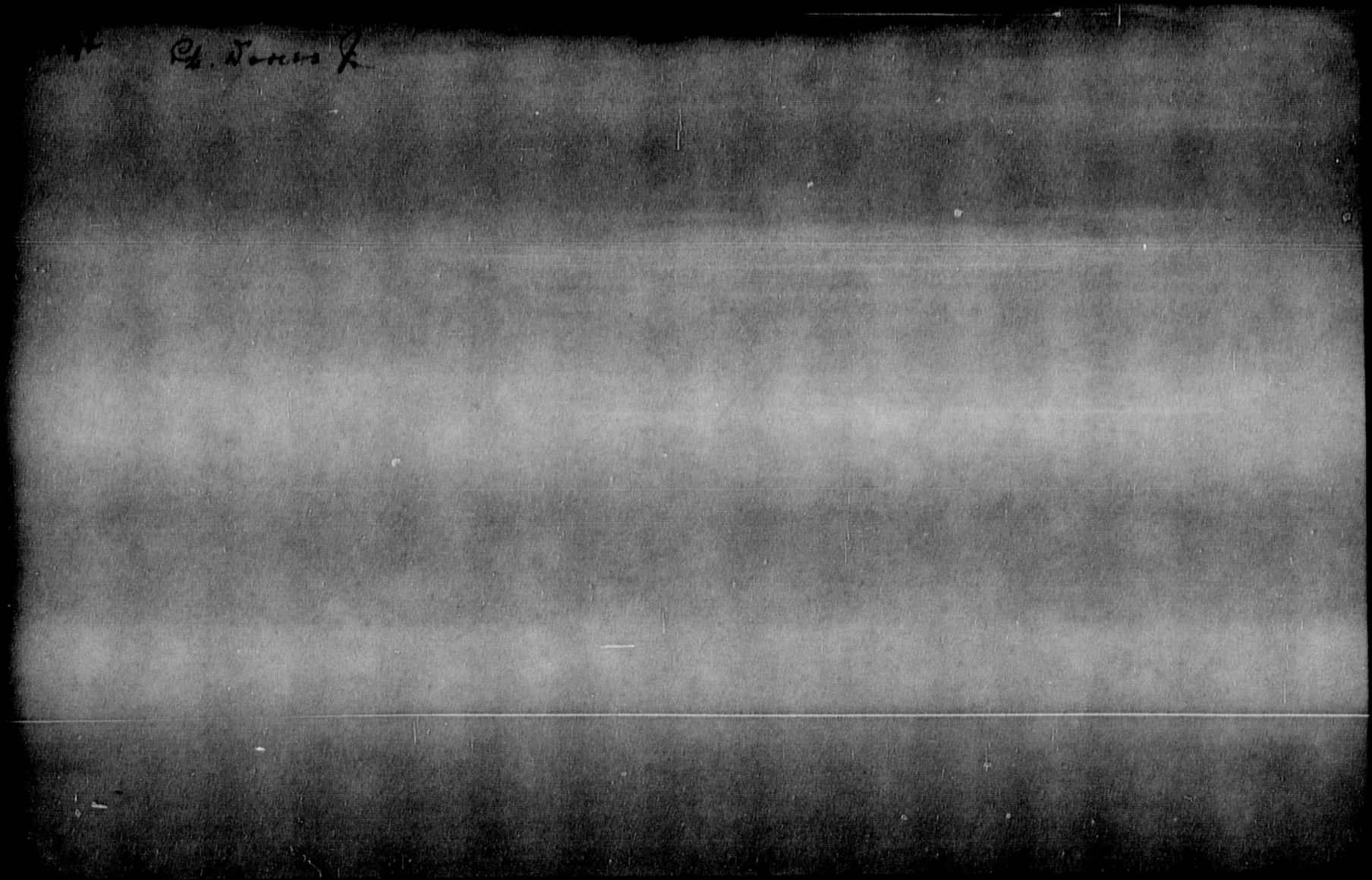
(*Continued overleaf.*)

COUNTER NUMBER 539954

HOUR 14 30

OPERATOR'S INITIALS GM

RELIEVING OPERATOR RL



Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this EIGHTEENTH day of MAY, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of 2nd CANADIAN DIVISION, CANADIAN ARMY (ACTIVE) on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *and that it is not practicable to delay the trial for reference to a superior qualified officer.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

*~~it is impracticable to appoint~~

*~~(1) Three Officers to form the Court;~~

*~~(2) A Field Officer as President;~~

*~~(3) Three Officers having more than one year's service;~~

~~for the following reasons, namely:—~~

President.

Rank.	Name.	Regiment.
Major	R.J. Dufresne	2 Cdn Div Ret Coy

Members.

Rank.	Name.	Regiment.
Major	F.L. Debney	11 Cdn Fd Coy
Capt	H.A. Proctor	18 Cdn Fd Amb
Capt	J.D. Rutherford	Tor.Scot.R.(MG)

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (V.W.Odlum), Major-General
Commanding 2 Cdn Div.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E14212, Private John Davies, 2 Cdn Div. Amn. Coy., R.C.A.S.C., a soldier of the Canadian Army, Active	FIRST CHARGE A.A.Sec. 15(1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE, in that he at Tournay Barracks, Aldershot, Hants., absented himself without leave from 29 Mar 41 at 1800 hours, until 1500 hours 19 Apr 41. (Total A.W.L. 20 days and 21 hours)	Guilty	Guilty	Confirmed [illegible]

Sentenced to 63 Days Detention.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):

(Signed) [signature] (V.W.Odlum), Major General. (Signed) R.J. Dufresne Maj.
Commanding 2nd Canadian Division Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

19

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 24th day of May 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The [illegible] instruction~~) Shorthand writer
were duly sworn.

* Omit if not applicable.

Signed this 24th day of May 1941.

R.J. Dufresne Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

* See footnote (b) on page 762 M.M.L. 1929.

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 28 day of May 1941.

[signature] Major General and 2nd Cdn Div
Confirming Officer.

Promulgated and extracts taken in the case of E.14212 Pte Davies John

(a) (Dated) ~~[illegible]~~ 30-5-41 (Signed) [signature] Maj

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Tournay Barracks,
Aldershot, Hants.
MAY, 24th., 1 9 4 1.

MEDICAL OFFICER'S CERTIFICATE

This to certify that No: E-14212 Rte. DAVIES, John of 2 Cdn. Div. Amn. Coy. RCASC-C.A.(O/s.), is fit to undergo trial by Court Martial.

George S. Morgan, Major
Medical Officer
2 Cdn. Div. R.C.A.S.C. - Cdn. Army
(Overseas)

5

CHARGE SHEET

The accused No E-14212 Pte Davies John, 2nd Cdn Div Amn Coy RCASC(CAOS) a slodier of the Canadian Army Overseas, is charge with:

Absenting himself without leave.

First Charge
A.A. Sec 15 (1)

In that, he, at Tournay Barracks, Aldershot, Hants, England, absented himself without leave from March 29th 1941 at 1800 hrs until April 19th 1941 at 1500 hrs. (Total A.W.L. 20 days and 21 hours)

(P.M. Savard) Major
O.C. 2nd Cdn Div Amn Coy RCASC
(CAOS)

Tournai Barracks,
Aldershot Hants, England
April 26th 1941.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT TOURNAY BARRACKS, ALDERSHOT, HANTS, ON 24 MAY 41

TRIAL OF NO. M14212, Pte. John Davies, 2 Cdn Div. Amn. Coy.,

PROSECUTOR: Lieut. E. A. Dowling, 2 Cdn Div. Amn. Coy., RCASC.

DEFENDING OFFICER: Capt. J. Wallis, 2 Cdn Div., R.C.A.S.C.

SHORTHAND REPORTER: D24030, Sgt. J. M. Spence, H.Q. 2 Cdn Div.

----0000----

1. The Order Convening theCourt is read to the accused.

2. The accused is asked the following questions:

Q 1 Do you object to being tried by me as President, or by any of the Officers whose names you have heard read over?
A 1 No, sir.
Q 2 Do you object to having Sgt. Spence take down the evidence in shorthand?
A 2 No,sir.

3. The President,Members of the Court and shorthand reporter are duly sworn.

4. (a) The accused answers to his name and number and is duly arraigned on the charge:
(b) The accused pleads guilty.

5. Rule of Procedure 35(B) is complied with.

6. The reading of the summary of evidence is waived by consent of the Prosecutor and Defending Officer.

7. THE COURT IS CLOSED TO CONSIDER FINDING.

8. THE COURT IS RE-OPENED AND THE ACCUSED AGAIN BROUGHT BEFORE THE COURT.

9. THE PROSECUTOR IS SWORN, and files A.F.B296 and M.F.M.C, in connection with the accused.

10. THE DEFENCE DECLINES TO CROSS-EXAMINE THE WITNESS.

THE DEFENDING OFFICER: I would ask the Court, in awarding punishment to the accused, to bear in mind the following facts: Firstly that the accused has now been confined for some 35 days awaiting hearing by this Court. He has service of 18 months and though on his conduct sheet there are a number of entries they are all arising from the same offence; otherwise the accused has a clear conduct sheet; also the fact that the accused has pleaded guilty to the charge and admits that he has broken discipline in that respect and is quite willing to take whatever punishment the Court may think just.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE.

I HEREBY CERTIFY THAT THE foregoing page of typewritten matter is a true and correct transcript of shorthand notes taken by me at the time and place first above written.

J M Spence Sgt.
D24030, J.M.Spence, (Sworn)

SUMMARY OF EVIDENCE

IN THE CASE OF

E-14212 Pte. DAVIES, John, 2nd Cdn. Div. Amm. Coy., R.C.A.S.C. - C.A.(O/S)

The Commanding Officer directed that the evidence be taken on oath.

1st. Witness for the prosecution.

E-14122 L/Cpl. FRADETTE, P., 2 Cdn. Div. Amm. Coy., R.C.A.S.C. - C.A.(O/S) after being duly sworn states:-

On the evening of March 29th., 1941, I was Duty Corporal, at tattoo roll call Pte. DAVIES, J., E-14212 was absent. I reported his absence to the Section Orderly Room.

P. Fradette L/Cpl.

(E-14122 Fradette, P.

The accused declined to cross examine the witness.

2nd. Witness for the prosecution.

E-14315 Sgt. MATTHEWS, R., 2nd Cdn. Div. Amm. Coy., R.C.A.S.C. - C.A.(O/S) after being duly sworn states:-

On Sunday March the 30th., 1941, I was on duty as Orderly Room Sergeant in "B" Section Orderly Room. L/Cpl. FRADETTE, P. reported me that E-14212 Pte. DAVIES, J., was missing from his quarters at tattoo roll call, at 2230 hours.

R. Matthews Sgt.

(E-14315 Matthews, R.

The accused declined to cross examine the witness.

3rd. Witness for the prosecution.

E-14168 L/Cpl. KIROUAC H., 2 Cdn. Div. Amm. Coy., R.C.A.S.C. - C.A.(O/S) after being duly sworn states:-

On March 29th., 1941, I was Co rporal in charge of the vehicle guard. At 1800 hrs., E-14212 Pte. DAVIES, John did not report for guard duty.

cpl H. Kirouac L/Cpl.

(E-14168 Kirouac, H.

The accused declined to cross examine the witness.

8th. Witness for the prosecution.

E-86552 Cpl. CUNNINGHAM, G., 2nd Cdn. Div. Sup. Colmn., R.C.A.S.C. - C.A.(O/S) after being duly sworn states:-

On April 19th., 1941, I was on duty on the Formation Guard as Corporal of the Guard. [redacted] Private DAVIES, John, E-14212, was brought in the Guard Room by Corporal LAPORCE, L., who had placed him under close arrest. The time was 1500 hrs.

G. Cunningham Cpl.

(G. Cunningham)

The accused declined to cross examine the witness.

SUMMARY OF EVIDENCE

IN THE CASE OF

E-14212 Pte. DAVIES, John, 2nd Cdn. Div. Amm. Coy., R.C.A.S.C. - C.A.(O/S)

The accused reserves his defence.

5th. Witness for the prosecution.

E-14066 Cpl. LAFORCE, L.P., 2nd Cdn. Div. Amm. Coy., R.C.A.S.C. - C.A.(O/S) after being duly sworn states:-

On April the 19th., 1941, I was Section Duty N.C.O. At around 1500 hrs., I found Pte. DAVIES, John in his quarters. Knowing that he was absent without leave since March 29th., 1941, I immediately placed him under close arrest and brought him to the Guard Room. Cpl. C. CUNNINGHAM took him in his charge.

L.P. Laforce Cpl.
(L.P. Laforce)

The accused declined to cross examine the witness.

The accused reserves his defence.

Taken down by me in the presence of the accused, R.P. 4 (c) (b) (d) and (e) having been complied with.

A Mercier Lt
(A. Mercier) Lieut.
2 Cdn. Div. Amm. Coy.,
R.C.A.S.C. - C.A.(O/S)

Tournay Barracks,
Aldershot, Hants.
April 28th., 1941.

R.J. Williams Maj
President

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Aldershot Hants.
April 29th 1941.

I, Pte DAVIES J. E-14212 would like to have as my defending Officer Capt. John Wallis of the H.Q. 2nd Cdn Div. RCASC

John Davies
E-14212 Pte Davies J.

Exhibit B.

M.F.M. 6
A.F.B. 122

No. E-14212 Name Davies John Sqn., Battery, or Company 2 Cdn Div Amn Coy RCASC(CA/OS) Corps Date of enlistment No 10 1939 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Number of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On 10 May 1940 this soldier completed six months service, there was no previous entries on previous sheet which was destroyed on 10th May 1940 in accordance with R.O. 71 (CA.S.F.)									
Aldershot Hants.	16/11-40	Pte		A.A.Sec 40 W.O.A.S. conduct to the prejudice of good order & military Disciplie, In that he at 1000 hrs on 16 Nov 40 acted in an improper manner while on picquet duty in the vicine of the garage A.A.Sec 11 W.O.A.S. neglecting to obey orders concerning the use of M.T.vehicles, In that he at 1000 hrs Nov 16/40 took motor cycle CC 74644 and went for a drive on Parade Ground without proper auth.,	Sgt Turgeon	14 days C.B. and Forfeits 14 days pay & Allowance under XXXXXXXXXXXX A.A. 46 (2) (d)	23-11-40	Lt-Col McQueen	

Place	Date of offence	Rank	Cause of breaking arrest	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot Hants	16/11/40	Pte		A.A.Sec 15 W.O.A.S. Absenting Himself without leave. In that he absented himself from Picquet Room when off beat from 1330 hrs until 1700 hrs 16/11/40 A.A.Sec 15. W.O.A.S. A.W.L.In that he, when under open arrest was absent from his quarters from 0945 hrs until 2345 hrs 17/11/40 14 hrs Absen.					

Certified True Copy

(P.H.Savard)Major

O.C. 2 Cdn Div Amn Coy RCASC(CAOS)

Exhibit "A"

M.F.B. 355 17
H.Q. 1772-39-[illegible]
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E-14212	Pte	DAVIES JOHN	2nd Cdn Div Amn Coy RCASC (CAOS)

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ ~~Conduct sheets~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months			Since enlistment		
For	A.A. Section	40	1 times	A.A. Section	40	1 times
For	A.A. "	11	1 times	A.A. "	11	1 times
For	A.A. "	15	1 times	A.A. "	15	1 times
For			times			times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted NIL

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. NIL

or,

The accused at the present time is under sentence for NIL beginning on the NIL day of NIL

4. The accused has been in confinement awaiting trial on the present charges for None days in civil custody, and ~~NIL~~ Thirty five days in military custody, making a total of ~~NIL~~ Thirty five days in custody, of which NONE days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 22 years and 6 months ~~and 26 days~~

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 10th November 1939.

7. The service which the accused is allowed to reckon towards discharge is ~~[illegible]~~ 19 months and ~~[illegible]~~ 14 ~~[illegible]~~ days.

8. The accused is entitled to reckon NIL service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. NIL

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of NIL

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11. (In the case of an officer.) The accused holds in the ~~Royal Canadian Air Force~~ Permanent Force unit the rank of NIL dated NIL, and in his regiment (or corps), the rank of NIL dated NIL.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

NIL Date of promotion.

In the rank of NIL years.

In the rank of NIL years.

In the rank of NIL years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number E-14212 Rank Pte

Name DAVIES JOHN of 2nd Cnd Div Amn Coy RCASC Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24th day of May 1941

[illegible] Lieut & Cdr Div Amn Coy RCASC/CA/[illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

RECORDED AT CMHQ IN AB 160 TTT-181

1.140

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFAB) C.F.P. & S. 6/1098 (2564)

Convened by Order of Brig. E.C. Plow Comd CCRA 1 Can Corps dated 22 June 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, (09). As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt. A/rank or A/apptmt. see AA 182, 183, fns. KR Can 108, 328, 330.)

Number.	(a) Permt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E 14212	Pte	John	DAVIES	1 Can Corps Can Coy RCASC

PROCEEDINGS REVIEWED

REVIEWING OFFICER AND BRANCH CMHQ

1 JUL 1944

Capt.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 24 June 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout it on p 4. Citations do NOT include all relevant from ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 131.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused. Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 109. 2. If no objection, waiting member retires. RP 48(B). If objection, see procedure AA 57, RP 56, 71, 10, MML p 747.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	T.S. Wallace	HQ 1 Can Corps
Member	Capt.	W.J. Stevenson	Lys "
Member	Lieut.	M.P. Welch	Lys "
Judge-Advocate	Major	G.M. Mynnison	HQ 1 Can Corps
Prosecutor	Lieut	P.J. Power	1 Can Corps Can Coy
Defending Offr	Lieut	T.F.F. Fowler	Lanc Scots

~~Questions by President: Is the Prosecutor a lawyer? Ans. Is the Defending Offr a lawyer? Ans.~~

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pris a lawyer and Def offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused before arraignment tenders(s) (has not tendered) plea(s) N/A

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 109), or as to the jurisdiction of the Court (RP 38, 39(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by some of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to that effect. Insert in all rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, discuss and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E 14212 Pte Davies J. 1 Can Corps Can Coy

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.).
1st	A.A. Sec 15(1)	Not Guilty	Guilty	Except absence from 1330 hrs to 1530 hrs 13 June 44
2nd	A.A. Sec 10(5)	Not Guilty	Guilty	
3rd	A.A. Sec 40	Not Guilty	Not Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~(1) pt pursuant under sentence for beginning on (date)~~ (*)

(*. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer Field Punishment for a term of 40 days, and to forfeit 40 days Pay.

(Sgd) Guillonnon Maj. 24 June 44 (Sgd) Jan Wallace Maj

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 56, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Can 562-577. Accused cannot be tried again on charges on which finding or sentence has been quashed by Court: AA 56(2), RP 44(B)(2). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Can 578. Duties and powers of reviewing officer: AA 57, 57A, RP 52A, 56. The Confirming Offr must sign here personally. AA 172 (b i.).

My decision on the finding(s) and sentence set forth in Part I is

I confirm the finding and sentence and order the same to be carried into execution.

I direct that the sentence be duly executed, but that the execution thereof be suspended until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) J.H.C. Stone, Lt Gen

Date 26 Jun 44 Commanding CCRA 1 Can Corps.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 578, 579.)

Accused.	Date.	Signature of Offr.
E 14212 Pte Davies J.	28 Jun 44	Jean W. Kent Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial: (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement. Court (1): The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with para D1 to D8 inclusive in Record Form D on p 3 and marking on appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pte Law Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No. (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~an~~) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. ~~The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ No
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Neither. Do you intend to call witnesses on your behalf? Ans Yes. Are they witnesses as to character only? Ans No, to four
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Yes - under oath
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "A" and Ex "B" respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes. (2)
(1. RP 37(C), 46(D). 2. Address (if any, recorded per Notes. Court should permit accused or his witnesses to prove as much anything bona or previously stated which could affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 37(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas AO 309, 3323, MML p 60, 753-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

1 CANADIAN CORPS CAR COY RCASC

CHARGE SHEET

The accused, E14212 Pte. Davies J., 1 Cdn Corps Car Coy RCASC CMF, a soldier of the Canadian Army CMF, is charged with:

First Charge: Sec 15(1) AA — When on active service absenting himself without leave in that he

In the Field on 13 Jun 44 absented himself without leave from 1000 hrs on said 13 Jun 44 until apprehended by L/Cpl. Dawson at 1530 hrs on said 13 Jun 44 (absent five hours thirty minutes).

Second Charge: Sec 16(3) AA — When on active service resisting an escort whose duty it was to have in charge in that he

In the Field on 13 Jun 44 while under escort of Gnr. H. G. Jones, 1 Cdn Corps Car Coy RCASC, resisting the escort by attempting to forcibly take the escort's rifle from him.

Third Charge: Sec 40 AA — When on active service conduct to the prejudice of good order and military discipline in that he

In the Field on 13 Jun 44 was concerned in the improper and unauthorized taking and use of Cdn Mil Vehicle No. M4232732 thereby occasioning damage to said vehicle in the amount of £13-12-0.

(T. W. Kerr) Capt.
Officer Commanding,
1 Cdn Corps Car Coy RCASC.

In the Field
14 Jun 44.

To be tried by Field General Court-Martial

(E.C.Plow) Brigadier
C.C.R.A. 1 Cdn Corps

In the Field,
22 JUN 44

C.F.A.66 (In lieu of A.F.A.33 and P.A.M./1097 (20625))

FIELD GENERAL COURT-MARTIAL

(Whether the accused is to be tried in under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23.
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets RP 87(B).
As to two or more accused charged jointly see RP 16, 109.
As to separate trial on charges in the same charge sheet see RP 108. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-14212	Pte		John	DAVIES	1 Cdn Corps Car Coy, R.C.A.S.C.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~s~~ attached and on (*date*) 22 JUN 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable for delay the trial for reference to a superior qualified offr ;~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(*Must be named. RP 106.*)	(Unit.)
Major	I.S. Wallace	HQ 1 Cdn Corps

MEMBERS.

A Captain to be detailed by OC 1 Cdn Corps Sigs, RCCS

(Rank.)	(*Named or detailed. RP 105.*)	(Unit.)
A Lieutenant to be detailed	by OC 1 Cdn Corps Sigs, RCCS	

WAITING MEMBER.

(Rank.)	(*Named or detailed, if any. RP 106.*)	(Unit.)
A Lieutenant to be detailed	by OC 1 Cdn Corps Def Coy (Lorne Scots)	

JUDGE-ADVOCATE.

(Rank.)	(*Must be named, if any. RP 106.*)	(Unit.)
Major	C.M. Morrison	DJA 1 Cdn Corps

On Active Service in the Fd

In Italy (Country)

Date 22 JUN 44

(E.C.Plow) (*Signed personally. RP 102 (b).*)

Brigadier (Rank.)

A/Comd. 1 Cdn Corps Artillery (Convening Officer.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (RP 95(C)), any objections (RP 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the paras in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (RP 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (RP 60(C), 87(C), 92(C) (D).)
(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)), or evidence by accused, as to facts or his character or both. (See RP 41 fn 2, 46 fn 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (Cor RP 46 fn 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (RP 86(B)), or to prove previous convictions where accused has called witnesses as to character. (RP 86(C).)
(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (See RP 40 fns 8-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused charged jointly see RP 61.)
(vi) Closing address by Prosecutor. (See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).)
(vii) Summing up by JA, if any. (RP 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (KR Can 567.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (As to admitting in evidence a certified copy in lieu of original see KR Can 569. As to certified copies of regimental books see AA 142 (1) (g) (ii).)
(vi) Summary of Evidence, if not already an exhibit.
(vii) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (See RP 95(D).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (AA 52(9), RP 115(C), MML p 759.)
3. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

I CERTIFY that No. H42818 Pte. Davies, J. Regiment
1 Cdn Corps Car Coy R.C.A.S.C., is fit to undergo trial by
Court-Martial.

Signature of Medical Officer H. Goldberg. Capt.

24 Jun 44

MEDICAL OFFICER'S CERTIFICATE

I CERTIFY that No. H14814 Pte. DAVIES, J. Regiment

1 Can Corps Car Coy., R.C.A.S.C., is fit to undergo

trial by Court-Martial.

Signature of Medical Officer H. Goldberg Capt.

23 Jun 43

Plea in Mitigation in the Case of E14212 Pte Davies, J. Gunn

The Court has decided to find the accused guilty, and I cannot now question that decision.

Davies has a static vehicle. Daily maintenance is his sole duty in camp. This he completes by 0930 hrs at the latest. Since coming to St Angelo he has not be ordered to any other tasks. To relieve the monotony he has asked to take out the water vehicle. He has not been checked for missing parades. The Kiwis First Corps is here for rest and relaxation. He hasn't been told to stay around camp. He had every reason to believe he had freedom when his duties were completed to come and go. Indeed he was told by the Serj. it was unnecessary to check out when washing his vehicle for it was static. Why should he then have to check out himself? He was certainly not absent for five hours and forty minutes.

The drunkenness of Davies has been proved beyond a doubt. It is submitted he was not

responsible for his actions [illegible] ~~tangling with the escort~~. I request the Court to enter a finding of Drunk.

Cpl. Church has declared Davies has performed efficiently all the duties given to him, and witnesses that he has been involved in no accident.

I can attest as to Davies willingness to work and his lack of duties while his caravan is stopped.

When my guard was at the Prisoner of War cage between Mignano and Cepano, Davies came to our camp. I asked him what he was doing there. He replied that he had volunteered to drive some one else's truck and take prisoners back to the Army Cage: his vehicle was packed and he had nothing else to do.

I ask for the utmost leniency on the part of the Court in determining punishment for Pte Davies.

[illegible] Lieut

Evans

First Witness for Pros.

3386717 S/Cpl. Dawson, C.R. having been duly sworn states: I am NCO i/c discipline in 1 Coln Corps Coy. I saw the accused at 14 30 (approx) on 13 June in Alipi. The accused had not been present on 1330 hrs parade. I ~~asked~~ told him to return to Camp with me, which he did, arriving at 1545. I handed him over to S/Sgt Monroe, who placed him on charge and under open arrest. He was placed in close arrest later on & put in the det: lany. Shortly afterwards I heard a commotion going on & went over to the lany. The accused was out of the lany & going towards Gnr. Jones, one of the guards, who told him to get back or he would shoot. The accused said "You haven't the guts to shoot". He then grabbed the rifle (& turned) pulled it towards his own stomach, saying "Pull the trigger. If you don't I will". The accused then struggled to get possession of the rifle but failed to do so, & then climbed back into the truck.

X-D The accused was under the influence of liquor at the time. He was not fit to drive a vehicle.

RP 93(B) complied with.

Gowan 2 Gwm.

Second Witness for Prosn.

L.7329 S/t Morrison R.A. having been duly sworn states: I am pl S/t of A/pl 1 Cdn Corps Car Coy. On 13 Jun at approx. ~~1330~~ 1000 hrs. it was reported to me that the accused was absent from duty

XXD: Pte Davies drives the 60-cwt Mess truck. His daily duties are mtce. This takes 1½ hrs to 2½ hrs. Some tasks could be done in an hour. To my knowledge, accused had been given one other particular job to do. Other fatigue jobs are to be done, laid on by the duty NCO or myself. The accused was under the influence of liquor when brought in.

R P 83(B) complied with

Third Witness for Prosn.

B6941 Gn. Jones H.G. 1CCCC L. C. S. states:

I am a dinner 1 C.C.C.C. I was placed in charge (as a guard) of the accused at about 1530 hrs on 13 Jun 44. A squabble arose in the detn vehicle & the prisoners. The accused away then got out of the vehicle. I ordered them back in, & as the accused was passing me on his way to the truck, he grabbed my rifle, trying to take it away from me. I got the rifle away from him & he then got into the truck.

Emm

XXD: The accused appeared ~~[illegible]~~ under the influence of liquor when in the det' vehicle. I don't remember Cpl. Dawson being around.
RP 83 (B) complied with

1st Witness for Defence L 8867 Pte Boulanger, H.P.
having been duly sworn states:
about 0830 I am a member of "A Pl 1 C.C.C.
On 11 June I heard Sgt Morrison tell the accused, on being asked ~~if the [illegible]~~ by the accused if he could wash his vehicle, that as the vehicle was static there was no need to check out. He washed his vehicle then.
RP 83 (B) complied with
no cross-exam

2nd Witness for Defence
B 146697 Pte Tarbutt, H.J. b. b. d. & Statis
I am a member of 1 C.C. Def. Cy. I was a guard for the prisoners at 1545 13 June. The R.C.A.S.C. was a temporary guard until we arrived. ~~[illegible]~~ Sgt Morrison told us he had 3 drunks to be put on the lorry & to look after them. There was a crowd of men around the vehicle & some of them were heckling the prisoners.
no cross-exam
RP 83 (B) complied with

The Judge Advocate summed up Gunn briefly.

The accused, h b d s states:

I drive a static vehicle of B Mess. I have volunteered to drive other vehicles, but have never been required to do so. Mtce usually takes me ½ an hour per day. My vehicle does not move often & has not been taken out by me since 11 June, when I washed it. I did not, accordingly to Sgt Morrison check out when have to have permission to washing my vehicle. I loaf around when not doing mtce. I had missed a good many parades. I had only been checked once for this, about 2 mos ago. I have had no leave except 3-24 hr passes ~~26~~ since 26 Dec 43.

RP 83(B) complied with

Witness as to Character.

A3917 Cpl. Church, M.H. h. b. d. s. states:

I am Cpl in 1 CCCC. I have known Davies for about 3 Months. He has been in my Sec. for about a month. His vehicle has been kept in good shape. He does jobs given to him well.

RP 83(B) complied with

Gunn

Closing Address by the Defence
in the Case of E 14212 Pte Davies J.

Pte Davies is charged with being
AWL from 1000 hours, 13 June to 1530
hours on that date. The prosecution has
established Davies' absence from the
1330 parades. It has failed to
prove him absent before that time. No
one who endeavoured to find Davies
between Parade hours was produced
in Court. Reliance is placed solely
on Sgt. Morrisson's evidence he was
told Davies could not be found.
This is hearsay evidence, unsatisfactory
and inadmissible.

Indeed, it is not established that
the accused was AWL at all. He
was never ordered to stay around
camp, nor checked for missing parades.
He has a static vehicle and daily
maintenance in the morning, which he
had completed, concludes his duties
for the day. He had never been called
upon to perform other duties.
Unless he engaged in some
division during the day he would be
completely idle. Considering that first
corps is in this camp for rest and
relaxation Davies had every right
to believe he possessed some
freedom during the day to amuse
himself.

I submit Davies was not AWL

at all. Certainly he was not H.M. five hours and thirty minutes.

The Second Charge deals with resisting an escort, something Davies undoubtedly did. But it has been established conclusively that Davies was drunk — thoroughly so. He and a friend had consumed a full [illegible] of liquor, and local wine in quantity.

The Defence has established that a large and noisy crowd were gathered around the detention lorry. The guards and the crowd were baiting Davies, goading on the three drunks in detention, calling them "dirty bastards" and "drunken fools", thoroughly antagonizing them. It was only natural for Davies to respond as he did, drunk and provoked.

Davies was drunk, aggravated, not responsible for his actions when he tussled with the Guard. I contend Davies should not be found guilty of the Second Charge.

Prosecution and Court have chosen, to drop the Third Charge against the accused. I submit he must be found Not Guilty of the charges remaining. [illegible]

EXHIBIT "A"

M.F.B. 355
23M—5-41 (572-3)
H.Q. 1772-89-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E14212	PTE	DAVIES, J.	1 Cdn Cps Car Coy RCASC

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental~~ and Squadron, ~~Battery~~ ~~Conduct sheets~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec.40 AA	-- times	Sec.40 AA	2 times
For	Sec.15(1) AA	-- times	Sec.15(1) AA	7 times
For	Sec.10(4) AA	-- times	Sec.10(4) AA	1 times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

Previous convictions of the accused by a court-martial ~~or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.F.A. 73~~ ~~Air Force Act~~ are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the days.~~

4. The accused has been in confinement awaiting trial on the present charges, ~~for~~ ~~civil custody, and~~ 11 days in military Air Force custody, making a total of 11 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 26 yrs, 8 mos. ~~attestation paper~~

6. The date of his ~~commission~~ attestation specified in his record of service is 10 Nov 39 ~~attestation paper~~

7. The service which the accused is allowed to reckon towards discharge is 4 yrs, 7 mos.

8. The accused is entitled to reckon 4 yr, 7 mos service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~an entitled to be an Air Force~~ military decoration, ~~or an Imperial and Canadian military~~ ~~possession of an entitled to~~. State any ~~Air Force~~ military decoration or reward.

Cdn Volunteer Service Medal and Clasp.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the ~~regimental~~ Air Force rank of N/A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

~~X/X~~ N/A ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial ~~or civil court, of summary awards under Section 17 of the Army Act, and of cases in which trial has been dispensed with of accused~~, Number E14212 Rank Pte

Name DAVIES, John of 1 Cdn Corps Car Coy RCASC Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field 24-5-41	Sec.15(1) A.A.	63 days detention.	21 days.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. [signature] DC 1 Cdn Cps Car Coy RCASC

Signed this 13 ~~10th~~ day of June, 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

EXHIBIT "B"

MFM 6
(AFB 122)
40/P&S/136 (3438)

No E14212 Name DAVIES, J. Sqn. Battery or Company [signature] Corps R.C.A.S.C. Date of enlistment 10-11-39 GC Badges Service or Proficiency Pay N/A.

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine n-a Sheet No 2 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13.4.43	Pte		Sec.15(1) AA AWL from 2400 hrs 13-4-43 to 0230 hrs 14-4-43 T.A. 2 hrs 30 min.	L/Cpl.Fraser	7 days C.B.	14-4-43	R.Buckner Major	
Field	26/5	Pte		Sec.15(1) AA AWL from 2300 hrs 16 May 43 until 2100 hrs 25 May 43. Total time absent 8 days 22 hrs.	Documentary L/Cpl.Marshall	21days F.P.	26.5.43	R.Buckner Major	Forfs 10 dys pay (AWL)forf 21 dys pay (Fd.Pun.)

CERTIFIED TRUE COPY OC 1 Cdn Cps Car Coy RCASC

Gwen H. Lane Capt.

(PTO)

Exhibit "B"

MFM 6
(AFB 132)
40/P&S/136 (3438)

No E14212 Name DAVIES, J. Sqn, Battery or Company [illegible] Corps R.C.A.S.C. Date of enlistment 20-11-39 OC Badges Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine n-a Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In accordance with Overseas R.O. 2084 previous sheet was destroyed on completion of six months service from date of attestation. Sheet destroyed 10.5.40; last entry nil; cases of drunkenness nil; last ~~xx~~ instance on N.A.									
Field	16.11.40	Pte		(1) Sec.40 A.A. acted in a careless and improper manner while on piquet. (2) Sec.15(1) AA AWL from 1330 hrs to 1700 hrs 16.11.40	Sgt.Turge	on 14 dys C.B. 6days pay FR&I 149(2)	23.11.40		
Field	29.4.41	Pte		Sec.15(1) AA AWL from 2230 hrs 29-3-41 to 1500 hrs 19.4.41 T.A. 20 days 16½ hrs.	Sgt.Mathews Cpl.Murphy	63 days detn	24.5.41	F.G.C.M.	Forf.118 dys pay FR&I 149 (1)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15.7.41	Pte		Sec.15(1)AA AWL from 0600 hrs 15.7.41 to 1700 hrs 20.7.41 T.A. 5 days 11 hrs.		14 days C.B.			Forfs.6 days pay FR&I 142(1)(a)
Field	14.8.42	Pte		Sec.40 A.A. dirty rifle	C11447 Sgt. Morin, E.L.	4 days C.B.	15.8.42	W.R. Mead Lieut	
Field	18.8.42	Pte	(1)	Sec.15(1) AA AWL from 1330 hrs 15.8.42 to 2220 hrs 18.8.42 T.A. 3 days 8 hrs 50 mins.	Sgt.Clow L/Cpl.Hooper	7 days C.B. 7 days pay FR&I 149(2)	19.8.42	J.Fitz-Randolph Major.	Forfs 4 days pay FR&I 149 (1)(a)
			(2)	Sec.10(4) AA Breaking out of barracks when a defaulter.	S83694 Sgt. Hewitt				
Field	13.12.42	Pte		Sec.15(1) AA AWL from 0830 hrs to 1015 hrs 13-12-42.	L/SGT HAMB-LING, W.J.	5 days C.B.	14-12-42	W.R. Mead Lieut	

SUMMARY OF EVIDENCE

in the case of

14212 Pte. Davies J on the strength of 1 Cdn Corps Car Coy RCASC CMF, a soldier in the Canadian Army CMF.

CHARGES

FIRST CHARGE: AA Sec 15(1) When on active service, absenting himself without leave in that he

In the Field on 13 Jun 44 absented himself wihtout leave from 1000 hrs on said 13 Jun 44 until apprehended by L/Cpl. C. R. Dawson at 1530 hrs on said 13 Jun 44 (absent five hours and thirty minutes).

SECOND CHARGE: AA Sec 10(3) When on active service resisting an escort whose duty it was to have in charge in that he

In the Field on 13 Jun 44 while under escort of Gnr. H. G. Jones 1 Cdn Cps C r Coy RCASC resisting the escort by attempting to forcibly take the escort's rifle from him.

THIRD CHARGE: AA Sec 40 When on active service conduct to the perjudice of good order and military discipline in that he

In the Field on 13 Jun 44 was concerned in the improper and ~~authorized~~ unauthorized taking and use of Cdn Mil vehicle No. M4232732 thereby occasioning damage to the same in the amount of £13-12-0.

By order of the Commanding Officer the Summary of Evidence will be taken under oath.

FIRST WITNESS: B86217 L/Cpl. Dawson C. R. on strength 1 Cdn Corps Car Coy RCASC CMF having been duly sworn states:

"I am L/Cpl. C. R. Dawson, NCO i/c despatching office "A" Platoon 1 Cdn Corps Car Coy RCASC. At approximately 1530 hrs 13 Jun 44 I saw Pte. Davies in the town of Alife. I realized that he was absent from his duty so I ordered him to return to the camp with me. He came along and we entered camp at approximately 1545 hrs. After Davies had been confined to the Detention Vehicle he climbed out of the truck along Page and Gayhart. The guard told ~~him~~ them to get back or he would shoot. Davies replied, "I won't and you haven't the guts to shoot." He then grabbed the barrel of the guard's rifle and pointed it at his own stommach and said, "Now, pull the trigger. If you won't I will." Then the guard and Davies started to wrestle with the rifle. The guard gained control of the rifle and Davies climbed back in the vehicle. That is all I know of the case.

Q. Were you sent to pick us up?

A. No.

Q. Were we drunk or simply under the influence?

A. Merely under the influence.

Q. In your mind were we capable of carrying out our duties?

A. Yes, certain duties.

Q. Were we capable of driving a vehicle?

A. Not to my satisfaction.

C. R. Dawson L/Cpl.
B86217 L/CPL. Dawson C. R.

Second Witness: L7329 Sgt. Morrison R. A. on strength 1 Cdn Corps Car Coy RCASC CMF having been duly sworn states:

"I am L7329 Sgt. R. A. Morrison, Platoon Sgt of "A" Platoon 1 Cdn Cps Car Coy RCASC. On 13 Jun 44 at approximately 1000 hrs Pte. Davies was missed from his place of duty. On the 1330 parade roll call was called and Pte. Davies was absent. I detailed Cpl. Anning to make a search of the area which he did and reported to me at 1430 hrs that Pte. Davies could not be located in the area. I reported the absence of Pte. Davies to Lieut. J. R. Watson, my platoon officer. Lieut. Watson warned me to place Pte. Davies under open arrest on his return. At 1545 hrs 13 Jun 44 Pte. Davies returned to the park. He was questioned immediately as to his whereabouts between 1000 and 1545 hrs. He stated that he had been in the company of Pte. C. Page and Pte. C. Gayhart and that they had been washing WD vehicle M4232732. The three soldiers, Davies, Page and Gayhart were then asked where the vehicle was. Gayhart and Page replied that the vehicle had been involved in an accident and vehicle No. M4232732 was at present in Coy Wksp. At this point it became quite obvious that the three men were under the influence of liquor. Lieut. Watson asked Page if he had been drinking to which Page replied, "Certainly we had a drink but after the accident." Mr. Watson ordered me to place the three men under close arrest immediately, which I did. That is all I know of the case."

Q. Was I drubk or simply under the influence of liquor?

A. I am not a medical man and am not qualified to determine the extent of drunkeness or the extent of being under the influence but would say that you had been drinking."

.....
L7329 Sgt. Morrison R. A.

Third Witness: Lieut. J. R. Watson of 1 Cdn Cps Car Coy RCASC CMF having been duly sworn states:

"I am OC "A" Platoon 1 Cdn Cps Car Coy RCASC. At approximately 1000 hrs 13 Jun 44 Sgt. R. A. Morrison reported to me that he was under the impression that Pte. Davies was absent from his duty. I ordered Sgt. Morrison to investigate the absence and he later reported that on the Platoon parade at 1330 hrs that Pte. Davies failed to answer his name. He stated that a thorough search of the camp area had been made. At approximately 1545 hrs 13 Jun 44 Davies returned to the car park in company with two soldiers, namely Gayhart and Page, who were also suspected of being absent. I questioned Davies as to his absence and he replied in a voluble and abusive manner. I realized that he was under the influence of alcoholic drink so ordered Sgt. Morrison to place him in close arrest. Prior to being placed under close arrest Davies stated that he had been in the company of Gayhart and Page during the day. He stated that he had accompanied Pte. Page to aid in washing the vehicle at 0630 hrs. He was unauthorized to make this journey. That is all I know of the case."

Q. Was I capable of properly performing my duties?

.....
Lieut. J. R. Watson

A. Not to my satisfaction as Platoon Commander.

Q. Was I drunk or under the influence?

A. Merely under the influence.

.....
Lieut. J. R. Watson

Fourth Witness: B6941 Gnr. Jones H. G. on strength 1 Cdn Cps Car Coy RCASC CMF having been duly sworn states:

"I am Gnr. H. G. Jones, a driver in 1 Cdn Cps Car Coy RCASC. On 13 Jun 44 between 1500 hrs and 1600 hrs I was detailed as a guard over the Detention Lorry. Having assumed my ~~ix~~ duties for about five minutes an arguement ~~arose~~ between a Cpl. and one of the prisoners. During the arguement the three prisoners got out of the vehicle. Pte. Davies more or less fell out of the vehicle so I figured he was drunk. I told the three prisoners to get back in the vehicle or I would shoot. They started back in the truck and Pte. Davies spun around and grabbed hold of my rifle. We tussled for a moment and I got control of the rifle. I told Davies he was sticking his neck out. Davies apologized and got back in the truck."

Q. Was L/Cpl. Dawson at the scene at the time?

A. I cannot say as I have no recollection of seeing L/Cpl. Dawson there.

H.G. Jones
.....
B6941 Gnr. Jones H. G.

Fifth Witness: HB7666 L/Cpl. Sutton E. on strength 1 Cdn Cps Car Coy RCASC CMF having been duly sworn states:

"I am L/Cpl. E. Sutton, 1 Cdn Cps Car Coy RCASC. At approximately 1200 hrs on 13 Jun 44 on the way back from Petrol Point I went around the town of Alife. On the way round I saw a Car Coy jeep on the side of the road with Ptes Davies, Geyhart and Page beside it. I stopped and asked them if I could assist them. They asked me if I could tow them to camp. I looked at the vehicle and found that the steering was broken. I could not tow the vehicle so I returned to camp and informed Wksp who sent a breakdown to bring in the vehicle. That is all I know of the case.

The accused declines to cross-examine the witness.

E. Sutton
.....
HB7666 L/Cpl. Sutton E.

Sixth Witness: Lieut. J. V. Baker of 1 Cdn Corps Car Coy RCASC CMF having been duly sworn states:

" I am Lieut. J. V. Baker, Wksp Officer 1 Cdn Cps Car Coy RCASC. On 13 Jun 44 vehicle No. M4232732 was towed into Wksp. On 14 Jun 44 I examined the vehicle and found the following damage cost of repair being approximately £13-12-0.

Front end assembly		approx £5-0-0
Transmission		approx 5-0-0
Rt Front fender bent		
Bumper twisted		
Rt front spring bent		
No of hrs for labor	24 @ 3s	3-12-0
Total cost of repair		£13-12-0

That is all I know of the case.

The accused declines to cross-examine the witness.

J. Baker
Lieut. J. V. Baker

The accused having been duly cautioned as in Rules of Procedure 4(E) declines to make a statement or give evidence.

I certify that the foregoing summary of evidence consisting of four pages was taken down by me in the presence and hearing of the accused and that the Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

R. J. Power
Lieut. R. J. Power

LIST OF WITNESSES

Lieut J. R. Watson	1 Cdn Cps Car Coy RCASC CMF
L7329 Sgt. Morrison R. A.	1 Cdn Cps Car Coy RCASC CMF
B86217 L/Cpl. Dawson C. R.	1 Cdn Cps Car Coy RCASC CMF
B6941 Gnr. Jones H. G.	1 Cdn Cps Car Coy RCASC CMF
H87666 L/Cpl. Sutton E.	1 Cdn Cps Car Coy RCASC CMF
Lieut. J. V. Baker	1 Cdn Cps Car Coy RCASC CMF

I desire the services of Lieut. Folkes 1 Cdn Cps Def Coy if available to represent me at my forth-coming trial by Field General Court Martial.

J. Davies
(E.[illegible]212 Pte. Davies, J.)
1 Cdn Corps Car Coy RCASC.

Field
16 Jun 44

4L-119

Pte. Davies K. R.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B/75898 Pte Kenneth Rees Davies 10 Cdn Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 18(1)(a)	Not guilty	Not guilty of desertion, but guilty of absence without leave.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~[illegible]~~ beginning on (date) ~~[illegible]~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which no days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned without hard labour for two (2) years and to be discharged with ignominy from His Majesty's Service

(Sgd) H Cameron Capt. 17 Nov 44 (Sgd) J C Lewis Maj
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be released from custody.~~ ~~(See 57A. Delete if not used.)~~

(Sgd) Wally Jones Lt Col

Date 19 Nov 44 Commanding CR C ASC 4 CDN ARMD DIV

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr
B75895 Pte Kenneth Rees Davies 10 Cdn Coy RCASC	20 Nov 44	H Cameron Capt. 40 Cdn Sp Pk Coy

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PROCEEDED AT CMHQ IN AB 100 4L-119

"CPA86 (To be left of AFA31) 40/P & R/3008 (40/50)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Order of D. Douglas Lt Col. Comdg 4 Recce 4 Can Armd Div. dated 14 Nov 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or conferred rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B75898	Pte	Kenneth Rees	Davies	10 Can Coy RCASC 21 Army Gp

PROCEEDINGS REVIEWED 25 Jan 45 [illegible] JUDGE ADVOCATE, 1ND ECHELON

PROCEEDINGS REVIEWED [illegible] Date 25 Jan 45 Deputy Judge Advocate General 21 Army Group

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date) 17 Nov 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13/109

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3) 1/

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 22, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) 11

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to [illegible] as interpreter? Ans [illegible]~~ 1/1

~~The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans [illegible]~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 16, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj.	J.C. Lewis	21 C.A.R.
Member	Capt	R.A. Stamper	35 Can Fd Regt RCA
Member	Lieut	W. Singleton	61 Cdn Fd Regt RCA
Judge-Advocate	Capt	H. Cameron	HQ 4 Cdn Armd Div.
Prosecutor	Capt	C.N.F. Privett	10 Cdn Coy RCASC.
Defending Offr	Lt	L.C. Colvin	10 Cdn Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 2.)

A8. The accused ~~[illegible]~~ before arraignment makes(es) (no) ~~[illegible]~~ plea. 1

(?)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 156), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. 11

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. D etc 1

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex.....initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with *C* 2.(1)

(1. *RP* 37(*A*) (*i*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No.(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (~~his~~) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).~~(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Yes. Do you intend to call witnesses on your behalf? Ans. Not. Are they witnesses as to character only? Ans. No.

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(1)

(1. *AA* 54(3) (*b*), *RP* 42, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? (2)(3) Ans. No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)

(1. *RFP* 252 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes – Ref. CFO.(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(4), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 40. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 336, 563-566. *Overseas RD* 309, 1323, *MML p* 66, 727-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Convening Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B75893 Private Kenneth Ross DAVIES, 10 Cdn Inf Bde Coy, RCASC, a soldier of the Canadian Army Overseas, is charged with:

Sec 12(1)(a) Army Act

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE,

in that he

in the Field, in England, on 15 July, 1944, at 2359 hrs, after having been warned for embarkation for special duty overseas, with intent to avoid embarkation did absent himself without leave from his Unit until he surrendered to Military authorities at CMHQ, Cockspur St., LONDON, ENGLAND, at 2255 hrs 24 October, 1944. (Absent 100 days, 22 hrs and 56 mins)

Dated
In the Field, In Holland
12 November, 1944.

[signature] Major,
Officer Commanding
10 Cdn Inf Bde Coy, RCASC

To be tried by FGCM

[signature] Lt Col
Comd HQ RCASC 4 Cdn Armd Div.

Dis the field
14 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to seperate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B75693	Pte.	Kenneth Ross	DAVIES	10 Cdn Inf Bde Coy, RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	J.C. LEWIS		21 Cdn Armd Regt

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
CAPT	R.A. SHARIE		23 Cdn Fd Regt (SP) RCA
LIEUT	W. SANGSTER		28 Cdn Armd Regt

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT	W.E. KILB		4 LAD ATT HQ ROYAL

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
CAPT	H.A. HANSON		HQ 4 Cdn Armd Div.

On Active Service in the Fd

in HOLLAND (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Dat 14 Nov 44

Commanding HQ RCASC 4 Cdn Armd Div
Convening Offr.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for words and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.
2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken verbatim, RP 83(C) will be complied with. If taken by him verbatim, (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with.
3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.
4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court commits such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP* 95(C), 87(C), 92(C) (*D*).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 40 fn* 1.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 40 fn* 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will made his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*Where accused charged jointly see RP* 61.)
(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)
(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.
2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 567.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.
3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 792.*)
4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S REPORT

I certify that No. B75893 Pte. DAVIES, K.R.

of 10 CIB Coy RCASC is in a normal state of health,

and fit to undergo Trial by Court martial.

[signature]

Medical Officer

Station In the field.

Date 17 Nov 44

M. F. B. 246

25M—6-41 (792)
U.Q. 1/72-28 480

Prosecution

1W. Capt O.F. Bratby RA Syn & cam
sworn & exd.

I am W/C and Adj't of RA Syn
& can ident this.
~~in this capacity and as such~~
~~custody of the Syn I have~~
~~copy of O.O. 4/37 dated 4th.~~
A. about 12 pm 4th a muster parade
was held of RA Syn and
I & can copy Do 356 4/37 May 4th.
I asked for questions. Some
questions were asked and answered
by me. I stated everyone number
but some clearly but remember
noting a change in the name
of the accused on the muster
roll. From this I assume that ac-
cused was on parade. I
satisfied myself everyone heard or-
der.

(I can copy Do 356 4/37 May 4th
admitted as Exh "G" read by Ho
Pres and. A certified true copy
thereof compared by me and
attached to the proceedings. The
original returned to Capt Bratby.)

This order was republished in unit
Part I order No 43 A/C pm 4th
and posted in prominent places
in their lines.

Senior Part I order No 43 A/C pm
4th admitted as Exh "B" and read
by Ho Pres and. A certified true
copy thereof compared by me and
attached to the proceedings
I am original returned to Capt Bratby)

The Senior Investment Offr. Lt F. H. Hancocks was present and certified to the correctness of the Muster Roll which I read.

(Muster Roll admitted as Exh "C" and the name of the accused read by the president. A certified true copy thereof compared by court and attached to proceedings. The original returned to Capt Beatty.)

I cannot actually recall seeing the accused on the parade.

At this time (12 Jun 44) the accused was attached fop from 10 CIB Coy Reasc and was also so attached on 8 Jun 44. The accused ceased to be attached on or about 24 Jun 44 when he went back to 10 CIB Coy Reasc.

Ex Exam. The accused was a Mess waiter in "A" Mess. I knew the accused in my capacity as Adj. On Muster Parades everybody should be present. Nobody was off this parade from the Sgt; everybody was there. I cannot recall making the change in the initial of the accused on the parade itself. It would not be possible for anyone to be absent from the parade.

No Reexam.

Exam by Court.
At the Muster Parade to ensure I had warned everyone, I marched the men from one group to another as their names were called.

During the period of 12 Jun - 24 Jun leaves were suspended. D Day had come along and passed, waterproofing was well underway, clothing parades had been held. and it was general knowledge that we were going somewhere.

KP 83(B) complied with.

Sol K 49027 Sgt Hando A N. No Pl.
10 CSB Coy R Case, sworn.
Am O.R. sgt.
I produce certified true copy of the Record of the Declaration of a court of inquiry relating to the accused.
The accused returned to our unit in Jun 44 and was with the unit during a portion of July.
Certified true copy of Declaration admitted as Exh "D"
I produce certificate of apprehension relating to the accused.
Admitted as Exh "E"
During the period 24 Jun to 15 Jul 44. preparation for overseas service was going on. and waterproofing was completed. Passes were given until midnight.

Ex Exam. The accused was sad after his absence. I don't know whether the accused was warned in accordance with Exh "A."
The accused was with the Coy only one day before he went to HQ Sgn on detachment.

No Reexam.

Exam by Court. We were localized in Crowborough about 15 July 44 - 14 hrs passed were cancelled a short time but were permitted for a time again. The unit ~~was~~ left the Cave area 18 July and arrived at Marshalling area 18 July. We left in parties for O/S in the next 4 or 5 days. The accused did not go overseas ~~#~~ with the unit.

The witness desires to correct his evidence by stating that the accused was with the unit a very short time and not one day before proceeding on att. to H.Q. Sgn.

RD 83(B) complied with.

Defence.

B 75893 Pte Davies H.R. 10 Can Inf Bde Coy Slate Sworn

Joined 10 CdB on May 23, later from No 1 Casdu. I was with the unit only one hour. when I was transferred to Hd Sgn as waiter. I was a waiter in the GOC's mess.

I was excused parades. and do not remember attending the Muster Roll Parade. Sgt Walton the Mess Stewart would account for me on parades.

When I returned to 10 CdB Coy I was posted to B Pl. I was never named for O/S service.

On July 15, 1944 I was issued with a 12 hr pass expiring at 2359 hrs. I went to London to see my wife to come to some arrangement concerning a separation. I had attempted to see her before without success. I could not see her and I was disgusted and demoralized so I stayed away until I gave myself up. I was worried over what would happen to me.

I was sent to No 1 Casdu about 29 Oct 44 under close arrest. I was charged with Ab for 100 days 22 hrs 56 minutes for the period of the present charge. and remanded for F.G.S.M. No summary was taken. I never appeared before the Co after being remanded.

Several days after I was put on draft and came overseas. I was not tried in England.

I came over not under arrest. and was first placed under arrest at 12 Bn CBRG - From there I went to my present unit on draft and not under arrest.

I did not know I was going to be tried and when I left England. I thought the case was all washed out

Exam. I did not read Part I orders 8 Jun at HQ Sqn. I have read Part II orders occasionally - and know that every man is required to read Part I orders.

When I came back to B Pl 10 CVB Coy I did not see any outstanding preparation for embarkation. It was a busy Pl - getting petrol and pickled it up in Can Army Lines.

I did not see any waterproofing going on in unit lines.

I was under the impression that D Day was 6 Jun. I did have an idea that the Div would be going O/S some day but did not know when. I knew 7 day leaves had been cancelled. I did not hear Part I orders read in B Pl on the afternoon parades. During the period of my absence I made no attempt to get in touch with the military authorities to surrender. I did not know if my unit had gone O/S or not.

I did not communicate with anyone in 10 CVB Coy Grass concerning my family troubles.

Remarks — None.

Exam by Court.

I saw my wife's mother and when I understood my wife was avoiding me, so I decided to stay until I had seen my

I

wife - I live with friends just outside of London.

RP 8(B) complied with.

Pass Closing

1. The accused was warned for special duty.

2. He met Arch.

3. At the time he must have known he would miss embarkation.

4. The credibility of the accused questioned in that he chose a time just before embarkation to leave the unit because of family difficulties ~~and~~ whereas he had many months before to take such steps

5. Submitted that a case of desertion made out.

Def Affr Reply

1. The accused did not know the unit going O/S.

2. He surrendered of his own accord, desiring to rejoin his unit.

3. When accused started for France he believed he was free — and he did not attempt to avoid further service.

tion.

ged with ~~attempt~~ intend
skates – i.e.

must show beyond
so that the
ed to avoid

is advised fully
in accordance
ciple laid down

ings explained s 56.

COUNTER NUMBER 540012

HOUR 1450

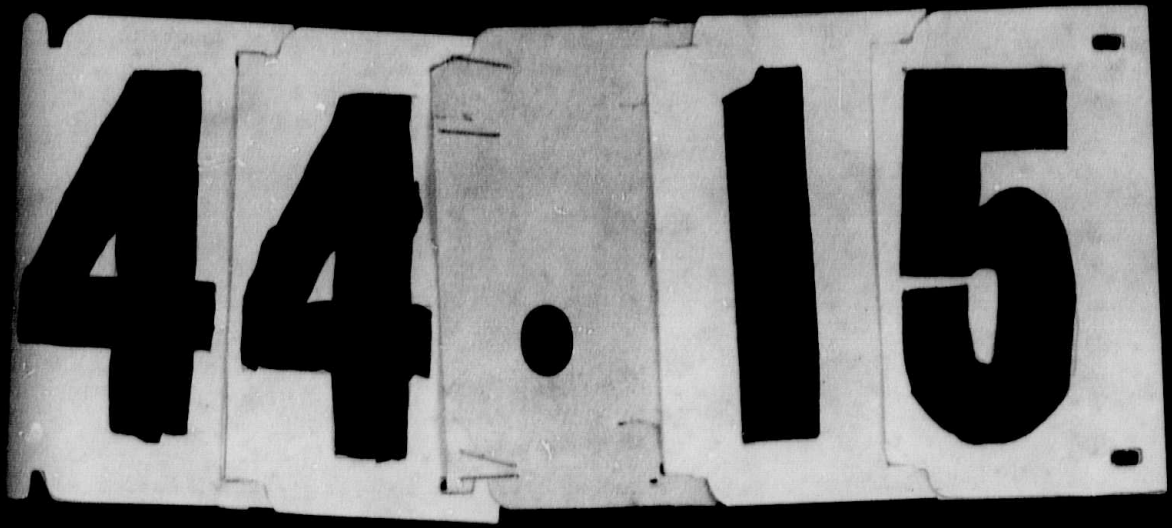
OPERATOR'S INITIALS FL

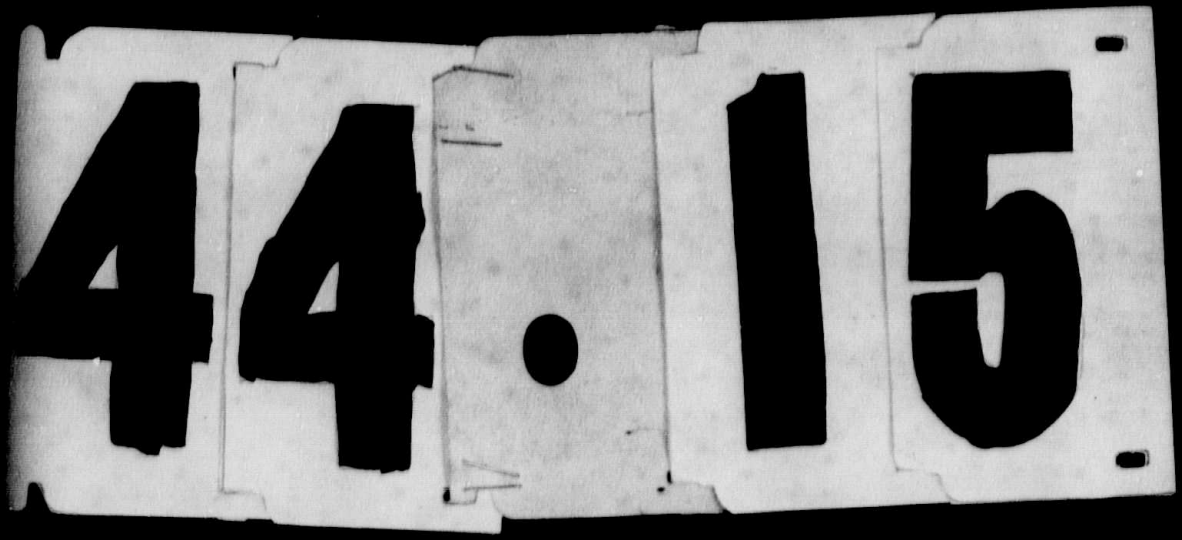
RELIEVING OPERATOR BH

END

SECOND

SIDE


44.15


44.15

START

SECOND

SIDE

4L-119

Pte. Davies K. R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B/5898 Pte Kenneth Rees Davies, 10 Cdn Coy ACC

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)(a)	Not guilty	Not guilty of desertion, but guilty of absence without leave.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~present trial~~ ~~awaiting trial~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which no days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under, E2.)

Sentence Awarded by the Court: To be imprisoned without hard labour for two (2) years and to be discharged with ignominy from His Majesty's Service

(Sgd) Ken Lawson Capt 17 Nov 44 (Sgd) J C Lewis Maj
Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 4, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn (.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not confirmed in prison or detained~~ (1. AA 57A. Delete if not used.)

Date 19 Nov 44 (Sgd) Maj Gen Commanding C.R.C.A.S.C. & C.D.N. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B/5898 Pte Kenneth Rees Davies 10 C I B Coy ACC	20 Nov 44	A C Barnard Capt 40 10 C I B Coy ACC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PROCEEDED AT CMHQ IN AD 160 4L-119

CPA86 (To Issue of APA31) 40/P/A 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of D Douglas Lt Col Comdg 4 Repair Depot dated 14 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or conferred rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B/5898	Pte		Kenneth Rees	Davies	10 Can Inf Bde Coy Canadian Army Pay Corps (H.Q.) 21 Army Gp

PROCEEDINGS REVIEWED 25 Jan 45 [illegible] OFFICER, JAG BRANCH

PROCEEDING REVIEWED 30 Jan 45 [illegible] Date

PROCEEDINGS OF TRIAL.

Held in the Fd th (country) Netherlands on (date) 17 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13/109

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3) 1/2

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) 1/2

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to an interpreter?~~ Ans ~~The Interpreter is sworn.~~(1) ~~Do you object to as shorthand writer?~~ Ans ~~The shorthand writer is sworn.~~(1) 1/2

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, (E, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	J C Lewis	21 C A R
Member	Capt	R A Strange	33 Can Fd Regt RCA
Member	Lieut	W Langstaff	41 C H
Judge-Advocate	Capt	K G Lawson	No 4 C A D.
Prosecutor	Capt	C N F Pinney	10 C I B by direction
Defending Offr	Lt	L C Calow	10 C I B by direction

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2) 1

(1. RP 26, 27, 109, 111. List of offrs whose instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) ~~no~~ plea 1

(1. If a special plea is made for separate trial on one or more charges (RP 62(C), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or to one of several inclusive charged points to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~separately~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. 1

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. Dec 3

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M.M.L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 83, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your pleas. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans _____(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea first, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making as appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No.(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (an) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D6.*)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Yes. Do you intend to call witnesses on your behalf ? Ans No. Are they witnesses as to character only ? Ans No.

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding.(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the _____ charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (4). RP 45, 120(A).* 2. *AA 54(3). RP 45, 117. This alternative announcement is not applicable when there are plea of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses per Notes. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. *MFB 355 or MFB 296.* 2. *MFM, 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 (C) (para 1.)*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes - by Counsel.

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(4). RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused stand jointly see RP 73 (D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and 45, to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44. 72, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 310, 563-566, Overseas RO 309, 2323, MML p 60, 757-798. As to sentences assigned for civil offences by the laws of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564.* 2. *RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B75893 Private Kenneth Ross DAVIES, 10 Cdn Inf Bde Coy, RCASC, a soldier of the Canadian Army Overseas, is charged with:

Sec 12(1)(a) Army Act

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE,

in that he

in the Field, in England, on 15 July, 1944, at 2359 hrs, after having been warned for embarkation for special duty overseas, with intent to avoid embarkation did absent himself without leave from his Unit until he surrendered to Military authorities at CMHQ, Cockspur St., LONDON, ENGLAND, at 2255 hrs 24 October, 1944. (Absent 100 days, 22 hrs and 56 mins)

Dated
In the Field, In Holland
12 November, 1944.

[signature] Major,
Officer Commanding
10 Cdn Inf Bde Coy, RCASC

To be tried by FGCM
See the field
14 Nov 44

[signature]
Comd HQ RCASC 4 Cdn Armd Div.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 323, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B75893		Pte.	Kenneth Ross	DAVIES	10 Cdn Inf Bde Coy, RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I ~~am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	J.O. LEWIS		21 Cdn Armd Regt

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
CAPT	E.A. MARIE		25 Cdn Fd Regt (SP) RCA
LIEUT	W. SANGSTER		26 Cdn Armd Regt

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT	H.E. KILB		4 LAD ATT HQ RCASC

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
CAPT	H A HANSON		HQ 4 Cdn Armd Div.

On Active Service in the Fd

In HOLLAND (Country)

(Signed personally. RP 105 fn 2.) (Rank.)

Dat 14 Nov 44

Commanding HQ RCASC 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 3) 60(F de E-3867 (43-9)

(See overleaf for points and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. B75893 Pte. DAVIES, K.R.

of 10 CIB Coy RCASC is in a normal state of health,

and fit to undergo Trial by Court martial.

[signature]

Medical Officer

Station In the field.

Date 17 Nov 44

M. F. B. 246

ISM—6-41 (797)
H.Q. 1172-39 480

Prosecution

1W. Capt O.T. Beatty NS Sqn & can
orders dis swrn.

I am C/c and adj of NS Sqn
& can ident dis. ~~[illegible]~~
~~[illegible]~~
4. ~~[illegible]~~ about 12 Jan 44 a muster parade
was held of NS Sqn and
I & Co Capt Do 355 1/27 May 44.
I asked for questions. Some
questions were asked and answered
by me. I stated accuseds number
but some clerk had somewhere
making a change in the name
of the accused on the muster
roll. From this I recall the ac-
cused was on parade. I
satisfied myself accused was on
order.

(C Can Capt Do 355 1/27 May 44
admitted as Exh "A" read by Ld
Prosecutor. Ac satisfies him copy
thereof compared by Ld Counsel and
ordered to be proceeded. Exh
original returned to Capt Beatty.)

This order was republished in Unit
Part I order No NS A/C Force 44
and posted in prominent places
in Unit lines.

Senior Part I order No NS A/C Force
44 admitted as Exh "B" and read
by Ld Prosecutor. Ac satisfies him
copy thereof compared by Ld Counsel
and ordered to be proceeded.
Exh original returned to Capt Beatty)

The Senior Movement Offr. Lt F. H. Hancastle was present and certified to the correctness of the Muster Roll which I read.

(Muster Roll admitted as Exh "C" and the name of the accused read by the president. A certified true copy thereof compared by court and attached to proceedings. The original returned to Capt Beatty.)

I cannot actually recall seeing the accused on the parade.

At this time (12 Jun 44) the accused was attached fap from 10 C/B Coy Reasc and was also so attached on 8 Jun 44. The accused ceased to be attached on or about 24 Jun 44 when he went back to 10 C/B Coy Reasc.

Cr Exam. The accused was a Mess waiter in "A" Mess. I knew the accused in my capacity as Adj. On Muster Parades everybody should be present. Nobody was off this parade from the Sgt; everybody was there. I cannot recall making the change in the initials of the accused on the parade itself. It would not be possible for anyone to be absent from the parade.

No Reexam.

Exam by Court.

At the Muster Parade to ensure I had warned everyone, I marched the men from one group to another as their names were called.

During the period of 12 Jun - 24 Jun
leaves were suspended. D Day
had come along and passed,
waterproofing was well underway.
Clothing parades had been held.
and it was general knowledge that
we were going somewhere.

KP 83(B) complied with.

JN K49027 Sgt Kando A.N. No 11.
10 CAB Coy RCASC, sworn.
Am O.R. sgt.
I produce certified true
copy of the Record of the
Declaration of a court of inquiry
relating to the accused.
The accused returned to our
unit in Jun 44 and was
with the unit during a
portion of July.
Certified true copy of Declaration
admitted as Exh "D"
I produce certificate of
apprehension relating to the
accused.
Admitted as Exh "C"
During the period 1st June to
15 Jul 44. preparation for
overseas service was going on.
and waterproofing was completed.
Passes were given until
midnight.

Exam. The accused was sad
after his absence. I don't
know whether the accused
was warned in accordance
with Exh "A."
The accused ~~was~~ was
with the Coy only one day
before he went to AS Sgn on
detachment.

No Reexam.

4.

Exam by Court. We were located in Cowborough about 15 July 44 - 24 hrs passes were cancelled a short time but were permitted for a time again. The unit ~~[illegible]~~ left the Cove area 18 July and arrived at Marshalling area 18 July. We left in parties for O/S in the next 4 or 5 days. The accused did not go overseas ~~[illegible]~~ with the unit.

The witness desires to correct his evidence by stating that the accused was with the unit a very short time and not one day before proceeding on att. to H.Q. Sgn.

R P 83(B) complied with.

Defence.

B/75893 Pte Davies H.R. 10 Can Inf Bde Coy Slate Sown

Joined 10 CdB in May 23, came from No 1 CASRU. I was with the unit only one hour. when I was transferred to HQ Sqn as waiter. I was a waiter in the GOC's mess.

I was excused parades. and do not remember attending the Muster Roll Parade. Sgt Walton the Mess Stewart would arrange for me on parades.

When I returned to 10 CdB coy I was posted to B Pl. I was never named for O/S service.

On July 15, 1944 I was issued with a 12 hr pass expiring at 2359 hrs. I went to London to see my wife to come to some arrangement concerning a separation. I had attempted to see her before without success. I could not see her and I was disgusted and demoralized so I stayed away until I gave myself up. I was worried over what would happen to me.

I was sent to No 1 CASRU about 29 Oct 44 under close arrest. I was charged with Ord for 100 days 22 hrs 56 minutes for the period of the present charge. and remanded for F.G.C.M. No summary was taken. I never appeared before the Co after being remanded.

Several days after I was put on draft and came overseas. I was not tried in England.

I came over not under arrest. and was first placed under arrest at 12 Bn / CBRG - From there I went to my present unit on draft and not under arrest.

I did not know I was going to be tried and when I left England. I thought the case was all wasted out

Cr Exam. I did not read Part I orders 6 Jun at HQ Sqn. I have read Part II orders occasionally - and know that every man is required to read Part I orders.

When I came back to B Pl 10 CVB Coy I did not see any outstanding preparation for embarkation. It was a busy Pl - getting petrol and picked it up in Can Army Lines.

I did not see any waterproofing going on in unit lines.

I was under the impression that I Day was 6 Jun. I did have an idea that the Div would be going O/S some day but did not know when. I know I Day leave had been cancelled - I did not hear Part I orders read in B Pl on the after-noon parades. During the period of my absence I made no attempt to get in touch with the military authorities to surrender. I did not know if my unit had gone O/S or not.

I did not communicate with anyone in 10 CVB Coy Grass concerning my family troubles.

Reexam. — None.

Exam by court.

I saw my wife's mother and when I understood my wife was avoiding me, so I decided to stay until I had seen my

7

wife - I lived with friends just outside of London.

RAF 8(B) complied with.

Pros Closing

1. The accused was warned for special duty.

2. The unit dwd.

3. At the time he must have known he would miss embarkation.

4. The credibility of the accused questioned in that he chose a time just before embarkation to leave the unit because of family difficulties ~~and~~ whereas he had many months before to take such steps.

5. Submitted that a case of desertion made out.

Def Offr Reply

1. The accused did not know the unit going O/S.

2. He surrendered of his own accord, desiring to rejoin his unit.

3. When accused started for France he believed he was free — and he did not attempt to avoid further service.

Jn. Summation.

1. Accused charged with ~~attempt~~ intend to avoid embarkation – i.e. desertion –
2. The pros. must show beyond reasonable doubt that the accused intended to avoid embarkation –
3 The court is advised fully on this point in accordance with the principles laid down in MMA.
4. Special findings explained s 56.

10.

Plus in Mitigation

The court asked to be
Unit

Exhibit "A"

EXTRACT FROM 2 CDN CORPS ROUTINE ORDERS by LT GEN G G SIMMONDS CBE GSO GOC 2 CDN CORPS

DATED 6 JUN 44

DISCIPLINE

353. **Warning for special duty overseas**

1. All ranks 2 Cdn Corps are warned for embarkation for special d ty overseas. Personnel absent without leave after 2359 hrs, 8 Jun 44, or in any way attempting to evade such embarkation or special duty, are liable to be charged under Army Act Sec 12, with deserting from His Majesty's Service.

2. This Order will be repeated in all fmn and unit orders and will be read to all ranks on a special muster parade to be held under unit arrangements forthwith. Unit Service Increment Offrs will be present at s ch muster parades and will certify on the muster roll that the foregoing notice has been read.

3. A certified true copy of unit orders containing this order, and a certified true copy of the muster roll, will be delivered to Service Increment Offrs.

CERTIFIED TRUE COPY OF 2 CRO 253 ....Capt
(O J Beatty)
Records Officer
HQ Sqn 4 Cdn Armd Div

This is Exhibit "A", referred to in the Summary of Evidence in the case of B75893 Pte. Davies, K.R., taken before me, this 12th day of November, 1944.

Capt.,
(Signature of Officer taking Summary)

certified true copy
Maj
President

Exhibit "B"

HQ 4 CDN ARMD DIV
Part 1 Orders issued by
Major C S Campbell
OC HQ SQN

Last Order		This Order
No 42		No 43
7 Jun 44		8 Jun 44

1. DUTIES

Orderly Offr	9 Jun 44	Lieut JH Derij
Next for Duty	10 Jun 44	Lieut DR Colombo
For Duty	11 Jun 44	Lieut EG Phillips
For Duty	12 Jun 44	RSM RW Croley
Orderly Sjt	9 Jun 44	Sjt Birch HW
Next for Duty	10 Jun 44	Sjt Hill JT
For Duty	11 Jun 44	Sjt Durrand WD
For Duty	12 Jun 44	Sjt Carmichael WJ

2. FIRST FD DRESSING - 2 CRO 352
Effective forthwith, First Fd Dressings will be carried by all ranks of HQ & HQ Sqn 4 Cdn Armd Div.

3. WARNING FOR SPECIAL DUTY OVERSEAS - 2 CRO 353
1. All ranks of HQ & HQ Sqn 4 Cdn Armd Div are warned for embarkation for special duty overseas. Personnel absent without leave after 2359 hrs, 8 Jun 44, or in any way attempting to evade such embarkation or special duty, are liable to be charged under Army Act Sec 12, with deserting from His Majesty's Service.

4. POST OFFICE SAVINGS BANK BOOKS

1. All ranks are warned that Post Office Savings Bank Books should not be taken out of the UK owing to the risk of being lost. Such books should be sent to the Offr i/c Records CMHQ for safekeeping.

5. GREEN PRIVILEGE ENVELOPES - BLUE AIR LETTER FORMS
1. Tp NCOs are responsible to pick up supplies of the a/m forms each Monday morning for issue to personnel under their charge. They will be issued ONLY on Monday mornings of each week.

(Sgd) O J Beatty Captain
for (C S Campbell) Major
OC HQ Sqn 4 Cdn Armd Div

CERTIFIED TRUE COPY. O J Beatty .....Captain
(O J Beatty)
Records Officer HQ Sqn 4 Cdn Armd Div

This is Exhibit "B", referred to in the Summary of Evidence in the case of B75893 Pte. Davies, R.R., taken before me, this 12th day of November 1944.
(Signature of Officer taking Summary). Capt.,

Exhibit "C"

CERTIFIED TRUE COPY

[illegible] Capt

12 Jun 44

161

NOMINAL ROLL OF PERSONNEL WARNED FOR SPECIAL DUTY OVERSEAS

WARNING FOR SPECIAL DUTY OVERSEAS:

All ranks on strength and attached for all purposes HQ Sqn 4 Cdn Armd Division are warned for embarkation for special duty Overseas. Personnel absent without leave after 2359 hrs. 8 Jun 44, or in any way attempting to evade such embarkation or special duty, are liable to be charged under Army Act Sec 12, with deserting from His Majesty's Service.

ATTACHED PERSONNEL

NUMBER	RANK	NAME		ATTACHED FROM
D46908	Sgt	Allan	AO	7 Cdn Ed uc Ser Sec
L55502	Pte	Gray	F.S.	7 Cdn E duc Ser Sec
B54598	A/Cpl	Sanders	A B	7 Cdn Educ Ser Sec
B87829	Sgt	Pratt	A W	7 Cdn Educ Ser Sec
G57756	Sgmn	MacRae	E W	4 CAD Sigs
B111533	Sgmn	Crocker	C V	4 CAD Sigs
G605 17	Sgmn	Lindsay	B R	4 CAD Sigs
B30062	Sgmn	Burns	W M	4 CAD Sigs
F97211	Sgmn	Smith	W	4 CAD Sigs
M101831	L/cpl	Keim	WA	4 CAD Sigs
F75999	Sgmn	Burns	R F	4 CAD Sigs
K34903	L/Sgt	Turner	G A	4 CAD Sigs
B49549	Tpr	Pelletier	W J	28 C.A.R. (BCR)
C31568	Pte	Thornton	H I	22 C.A.R. (CGG)
D26126	Pte	Munn	H	22 C.A.R. (CGG)
H24177	Gnr	Waite	C R	HQ RCA
D126652	Pte	Brewster	JJ	15 Cdn Fd Amb
B46097	Pte	Joslin	G M	A & S H of C
A102774	Spr	Barclay	G W	1 Cdn Army Fd Svy Depot
K48784	Spr	Sopow	W M	1 Cdn Army Fd Svy Depot
C102520	Pte	Findlay	KC	HQ 1st Cdn Army
B98395	Pte	Pogue	R J	HQ 1st Cdn Army
M28617	Gdsm	Cragg	D A	HQ 10 C.I.B.
B75893	Pte	Davies	K R	10 C.I.B. Coy
H65398	Pte	McLennan	C	4 CAD Tps Coy
A44213	Pte P	Presser	L	7 Cdn Aux Ser Sec
D116655	Sgmn	Faughman	G F	ASSU
F66625	L/Cpl	MC Kinnon	R R	APIS
E100595	Tpr	LaBrecque	M	18 Cdn Armd Car Regt
L84725	Tpr	Joybert	P A	28 Cdn Armd Car Regt (BCR)
F66303	Cpl	Croscup	B H	ASSU

NUMBER	RANK	NAME		ATTACHED FROM
L9843	Sgmn	Thorlakson	C I	ASSU
D116701	Sgmn	Sargeant	K H	ASSU
F87778	Gnr	Walker	D H	ASSU
D76611	Sgt	de BREYNE	A E	ARCO
K50842	Pte	Stewart	R E	ARCO
A116620	Tpr	Harris	W R	ARCO

I HEREBY CERTIFY that the above WARNING ORDER HAS been read and explained, in my present to all personnel whose names appear on this MUSTER ROLL

Signed F.H. Horncastle Lieut.
Service Increment Officer
HQ 4 Cdn Armd Division

CERTIFIED TRUE COPY OF DOCUMENTS HELD IN MY CUSTODY

.....Capt.
(O J Beatty) Capt
Officer having custody of documents
HQ Sqn 4 Cdn Armd Division

This is Exhibit "C", referred to in the Summary of Evidence in the case of B75893 Pte. Davies, K.R., taken before me, this 12th day of November, 1944.

Capt.,
(Signature of Offr taking Summary)

Ex "D" 14

RECORD of the Declaration of a Court of Inquiry assembled at the Field on the 6th day of August 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B 75893 Pte. Davies, K.R., 10 Cdn Inf Bde Coy, RCASC.

DECLARATION

The Court declare that No. B 75893 Pte. Davies, K.R., 10 Cdn Inf Bde Coy RCASC illegally absented himself without leave at 2359 hrs on the 15th day of July 1944, that he is still so absent, and that on the 6th Aug, 1944 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
NIL	NIL	NIL	NIL

C.M.F.P.

(sgd) C.M.F.Prevey, Capt 10 Cdn Inf Bde Coy, RCASC — President

(sgd) G.A.Campbell, Lieut. 10 Cdn Inf Bde Coy, RCASC — Member

(sgd) C.D.Glover, Lieut. 10 Cdn Inf Bde Coy, RCASC — Member

Signed at the Field this 6th day of Aug 1944

Signature of Commanding Officer (sgd) C.R.Waller, Major 10 Cdn Inf Bde Coy, RCASC

Certified true copy [signature] Capt 10 Cdn Inf Bde Coy, RCASC — Signature of Officer having custody of original record

M.F.B. 275
A.F.B. 152
25M—8-41 (750)
B.Q. 1771-78-227

This is Exhibit "D", referred to in the Summary of Evidence in the case of B75893 Pte. Davies, K.R., taken before me, this 11th day of November, 1944.

[signature] Capt
(Signature of Officer taking Summary)

This is Exhibit "E", referred to in the Summary of Evidence in the case of B75893 Pte. Davies, K.R., taken before me, this 11th day of November 1944.

_____ Capt
(Signature of Officer taking Summary)

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (i)

I, Capt. R.J.Stinson, D.A.P.M. C.M.H.Q. certify that

Regt. No. B.75893 Rank. Pte. Name. Davies K.R.

Regiment.

Unit. No.1.C.A.S.C.R.U. (CRU)

Stationed at.

Surrendered himself to No. M.17303 Rank. L/Cpl. Name. Berg.A.F.

of the No.6.(Area).Provost.Coy. Cdn.Provost Corps.

on the 24. day of October 194.4, at. 2255 hrs. hours.

.AS AN ABSENTEE WITH OUT LEAVE.

At the time of his surrender he was wearing (Military uniform) or ~~(Civilian clothes)~~

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer, or the non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrendering.
(Strike out part inapplicable).

London
25-Oct-44

R.J. Stinson
(R.J. Stinson), Capt.,
D.A.P.M. C.M.H.Q.

"F"

M.F.B. 388
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number B75893 Rank Private Name Kenneth Ross DAVIES Regiment (or unit) 10 Cdn Inf Bde Coy, RCASC

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

For	Within last 12 months	MFM 6 NOT AVAILABLE
For		times
For		times
For		times
For		times
		times
		times
		times
		times

There are no entries in the conduct sheets of the accused. (not known)

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted (not known) or.

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

The accused has been in confinement awaiting trial on the present charges, for Nil days in [illegible], and 16 days in military custody, making a total of 16 days in custody. Nil days were spent in hospital. (including 10 days in custody in Eng Lond).

[illegible] age of the accused according to his attestation paper is 25 yrs, 5½ months

[illegible] of his attestation specified in his attestation paper 10 September, 1939

[illegible] in possession of or entitled to [illegible] for [illegible]

[illegible] (a). State any military decoration or [illegible]

[illegible]lunteer Service Mo[illegible]

"F"

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B75893	Private	Kenneth Ross DAVIES	10 Cdn Inf Bde Coy, RCASC

1. The following is a fair and true summary of the entries in the [redacted] Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

MFM 6 NOT AVAILABLE

	Within last 12 months	Since enlistment or appointment
For	times	times
For	times	times
For	times	times
For	times	times

[redacted]

There are no entries in the conduct sheets of the accused. (not known)

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted (not known)

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 16 days in military custody, making a total of 16 days in custody, of which Nil days were spent in hospital. (This including 10 days in custody in England)

5. The present age of the accused according to his [redacted] attestation paper is 25 yrs, 5½ months

6. The date of his [redacted] attestation specified in his [redacted] attestation paper 10 September, 1939

[redacted]

8. [redacted]

9. The accused is in possession of or entitled to [redacted] (or is in possession of or entitled to). State any [redacted] military decoration or reward.

Canadian Volunteer Service Medal and Clasp

10. [redacted]

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~

Permanent Force
unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the ~~paragraph must be struck through.~~

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit ..... Regiment

Name ..... of .....

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of November, 1944. [signature] Cap[illegible] 40, 10 Cdn Inf Bde. Coy, [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

C.16
26.10.44

MFM. 6

Regimental No. B 75893 Rank Pte

Name Davies Kenneth Ross

Sheet No. I

MFM 1 & 2a
40 P & G/119 (1012)

	Record of Promotions, Reductions, Transfers, Casualties, Reports, etc—	Rank Shown	Effective Date	Unit	Place	Authority DO Number	Authority Dated
(1)	AWL Award 8 dys Detn: tot forf: of 9 dys Pay FF12	Pte	15.7.40	T.S. Rgt	Field	10	26 July 40
(2)	Award: 8 dys Detn: forf: 8 dys Pay: 149(B)	Pte	1.10.40	T.S. Rgt	Field	22	4 Oct 40
(3)	AWL AA15(1) forf: 15 dys Pay	Pte	24.2.43	11 Fld Amb	UK	10	5 Mar 43
(4)	AA15(1) forf: 22 dys Pay	Pte	12.4.43	11 Fld Amb	UK	14	30 Apr 43
(5)	AWL (from 7 Sept 43 to 4 Oct 43) over 21 dys SOS as Deserter TOS on apprehn from Desertion: AA15(1) tot forf: of 56 dys Pay: & cost of apprehn 4/8: Def in Kit £5 2 3	Pte	6.10.43	11 Fld Amb	UK	46	15 Oct 43
(6)	AWL (from 15 July 44). Still AWL on 22nd day SOS as Deserter	Pte	7.8.43	10 C10 Coy	21 Army Gp	40	12 Aug 43

Certified true Extract from MFM 2.

[signature]
(R.A.C. Johnson). Capt
for Colonel
OIC Records
Canadian Military Headquarters

SUMMARY OF EVIDENCE

in the case of

No. B75893 Pte. Kenneth Ross DAVIES, 10 Cdn Inf Bde Coy, RCASC, Charged with:

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

The C.O. directs that the evidence be taken on Oath.

First Witness

Capt. O.J. Beatty, 2 I/C and adjt of HQ Sqn, 4 Cdn Armd Div, sworn, states -

I was, on 12 June 44, and am still 2 I/C and Adjt of HQ Sqn, 4 CAD. I am acquainted with B75893 Pte. Davies, K.R. 10 C.I.B.Coy, RCASC, whom I recognize here as the accused. On or about 12 June 44, at a Muster Parade of HQ Sqn, 4 CAD, I read to all personnel on strength and attached fap to HQ Sqn, 4 CAD, a Special Warning Order for Service Overseas, namely 2 Cdn Corps Routine Order 353, dated 27 May 44. This Order was republished in my Unit Daily Orders, Part I, No. 43, dated 8 June 44 and signed by myself for the OC HQ Sqn, 4 CAD. B75893 Pte. Davies, K.R. was present on parade when the warning Order was read to HQ Sqn, 4 CAD. Lieut. F.H. Horncastle, the Unit Service Increment Officer, attended this parade and certified as to the correctness of the Nominal Roll, as laid down in 2 Cdn Corps Routine Order 353, Para 2. I clearly remember explaining this Order in detail and advised everyone to ask questions of me if the Order was not understood fully. Some questions were asked and I made answer to these. After assuring myself that all understood, the parade was dismissed.

A Certified True Copy of the original 2 Cdn Corps Routine Order 353, dated 27 May 44 is submitted as Exhibit "A".

A Certified True Copy of the original HQ Sqn, 4 CAD Daily Part I Order No. 43, dated 8 June 44, is submitted as Exhibit "B".

A certified True Copy of the original Muster Roll, signed by Lieut. F.H. Horncastle, is submitted as Exhibit "C".

On 24 June 44, B75893 Pte. Davies, K.R. on strength 10 C.I.B.Coy, RCASC, and attached fap to HQ Sqn, 4 CAD, ceased to be attached fap to HQ Sqn, 4 CAD. I have not seen the accused from that date until now.

The accused declines to cross-examine this witness.

(Signature of the Witness.)

"The documents refered to by the witness, were produced, read over to the accused, marked as indicated, signed by me, and attached hereto."

(Signature of Offr taking Summary)

Second Witness

K49027 Sgt. Dando, A.F., HQ Pl, 10 Cdn Inf Bde Coy, RCASC, sworn, states -

I was, on 6 Aug 44, and still an Orderly Room Sergeant of the 10 C.I.B.Coy, RCASC,. On 6 Aug 44 a Court of Inquiry was held in the case of B B75893 Pte. Davies, K.R. and a record of the Declaration of the said Court was entered in Mil RM 66. I produce a Certified True Copy of the said record. I also produce Certificate of Surrender to No. 6 (area) Provost Coy, Cdn Provost Corps, signed by Capt. R.J. Stinson, DAPM, CMHQ, dated at London, 25 October 44, certifying that B75893 Pte. Davies, K.R. [redacted] surrendered himself on the 24th day of October, 1944, at 2255 hrs, as an absentee without leave, and that at the time of his surrender he was wearing military uniform.

The accused declines to cross-examine this witness.

(Signature of the Witness)

The record of the Declaration of the Court of Inquiry, marked "D" and Certificate of Surrender, marked "E", referred to by the witness, were produced, read over to the accused and attached hereto.

(Signature of Offr taking Summary)

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The Accused: I have nothing to say at this time.

(Signature of Accused)

The accused declined to call witnesses in his own behalf.

I certify that RF 4 has been complied with.

Taken by me in the fd in the presence and hearing of the accused this 12th day of November, 1944.

(Signature of Offr taking Summary)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-75895 Pte Kenneth Ross Davies 10 CIB Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 12(1)(a)	Not Guilty	Not Guilty of Desertion but Guilty of absence without leave	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) ~~.....~~ ~~Nil~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned without hard labour for two (2) years and to be discharged with ignominy from His Majesty's Service.

(Sgd) H.A. Hanson, Capt — Judge-Advocate, if any.
17 Nov 44 — Date awarded.
(Sgd) J.C. Lewis, Major — President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be remixed: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) D.Douglas, Lt-Col

Date 19 Nov 44 — Commanding C.R.C.A.S.C. 4th Cdn Armd Div — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-75895 Pte Kenneth Ross Davies	20 Nov 44	H.V. Harris, A/Capt AQ 10 CIB Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

42-119

FIELD GENERAL COURT-MARTIAL

CFA&E (WWII) F AFA31 40-P & S-44 (40-P-D) 4/38B

Convened by Order of D. Douglas, Lt Col Comd HQ RCASC 4 Cdn Armd Div dated 14 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-75893	Pte	Kenneth Ross	Davies	10 CIB Coy, RCASC

Certified true Copy
A.D.J.A.

PROCEEDINGS OF TRIAL.

Cdn. Sec. G.H.Q. 2 Echn 21 Army Gp

Held in the Fd in (country) Holland on (date(s)) 17 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13/109

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP see fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.C. Lewis	21 C.A.R.
Member	Capt	R.A. Sharpe	23 Cdn Fd Regt Sp RCA
Member	Lieut	W. Sangster	28 C.A.R.
Judge-Advocate	Capt	H.A. Hanson	HQ 4 CdnArmd Div
Prosecutor	Capt	C.N.F. Prevey	10 C.I.B. Coy RCASC
Defending Offr	Lt.	L.C. Cohen	10 C.I.B. Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 60 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) (1) plea

(1. If a special plea is made for separate trial on one or more charges (RP 53(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*E*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~an~~) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).~~(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Yes . Do you intend to call witnesses on your behalf ?
Ans NO . Are they witnesses as to character only ? Ans NO .
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s) of any of Not Guilty,~~ and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(*3*) (*c*). *RP* 45, 120(*A*). 2. *AA* 54(*3*). *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces extracts from AMF 2 Statements as to Character and Particulars of Service(1), and certified true copy (~~extract~~, of ~~Conduct Sheet~~) ~~Crime Sheet~~, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex F and Ex 2 respectively.(2)
(1. *AFB* 215 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) ~~and Crime Sheet~~ extracts from AMF 2, and in mitigation of punishment ?(1) Ans Yes - Defending Officer .(2)
(1. *RP* 37(*C*), 44(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove an oath anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*3*). *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 48-50, 69, 118, 119(*A*), *KR Can* 308, 330, 343-346. *Overseas RO* 309, 1322, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 40(*2*). *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*1*), 68(*1*), *KR Can* 344. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 347. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

J.C.L.
Pres

CHARGE SHEET

The Accused, B-75893 Private Kenneth Ross Davies, 10 Cdn inf Bde Coy, RCASC, a Soldier of the Canadian Army Overseas, is charged with:

Sec 12(1)(a) Army Act

WHEN ON ACTIVE SERVICE? DESERTING HIS MAJESTY'S SERVICE

in that he

in the Field, in England, on 15 July, 1944, at 2359 hrs, after having been warned for embarkation for special duty Overseas, with intent to avoid embarkation did absent himself without leave from his Unit until he surrendered to the Military authorities at CMHQ, Cocksour St., London, England, at 2255 hrs 24 October, 1944. (Absent 100 days, 22 hrs and 56 mins)

In the Field, In Holland
12 November, 1944.

(sgd) C.B. Waller, Major
Officer Commanding
10 Cdn Inf Bde Coy, RCASC

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
14 Nov 44

(sgd) D.Douglas, Lt-Col
Comd HQ RCASC 4 Cdn Armd Div

J.C.L.
Pres

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-75893	Pte		Kenneth Ross	Davies	10 Cdn Inf Bde Coy, RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Nov 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) J.C. Lewis (Must be named. RP 106.) 21 Cdn Armd Regt (Unit.)

MEMBERS.

Capt R.A. Sharpe 23 Cdn Fd Regt (SP) RCA

Lieut (Rank.) W. Sangster (Named or detailed. RP 106.) 2# Cdn Armd Regt (Unit.)

WAITING MEMBER.

Lieut (Rank.) W.E. Ellis (Named or detailed, if any. RP 106.) 4 LAD ATT HQ RCEME (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.) H.A. Hanson (Must be named, if any. RP 106.) HQ 4 Cdn Armd Div (Unit.)

On Active Service in the Fd

in Holland (Country.)

D. Douglas, Lt-Col (Signed personally. RP 105 fn 2.) (Rank.)

Date 14 Nov 44

Commanding HQ RCASC 4Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for words and notes for use on trial.)

J.C.L.
Pres

MEDICAL OFFICER'S REPORT

I certify that No, B-75893 Pte Davies, K.R.
of 10 CIB Coy RCASC is in a normal state of health
and Fit to undergo Trial by Court Martial.

(sgd) _____ Capt
Medical Officer

In the Field
17 Nov 44

PROSECUTION

FIRST WITNESS Capt., O.J. Beatty, HQ Sqn 4 Cdn Armd Div
sworn states:

I am 2i/c and adj of HQ Sqn 4 Cdn Armd Div. About 12 June 44 a muster parade was held of HQ Sqn and I used 2 Cdn Corps R.O. 353 d/29 May 44. I asked for questions. Some questions were asked and answered by me. I stated everyones number and name clearly and remember making a change in the name of the accused on the muster roll. From this I recall that the accused was on parade. I satisfied myself everyone heard the order.

(2 Cdn Corps RO 353 d/29 May 44 admitted as Exhibit "A" read by the president. A certified true copy thereof compared by the court and attached to the proceedings. The original returned to Capt Beatty.)

This order was republished in Unit Part 1 order No 43 d/8 June 44 and posted in prominent places in unit lines.

(With Part 1 order No 43 d/8 June 44 admitted as Exhibit "B" and read by the President. A Certified true copy thereof compared by the Court and attached to the proceedings. The original returned to Capt Beatty.)

The Service increment Officer Lt F.H. Horncastle was present and certified to the correctness of that muster roll which I read.

(Muster roll admitted as Exhibit "C" and the name of the accused read by the president. A certified true copy thereof compared by the court and attached to proceedings. The original returned to Capt Beatty.)

I cannot actualy recall seeing the accused on the parade.

At this time (12 Jun 44) the accused was attached fap from 10 CIB Coy RCASC and also was so attached on 8 June 44 The accused ceased to be attached and was absent 24 June 44 when he went back to 10 CIB Coy RCASC.

Cross-exam;

The accused was a mess waiter in "A" Mess. I knew the accused in my capacity as adjutant. On muster parades everybody should be present. Nobody was off this parade from that Sqn ; everbody was there. I cannot recall making the change in the initial of the accused on the parade itself. It would not be possible for anyone to be absent from that parade.

No Re-exam

Examined by Court

At the Muster Parade to ensure I had warned everyone, I marched the men from one group to another as their names were called. During the period of 12 Jun - 24 Jun 44 leaves were suspended, D Day had come along and passed, waterproofing was well underway clothing parades had been held. and it was generel knowledge that we were going somewhere.

RP 83 (B) Complied with.

SECOND WITNESS

K-49027 Sgt Dando, A.M.S, HQ Pl. 10 CIB Coy RCASC, Sworn states:

Am O.R. Sgt I produce certified true copy of the Record of the declaration of the Court of Inquiry relating to the accused. the accused returned to our unit in Jun 44 and was with us

during a portion of July :

Certified true copy of Declaration admitted as Exhibit "D"
I produce certificate of apprehension relating to the accused admitted as Exhibit "E" During the period 24 June to 15 Jul preparation for overseas service was going on. and waterproofing was completed passes were given until midnight.

Cross-examination

The accused was S.O.S. after his absence . I dont know whether the accused was warned in accordance with Exhibit "A" . The accused was with the Coy only one day before he went to HQ sqn on attachment.

No Re-exam.

Exam by Court

We were located at Cressborough about 15 July 44 . 24 hrs passes were cancelled a short time but were permitted for a time again. The Unit left the Cave area 18 July and arrived at marshaling area 18 July . We left in parties for Overseas in the next 4 or 5 days. The accused did not go overseas with the Unit

The witness desires to correct his evidence by stating that the accused was with the Unit a very short time and not one day before proceeding on attachment to HQ sqn.

R.P. 83(B) Complied with.

DEFENCE

B-75893 Pte Davies, H.R. 10 Cdn Inf Bde Coy, RCASC sworn states:

Joined 10 CIB in 23 May 44 came from No 1 CASRU. I was with the Unit only an hour when I was transferred to HQ Coy as waiter I was a waiter in the GOC's mess.

I was excused parades and so not remember attending the muster roll parade. Sgt Walters the Mess steward would answer for me on parades.

When I returned to 10 mC.I.B. Coy I was posted to B Pl. I was never warned for overseas Service.

On 15 July 1944 I was issued with a 12 hr pass expiring at 2359 hrs. I went to London to see my wife , to come to some arrangement concerning a seperation. I had attempted to see her before without success. I could not see her and I was disgusted and demoralized so I stayed away untill I gave mys lf up. I was worried about what would happen to me. I was sent to No 1 CASRU about 29 Oct under close arrest. I was charged with absent for 100 days 22 hrs 56 Min for that period of the present charge. and remanded for FGCM. No summary was taken I once appeared before the CO after being remanded . Several days after I was put on draft and came overseas . I was not tried in England I came over not under arrest and was first put under arrest at 12 Bn CBRG from there I went to my present Unit on draft and not under arrest. I did not know I was going to be tried and when I left England I thought the case was all washed out.

Cross-exam;

I did not read Part 1 orders 6 Jun at HQ Coy . I have read Part I orders occasionally and know that every man is required to read Part I orders . When I came back to B Pl 10 CIB Coy I did not see any outstanding preparations for embarkation. It was a busy Pl. getting petrol and picked it up in 1 Cdn Army Lorries . I did not see any waterproofing going on in Unit Lines . I was under the impression that D day was the 6 Jun. I did have an idea that the Div would be going overseas some day but did not know when I knew 7 day leaves had been cancelled. I did not hear Part 1 orders read in B pl on any of the afternoon parades. During the period of my absence I made no attempt to get in touch with the military authorities to surrender . I did not know if my unit had gone overseas or not .

I did not communicate with anyone in 10 CIB Coy RCASC cocerning my family troubles.

Re-exam: None

Examined by Court

I saw my wife's mother and when I understood my wife was avoiding me , so I intended to stay until I had seen my wife, I lived with friends just outside of London.

D.P. & E. Complied with.

PROSECUTORS CLOSING ADDRESS

1. The accused was warned for special duty.

2. He went AWL

3. At the time he must he must have known that he would miss embarkation.

4. The credibility of the accused questioned in that he chose a time just before embarkation to leave the Unit because of family difficulties whereas he had many months before to take such steps.

5. submitted that a case of desertion made out.

DEFENDING OFFICERS REPLY

1. The accused did not know they were going overseas.

2. He surrendered of his own accord , desiring to rejoin his Unit.

3. When accused started for France he believed he was free and he did not attempt to avoid further service.

JUDGE ADVOCATE SUMS UP

1. Accused charged with intent to avoid embarkation i e desertion.

2. The prosecution must show beyond a reasonable doubt that the accused intended to avoid embarkation

3. The Court is advised fully on this point in accordance with the principles laid down in MML.

4 Special findings explained. S 56

PLEA IN MITIGATION

The Court asked to be lenient

Exhibit "A" J.C.L.

EXTRACT FROM 2 CDN CORPS ROUTINE ORDERS by LT GEN G G SIMMONDS CBE GSO GOC4
2 Cdn CORPS

DATED 6 JUN 44

DISCIPLINE
353 Warning for special duty overseas

1. All ranks 2 Cdn Corps are warned for embarkation for special duty overseas. Personnel absent without leave after 2359 hrs, 6 Jun 44, or in any way attempting to evade such embarkation or special duty, are liable to be charged under Army Act Sec 12, with deserting from His Majesty's Service.

2. This Order will be repeated in all fmn and Unit orders and will be read to all ranks on a special muster parade to be held under unit arrangements forthwith. Unit Service Increment Offrs will be present at such muster parades and will certify on the muster roll that the foregoing notice has been read.

3. A Certified true copy of unit orders containing this order, and a certified true copy of the muster roll, will be delivered to Service Increment Offrs.

Certified true copy of 2 CRO 253 (sgd) O.J. Beatty, Capt
Records Officer
HQ Sqn 4 Cdn Armd Div

This is Exhibit "A" referred to in the Summary of Evidence in the case of B-75693 Pte Davies, K.R., taken before me, this 12th day of November, 1944.

(sgd) H.V. Harvie, Capt
Signature of Officer
taking summary

Certified true copy

J.C. Lewis, Major
President

Exhibit "B" J.C.L. Pres

HQ 4 CDN ARMD DIV
Part 1 Orders issued by
Major C S Campbell
OC HQ SQN

Last Order No 42 7 Jun 44

This Order No 43 8 Jun 44

1. SGTI FS

Orderly Offr	9 Jun 44	Lieut JR Derij
Next for Duty	10 Jun 44	Lieut DR Colombo
For Duty	11 Jun 44	Lieut EG Phillips
For Duty	12 Jun 44	RSM RW Croley
Orderly Sjt	9 Jun 44	Sjt Birch H.W.
Next for Duty	10 Jun 44	Sjt Hill JT
For Duty	11 Jun 44	Sjt Durrand WD
For Duty	12 Jun 44	Sjt Carmichael WJ

2. FIRST FD DRESSING- 2 CRO 352
Effective forthwith, First Fd Dressings will be carried by all ranks of HQ & HQ SQn 4 Cdn Armd Div.

3. WARNING FOR SPECIAL DUTY OVERSEAS - 2 CRO 353
1. All ranks of HQ & HQ Sqn 4 Cdn Armd Div are warned for embarkation for special duty overseas. Personnel absent without leave after 2359 hrs, 8 Jun 44, or in any way attempting to evade such embarkation or special duty, are liable to be charged under Army Act Sec 12, with deserting from His Majesty's Service.

4. POST OFFICE SAVINGS BANK BOOKS

1. All ranks are warned that Post Office Savings Bank Books should not be taken out of the UK owing to the risk of being lost. Such books should be sent to the Offr i/c Records CMHQ for safekeeping.

5. GREEN PRIVILEGE ENVELOPES/ BLUE AIR LETTER FORMS
1. Tp NCOs are responsible to pick up supplies of the a/m forms each Monday Morning for issue to personnel under their charge . They will be issued Only on Monday mornings of each week.

(sgd) O.J. Beatty, Capt
for C S Campbell, Major
OC HQ Sqn 4 CdnArmd Div

Certified True Copy (sgd) O.J. Beatty, Capt
Records Officer HQ Sqn 4 Cdn Armd Div

This is Exhibit "B", referred to in the summary of Evidence in the case of B-75893 Pte Davies, K.R., taken before me, this 12th day of November, 1944

(sgd) H.V. Harvie, Capt.,
Officer taking Summary

Certified true Copy (sgd) J.W. Lewis, Major
President

EXHIBIT "C" CERTIFIED TRUE COPY (sgd) C.J. Beatty, Capt J.C.L. PRES

NOMINAL ROLL OF PERSONNEL WARNED FOR SPECIAL DUTY OVERSEAS

WARNING FOR SPECIAL DUTY OVERSEAS:

All ranks on strength and attached for all purposes HQ 4 Cdn Armd Division are warned for embarkation for special duty overseas. Personnel absent without leave after 2359 hrs. 8 Jun 44, or in any way attempting to evade such embarkation or special duty, are liable to be charged under Army Act Sec 12, with deserting from His Majesty's Service.

ATTACHED PERSONNEL

NUMBER	RANK	NAME		ATTACHED FROM
D46908	Sgt	Allen	AO	7 Cdn Educ Ser Sec
L55502	Pte	Gray	FS	7 Cdn Educ Ser Sec
B54698	A/Cpl	Sanders	AB	7 Cdn Educ Ser Sec
B67829	Sgt	Pratt	AW	7 Cdn Educ Ser Sec
G57756	Sgmn	McRae	EW	4 CAD Sigs
B111533	Sgmn	Crocker	CV	4 CAD Sigs
G605 17	Sgmn	Lindsay	BR	4 CAD Sigs
B30062	Sgmn	Burns	WM	4 CAD Sigs
F97211	Sgmn	Smith	W	4 CAD Sigs
M101831	L/Cpl	Keim	WA	4 CAD Sigs
F75999	Sgmn	Burns	RF	4 CAD Sigs
K44903	L/Sgt	Turner	GA	28 C.A.R. (BGR)
B49549	Tpr	Pelletier	WJ	22 C.A.R. (CGG)
G31568	Pte	Thornton	HI	22 C.A.R. (CGG)
D26126	Pte	Munn	H	HQ RCA
H24177	Gnr	Waite	CR	15 Cdn Fd Amb
D126652	Pte	Brewster	JJ	A & S H of C
B46097	Pte	Joslin	GM	1 Cdn Army Fd Svy Depot
A102774	Spr	Barclay	GW	1 Cdn Army Fd Svy Depot
K48764	Spr	Sopow	WM	HQ 1 Cdn Army
C102529	Pte	Findlay	KC	HQ 1 Cdn Army
B93385	Pte	Pogue	RJ	HQ 10 C.I.B.
M28617	Gdsm	Cragg	DA	10 C.I.B. Coy
B75893	Pte	Davies	KR	4 C.A.D. Tps Coy
H65398	Pte	McLennan	C	7 Cdn Aux Ser Sec
A44213	Pte	Presser	L	AssU
D116655	Sgmn	Faughman	GF	APIS
F66625	L/Cpl	McKinnon	RR	18 Cdn Armd Car Regt
E100595	Tpr	LaBrecque	M	28 Cdn Armd Car Regt
L84725	Tpr	Joubert	PA	AssU
F66303	Cpl	Croscup	BH	AssU
L90433	Sgmn	Thorlakson	CI	AssU
D116701	Sgmn	Sergeant	KH	AssU
F87778	Gnr	Walker	DH	ARCO
D76611	Sgt	de Breyne	AE	ARCO
K50842	Pte	Stewart	RE	ARCO
A116620	Tpr	Harris	VR	ARCO

I hereby certify that the above warning order has been rad and explained, in my presence to all personnel whose names appear on this Muster Roll

(sgd) F.H. Horncastle, Lieut
Service Increment Officer
HQ 4 Cdn Armd Division

CERTIFIED TRUE COPY OF DOCUMENTS HELD IN MY CUSTODY

(sgd) O.J. Beatty, Capt
Officer having custody of documents
HQ Sqn 4 Cdn Armd Division

This is Exhibit "C" , referred to in the Summary of Evidence in the case of B75893 Pte. Davies, K.R., taken before me, this 12th day of November, 1944.

(sgd) H.V. Harvie, Capt.,
Officer taking Summary

Certified true Copy (sgd) J.C.Lewis, Major
President

G.D. J.C.L.

RECORD of the Declaration of a Court of Inquiry assembled at The Field on the 6th day of August 1944 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-75893 Pte. Davies, K.R., 10 Cdn Inf Bde Coy, RCASC

DECLARATION

The Court declare that No. B-75893 Pte Davies, K.R. 10 Cdn Inf Bde Coy RCASC illegally absented himself without leave at 2359 hrs on the 15th day of July 1944, that he is still so absent, and that on the 6th Aug 1944 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE

C.M.F.P.

(sgd) C.M.F. Prevey, Capt 10 Cdn Inf Bde Coy, RCASC President

(sgd) G.A. Campbell, Lieut 10 Cdn Inf Bde Coy, RCASC Member

Signed at The Field

(sgd) C.D. Glover Lieut 10 Cdn Inf Bde Coy RCASC Member

this 6th day of Aug 1944

Signature of Commanding Officer (sgd) C.R. Weller, Major 10 Cdn Inf Bde Coy, RCASC

Certified true copy (sgd) H.V. Harvie, Capt 10 Cdn Inf Bde Coy, RCASC Signature of Officer having custody of original record

M.F.B. 275
A.F.B. 515
35M—6-41 (3361)
H.Q. 1771-26-247

This is Exhibit "D" referred to in the Summary of Evidence in the Case of B75893 Pte Davies, K.R., taken before me, this 11th day of November 1944

(sgd) H.V. Harvie, Capt Officer Taking Summary

J.C.L.
Pres

This is Exhibit "E", referred to in the summary of Evidence in the case of B75893 Pte. Davies, K.R., taken before me, this 11th day of November 1944

(sgd) H.V. Harvie, Capt
Officer taking Summary

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (i) (j)

I, Capt. R.J. Stinson, D.A.P.M., C.M.H.Q. Certify that

Regt. No. B-75893 Rank Pte Name Davies, K.R.

Regiment

Unit No 1 C.A.S.C.R.U. (C.R.U.)

Stationed at

Surrendered himself to No M-17303 Rank L/CPl Name Berg, A.F.

of the No. 6 (Area) Provost Coy, Cdn Provost Corps

On the 24th day of October 1944, at 2255 hours

As AN ABSENTEE WITH OUT LEAVE

At the time of his surrender he was wearing Military Uniform

London
25 Oct 44

(sgd) R.J. Stinson, Capt.,
D.A.P.M., C.M.H.Q.

"F" J.C.L.
Pres

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-75893	Pte	Kenneth Ross Davies	10 Cdn Inf Bde Coy, RCASC

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

MFM 6 NOT AVAILABLE

	Within last 12 months	Since enlistment or appointment
For	times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~Nil~~

There are no entries in the conduct sheets of the accused. (not known)

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted (not known)

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

~~Nil~~

~~The accused is the [illegible] days~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 16 days in ~~air force~~ military custody, making a total of 16 days in custody, of which NIL days were spent in hospital. (including 10 days in custody in England)

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 25 yrs, 5½ months

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 10 September 1939

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The [illegible]~~

9. The accused is in possession of or entitled to ~~[illegible]~~ possession of or entitled to). State any ~~air force~~ military decoration or reward.

Canadian Volunteer Service Medal and Clasp

10. ~~[illegible]~~

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 th day of November, 1944

(sgd) H.V.Harvie, Capt
AO, 10 Cdn Inf Bde CoyRCASC

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Ex "C" J.C.L.Pres
3/17 MFM 6
(AFB 122)
89/PAS/156 (5413)

No. B75893 Name Davies, Kenneth Ross. Sqn, Battery, or Company | Corps | Date of enlistment 10 Sept 1939 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15-7-40	Pte		A.W.L.		8 days Det			ttl forft 9dys pay FR&I
Field	1-10-40	Pte				8 days Det			forft 8 dys pay 149(B)
UK	24-2-43	Pte		A.W.L. AA 15 (1)					forfts 15dys pay
UK	12-4-43	Pte		A.W.L AA 15 (1)					forft 22dys pay
UK	6-10-43	Pte		AWL from 7th Sept 43 to 4 Oct 43 over 21 dys SOS as Deserter TOS on Appreh from Desertion AA 15(1) total forf of 56 dys pay &cost of appreh Def in Kit £5/2/3					

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
21 Army Gp	7-8-44	Pte		AWL from 15 July 44 still AWL on 22 day sos as Deserter					

CERTIFIED TRUE EXTRACT FROM MFM 2

(sgd) E.E. Le Gros, Capt
for R.A.C. Johnson , Capt
for Colonel
OIC Records
Canadian Military HeadQuarters

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
21 Army Gp	7-8-44	Pte		AWL from 15 July 44 still AWL on 22 day SOS as Deserter CERTIFIED TRUE EXTRACT FROM NFM 2 (sgd) E.E. Le Gros, Capt for R.A.C. Johnson , Capt for Colonel OIC Records Canadian Military Headquarters					

SUMMARY OF EVIDENCE

in the case of

B-75893 Pte Kenneth Ross Davies, 10 Cdn Inf Bde Coy, RCASC, charged with:

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

The C.O. directs that the evidene be taken on Oath.

First Witness

Capt., O.J. Beatty, 2 I/C and Adjt of HQ Sqn, 4 Cdn Armd Div, sworn states:

I was, on 12 June 44, and am still 2 I/C and Adjt of HQ sqn, 4 CAD, I am acquainted with B-75893 Pte Davies, K.R. 10 C.I.B. Coy, RCASC, whom I recognize here as the accused. On or about 12 June 44, at a Muster Parade of HQ Sqn, 4 CAD, I read to all personnel on strength and attached fap to HQ Sqn, 4 CAD, a Special Warning Order for Service Overseas, namely 2 Cdn Corps Routine Order 353, dated 27 May 44. This Order was republished in my Unit Daily Orders, Part I No 43, dated 8 June 44 and signed by myself for the OC HQ Sqn, 4 CAD. B75893 Pte Davies, K.R. was present on parade when the warning order was read to HQ Sqn , 4 CAD. Lieut F.H. Horncastle the Unit Service Increment Officer, attended this parade and certified as to the correctness of the Nominal roll , as laid down in 2 Cdn Corps Routine Order 353, Para 2. I clearly remember explaining this order in detail and advised everyone to adk questions of me if the order was not understood fully. Some questions were asked and I made answer to them . After assuring myself that all understood , the parade was dismissed.

A Certified True Copy of the original 2 Cdn Corps Routine Order 353, dated 27 May 44 is submitted as Exhibit "A".

A Certified True Copy of the original HQ Sqn, 4 CAD Daily Part I Order No. 43, dated 8 June 44, is submitted as Exhibit "B"

A Certified True Copy of the original Muster Roll, signed by Lieut F.H. Horncastle, is submitted as Exhibit "C"

On 24 June 44, B75893 Pte Davies, K.R. on strength 10 C.I.B. Coy, RCASC, and attached fap to HQ Sqn, 4 CAD, ceased to be attached fap to HQ sqn, 4 CAD. I have not seen the accused from that sate until now.

The accused declines to Cross-examine this witness.

(sgd) O.J. Beatty, Capt
Witness

"The documents referred to by the witness, were produced, read over to the accused, marked as indicated, signed by me, and attached hereto."

(sgd) H.V.Hervie, Capt
Officer taking Summary.

SECOND WITNESS

K-49027 Sgt Dando, A.N., HQ Pl, 10 Cdn Inf Bde Coy, RCASC, Sworn, States:

I was, on 6 Aug 44, and still am Orderly Room Sergeant of the 10 C.I.B. Coy, RCASC,. On 6 Aug 44 a court of Inquiry was held in the case of B-75893 Pte Davies, K.R. and a record of the Declaration of the said Court was entered in Mil Bk 68. I produce a Certified True Copy of the said record. I also produce Certificatex of Surrender to No 6 (Area) Provost Coy, Cdn Provost Corps, signed by Capt., R.J.Stinson, DAPM, CMHQ, dated at London, 25 Oct 44, certifying that B-75893 Pte Davies, K.R. surrendered himself on the 24th day of October, 1944, at 2255 hrs, as an absentee without leave, and that at the time of his surrender he was wearing military uniform.

The accused declines to Cross-examine this witness.

(sgd) A.N. Dando, Sgt.,
Witness

The record of the Declaration of the Court of Inquiry, marked "D" and Certificate of Surrender , marked "E", referred to by the witness, were produced, read over to the accused and attached hereto.

(sgd) H.V. Harvie, Capt
Officer taking Summary

The accused was warned as follows:

" Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you do say or any evidence you give will be taken down in writing, and may be given in evidence."

The Accused : I have nothing to say at this time.

(sgd) K.R. Davies, Pte
Accused

The Accused declines to call witnesses in his own behalf.

I certify that RP 4 has been complied with.

Taken by me in the Field in the presence and hearing of the accused this 12th day of November, 1944.

(sgd) H.V.Harvie, Capt.,
Officer taking Summary.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D-75995 Pte Kenneth Ross Davies 10 CIC Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 19(2)(a)	Not Guilty	Not Guilty of Desertion but Guilty of absence without leave	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To be imprisoned without hard labour for two (2) years and to be discharged with ignominy from His Majesty's Service.

(Sgd) H.A. Henson, Capt — Judge-Advocate, if any.
17 Nov 44 — Date awarded.
(Sgd) J.C. Lewis, Major — President. (RP 15, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 53-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) D. Douglas, Lt-Col

Date 19 Nov 44

Commanding O.C. A.I.C. 4 Cdn Armd Div

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D-75995 Pte Kenneth Ross Davies	20 Nov 44	G.V. Harvey, Capt 10 CIC Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

42-119

CPA&S 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of D. Douglas, Lt Col Comd 4 Cdn Armd Div dated 14 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-75995	Certified true Copy (a) Pte (b)	Kenneth Ross	Davies	10 CIC Coy RCASC

H.A. Henson, Capt
A/D J.A.
4 Cdn Armd Div

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 17 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(2) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~

(1. KR Con 557. 2. AA 46(2), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~

~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J.C. Lewis	21 C.A.O.
Member	Capt	A.A. Thrue	23 Cdn Fd Regt RCA
Member	Lieut	W. Ingster	68 C.A.S.
Judge-Advocate	Capt	H.A. Henson	HQ 4 Cdn Armd Div
Prosecutor	Capt	C.M.P. Provey	10 C.I.C. Coy RCASC
Defending Offr	Lt.	I.C. Cohen	10 C.I.C. Coy RCASC

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) (a) plea(s) .....

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cond. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, advise and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1); and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea of Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~an~~) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).~~(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans Yes Do you intend to call witnesses on your behalf?

Ans NO Are they witnesses as to character only? Ans NO .

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fn* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 66(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 102(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s), if any, of Not Guilty~~, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)

(1. *AA* 34(*3*) (*a*), *RP* 45, 120(*A*). 2. *AA* 34(*3*), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pieces of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans NO

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~a statement(s) as to Character and Particulars of Service~~(1), and certified true copy (~~copies~~) of ~~Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents relate to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. *MFB* 225 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and ~~Conduct Sheet(s)~~, and in mitigation of punishment?(1) Ans Yes - Defending Officer (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 34(*3*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. Must not exceed jurisdiction of Court. See AA* 34(*3*), 64, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, *UK* 563-566. *Overseas* 80 309, 1223, *RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, *UK* 563-566. *Overseas* 80 309, 1223, *MML p* 60, 752-756. *As to sentences assigned for civil offences by the law of England see AA* 61(*3*), *MML p* 136. *When accused already under sentence of imprisonment or desertion see AA* 64(*1*)(*b*), 68(*1*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

J.C.L.
Pres

CHARGE SHEET

The Accused, R-75[illegible] Private Kenneth Ross Davies, 10 Cdn Inf Bde Coy, RCASC, a Soldier of the Canadian Army Overseas, is charged with:

Sec 12(1)(a) Army Act — WHEN ON ACTIVE SERVICE? DESERTING HIS MAJESTY'S SERVICE

in that he

in the Field, in England, on 1st July, 19HH, at 0359 hrs, after having been warned for embarkation for special duty Overseas, with intent to avoid embarkation did absent himself without leave from his Unit until he surrendered to the Military authorities at CMHQ, Cockspur St., London, England, at 2255 hrs 2nd October, 19HH. (Absent 100 days, 22 hrs and 56 mins)

In the Field, In Holland
12 November, 19HH.

(sgd) C.V. Weller, Major
Officer Commanding
10 Cdn Inf Bde Coy, RCASC

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
14 Nov HH

(and) D.Douglas, Lt-Col
Comd HQ RCASC 4 Cdn Armd Div

J.C.L.
Pres

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-75893		te	Kenneth Ross	Davies	10 Cdn Inf Bde Coy, RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 21 Nov 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(E), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.C. Leslie	21 Cdn Armd Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R.A. Sharpe	27 Cdn Fd Regt (SP) RCA
Lieut	Y. Carter	2nd Cdn Armd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	W.F. Ellis	4 LAD ATT HQ RCE'E

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	E.A. Hanson	4 Cdn Armd Div

On Active Service in the Fd

in Holland (Country.)

D. Dowell, Lt-Col (Signed personally. RP 105 fn 2.) (Rank.)

Date 21 Nov 45

Commanding [illegible] 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (FAAG (2d Impn) of AFAS) 50-9-45 (1601)

J.C.L.
Pres

M E D I C A L O F F I C E R ' S R E P O R T

I certify that No. [illegible]-75[illegible] Pte Davies, K.R.
of 10 CIB Coy RCASC is in a normal state of health
and Fit to undergo Trial by Court Martial.

(sgd) _____ Capt
Medical Officer

In the Field
17 Nov 44

PROSECUTION

FIRST WITNESS Capt., C.J. Beatty, HQ Sqn 4 Cdn Armd Div sworn states:

I am 2i/c and adj of HQ Sqn 4 Cdn Armd Div. About 12 June 44 a muster parade was held of HQ Sqn and I used 2 Cdn Corps R.O. 353 d/29 May 44. I asked for Questions. Some questions were asked and answered by me. I stated everyones number and name clearly and remember making a change in the name of the accused on the muster roll. From this I recall that the accused was on parade. I satisfied myself everyone heard the order.

(2 Cdn Corps RO 353 d/29 May 44 admitted as Exhibit "A" read by the president. A certified true copy thereof compared by the court and attached to the proceedings. The original returned to Capt Beatty.)

This order was republished in Unit Part 1 order No 43 d/8 June 44 and posted in prominent places in unit lines.

(With Part 1 order No 43 d/8 June 44 admitted as Exhibit "B" and read by the President. A Certified true copy thereof compared by the Court and attached to the proceedings. The original returned to Capt Beatty.)

The Service Increment Officer Lt E.H. Hornsastle was present and certified to the correctness of that muster roll which I read.

(Muster roll admitted as Exhibit "C" and the name of the accused read by the president. A certified true copy thereof compared by the court and attached to proceedings. The original returned to Capt Beatty.)

I cannot actually recall seeing the accused on the parade.

At this time (12 Jun 44) the accused was attached for from 10 CIB Coy RCASC and also was so attached on 8 June 44 the accused ceased to be attached and was absent 24 June 44 when he went back to 10 CIB Coy RCASC.

Cross-exam;

The accused was a mess waiter in "A" Mess. I knew the accused in my capacity as adjutant. On muster parades everybody should be present. Nobody was off this parade from that Sqn ; everbody was there. I cannot recall making the change in the initial of the accused on the parade itself. It would not be possible for anyone to be absent from that parade.

To Re-exam

Examined by Court

At the Muster Parade to ensure I had warned everyone, I marched the men from one group to another as their names were called. During the period of 12 Jun - 24 Jun 44 leaves were suspended, Debby had come along and passed, waterproofing was well under way clothing parades had been held. and it was general knowledge that we were going somewhere.

RP 83 (B) Complied with.

SECOND WITNESS

K-49027 Sgt Lande, A.S.P., HQ Pl. 10 CIB Coy RCASC, Sworn states:

Au O.R. Sgt I produce certified true copy of the Record of the declaration of the Court of Inquiry relating to the accused. The accused returned to our units in Jun 44 and was with us

during a portion of July .

Certified true copy of Declaration admitted as Exhibit "B"
I produce certificate of apprehension relating to the accused admitted as Exhibit "C" During the period 24 June to 15 Jul preparation for overseas service was going on. and waterproofing was completed passes were given until midnight.

Cross-examination

The accused was "A.O.". after his absence . I dont know whether the accused was warned in accordance with Exhibit "A" . The accused was with the Coy only one day before he went to Hospn on attachment.

No Re-exam.

Exam by Court

We were located at Grassborough about 15 July 44 . 24 hrs passes were cancelled a short time but were permitted for a time again. The Unit left the Cove area 14 July and arrived at marshalling area 14 July . We left in parties for Overseas in the next 4 or 5 days. The accused did not go overseas with the Unit

The witness desires to correct his evidence by stating that the accused was with the Unit a very short time and not one day before proceeding on attachment to Hospn.

R.P. 83(3) Complied with.

DEFENCE

B-75893 Pte Davies, H.R. 10 Cdn Inf Bde Coy, RCASC sworn states:

Joined 10 CIB in 23 May 44 came from No 1 CASRU. I was with the Unit only an hour when I was transferred to HQ Sq as waiter I was a waiter in the GOC's mess.

I was excused parades and so not remember attending the muster roll parade. Sgt Walters the Mess steward would answer for me on parades.

When I returned to 10 C.I.B. Coy I was posted to R Pl. I was never warned for overseas Service.

On 15 July 1944 I was issued with a 12 hr pass expiring at 2359 hrs. I went to London to see my wife, to come to some arrangement concerning a seperation. I had attempted to see her before without success. I could not see her and I was disgusted and demoralized so I stayed away untill I gave myself up. I was worried about what would happen to me. I was sent to No 1 CASRU about 29 Oct under close arrest. I was charged with absent for 100 days 22 hrs 56 Min for that period of the present charge. and remanded for FGCM. No summary was taken I once appeared before the CO after being remanded. Several days after I was put on draft and came overseas. I was not tried in England I came over not under arrest and was first put under arrest at 12 Bn CBRC from there I went to my present Unit on draft and not under arrest. I did not know I was going to be tried and when I left England I thought the case was all washed out.

Cross-exam;

I did not read Part 1 orders 8 Jun at HQ Sqn. I have read Part I orders occasionally and know that every man is required to read Part I orders. When I came back to R Pl 10 CIB Coy I did not see any outstanding preparations for embarkation. It was a busy Pl. getting petrol and picked it up on 1 Cdn Army Lorries. I did not see any waterproofing going on in Unit Lines. I was under the impression that 8 day was the 6 Jun. I did have an idea that the Div would be going overseas some day but did not know when I know 7 day leaves had been cancelled. I did not hear Part 1 orders read in R pl on any of the afternoon parades. During the period of my absence I made no attempt to get in touch with the military authorities to surrender. I did not know if my unit had gone overseas or not.

I did not communicate with anyone in 10 CIB Coy RCASC concerning my family troubles.

Re-exam: None

Examined by Court

I saw my wife's mother and when I understood my wife was avoiding me, so I intended to stay until I had seen my wife, I lived with friends just outside of London.

[illegible] Complied with.

PROSECUTORS CLOSING ADDRESS

1. The accused was warned for special duty.

2. He went AWL

3. At the time he must he must have known that he would miss embarkation.

4. The credibility of the accused questioned in that he chose a time just before embarkation to leave the Unit because of family difficulties whereas he had many months before to take such steps.

5. submitted that a case of desertion made out.

DEFENDING OFFICERS REPLY

1. The accused did not know they were going overseas.

2. He surrendered of his own accord , desiring to rejoin his Unit.

3. When accused started for Frince he believed he was free and he did not attempt to avoid further service.

JUDGE ADVOCATE GUIDE #7

1. Accused charged with intent to avoid embarkation i e desertion.

2. The prosecution must show beyond a reasonable doubt that the accused intended to avoid embarkation

3. The Court is advised fully on this point in accordance with the principles laid down in MCM.

4 Special findings explained. e 56

PLEA IN MITIGATION

The Court asked to be lenient

Exhibit "A" J.C.L.

EXTRACT FROM 2 CDN CORPS ROUTINE ORDERS by LT GEN G G SIMMONDS CBE CBO SOC&
2 Cdn CORPS

DATED 6 JUN 44

DISCIPLINE
353 Warning for special duty overseas

1. All ranks 2 Cdn Corps are warned for embarkation for special duty overseas. Personnel absent without leave after 2359 hrs, 8 Jun 44, or in any way attempting to evade such embarkation or special duty, are liable to be charged under Army Act S c 12, with deserting from His Majesty's Service.

2. This Order will be repeated in all fan and Unit orders and will be read to all ranks on a special muster parade to be held under unit arrangements forthwith. Unit Service Increment Offrs will be present at such muster parades and will certify on the muster roll that the foregoing notice has been read.

3. A Certified true copy of unit orders containing this order, and a certified true copy of the muster roll, will be delivered to Service Increment Offrs.

Certified true copy of 2 CRO 253 (sgd) O.J. Beatty, Capt
Records Officer
HQ Scn 4 Cdn Armd Div

This is Exhibit "A" referred to in the Summary of Evidence in the case of B-35693 Pte Davies, K.R., taken before me, this 12th day of November, 1944.

(sgd) H.V. Harvie, Capt
Signature of Officer
taking summary

Certified true copy

J.C. Lewis, Major
President

Exhibit "B"

J.C.L.
Pres

HQ 4 CDN ARMD DIV

Last Order	Part 1 Orders issued by	This Order
No 42	Major G C Campbell	No 43
7 Jun 44	OC HQ SQN	8 Jun 44

1. DUTY PO

Orderly Offr	9 Jun 44	Lieut JH Peril
Next for Duty	10 Jun 44	Lieut DR Colombo
For Duty	11 Jun 44	Lieut RG Phillips
For Duty	12 Jun 44	RSM HW Croley
Orderly Sjt	9 Jun 44	Sjt Birch H.W.
Next for Duty	10 Jun 44	Sjt Hill JT
For Duty	11 Jun 44	Sjt Durrand WD
For Duty	12 Jun 44	Sjt Carmichael WJ

2. FIRST AID DRESSINGS - 2 CMO 352

Effective forthwith, First Aid Dressings will be carried by all ranks of HQ & HQ Sqn 4 Cdn Armd Div.

3. WARNING FOR SPECIAL DUTY OVERSEAS - 2 CMO 357

1. All ranks of HQ & HQ Sqn 4 Cdn Armd Div are warned for embarkation for special duty overseas. Personnel absent without leave after 2359 hrs, 6 Jun 44, or in any way attempting to evade such embarkation or special duty, are liable to be charged under Army Act Sec 12, with deserting from His Majesty's Service.

4. POST OFFICE SAVINGS BANK BOOKS

1. All ranks are warned that Post Office Savings Bank Books should not be taken out of the UK owing to the risk of being lost. Such books should be sent to the Offr i/c Records CMHQ for safekeeping.

5. GREEN PRIVILEGE ENVELOPES/ BLUE AIR LETTER FORMS

1. The WOOs are responsible to pick up supplies of the a/m forms each Monday Morning for issue to personnel under their charge. They will be issued only on Monday mornings of each week.

(sgd) O.J. Beatty, Capt
for G C Campbell, Major
OC HQ Sqn 4 Cdn Armd Div

Certified True Copy (sgd) O.J. Beatty, Capt
Records Officer HQ Sqn 4 Cdn Armd Div

This is Exhibit "B", referred to in the summary of Evidence in the case of D-75427 Pte Davies, K.R., taken before me, this 12th day of November, 1944

(sgd) H.W. Murvie, Capt.,
Officer taking Summary

Certified True Copy (sgd) J.S. Lewis, Major
President

EXHIBIT "C" CERTIFIED TRUE COPY J.C.L.
(sgd) O.J. Beatty, Capt PRES

NOMINAL ROLL OF PERSONNEL WARNED FOR SPECIAL DUTY OVERSEAS

WARNING FOR SPECIAL DUTY OVERSEAS:

All ranks on strength and attached for all purposes HQ Con 4 Cdn Armd Division are warned for embarkation for special duty overseas. Personnel absent without leave after 2359 hrs. 8 Jun 44, or in any way attempting to evade such embarkation or special duty, are liable to be charged under Army Act Sec 12, with deserting from His Majesty's Service.

ATTACHED PERSONNEL

NUMBER	RANK	NAME		ATTACHED FROM
D46908	Sgt	Allan	AO	7 Cdn Educ Ser Sec
L55502	Pte	Gray	FS	7 Cdn Educ Ser Sec
D54598	A/Cpl	Sanders	AB	7 Cdn Educ Ser Sec
F87829	Sgt	Pratt	AW	7 Cdn Educ Ser Sec
C57756	Sgmn	McRae	EW	4 CAD Sigs
B111533	Sgmn	Crocker	CV	4 CAD Sigs
C605 17	Sgmn	Lindsay	BR	4 CAD Sigs
B30062	Sgmn	Burns	WM	4 CAD Sigs
F97211	Sgmn	Smith	W	4 CAD Sigs
M101831	L/Cpl	Keim	WA	4 CAD Sigs
F75999	Sgmn	Burns	RE	4 CAD Sigs
K34903	L/Sgt	Turner	GA	4 CAD Sigs
E49549	Tpr	Pelletier	MJ	28 C.A.R. (SGR)
C31568	Pte	Thornton	HI	22 C.A.R. (CGG)
D26126	Pte	Munn	[illegible]	22 C.A.R. (CGG)
H24177	Gnr	Waite	GB	HQ RCA
D126652	Pte	Brewster	JJ	15 Cdn Fd Amb
D46097	Pte	Joslin	GM	A & S N of C
A102774	Spr	Barclay	GW	1 Cdn Army Fd Svy Depot
K48784	Spr	Sopow	[illegible]	1 Cdn Army Fd Svy Depot
C102529	Pte	Findlay	KC	HQ 1 Cdn Army
D98385	Pte	Pogue	RJ	HQ 1 Cdn Army
H28617	Sgmn	Gregg	DA	HQ 10 C.I.R.
[illegible]	Pte	[illegible]	KR	10 C.I.R. Coy
H65398	Pte	McLennan	C	4 C.A.R. Tpr Coy
[illegible]44213	Pte	Prasser	L	7 Cdn Aux Ser Sec
D116655	Sgmn	Vaughan	GF	ASSU
F66625	L/Cpl	McKinnon	RR	APIS
E100595	Tpr	LaBrecque	M	18 Cdn Armd Car Regt
L84725	Tpr	Joubert	PA	28 Cdn Armd Car Regt
F66303	Cpl	Grosscup	PH	ASSU
L9043	Sgmn	Thorlakson	CI	ASSU
D116701	Sgmn	Sargeant	KH	ASSU
F87778	Gnr	Walker	DH	ASSU
D76611	Sgt	de Breyne	AF	ARCO
K50842	Pte	Stewart	RE	ARCO
A116620	Tpr	Harris	WR	ARCO

I hereby certify that the above warning order has been read and explained, in my presence to all personnel whose names appear on this Muster Roll

(sgd) F.H. Hornsmetle, Lieut
Service Increment Officer
HQ 4 Cdn Armd Division

CERTIFIED TRUE COPY OF DOCUMENTS HELD IN MY CUSTODY

(sgd) O.J. Beatty, Capt
Officer having custody of documents
HQ Sdn 4 Cdn Armd Division

This is Exhibit "C", referred to in the Summary of Evidence in the case of B75[illegible] Pte. Davies, K.R., taken before me, this 12th day of November, 1944.

(sgd) H.V. Harvie, Capt.,
Officer taking Summary

Certified true Copy (sgd) J.C.Lewis, Major
President

Ex "D" J.C.J.

RECORD of the Declaration of a Court of Inquiry assembled at The Field on the 6th day of August 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-75893 Pte. Davies, K.R., 10 Cdn Inf Bde Coy, RCASC

DECLARATION

The Court declare that No. B-75893 Pte Davies, K.R. 10 Cdn Inf Bde Coy RCASC illegally absented himself without leave at 2359 hrs on the 15th day of July 1944, that he is still so absent, and that on the 6th Aug 1944 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE

(sgd) C.W.F. Prevey, Capt 10 Cdn Inf Bde Coy, RCASC President

(sgd) S.A. Campbell, Lieut 10 Cdn Inf Bde Coy, RCASC Member

(sgd) S.D. Glover Lieut 10 Cdn Inf Bde Coy RCASC Member

Signed at The Field this 6th day of Aug 1944

Signature of Commanding Officer (sgd) C.F. Waller, Major 10 Cdn Inf Bde Coy, RCASC

Certified true copy (sgd) H.V. Harvin, Capt 10 Cdn Inf Bde Coy, RCASC Signature of Officer having custody of original record

M.F.B. 221
A.F.B. 133
[illegible]
H.Q. [illegible]

This is Exhibit "D" referred to in the Summary of Evidence in the Case of B75893 Pte Davies, K.R., taken before me, this 11th day of November 1944

(sgd) H.V. Harvin, Capt Officer Taking Summary

J.C.L.
Pre

This is Exhibit "E", referred to in the summary of Evidence in the case of B75893 Pte. Davies, K.R., taken before me, this 11th day of November 1944

(sgd) H.V. Hervie, Capt
Officer taking Summary

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (i) (j)

I, Capt. R.J. Stinson, D.A.P.M., C.M.H.Q. Certify that

Regt. No. B-75893 Rank Pte Name Davies, K.R.

Regiment

Unit No 1 C.A.S.C.P.U. (C.W.U.)

Stationed at

Surrendered himself to No M-17303 Rank L/CPL Name Berg, A.F.

of the No. 6 (Ass) Provost Coy, Gd Provost Corps

On the 24th day of October 1944, at 2255 hours

AS AN ARGUMENT WITH OVERLEAVE

At the time of his surrender he was wearing Military Uniform

London
25 Oct 44

(sgd) R.J. Stinson, Capt.,
D.A.P.M., C.M.H.Q.

"F" J.C.L.
Pres

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-7[illegible]	Pte	Kenneth Ross Davies	10 Cdn Inf Bde Coy, RCASC

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

NOT AVAILABLE

Within last 12 months		Since enlistment or appointment	
For	times		times
For	times		times
For	times		times
For	times		times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused. (not known)

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted (not known)

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 76 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for XX XXXX beginning on the XXXXXXX day of XXXXXX

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 16 days in military Air Force custody, making a total of 16 days in custody, of which NIL days were spent in hospital. (including 10 days in custody in England)

5. The present age of the accused according to his record of service is attestation paper is 25 yrs, 5½ months

6. The date of his commission attestation specified in his record of service is attestation paper 10 September 1939

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon XX service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force military decoration or reward.

Canadian Volunteer Service Medal and Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the ~~paragraph must be struck through~~.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 th day of November, 1944

(sgd) H. [illegible] Harvie, Capt
[illegible] 10 [illegible] Inf Bde Coy CASC

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No. 275893 Name Davies, Kenneth Sqn, Battery, or Company | Corps | Date of enlistment 10 Sept 1939 | GC Badges | Service or Proficiency Pay | Ex "G" J.C.L.Pres 3/17 MFM 6 (AFB 122) 40/P&S/128 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15-7-40	Pte		A.W.L.		8 days Det			ttl forft 9dys pay FR&I
Field	1-10-40	Pte				8 days Det			forft 8 dys pay 149(B)
UK	24-2-43	Pte		A.W.L. AA 15 (1)					forfts 15dys pay
UK	12-4-43	Pte		A.W.L. AA 15 (1)					forft 22dys pay
UK	6-10-43	Pte		AWL from 7 Sept 43 to 4 Oct 43 over 21 dys 20s as Deserter 70s on Approh from Desertion AA 15(1) total forf of 56 dys pay & cost of Approh Def in Kit £5/2/3					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
21 Army	[illegible]7-[illegible]	[illegible] to		AWL from 1[illegible] July [illegible] still AWL on 22 day[illegible] as Deserter					

CERTIFIED TRUE EXTRACT FROM [illegible] 2

(sgd) E.E. La Croc, Capt
for R.A.C. Johnson, Capt
for Colonel
OTC Records
Canadian Military Headquarters

SUMMARY OF EVIDENCE

In the case of

B-75893 Pte Kenneth Ross Davies, 10 Cdn Inf Bde Coy, RCASC,
charged with:

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

The C.O. directs that the evidence be taken on Oath.

First Witness

Capt. O.J. Beatty, 2 I/C and Adjt of HQ Coy, 4 Cdn Armd Div, sworn

States:

I was, on 12 June 44, and am still 2 I/C and Adjt of HQ Coy, 4 CAD, I am acquainted with B-75893 Pte Davies, K.R. 10 C.I.B. Coy, RCASC, whom I recognize here as the accused. On or about 12 June 44, at a Battalion Parade of HQ Coy, 4 CAD, I read to all personnel on strength and attached fmp to HQ Coy, 4 CAD, a Special Warning Order for Service Overseas, namely 2 Cdn Corps Routine Order 353, dated 27 May 44. This Order was republished in my Unit Daily Order, Part I No 47, dated 8 June 44 and signed by myself for the OC HQ Coy, 4 CAD. B75893 Pte Davies, K. . was present on parade when the warning order was read to HQ Coy, 4 CAD. Lieut .H. Hornecastle the Unit Service Increment Officer, attended this parade and certified as to the correctness of the Nominal Roll , as laid down in 2 Cdn Corps Routine Order 353, Para 2. I clearly remember explaining this order in detail and advised everyone to ask questions of me if the order was not understood fully. Some questions were asked and I made answer to them . After assuring myself that all understood , the parade was dismissed.

A Certified True Copy of the original 2 Cdn Corps Routine Order 353, dated 27 May 44 is submitted as Exhibit "A".

A Certified True Copy of the original HQ Coy, 4 CAD Daily Part I Order No. 47, dated 8 June 44, is submitted as Exhibit "B"

A Certified True Copy of the original Muster Roll, signed by Lieut .H. Hornecastle, is submitted as Exhibit "C"

On 24 June 44, B75893 Pte Davies, K. . on strength 10 C.I.B. Coy, RCASC, and attached fmp to HQ Coy, 4 CAD, ceased to be attached fmp to HQ Coy, 4 CAD. I have not seen the accused from that date until now.

The accused declines to Cross-examine this witness.

(sgd) O.J. Beatty, Capt
Witness

"The documents referred to by the witness, were produced, read over to the accused, marked as indicated, signed by me, and attached hereto."

(sgd) M.V.Harris, Capt
Officer taking Summary.

SECOND WITNESS

K-49027 Sgt Dando, A.N., [illegible] Pl, 10 Cdn Inf Bde Coy, RCASC, Sworn, Stated:

I was, on 6 Aug 44, and still an Orderly Room Sergeant of the 10 C.I.B. Coy, RCASC,. On 6 Aug 44 a court of Inquiry was held in the case of R-75807 Pte Davies, K.R. and a record of the Declaration of the said Court was entered in Mil Rk 66. I produce a Certified True Copy of the said record. I also produce Certificates of Surrender to No.6 (Area) Provost Coy, Cdn Provost Corps, signed by Capt., R.J.Stinson, DAPM, CMHQ, dated at London, 25 Oct 44, certifying that R-75807 Pte Davies, K.R. surrendered himself on the 24th day of October, 1944, at 2255 hrs, as an absentee without leave, and that at the time of his surrender he was wearing military uniform.

The accused declines to Cross-examine this witness.

(sgd) A.N. Dando, Sgt.,
Witness

The record of the Declaration of the Court of Inquiry, marked "D" and Certificate of Surrender , marked "E", referred to by the witness, were produced, read over to the accused and attached hereto.

(sgd) H.V. Harvie, Capt
Officer taking Summary

The accused was warned as follows:

" Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you do say or any evidence you give will be taken down in writing, and may be given in evidence."

The Accused : I have nothing to say at this time.

(sgd) K.R. Davies, Pte
Accused

The Accused declines to call witnesses in his own behalf.

I certify that RP 4 has been complied with.

Taken by me in the Field in the presence and hearing of the accused this 12th day of November, 1944.

(sgd) H.V.Harvie, Capt.,
Officer taking Summary.

4R-31

Cfn Davies R.A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-53268 Cfn DAVIES, Roy Arthur - 1 COMERU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd	NG		
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of xit see RP 44 fn 6.)

At present under sentence for NOT beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which Nil+- days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay for Sixty (60) days and to be fined under 4 Heads of Charge of £1-10-0 (Cost of return)

3 Feb 45 (Sgd) H.W. Brownfield President. (RP 45, 50.)
(Sgd) Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 56, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 4 Feb 45 (Sgd) H.W. Brownfield Major
(HON BROWNFIELD CBE MC)
COMD "C" GP. CDN RCA UNITED
Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B 53268 Cfn R.A. Davies	6 Feb 45	H.W. Brownfield Colonel, Commanding, No. 1 Canadian Ordnance & Mechanical Engineer Reinforcement Unit.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Promulgated Part II D.O. # 32 1/7 Feb 45

RECORDED AT CMHQ IN AB 160 4R-31

RECEIVED 9 FEB 1945

FIELD GENERAL COURT-MARTIAL

CPAMS (In lieu of AFAB1 40/1 & B/1688 (8144))
4/388

Convened by Order of Brig HON Brownfield CBE MC Comd "C" GP. CDN dated 30 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-53268 Cfn		Roy Arthur	DAVIES	1 COMERU

PROCEEDINGS REVIEWED
Mob Uhaell Major
REVIEWING OFFICER, LAS BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 2 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans

~~The Interpreter is sworn.~~(1) Do you object to Capt Lt Col Hanley as shorthand writer? Ans No
The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H. Th. Miller ED 10	MD Can
Member	Capt	R.T. Rich	1 ComEng
Member	Lieut	J.R. Mead	1 ComEng
~~Judge-Advocate~~			
Prosecutor	Lieut	R.W. Cole	1 ComEng
Defending Offr	Lieut	W.R. Learmonth	1 ComEng

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 60 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused before arraignment make(s) (no) ~~not guilty~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 123), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

(3). The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (2)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP 115.* 2. *RP 46(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (d), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. Yes I do call a character witness

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *AFB 253 or AFB 294.* 2. *MAM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Only what is stated in the Plea

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also J.A., if any.~~(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2323, MML p 90, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1), 48(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.53268 Craftsman Roy Arthur DAVIES, Royal Canadian Electrical and Mechanical Engineers, on strength of No.1 Canadian Ordnance and Mechanical Engineer Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with,

WHILE ON ACTIVE SERVICE

SECTION 15(1) ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Bordon, Hants., did absent himself without leave from 1400 hours 16 December 44 until surrendering to the Garrison Police at Leeds at 0001 hours 20 January 45, thereby incurring costs of returning him to his unit in the amount of £1-18-0. Total absence thirty-four (34) days, ten (10) hours, one (1) minute.

Bordon, Hants.
27 Jan 45

(Harold M. Bailey) Col.,
Commanding Officer,
No.1 Cdn Ord & Mech Engr Rft Unit.

To be tried by Field General Court Martial

H.W. Brownfield Brigadier
Commanding "C" Gp, Cdn Reinforcement Units
(Convening Officer)

Bordon, Hants

30 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paros 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-53268	Cfn		Roy Arthur	DAVIES	1 COMERU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~[illegible]~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) this date endorsed by me, ~~[illegible]~~, "To be tried by Field General Court-Martial". HB

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; ~~[illegible]~~ HB

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~ HB

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~ HB

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	E.M. Miller ED (Must be named. RP 106.)	HQ CRU (Unit.)

MEMBERS.

Capt	to be detailed by CO	1 COMERU
Lt (Rank.)	to be detailed by CO (Named or detailed. RP 106.)	1 COMERU (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Hen Brownfield (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Dat 30 Jan 45

Commanding "C" Gp, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 2) 40/F & S/1697 (6148)

(See overleaf for oaths and notes for use on trial.)

NO.1 CANADIAN ORDNANCE REINFORCEMENT UNIT 1CORU/5-2

MEDICAL CERTIFICATE

I certify that B.57265 Cfn DAVIES, R. has been examined by me this morning and is fit to undergo trial by Court Martial.

Date 2 FEB 1945

R.E. Low Capt
Medical Officer,
No.1 Cdn.Ordnance Reinf.Unit.

IN THE CASE OF

B.53268 Cfn DAVIES.R.A. 1 COMERU

E-1 STATEMENT BY ACCUSED
(on oath)

B.53268 Cfn DAVIES. R.A. of 1 COMERU having been duly sworn states:

Q. With regard to your education you have two years high school and after that you worked for your father in the coal and ice business is that right?
A. Yes sir.

Q. You are 22 years of age and category A.1 is that right?
A. Yes sir.

Q. Did you enlist in the Ordnance on 20 Sep 41 at the age of 19 and subsequently proceed overseas with CBOW on 22 Mar 42?
A. Yes sir.

Will you tell the Court in your own words of the AWLs at CBOW and the reason for them?

"I wanted to go to the infantry and it seems they would not let me. I am category A.1. I went to the Orderly Room and asked the CSM if I could go to the infantry. CSM Stenhouse later told me that nothing had happened and so I went AWL. When I came back I was put on charge and I told Col. Fields that I wished to go to the infantry and that was the reason why I went absent. He said that that was a poor excuse so I went AWL again. When I came back I told Col. Fields the same reason for my going AWL. He said he would see what he could do for me. I was let out on 3 days remission of sentence for the purpose of going to the infantry but I was sent to the Ord. R.U. I was suppose to go to the infantry because I saw it on the paper which I handed in to Records. Nothing happened for a while so I went AWL again and received 28 days field punishment. When I came up for office before Major Shewbridge I told him why I went absent, because I still wanted to go to the infantry, and he gave me a bawling out. I spent 28 days in hospital and I was put on three drafts for overseas when I came to this camp and each time I was taken off by the M.O. because I was taking treatment for V.D. I then had a 9 day leave which I over-stayed which is this absence."

Q. You were in Leeds all the time you were AWL the last time?
A. Yes sir.

Q. What were your reasons for returning?
A. It was my duty sir.

Q. Anything else?
A. Yes sir there is a girl I wish to marry.

Q. Has your treatment by the M.O. been completed by now?
A. Yes sir.

Q. You are now medically available for draft?
A. Yes sir.

Q. What trades have you in the army?
A. No trade sir.

Q. Do you mean by that general duty?
A. Yes sir.

Q. You have never taken a course?
A. No sir.

Q. What have you been employed at all the while at CBOW & COMERU?
A. Fatigues all the time sir.

From defence Cross-exam. & by the Court:—

Q. Have you ever applied for permission to be married?
A. Not yet sir.

Q. How did you live for 34 days?
A. I stayed at the girl's place.

Q. Have you ever had the Army Act read to you?
A. Yes sir.

Q. Have you ever been told that you had the right to be paraded to your officer?
A. Yes sir.

Q. Why didn't you ask to be paraded?
A. You hear so much about that sir of one fellow trying to get paraded and you never seem to be able to get paraded.

Q. Why didn't you try?
A. I do not know sir.

CASE OF

B.53268 Cfn DAVIES.RA. 1 COMERU.

CHARACTER WITNESS FOR ACCUSED

B.24140, CSM STENHOUSE. J. of 1 CBOW having been duly sworn states:

Will you tell the Court what you know of the character of Cfn Davies and what you know of his work and general reputation as a soldier?

"He was with Base Wksp for some time. The last I knew of him he was employed in the Sgts Mess as a waiter for the last two years before leaving us. He was a good soldier and worker. He was always on the job except for a couple of times when he was A.W.L. which I believe was caused by his nerves. The general information I received from the Sgts. was that he was a good man, smart and attended to his duties and generally conducted himself very good."

Pros does not wish to Cross Exam. Q. by the Court! —

Q. Had this man ever asked you about a transfer to the infantry?
A. Yes he was interested to get to the infantry.

Q. What did you do about it?
A. I took it up with Major Ross.

Q. What happened?
A. He stated that he would have to wait until a draft was going out.

Q. Did you tell him that?
A. I told him there was a possibility of his going to the infantry later on.

Q. Did you ever parade him to an officer?
A. Not that I recollect.

Q. Why not?
A. He didn't ask.

Q. He asked to go to the infantry?
A. Yes sir he spoke to me about it.

Q. Why didn't you parade him to an officer?
A. ~~xxxxxxxxxxx~~ I had already taken the matter up with the Coy.Comdr. At that time we had from 100 to 150 who wanted to go to the infantry and we didn't encourage them at that time. The Coy Comdr said there would be men going out at a later date.

ADDRESS IN MITIGATION

B-53268 Cfn DAVIES, R.A.

The Court are asked to consider the following points in mitigation of sentence.

1. The accused has been given a good character reference by his C.S.M. at the only unit in which he has been other than the R.U.

2. This is the first F.G.C.M. of the accused, he has never served detention and he has now been A.W.L. 34 days.

3. The accused was in uniform at all times and voluntarily surrendered.

4. That the accused has, for months now, being trying to transfer to the Canadian Infantry Corps and has even gone AWL trying to force the issue.

5. The accused has been on two or three Canadian Infantry Corps drafts at COMEND, but has been removed by the M.O. However, this has now been cleared up and he is medically available for Canadian Infantry Corps transfer.

6. The accused is physically and mentally equipped for transfer to Canadian Infantry Corps i.e. age 22, Category A-1 and two years High School training.

7. It is recommended therefore, that after as short a period of punishment as possible that the accused be allowed to transfer to the Canadian Infantry Corps.

SUMMARY OF EVIDENCE

In the case of B-53268 Craftsman Roy, Arthur, DAVIES on strength of No 1 Canadian Ordnance and Mechanical Engineer Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

First Witness for the Prosecution

C-28772 Sergeant Ruddell, R.J. on the strength of No. 1 Canadian Ordnance and Mechanical Engineers Reinforcement Unit having been duly sworn states:

"I am Orderly Room Sergeant No 3 Coy of No 1 Canadian Ordnance and Mechanical Engineers Reinforcement Unit and I produce the following:

(A) A certified true copy of the Records of Declaration of the Court of Inquiry concerning the illegal absence of the accused dated 10 Jan 45

(B) A certificate of the surrender of the accused dated 20 Jan 45

(C) A certificate of expenses incurred in the return of the accused to his unit dated 25 Jan 45.

As Exhibits (a), (B), and (C) for the prosecution and pertaining to the accused whom I now recognize I have initialled the Exhibits for the purpose of identification.

R.J. Ruddell
C-28772 Sgt. Ruddell, R.J.

The accused declines to cross-examine the witness.

The accused having been duly cautioned as follows:

"Do you wish to make any statement or to give evidence on Oath? You are not obliged to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

The accused reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and in the hearing of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with

(E.W. Cols) Lieut.
Officer detailed to take down Summary of Evidence.

Ex A

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Bordon Hants on the 10 day of January 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-53268 Cfn Davies R.A.

DECLARATION.

The Court declare that B-53268 Cfn. Davies, R.A. RIEME on strength of No.1 Cdn. Ordnance and Mechanical Engineers Reinforcement Unit, did illegally absent himself without leave at Bordon Hants at 1400hrs 16 December 1944 and that he is still so absent and that on 10 January 45, He was deficient the articles of clothing and equipment listed on the attached sheet and of the value stated

President .....Major
(F.T. Shoebridge)

Members .....Lieut
Names of President and Members (G.W. Cole)

.....Lieut.
(W.R. Learmonth)

Col.
(Harold M. Bailey)

Signature of Commanding Officer Commanding Officer 1 COMMU

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Original Record.

(16818) Wt.28982/1365 120,000 1/41 A.A.E.W.Ltd. Gp.498
(17986) Wt.11504/173 200,000 5/41 " " Forms/B115/54

"B"

ABSENTEE SURRENDER SLIP.

Certificate of surrender under Sec.163 (1) (2) [illegible]

I. Capt H. Coop ..... certify that No. B.53268 Rank Pte Name DAVIS R.A.

Coy R.C.E.M.E. Date 20/1/45 Surrendered himself to No. 13012116

Rank Sjt. Name YEATMAN R. Garrison Police on the 20th day

of Jan 45. as a deserter (or absentee without leave)

Place LEEDS.

Signature ..... CAPT.,
GARRISON ADJUTANT,
[redacted]LTAR BARRACKS, LEEDS, 2.

Date 1/1/45.

"C"

Expense Voucher Re— Ref: KR & O (Can) 539

Reg No B53768 Rank Pte Name Harris, R.A Unit ICONRC

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit from~~ London from Leeds

Date	Particulars (½ portion)	Amount		
28 Jan 45	Escorts return fare from LONDON To Leeds		14	3
	Prisoners single fare to LONDON From Leeds		14	3
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		10	4
	Total £	1	18	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

J A Thomson LIEUT.
J. A. THOMSON,
ADMIN. OFFICER—D.P.M's BR.
C.M.H.Q.

Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 100-55
40/P & S/483 (6762)

M.F.B. 355

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Unit
B-53268	PTE	Roy Arthur DAVIES	No. 1 C.O.M.E.R.U.

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment or appointment	
For AA 15 (1)	3 times	AA 15 (1)	4 times
For AA 40	0 times	AA 40	3 times
For AA 11	1 times	AA 11	1 times
For	times		times
For	times		times

Number of instances of gallantry or distinguished conduct NIL

~~There are no entries in the conduct sheets of the accused.~~

Note.--If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL ..... days in civil custody, and 13 days in military custody, making a total of 13 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his attestation paper is 10 Sept 22

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 29 Sept. 41

7. The service which the accused is allowed to reckon towards discharge is .....

8. The accused is entitled to reckon 29 Sept 41 service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military award (or is in possession of or entitled to) State any military decoration or reward C.V.S.M. & Clasp

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Canadian Army the rank of ....N/A....dated....N/A....and in his regiment (or unit) the rank of....N/A....dated....N/A....

12. The accused has served as a non-commissioned officer continously, without reduction to the present date:--

....N/A....Date of promotion.

In the rank of....N/A....years.

In the rank of....N/A....years.

In the rank of....N/A....years.

Note.-- If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.

SCHEDULE

of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number....N/A....Rank....N/A....Name....N/A....Unit....of....N/A....

Note.-- A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of court by wich tried	Date and place of trial	Charge upon which convicted	Sentence of the court	Punishment Remitted
N/A	N/A	N/A	N/A	N/A

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this....2....Feb....45....day of....

Capt & Adj.
No. 1 C.B.M.H.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked....signed by the president, and annexed to the proceedings.

No. B-53268 Name DAVIES, Roy Arthur | Sqn, Battery, or Company | Corps R.C.E.M.E. | Date of enlistment 29 Sep 41 | OC Badges Nil | Service or Proficiency Pay N/A | 3/17 MFM 6 (AFB 122) 40/PAS/100 (5413)

Date of last entry in Company Conduct Sheet 20 Oct 46 | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc D. Campbell, Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dissenting with trial	By whom awarded	Remarks
Field	29-6-43	Pte		WOAS Conduct to the prej. became unfit for duty by reason of previous indulgence in alcoholic stimulants. A.S. 40.	Lieut Roberts Cpl Dyment	2 days pay & 7 days C.B.	30 Jun 43.	A.T. Field Major	
Field	12-8-43	Pte		WOAS AWL from 0200 hr. 11-8-43 to 1030 hrs 12-8-43 1 day 8 hrs 30 mins A.A. 15.	Documentary C.M.Police	14 day C.B. 2 Day pay. Stop of pay £2-10-6.	16-8-43	G.A. Secord Col.	2 days Auto Forf.
Field	20-9-43	Pte.		A.A. 40 WOAS Conduct to the prej. whiles on guard duty at 1 CBOW did use machine in machine shop without Auth.	L/Cpl Sutton (Doc) QMS Kilbank	7 days C.B. & extra fatigues	20Sep43	R.H. Beck	Capt.
Field	30-9-43	Pte.		AA 40 WOAS Neglect to the prej. failed to comply withhis superior officer	Sgt Henderson	7 days F.P. and Forf. pay.	1 Oct 43	Lt.Col. McGregor	
Field	31-5-44	Pte.		AA 11 WOAS Neglecting to obey Part I Orders. was improperly dressed.	(Doc) M.P's	1 days pay 7 days C.B.	5 Jun 44	Col. Secord.	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17Aug44	Pte		Sec 15(1) AA WOAS AWL from 0545 hrs 17-8-44 until 0915 hrs 21-8-44 (Total time absent) 4 days 4 hrs. (Doc.)	L/Cpl Gerego-raschuk.	10 days F.P. & Forf. of pay	21Aug44	Col. Secord	5 days Auto Forf.
Field	31Aug44	Pte		AA Sec 15(1) WOAS AWL from 2230 hrs 31 Aug44 until 1645 hrs 3 Sep44 (Total time absent-2 days, 18 hrs. 15 mins.)	Cpl Webb Documentary	10 Days Field P. & Forf pay	5 Sep 44	Col Secord	3 days Forf pay FR&I 149(1)(a).
Field	15Sep44	Cfn		AA Sec 15(1) WOAS AWL from 1300 hrs 15 Sep 44 to 1510 hrs 26 Sep 44. (Total absence - 11 ds 2 hrs 10 mins.)	Documentary Cpl Anderson O.	28 ds FP in Close Custody 28 ds Forf Pay	30 Sep44	F.T. Shoebridge, Maj.	12 ds Auto Forf of Pay. Stoppage 14/11 3 ds Forf. in Close Arrest.

CERTIFIED TRUE COPY.

Capt

.....OFFICER HAVING CUSTODY OF REGIMENTAL BOOKS.

LIST OF WITNESSES

In the case of B-53268 Craftsman Roy Arthur DAVIES on strength of No 1 Canadian Ordnance and Mechanical Engineers Reinforcement Unit.

(For the Prosecution)

1. C-28772 Sergeant Ruddell, R.J. Orderly Room Sgt. 3 Coy Holding Wing No 1 COMERU

(For the Defence)

None.

LIST OF EXHIBITS

In the case of B-53268 Craftsman Roy Arthur DAVIES on strength of No. 1 Canadian Ordnance and Mechanical Engineers Reinforcement Unit.

(For the Prosecution)

(A) A certified true copy of the Records Of Declaration of the Court of Enquiry concerning the illegal absence of the accused dated 10 Jan 45

(B) A certificate of surrender of the accused dated 20 Jan 45

(c) A certificate of expenses incurred in the return of the accused to his Unit dated 25 Jan 45

(For the Defence)

None

Harold M. Bailey Colonel
Commanding Officer
No 1 Cdn Ord & Mech Engrs Rft Unit

Bordon, Hants
27 Jan 45

In the case of B 53268 Craftsman ROY ARTHUR DAVIES on strength No 1 Canadian Ordnance and Mechanical Engineers Reinforcement Unit

- -

I hereby request that the convening officer appoint Lieut ~~[illegible]~~ No 1 C.B.W.(N.S.) coy to represent me at my forthcoming Court Martial.

R. A. Davies
B-53268 Cfn. Davies, R.A.

- -

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Bordon preliminary to my Court Martial, and I further acknowledge a receipt of a copy of the charge sheet under which I am being brought to Court Martial.

R. A. Davies
B-53268 Cfn. Davies, R.A.

Bordon, Hants
27 Jan 45.

XXX-33

TPR - DAVIES RD

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D125253 TPR ROY DOUGLAS DAVIES 1 CDN CONV DEPOT

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 34 days, of which 9 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 90 days

(Sgd) ..... Judge Advocate, if any. 21st August 1944 Date awarded. (Sgd) Charles Bellamy Lt/a. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed EWH

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) E.W. Haldenby Brig

Date 23 Aug 44 Commanding COMMANDER 1 CDN BASE RFT GROUP

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
D-125253 Tpr Davies, R D	27 Aug 44	R.L. Bergman Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, XXX-33.

CFA96 (To take place of AFA31 40/P & S/1098 (49/101)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Brigadier E.W. Haldenby Comd 1 Cdn Base Rft Gp dated 15 Aug 1944

K.3

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-125253	Tpr.	Roy Douglas	Davies	4 PDOG 1 Con Conv Dep

PROCEEDINGS REVIEWED 27 Sep 44 Charles Bellamy Capt JAG

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) Italy on (date(s)) 21st August 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2A 114

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 54, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	Charles Bellamy	O. de Recrut'e Centre
Member	Capt	E.R. Weldon	R.C.A.P.C. 1 Cdn Corps Tps
Member	Capt	R.L. Craddock	R.C.A. 5th Bn Reg CARO
Judge-Advocate			
Prosecutor	Capt	E.W. Cruikshanks	R.C.R. 1 Cdn Corps Tps
Defending Offr	Lieut	W.B. Langston	Edm Regt 1 Cdn Corps Tps

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 2.)

A8. The accused D-125253 Tpr Roy Douglas Davies before arraignment make(s) (no) ~~no~~ plea (s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rons and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. .....
Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*a*), *RP* 45, *120*(*a*). 2. *AA* 54(3), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(f) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *K* and Ex *L* respectively.(3)
(1. *MFB* 335 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes Sir. (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or wish anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(8), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-55, 69, 118, 119(*A*), *KR Can* 308, 330, 563-564, *Overseas RO* 309, 2323, *MML p* 80, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

E Bellerova mgr

CHARGE SHEET

The accused, D-125253 Trooper Roy Douglas Davies, 4 P.L.D.G., presently a convalescent at 1 Canadian Convalescent Depot, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Italy, at or about 2230 hours 29 June 44 absented himself without leave until apprehended by the Military Police at Sorrento at approximately 1840 hours 28 July 44.

In the Field
11 Aug 44

F F Northup Lieut-Colonel
(F.F. NORTHUP)
Officer Commanding
1 Canadian Convalescent Depot.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

E W Haldenby

In the Field
In Italy
18 Aug 44

(E.W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Gp

c Bellavance Major

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D125253	Tpr		Roy Douglas	DAVIES	(4 PLDG) 1 Conv Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached ~~and~~ on (*date*) 12 Aug 44 endorsed by me, ~~(or by an offr of my staff (or me)~~), "To be tried by Field General Court Martial". EWH

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ EWH

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Ed Offr as President, for the reasons I have attached hereto.~~ EWH

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*) EWH

5. ~~I also appoint as Judge-Advocate thereof the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C. Bellavance (CIC)	2 Cdn Reallocn centre

MEMBERS.

Capt or Lt to be detailed by OC 6 Bn 2 CSRD

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
	Capt or Lt to be detailed by OC 1 Cdn Conv Depot	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	Capt or Lt to be detailed by OC 1 Cdn Conv Depot	

~~JUDGE-ADVOCATE.~~ EWH

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (*Country.*)

Date 12 Aug 44

E.W. Haldenby (*Signed personally. RP 105 fn 2.*) Brigadier (*Rank.*)

(E.W. Haldenby)
Commanding 1 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FABS 178 (Pers of AFAS) 60/P & R (Def) 1461)

(*See overleaf for oaths and notes for use at trial.*)

No.1. Canadian Convalescent Depot. Canadian Army. C.M.F. C Bellevue M/C

I hereby certify that I have this morning examined. Tpr. Davies R.D.

D125253.....

and find him fit to undergo trial by Court Martial.

Date. 21. Aug. 44.... Signed.... H. J. Klein. Capt.....

E Bellerose Maj.

Plea in mitigation of sentence in
the case of D125253, Tpr. Davies, R.D.,
by Lieut. W.B. Langston, L.Edmn.R.

The accused in pleading guilty to the offence as charged has signified his acknowledgement of the fact that he has done wrong and his willingness to pay the price for so doing.

He has been a soldier in the Cdn.Army since Nov 41 and has been guilty of no crimes since proceeding overseas in Aug 43. He has served in the field with 4 P.L.D.G's., being wounded 25 Jan 44.

He has had no leave since 1 Aug 43.

Whilst the foregoing is not in any way intended to justify his present offence it is requested that the Court take into consideration the excellent record of the accused when considering the punishment to be awarded.

W.B. Langston

(W.B. Langston) Lieut.
Defending Officer.

"J"

E Bellavance Mgr.

SUMMARY OF EVIDENCE

SUMMARY OF EVIDENCE in the case of D-125253 Tpr Davies, Roy, Douglas, 4 P.L.D.G. presently a convalescent at No. 1 Canadian Convalescent Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution

Capt. J.O. Howitt, R.C.A., Adjt. 1 Cdn Conv. Depot having been duly sworn states as follows:-

I am Adjt. 1 Cdn Conv. Depot. I submit certified true copy of a Declaration of a Court of Inquiry which investigated the illegal absence of D-125253 Tpr. Davies R. 4 Recce Regt, the accused, whom I recognize.

The Declaration states that the accused absented himself without leave at 2230 hours 29 Jun 44 and was still absent without leave on 26 Jul 44. Certified true copy of declaration admitted in evidence and marked Exhibit "A".

The accused declines to cross-examine this witness.

J Howitt

SECOND WITNESS for the Prosecution

1136000 L/Cpl Robinson, J., 246 Provost Coy. C.M.P

Owing to the exigencies of the service this witness cannot be called to give evidence, therefore a true copy of a written statement purporting to be signed by him is attached with Army Form B-252 and marked Exhibit "B"

The accused does not demand the attendance of this witness for cross-examination.

J C Gordon Capt

Officer detailed
to take
Summary of Evidence.

The accused was asked, "Do you wish to give any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

Statement of accused.

What I wish to say is that on the 28 Jul 44 I reported to the first C.M.P. I saw at 1840 hrs. I asked him where the C.M.P. H.Q. was located. He took me there. I was sober and properly dressed.

Taken down before me in the presence of the accused this 10th day of Aug. 1944. I hereby certify that R.P. 4 (c)(d)(e)(f) and (g) have been complied with.

T. C. Gordon Capt

Officer detailed
to take
Summary of Evidence

In the Field
10 Aug 44.

Exhibit "B"

Statement of evidence in case of L125253 Pte Davies R.D. 4 P.L.D.G.

Statement of L/Cpl Robinson submitted as Exhibit"B".

Sir:

At Sorrento on the 28 Jul 44 at about 1840 hrs I was on duty in Via CORSO ITALIA where I saw the above named soldier. I stopped him and asked him for a pass, he replied, "I am absent, and was just going to the Military Police to give myself up, give me a chance and let me go there on my own".

I arrested and conducted him to the Military Police Detachment HQs where I obtained his particulars verbally, verified same from his Militia Book, Part 1 and he was later handed over to the NCO i/c Town Guard Room, Salerno.

C.M.F.
28 July 44

L/Cpl Robinson
C.M. Police

Certified true copy of statement.

K

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ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D/125853	Tpr.	Davis, R.D.	4 R.H.G.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 977, K.R., 1940.

* The summary entries should correspond with the entry in pursuance of the conduct sheets, preference being given to the most serious offence in each court, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for desertion or fraudulent enlistment state separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. ~~The accused has not been previously convicted~~ or

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time~~ or ~~The accused at the present time is under sentence of~~ _____ beginning on the _____ day of _____

4. ~~The accused has been in confinement awaiting trial on the present charges~~ for 6 days in civil custody, and 24 days in military custody, making a total of 27 days, of which 9 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 21 yrs 17 days

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 3 Nov 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____

8. ~~The accused is entitled to deferred pay or gratuity in respect of 2 yrs 291 days~~ service.

9. The accused is entitled to reckon 2 yrs 291 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or award*)). COR. VOL. SERVICE MEDAL & CLASP

11. ~~(*If the accused is a warrant officer*) The accused before he was made a warrant officer last held the regimental rank of~~ _____

12. ~~(*In the case of an officer*) The accused holds in the army the rank of~~ _____ dated _____

~~And in his regiment (or corps or department) the rank of~~ _____ dated _____

(P.[illegible]) W1.[illegible] 125,000 6/41 A.A.F.W.Ltd. Gp.698

'L'

M.F.M. 6 Ellenore
(A.F. B.122)
40/P & /8136 (2965)

No. D-125253 Name Tpr Davies, R. D. Sqn., Battery, or Company Corps C. A. C. Date of enlistment 3 Nov 41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified true copy from records available

[illegible] CONVALESCENT DEPOT, [illegible]

(P.T.O.)

"K"

Ebellaneous Regs.

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
P 125283	Tpr	Davies, R D.	4 R.C.D.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not inserted in the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, payments being given in the most serious offence in each entry, and to any recognised special rate of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. ~~The accused has not been previously convicted.~~ *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time.~~ *or* ~~The accused at the present time is under sentence for~~ _____ beginning on the _____ day of _____

4. ~~The accused has been in confinement awaiting trial on the present charges, for~~ 6 days in civil custody, and 24 days in military custody, making a total of 27 days, of which 9 days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 21 yrs 17 days

6. The date of his commission / attestation specified in his record of service / attestation paper is 7 Nov 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____

8. ~~The accused is entitled to deferred pay or gratuity in respect of 2 yrs 291 days~~ service.

9. The accused is entitled to reckon 2 yrs 291 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*) COY. VOL. SERVICE MEDAL 1 CLASP

11. ~~(*If the accused is a warrant officer.*)~~ The accused before he was promoted warrant officer last held the regimental rank of _____

12. ~~(*In the case of an officer.*) The accused holds in the army the rank of _____ dated _____ and in his regiment (or corps or department) the rank of _____ dated _____~~

(P 1629) Wt. 21/6402/144 425,000 6/41 A & S.W. 1134 Gp. 666

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 day of August 44

[signature] Regt. & Lieut., [illegible]

[illegible] Regt. [illegible]

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years.	
In the rank of	years.	
In the rank of	years.	

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

'L'

M.F.M. 6 Fellowes
(A.F. B.122)
40/P & /B136 (2965)

No. D-125253 Name Tpr Davies, R. D. Sqn., Battery, or Company Corps C.A.C. Date of enlistment 3 Nov 41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified true copy from records available

[signature]

CONVALESCENT DEPOT

(P.T.O.)

List of Witnesses for the Prosecution

Capt. J.O. Howitt	1 Cdn Conv. Depot
1136000 L/Cpl Robinson	246 Provost Coy. C.M.P.

List of Witnesses for the Defence

Nil

List of Exhibits

Exhibit "A" - Declaration of Court of Inquiry.

Exhibit "B" - Statement by 1136000 L/Cpl Robinson 246 Provost Coy. C.M.P.

I D-125253 Tpr Davies R.D. hereby acknowledge receipt, free of charge, of one copy of the Charge Sheet and one copy of the Summary of Evidence, relating to my trial.

R. D. Davies.

I request that an Officer be appointed to represent me at my trial. I request the services of _____ if he is available.

R. D. Davies.

5P-46.

Ohe. Davies, K.S.

RECORDED AT CMHQ IN AR 160 — SP-46

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81) 40/P & S/1698 (6144) 4/38B

Convened by Brigadier J.E.Sager Comd F Gp CRU dated 7 Jul 45

ACCUSED.

(Particulars of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) Appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.16313	Private	Ronald David	Davies	HQ 1 Cdn COD

PROCEEDINGS REVIEWED
J. Quinquefed, Capt.
20 July 45
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 9 JUL 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (are) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 22, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ... as interpreter?~~ Ans ...

~~The Interpreter is sworn.~~(1) Do you object to C.S.M. I.C. Sgt Bonnerman A.T. as shorthand writer? Ans NO. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO - A (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D L REDMAN	HQ CRU
Member	CAPT	A F CHURCHILL	1 CARU
Member	LIEUT	R R JACKSON	1 CARU
~~Judge-Advocate~~			
Prosecutor	MAJOR	R S McCREATH	HQ ICCOD
Defending Offr	CAPT	H F GIBSON	HQ ICCOD

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans YES.(2)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused ... before arraignment make(s) (no) (a) plea ...(1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M.16313 Pte Davies, R.D. - Hq 1 Cdn COD

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ... beginning on (date) ...(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of Sixty (60) Days.

(Sgd) ... Judge-Advocate, if any. 9 JUL 45 Date awarded. (Sgd) ... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Yes

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.66(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1) ~~(1. RP 57A. Delete if not used.)~~

Date 10 Jul 45 (Sgd) J.E. Sager Brigadier Commanding F Gp CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
M.16313 Pte Davies R.D. HQ 1 CCOD RCOC	13 JUL 45	A. McLean Capt HQ 1 CCOD RCOC

PART II DD 88 4/13 JUL 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their)~~ plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A*, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answers and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or MFB 296. 2. As at 4. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes A/J, DJ'd (NOTE A I)(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A., if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 336, 563-566, Chevreaux NO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 136. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to custody and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, M.16313 Pte. Ronald David DAVIES, on strength of HQ 1 Cdn COD, RCOC, a soldier of the Canadian Army Overseas, is charged with:

When on Active Service

FIRST CHARGE
Sec. 15 (1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Peper Harow, Surrey, absented himself without leave from 2359 hrs, 10 Jun 45 until surrendering himself to the Orderly Cpl. at Eashing, Surrey, at 2130 hrs, 3 Jul 45. Total time absent 22 days, 21 hrs and 30 mins.

R. C. Kelly

(R. C. Kelly) Lt.Col.
O.C. Depot Battalion
H.Q. 1 Cdn COD, RCOC

Peper Harow
6 Jul 45

To be tried by Field General Court Martial.

J.E. Sager

(J.E. SAGER) Brigadier,
Comd "F" Cp, C.R.U.

7 Jul 45
BORDON, Hants

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.16313	Private		Ronald David	Davies	HQ 1 Cdn COD RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 7 Jul 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-Col	D.L. Redman, V.D.	HQ CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

A Capt	from and to be detailed by OC	1 CARU
A Lieut	from and to be detailed by OC	1 CARU
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.) — J.E. Sager (J.E. SAGER) (Signed personally. RP 105 fn 2.) — Brigadier (Rank.)

Dat 7 Jul 45 — Commanding "F" Gp, C.R.U. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 85 (In lieu of AFA 3) 40/P & S/1697 (8142)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
KR(Can) para 557

I certify that I have this morning examined No. M.16313.

Rank Pte. Name Davies R.D. of HQ 1 CCOD, RCOC (Unit)

and in my opinion he is fit* to undergo trial by Court Martial.

A Green Capt (Rank)
Unit
Medical Offr, RCAMC

Station HQ 1 CCOD
Date 9 Jul 45
(of Court Martial)

* Cross out one N/A and initial.

TRIAL OF

M-16313 PTE DAVIES RD HQ 1 CCOD

PLEA IN MITIGATION OF SENTENCE

I would just like to say that his soldier enlisted in Sep 39 at which time he was with The Loyal Edmonton Regiment, but in the latter part of 40 by reason of his age and sickness, he was transferred from that unit to Ordnance when subsequently he came to 1 CCOD. He is married in England since 1940. His wife has had a series of illnesses having been bombed and buzz-bombed; her home was also bombed and buzz-bombed. The accused originally came from Wales in 1926 to Canada and wishes to be discharged in the UK because he has no relatives or friends back in Canada and hopes to make his home here. He is a mason by trade and has been promised a job over here if he can be discharged in this country. I should like the Court to pay particular attention to his AFW 6 which records that the only offences he has ever committed in the Army were small AWLs. On all these charges, he has been convicted and given various punishments. I suggest that if the accused is given a further period of detention it will not help him nor will it be of any assistance to the army. The reason he remained absent was because his wife was sick and he remained with her. He had been previously absent and his location was known and he could have been picked up if they had wanted to pick him up. He is 41 years old and was transferred to Ordnance by reason of category; I submit therefore that this man is more a medical case than a CM case.

E-3

SUMMARY OF EVIDENCE

in the case of

M.16313 Pte. Davies, R.D. on strength of Headquarters 1 Cdn C.O.D., RCOC, a soldier of the Cdn Army Overseas.

FIRST WITNESS For the Prosecution

C.15508 CSM Jamison, L.G., on strength of Headquarters 1 Cdn C.O.D., RCOC, having been duly sworn, states:

I produce the following documents pursuant to Overseas RO 5352 which has been read over and shown to the accused and which is attached hereto as Exhibit "A": "Certified true copy of 1 CCOD Part II D.O. No. 77 d/18 Jun 45, showing the accused to be Absent Without Leave from 2359 hrs, 10 Jun 45."

The accused declines to cross examine this witness.

L Jamison
.....
C.15508 CSM Jamison, L.G.

SECOND WITNESS For the Prosecution.

H.100728 L/Cpl Ogroskin, D., on strength of Headquarters 1 Cdn C.O.D., RCOC, having been duly sworn, states:

I was Orderly Cpl at Eashing Headquarters 1 Cdn C.O.D., RCOC, from 0630 hrs 3 Jul 45 until 0630 hrs 4 Jul 45. At 2130 hrs, 3 Jul 45, the accused, M.16313 Pte Davies, R.D., whom I now recognize, surrendered to me. He was sober and properly dressed in military uniform.

The accused declines to cross examine this witness.

D Ogroskin
.....
H.100728 L/Cpl Ogroskin, D.

The accused was cautioned as follows: "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

R.D. Davies
.....
Signature of Accused.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f), and (g) have been complied with.

Ralph W. Creath Lawson
Offr Detailed to Take Summary of Evidence

Dated at:
Peper Harow, Surrey
6 Jul 45

EXA
MY

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

This Order No. 77
d/18 Jun 45

Sheet No. 3

4. COURSES

B 56836 Pte Dalton E W
(1) 1 VRD

5. LEAVE OF ABSENCE

B 40297 Pte Alcock L J
(1) 1 VRD

Returned from (Christian Citizen Course Ser 2) wef 11 Jun 45

Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 18 May 45 to 28 May 45 with money allce in lieu of rations under FR&I(O/S)Art 789(3)&(4)

Granted 4 days leave from 25 May 45 to 28 May 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

U 1965 Pte Billington I J
B 97086 Pte Colvin L G
D 139290 Pte Gentil J A
F 89624 L/Cpl Gow B J R
D 46522 Sgt Mayes A T
M 56565 Pte Nugent T J
B 53292 L/Cpl Schell D J C
C 120591 Pte Way H C
(2) HQ

F 3301 Pte Brennan G F
L 9042 Cndr Davies J M
C 667 Cpl Gifford H L
D 96423 Pte Lorimer D J B
B 44871 Pte Nichols J J
L 6124 Pte Penfold G E
B 86742 Pte Swadron I
A 68067 Pte Winslade G H

Granted 4 days leave from 11 May 45 to 14 May 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

C 41902 Sgt Beardsley R S (16 CEDG) A 17071 Pte Cary G W
C 94803 Pte Davy V B B 103061 Pte Dinsmore K D
B 27311 Pte Fraser M F B 2527 Cpl Keane J F
L 22960 Cfn Laughington R H B 95845 Pte McKibbon C
L 110039 Pte Olson L J C 98509 Pte Roy J R
(3) HQ M 41052 Sgt Tilley F M

Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 8 Jun 45 to 16 Jun 45 with money allce in lieu of rations under FR&I(O/S)Art 789(3)

C 9657 Pte Bristow H M K 608131 Pte Perugini D
C 38496 Cpl Grass D E H 21115 Pte Kenny R
H 20336 Pte Jackson W W M 11508 Pte Thomas G
(4) HR Coy

Granted 4 days leave from 14 May 45 to 17 May 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

L 28040 Pte Caine T H (1 CITR) B 87880 Pte Chantroy
B 9677 Pte Chilton H (1CASCRU) D 124420 Pte Duffy
L 13780 Pte King C H 64659 Pte Pilki
A 86926 Pte Tudrick G H 99094 Pte Wilki
(5) HQ

Granted 7 days PL
leave & entitl
45 to 19 May
of rations

Pte Duvall C H
Pte Overholt R E
VRD

15 May 45 to 18 May
789(3)&(4)

PART II ORDERS
Issued By
BRIGADIER R.J.HENDERSON, C.B.E.,
Commandant
1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

Last Order No. 76
d/15 Jun 45

This Order No. 77
d/18 June 45

"A" OFFICERS

1. ENLISTMENTS

Col (1)	J B Allan HQ	Volunteered for the Pacific Theatre wef 6 Jun 45

2. ATTACHMENTS

Capt (1)	D M MacAdam HQ	Cease att fap (except regt'l duty) from HQ CRU wef 26 May 45 Att fap (except regt'l duty) to HQ from 1 Cdn Selection of Personnel Section Type "A" wef 27 May 45 (Auth: HQ CRU Pt II DO 71 d/11 Jun 45)
Capt (2)	H B Walker MT Coy	Cease att fap (except disc & pay) to 2 VRD 6 Chilwell MT Grp RAOC wef 12 Jun 45

3. COURSES

Capt J A Everest (1 S P Sec HQ CRU) Returned from CMHQ Course 99 Ser 2
Lieut J E Clarke (1 S P Sec HQ CRU) (Rehab Counsellors) wef 11 Jun 45
(1) 1 VRD

4. APPOINTMENTS & PROMOTIONS

Lieut	A J J Lacey	(2 VRD)	To be A/Capts wef 28 May 45 (Auth: Supp to C.A.(O/S)RO 5694 d/15 Jun 45)
Lieut	John Nicol	(1 VRD)	
Lieut (1)	G M Watson	(HQ)	

5. LEAVE OF ABSENCE

Lieut (1)	Edwin Douglas McRae 1 VRD	Granted 7 days FL & 48 hrs pass (total leave & entitlement 9 days) from 14 Jun 45 to 22 Jun 45 with money allce in lieu of rations under FMAI (O/S)Art 789(3)4(4)
Lieut (2)	L S Rees 1 VRD	Granted 7 days FL & 48 hrs pass (total leave & entitlement 9 days) from 15 Jun 45 to 23 Jun 45 with money allce in lieu of rations under FMAI (O/S)Art 789(3)4(4)

6. STRENGTH DECREASE

Capt (1)	J W Chappell	(MT Coy)	SOS to 1 COMERU wef 14 Jun 45 (Auth: CMHQ (MS5A) MS 3745 d/13 Jun 45)
	2 VRD		

"B" OTHER RANKS

1. STRENGTH INCREASE

TOS & Cease att fap from 1 COMERU wef 13 Jun 45 & posted to HR Coy (Auth: CMHQ/DEM/8118 d/29 May 45)

C 123255	Pte	Cavers H T	B 132131	Pte	Martin H
K 608131	Pte	Perugini D	B 57215	Pte	Sartorelli A
F 51217	Pte	Smith G L	A 609181	Pte	Voisin A E
(1)	HR Coy		F 84522	Pte	Whitoway J T

(OVER)

1. STRENGTH INCREASE (Cont'd)

L 53330 (2) Pte Weins P A (Shoemaker "B") BR Coy — TOS & Cease att fap from 1 COMERU wef 13 Jun 45 & posted to BR Coy (Auth: CMHQ DEM/8118 d/29 May 45)

2. ATTACHMENTS

Cease att fap (except disc & pay) to 2 VRD 6 Chilwell MT Grp RAOC wef 12 Jun 45

B 40297	Pte	Alcock L J	F 65412	Pte	Beck L M
F 10253	Pte	Bersuk P	E 48577	Pte	Bilodeau L
A 86025	Pte	Blackman C G	C 9766	Pte	Bombace F A
D 9011	Pte	Cheslock M	B 114494	Pte	Crosby T J
F 75922	Gnr	Dalton C	B 112523	Pte	De Angelis A J
F 88229	Pte	Devison J A	B 136924	Pte	Duvall C H
C 100562	Pte	Emberg J J	H 87987	Gnr	Gagnon W H
D 141030	Gnr	Getty W C	B 61782	Pte	Greenwood J
U 2161	Pte	Grover A R P	G 28827	Tpr	Irwin R E
E 49674	Pte	Lebel J H H L	B 136744	Pte	LeBlanc J W
D 129059	Pte	McCoy F M	H 14454	Pte	Merrifield E B
M 50676	Pte	Meyers J A	H 14456	Pte	Mills E J T
F 30839	Pte	Oakley E R	A 49921	Pte	Overholt R E
B 78125	Pte	Paddon C W W	M 102866	Pte	Peterson A H
C 94287	A/Cpl	Proulx V	M 36787	Pte	Ray W E
L 41158	Pte	Rosa G A	B 87645	Pte	Shephard J E
B 9376	Pte	Smyth J W	A 7913	Pte	Thoman B O
G 41229	Cpl	Turner W G	D 114732	Pte	Vinn F A
F 93492 (1)	Pte	Walsh P J 1 VRD	B 55833	Pte	Wolfe L H

L 66437 / B 145590 (2) — Sgt Carroll C H, Pte Williamson D C, HQ — Cease att fap (except regt'l duty) from HQ CMU wef 26 May 45 Att fap (except regt'l duty) to HQ from 1 Selection of Personnel Section Type "A" wef 27 May 45 (Auth: HQ CMU Pt II DO 71 d/11 Jun 45)

B 26195 (3) — Pte Coffey J H, HQ — Att fap (except regt'l duty) to HQ from 1 CGHU wef 16 Jun 45 (Mil Hosp) (Auth: CMU/408/Aux/1 (PTA) 452/Coffey J H/1 d/13 Jun 45)

B 82651 (4) — Sgt Corr G, HQ — Cease att fap from 1 CASCRU wef 16 Jun 45 on adm to Mil Hosp, Campbell College, Belfast

B 63575 (5) — Sgt Henderson J C, MT Coy — Cease att fap from 2 CITR wef 12 Jun 45 (Auth: 444/Hosp/1 (PTA) d/13 Jun 45)

P 34988 (6) — S/Sgt Kelly L G, 1 VRD — Cease att fap (except disc & pay) to 2 VRD 6 Chilwell MT Grp RAOC wef 12 Jun 45.

C 15708 / M 50986 (7) — Pte Knox A L, Pte Locuyer R, HQ — Cease att fap (except disc & pay) to 2 VRD 6 Chilwell MT Grp RAOC wef 12 Jun 45

G 7293 (8) — A/Sgt Ritchie E W, MT Coy — Att fap to MT Coy from 1 CMU wef 11 Jun 45 (Auth: 408/1 COOD/1 (PTA) d/13 Jun 45 CMU Att 1573) (FT)

3. COMMAND

P 35260 (1) — S/Sgt Beveridge A G, HQ — Proceeded on Command to London wef 0800 hrs 11 Jun 45 Returned from on Command 2200 hrs 13 Jun 45

(OVEM)

4. COURSES

B 56836 (1)	Pte	Dalton E W 1 VRD	Returned from (Christian Citizen Course Ser 2) wef 11 Jun 45

5. LEAVE OF ABSENCE

B 40297 (1)	Pte	Alcock L J 1 VRD	Granted 7 days FL & 96 hrs pass (total leave & entitlement 11 days) from 18 May 45 to 28 May 45 with money allce in lieu of rations under FR&I(O/S)Art 789(3)&(4)

Granted 4 days leave from 25 May 45 to 28 May 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

U 1965	Pte	Billington I J	F 3301	Pte	Brennan G F
B 97086	Pte	Colvin L G	L 9042	Cndr	Davies J M
D 139290	Pte	Gentil J A	C 667	Cpl	Gifford H L
F 89624	L/Cpl	Gow B J R	D 96423	Pte	Lorimer D J B
D 46522	Sgt	Mayes A T	B 44871	Pte	Nichols J J
M 56565	Pte	Nugent T J	L 6124	Pte	Penfold G E
B 53292	L/Cpl	Schell D J C	B 86742	Pte	Swadron I
C 120591	Pte	Way H C	A 68067	Pte	Winslade G H
(2)	HQ				

Granted 4 days leave from 11 May 45 to 14 May 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

C 41902	Sgt	Beardsley R S (16 CBDC)	A 17071	Pte	Cary G W
C 94803	Pte	Davy V B	B 103061	Pte	Dinsmore K D
B 27311	Pte	Fraser M F	B 2527	Cpl	Keane J F
L 22960	Cfn	Laughington R H	B 93845	Pte	McKibbon C
L 110039	Pte	Olson L J	C 98509	Pte	Roy J R
(3)	HQ		M 41052	Sgt	Tilley F M

Granted 7 days FL & 48 hrs pass (total leave & entitlement 9 days) from 8 Jun 45 to 16 Jun 45 with money allce in lieu of rations under FR&I(O/S)Art 789(3) & (4)

C 9657	Pte	Bristow H M	K 608131	Pte	Perugini D (1 COMBKU)
C 38496	Cpl	Grass D E	H 21115	Pte	Kenny R
H 20336	Pte	Jackson W W	M 11508	Pte	Thomas G
(4)	BR Coy				

Granted 4 days leave from 14 May 45 to 17 May 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

L 28040	Pte	Caine T H (1 CITR)	B 87880	Pte	Chantrey H
B 9677	Pte	Chilton H (1CASCKU)	D 124420	Pte	Duffy E L
L13780	Pte	King C	B 64659	Pte	Pilkington E W
A 86926	Pte	Tudrick C	H 99094	Pte	Wilkie K D
(5)	HQ				

B 136942	Pte	Duvall C H	Granted 7 days FL & 96 hrs pass (total leave & entitlement 11 days) from 9 May 45 to 19 May 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
A 49921	Pte	Overholt R E	
(6)	1 VRD		

Granted 4 days leave from 15 May 45 to 18 May 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)

B 8346	Cpl	Evans J R	M 5134	Pte	Key P L
C 15840	A/Sgt	Larocque C A	B 78266	Pte	Laverty J H
B 67285	Pte	McKinna D	A 22569	Pte	Maxim P
C 3332	Pte	Melanson J A	A 56509	Pte	Noble W L
L 13507	Pte	Parisien J R	B 1746	L/Cpl	Arden E R
(7)	HQ				

(OVER)

EXHIBIT "A"

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

This Order No. 77
d/18 Jun 45

Sheet No. 4

5. LEAVE OF ABSENCE (Cont'd)

A 9595 (8)	CSM HQ	Galloway E R (BEM)	Granted 14 days PL from 25 May 45 to 7 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
A 89029 (9)	Pte HQ	Isbister D L	Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 11 Jun 45 to 21 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
B 136744 M 102866 D 114732 (10)	Pte Pte Pte 1 VRD	Leblanc J W Petersen A H Viau F A	Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 24 May 45 to 3 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
A 21611 C 16696 (11)	Pte Pte HQ	Morrow P Thwaites R	Granted 4 days leave from 24 May 45 to 27 May 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
B 87645 G 28827 (12)	Pte Pte 1 VRD	Sheppard J E Irwin R E	Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 6 Jun 45 to 16 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
F 2760 (13)	L/Cpl HQ	Stewart G	Granted 7 days PL & 48 hrs pass (total leave & entitlement 9 days) from 11 Jun 45 to 19 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
F 2760 (14)	L/Cpl HQ	Stewart G	Granted 4 days leave from 20 Jun 45 to 23 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
B 57536 (15)	Pte MT Coy	Third A R	Granted 7 days PL & 96 hrs pass (total leave & entitlement 11 days) from 24 May 45 to 3 Jun 45 with money allce in lieu of rations under FR&I (O/S)Art 789(3)&(4)
(Amend) A 9595 (16)	CSM HQ	Galloway E R (BEM)	Part II DO 71 para 5(16) d/4 Jun 45 insofar as it refers to this WO is hereby cancelled
(Amend) M 60621 (17)	Pte 4 VRD	Weir J	Part II DO 75 pard 6(1) d/13 Jun 45 insofar as it refers to this soldier is hereby cancelled (Duplicate Entry)

6. ABSENT WITHOUT LEAVE

M 16313 (1)	Pte HQ	Davies R D	Absent without leave wef 2359 hrs 10 Jun 45 Still absent without leave 2359 hrs 11 Jun 45 (1st day)

7. HOSPITALIZATION

B 115717 F 77947 (1)	Pte Pte MT Coy	Kitchener E Van Volson H	15 Jun 45 Disch from 1 CMC wef dates shown: 14 Jun 45
B 22766 (2)	Pte 4 VRD	McCauley A C	Disch from 1 CMC wef 14 Jun 45

(OVER)

CERTIFIED TRUE COPY

Officer having custody of Original Document

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Sheet No. 5 — This Order No. 77 d/18 Jun 45

7. HOSPITALIZATION (Cont'd)

H 100499 (3)	Pte Wishart C M 2 VRD	Adm to 2 CMC wef 14 Jun 45

8. PUNISHMENTS

B 139571 (1)	Pte Bock E G 2 VRD	On 14 Jun 45 awarded a forf of 1 days pay FR&I 149(2) for an offence under Sec 15 (1)AA AWL from 0715 hrs 13 Jun 45 to 0800 hrs 13 Jun 45 (Absent 45 mins)
B 144609 (2)	Pte Hunter C G MT Coy	On 14 Jun 45 awarded 7 days CB for an offence under Sec 15(1)AA AWL from 2230 hrs 9 Jun 45 to 0600 hrs 11 Jun 45 (Absent 1 day 7 hrs 30 mins) Forfs 2 days pay FR&I 149(1)(a)
H 3777 (3)	Sgt Steele D E 2 VRD	On 11 Jun 45 tried by F G C M Charges: 1/ Sec 18(4) AA 2/ Sec 18(4) AA 3/ Sec 40 AA 4/ Sec 40 AA 5/ Sec 40 AA 6/ Sec 40 AA 7/ Sec 40 AA Findings: 1/ Not Guilty 2/ Not Guilty 3/ Guilty 4/ Guilty 5/ Guilty 6/ Guilty 7/ Guilty Sentence: To be reduced to the rank of Corporal Confirmation: Findings & sentence confirmed by Brigadier J E Sager, Comd "F" Grp, CRU on 13 Jun 45
H 100499 (4)	Pte Wishart C M 2 VRD	On 14 Jun 45 awarded a forf of 3 days pay FR&I 149(2) & 7 days CB for an offence under Sec 15(1)AA AWL from 0815 hrs 12 Jun 45 to 1615 hrs 12 Jun 45 (absent 8 hrs) Forfs 1 days pay FR&I 149(1)(a) (Total forf 4 days pay)

9. TRADESMENS QUALIFICATIONS (AMEND)

B 78083 (1)	Pte McKerracher G 1 VRD	Part II DO 76 para 13(4) d/15 Jun 45 insofar as it refers to this soldier is hereby cancelled
M 65280 (2)	Pte Richardson J G 1 VRD	Part II DO 76 para 13(6) d/15 Jun 45 insofar as it refers to this soldier is hereby cancelled

10. TRADESMENS RATES OF PAY

B 82286 (1)	Pte Pe[illegible] J H 1 VRD	Granted T/Pay as Stmn T&D Grp "C" wef 21 May 45
B 122879 (2)	Cfn [illegible]mbley F 4	Granted T/Pay Fitter "C" wef 11 Jun 45

(OVER)

11. CHANGE OF NEXT OF KIN

B 136942 (1) Pte Duvall C H 1 VRD — Kennedy — Change of N-of-K from: Mrs Marguerite Duvall (Mother) to: Mrs Agnes Martha Duvall (Wife) Box 106, Iroquois, Ontario, Canada

A 99441 (2) Cpl Ekins H M 4 VRD — Change of N-of-K from Mrs Annie Ekins (Mother) to: Mrs Phyllis Eva Ekins (Wife) The Cottage Bullbeggars Lane, Horsell, Woking, Surrey, England

12. NATURALIZATION

B 11986 (1) Pte Koivisto E F 1 VRD — Naturalized as a British Subject wef 12 Mar 45 (Auth: Dominion of Canada Certificate of Naturalization # 203440 Series "A")

13. MARRIAGES, BIRTHS & DEATHS

A 99441 (1) Cpl Ekins H M 4 VRD — Married, with permission, to Miss Phyllis Eva Gear on 2 Jun 45 at Gospel Hall, Woking, Surrey, England

14. POSTINGS INTER UNIT

Posted from Guard Increment to Veh Coy wef 15 Jun 45

L 140482	Pte	Abramovitch J	4 VRD	A 55729	Pte	Amlin C W L	4 VRD
M 104521	Pte	Anderson A J	4 VRD	D 26714	A/Sgt	Anderson C	MT Coy
L 27715	Pte	Andrews W F	4 VRD	A 117477	Pte	Antonechuk M	4 VRD
L 91727	Pte	Armitage W T	4 VRD	B 35035	L/Cpl	Armstrong H S	4 VRD
E 48740	Pte	Asoah E W	2 VRD	B 136696	Pte	Austin N R	1 VRD
M 36156	L/Cpl	Auvigne C A	1 VRD	L 103019	L/Cpl	Babcock C A	HQ
C 28762	Pte	Babcock V W	4 VRD	B 44496	Pte	Badyk W	4 VRD
H 19841	Pte	Banks W	MT Coy	C 101916	Pte	Barton G H	MT Coy
M 101221	Pte	Basrab H	4 VRD	C 121358	Pte	Beaulne R L	1 VRD
A 117578	Pte	Bechard G R	4 VRD	F 52661	Pte	Benoit V J	4 VRD
D 142606	Pte	Bertrand J R	2 VRD	E 20427	Pte	Bertrand O	HQ
A 86642	Pte	Bevan E	MT Coy	D 166175	Pte	Bissonnette P E	MT Coy
G 28647	Pte	Blanchard J G	HQ	K 57245	Cpl	Bollinger S	1 VRD
K 51694	Pte	Borley A T	2 VRD	A 63189	L/Cpl	Brackpool T F	MT Coy
G 49801	Pte	Brault M	4 VRD	M 101399	Pte	Briere A	4 VRD
B 76596	L/Cpl	Brown A J	4 VRD	A 106621	Pte	Brown J N	4 VRD
B 91764	Pte	Bubnich L	4 VRD	A 71084	L/Sgt	Buchanan R E	4 VRD
C 80104	Pte	Buell W G	4 VRD	A 108087	Pte	Buffon J	1 VRD
B 44214	Pte	Bullen W J	4 VRD	C 33626	L/Cpl	Butts E H	2 VRD
F 97168	Pte	Campbell C	1 VRD	L 102732	Pte	Campbell D G	4 VRD
B 88972	L/Cpl	Campbell K R	4 VRD	F 32032	Pte	Carrigan A E	1 Cdn Sub W/S
K 49573	Pte	Carrington O R	1 VRD	D 118473	Pte	Casey W F	1 VRD W/S
E 74672	Pte	Charbonneau A	MT Coy	F 56730	L/Cpl	Chisholm H T	HQ
M 10797	L/Cpl	Christensen H	4 VRD	F 51929	L/Cpl	Clark A	HQ
B 95110	L/Cpl	Clark J J	HQ	B 37973	A/Cpl	Clarke B A	4 VRD
H 66736	Pte	Clayton W	4 VRD	B 52048	Pte	Clifford L	2 VRD
B 49148	Pte	Coatos A E	2 VRD	C 63540	L/Cpl	Cook W T	1 VRD
L 13434	L/Cpl	Corry J P	HQ	K 74288	Pte	Cotowich P	4 VRD
A 116020	Pte	Courneyea J B	MT Coy	H 93459	Cpl	Cowley E H	4 VRD
L 13019	Pte	Craig C H	1 VRD	F 31322	Pte	Craswell H L	1 VRD
M 7776	Pte	Cripps L C	4 VRD	D 121985	Pte	Creet G	4 VRD
H 66679	Pte	Curle H E	1 VRD	B 79778	Pte	Daignault N J	4 VRD
A 87026	Pte	Danluck S	1 VRD	C 122093	Pte	Debonham J W	MT Coy
M 70519	Pte	Dechief A E	4 VRD	C 10206	Pte	Delino M H	MT Coy
13574	Cpl	Dellow J A	HQ	C 102209	Pte	Donault J E	MT Coy
98737	Pte	Donomme R J R	MT Coy	K 70367	Pte	Derkacz J	1 Cdn Sub W/S

(Continued on Next Page)

14. POSTINGS INTER UNIT (Cont'd) (Continued from Previous Page)

K 42410	Pte	Devinetz P	4 VRD	K 15095	Pte	Dodgshon W P	2 VRD
D 91005	A/Sgt	Dowd J	HQ	E 5801	Pte	Dube L	2 VRD
D 76926	Sgt	Duckett E H	HQ	H 20244	Pte	Dunn A A	MT Coy
L 110253	Pte	Dunn O C	HQ	M 11869	Pte	Durning F V 1 Cdn Sub W/	
M 106700	L/Cpl	Ellis K E	2 VRD	G 53453	Pte	Evans R W	1 VRD
F 65436	Pte	Faulkenham D S	4 VRD	H 15201	L/Cpl	Favell E G	1 VRD
L 9506	Pte	Fisher R A	MT Coy	B 11590	Pte	Fitzgerald A E	MT Coy
F 52622	Pte	Fougere A P	MT Coy	F 40068	L/Cpl	Fowler W G	4 VRD
A 105585	Pte	Fox F L	HQ	F 87654	Pte	Fraser R J	2 VRD
A 116278	Pte	French F N	4 VRD	C 101387	Pte	French C L	1 VRD
D 129466	Pte	Gardner G	1 VRD	M 16832	Pte	Giles J G	4 VRD
K 65244	Pte	Gobbett H N	1 VRD	G 28752	Pte	Goodwin A M	1 VRD
F 89604	Pte	Goucher T M	MT Coy	G 29020	L/Cpl	Gould D F	4 VRD
F 89624	L/Cpl	Gow B J R	HQ	K 53655	Pte	Graham G A	4 VRD
A 58463	Pte	Granger F	4 VRD	D 166724	Pte	Greene G	4 VRD
A 56732	L/Cpl	Griffin M A	HQ	K 98434	L/Cpl	Griffiths C N P	4 VRD
B 74231	Pte	Gunn J	2 VRD	E 26910	Pte	Harris J	4 VRD
B 54352	L/Cpl	Harris R T H	4 VRD	F 86355	Pte	Hartlin C W	1 VRD
H 41928	Pte	Harvey A	MT Coy	C 32169	Pte	Hawkins E O	1 VRD
B 74205	L/Cpl	Hay W J	HQ	M 61558	Pte	Hayes J G	1 VRD
L 105892	Pte	Herberholz S J	4 VRD	B 50142	Pte	Hills V G	MT Coy
C 39556	Pte	Hiscoe A W	4 VRD	A 55737	Pte	Hishon H B	MT Coy
A 64488	Pte	Huculak J	MT Coy	C 5239	L/Cpl	Huffman J L	4 VRD
B 46775	Pte	Hughes A	4 VRD	C 28813	Pte	Ivey J	4 VRD
F 86850	L/Cpl	Jarvis C J	4 VRD	M 68628	Pte	Johanson A S	1 VRD
B 127567	Pte	Johnson O R	4 VRD	C 33013	Pte	Johnston G D	1 VRD
H 56902	Pte	Jordan R J	1 VRD	B 77226	L/Cpl	Kean W M	4 VRD
C 110068	L/Cpl	Kitts W C	HQ	B 52220	Pte	Klinec J	4 VRD
B 130162	Pte	Knighton G W	4 VRD	G 18242	Pte	Knox W F 1 Cdn Sub W/S	
M 15549	Pte	Kovac M	4 VRD	C 41383	Pte	Lance A	1 VRD
H 21076	Pte	Lango E A	BR Coy	D 12243	Pte	Langevin E F	MT Coy
K 15905	Pte	Laplante M J	4 VRD	M 103239	Pte	Lardner G R	MT Coy
C 20925	L/Cpl	Larocque F A	BR Coy	B 133319	Pte	Latour L A	1 VRD
D 141848	Pte	Lavioletto J G	MT Coy	H 14430	Pte	Lawlor W I	MT Coy
H 19249	Pte	Leake H W	1 VRD	H 20941	Pte	Ledoux J C	MT Coy
L 35140	Pte	Lehocky G	MT Coy	B 127647	Pte	Leighton J	MT Coy
L 110095	L/Cpl	Lemoal E J M	MT Coy	M 61689	Cpl	Lewis C V	HQ
K 70056	Pte	Lezimo J	1 VRD	E 39118	Pte	L'Herault G	BR Coy
M 12153	Pte	Logie R	4 VRD	F 60092	Pte	Longaphie J D	1 VRD
L 12063	Pte	Lorenowicz A	MT Coy	B 66054	A/Cpl	Lumsden W D	4 VRD
H 75154	L/Cpl	Lunan N E	4 VRD	D 129400	Pte	Lussier W	MT Coy
B 1660	Pte	Magner T	HQ	M 11748	A/Cpl	Manning S W	4 VRD
C 121809	Pte	Marchildon W	2 VRD	B 113774	Pte	Maudsley W A	1 VRD
H 100735	Pte	Maxted K L	4 VRD	A 102324	Pte	Mazzali E P	4 VRD
C 115034	Pte	Mellis E R	1 VRD	B 132649	Pte	Merritt G A	1 VRD
B 132620	Pte	Michm H J	MT Coy	C 11764	Pte	Miree H M	4 VRD
F 5304	Pte	Mlechzko H	1 VRD	K 57683	Pte	Moran M	1 VRD
M 104269	Pte	Morasen J G	1 VRD	K 43545	Pte	Morgan K	4 VRD
D 62325	Pte	Morin A	2 VRD	H 195699	Pte	Murray J	1 VRD
G 3702	Pte	McAllister D B	MT Coy	L 102217	Pte	McAvany C E	4 VRD
M 28002	L/Cpl	McCallum M	HQ	G 48954	Pte	McCarthy T H	HQ
B 146347	Pte	McClelland J L	1 VRD	B 97012	Pte	MacDermott Z	MT Coy
M 67247	Pte	MacDonald D A	HQ	K 69075	Pte	McGill J	1 VRD
G 24165	Pte	McGivney R R	MT Coy	K 50425	Pte	McIntyre D B	4 VRD
D 81521	Pte	McKano F R	HQ	M 521	L/Cpl	McKinnon A R	HQ
F 88195	Pte	McLellan A	1 VRD	M 15804	Pte	McNeill E	4 VRD
B 60522	SSM	McNeill W	1 VRD	L 12381	A/Sgt	McWilliams G D	2 VRD
L 27930	Cpl	Naughton P J	1 VRD	K 69345	Pte	Neville J J	2 VRD
L 102036	Pte	Nielson A	1 VRD	M 388	Pte	O'Callaghan J	4 VRD
C 15742	Pte	O'Leary A D	4 VRD	E 32649	Pte	Oliver H	2 VRD
A 76104	Pte	Otto H A	4 VRD	L 100332	Pte	Pady W N	1 VRD
D 139326	Pte	Painchaud J L R	MT Coy	G 4122	Pte	Palmer F	MT Coy

(Continued on Next Page)

14. POSTINGS INTER UNIT (Cont'd) (Continued from Previous Page)

C 1633	L/Cpl	Payne R J	1 VRD	E 48522	Pte	Pelchat L	MT Coy
G 7455	Pte	Pelletier P	1 VRD				
D 15762	A/Cpl	Petit Clerc Dit Le Clerc J	1 VRD				
H 100727	Pte	Pfeifer G	MT Coy	C 98401	Pte	Plamondon J R	1 VRD
G 49655	Pte	Poirier E	1 VRD	G 52483	Pte	Poirier E	1 VRD
M 8843	Pte	Raby E J	MT Coy	A 9699	Pte	Rank J	MT Coy
B 144354	L/Cpl	Rice B E	HQ	A 586	Pte	Richardson F S	1 VRD
B 74874	Pte	Robertson D	HQ	H 19842	L/Cpl	Robertson W B P	MT Coy
G 63058	Pte	Robichaud T	MT Coy	G 53869	Pte	Rogers G R	HQ
F 82405	Pte	Ross C E	4 VRD	A 56621	Sgt	Rubery A E	4 VRD
F 2898	Pte	Ryan J C	HQ	B 18109	Pte	Sangster J	2 VRD
B 64837	Pte	Sears R S	MT Coy	L 18201	Pte	Seymour R D	4 VRD
B 92665	Pte	Sharpe R M	4 VRD	B 111160	Pte	Shearer J	HQ
K 62936	Pte	Sinclair G	2 VRD	F 31285	Pte	Smith A R	4 VRD
C 31929	Pte	Smith D	HQ	G 4778	Pte	Smith H M	MT Coy
L 9568	Pte	Smith W H	MT Coy	A 58923	Pte	Steeper O A	1 VRD
A 50265	L/Cpl	Stewart C H	MT Coy	B 138797	L/Cpl	St John C A	1 VRD
F 40254	L/Cpl	Stoddard M R	4 VRD	C 10076	Pte	Strader H F	MT Coy
H 100220	Pte	Strong C	MT Coy	L 103388	Pte	Sweeney W J	MT Coy
B 11661	Pte	Sylvester W J	4 VRD	G 24205	Pte	Taylor J E	MT Coy
M 101273	Pte	Taylor R D S	MT Coy	L 65187	Pte	Tempke B W	MT Coy
D 138162	L/Cpl	Thompson F J	HQ	A 64370	Cfn	Thompson F W	HQ
K 49059	Pte	Tolfree B C	2 VRD	A 27092	Cpl	Tomkins T	1 VRD
L 101819	Pte	Tosczak F C	MT Coy	A 103852	Pte	Tree C L	4 VRD
E 42493	Pte	Tremblay R	1 VRD	H 95730	Pte	Trueman R	4 VRD
M 60504	L/Cpl	Turnbull F J	1 VRD	F 78233	Pte	Turner D F	HQ
B 5007	Pte	Tushingham L R	HQ	B 26754	L/Cpl	Venning W H	MT Coy
A 105541	Pte	Walker H R	2 VRD	B 41317	Pte	Walker J	1 VRD
K 77612	L/Cpl	Walker R	MT Coy	B 89484	A/Sgt	Wallace R V	MT Coy
B 43773	Pte	Walsh D T	MT Coy	B 64743	Pte	Ward W	MT Coy
B 16651	L/Cpl	Ward W	HQ	G 59536	L/Cpl	Warren R H	1 VRD
B 8083	Pte	Weatherall E D	1 VRD	K 57125	Pte	Webber K B	4 VRD
K 69429	Pte	Weberg N E	4 VRD	M 100740	Pte	Weibe J	4 VRD
F 89292	Pte	Whalen W J	4 VRD	H 40961	Pte	Whittaker W G	MT Coy
K 31028	Pte	Wickstrom A E	1 VRD	M 42023	Pte	Wigg W E R	4 VRD
L 28375	Pte	Williams J S	MT Coy	F 56363	Pte	Wright D M	4 VRD
A 116673	Pte	Wright R E	1 VRD	D 143677	Pte	Yasskin A	4 VRD
M 20980 (1)	L/Cpl	York J W	2 VRD	K 73620	L/Cpl	Young J	4 VRD

15. ATTACHMENTS INTER UNIT

L 9084 (1)	Sgt	Andrusak F 1 VRD	Att to 4 VRD wef 14 Jun 45

16. STRENGTH DECREASE

B 26195 (1)	Pte	Coffey J H (Veh Coy) HQ	SOS to 1 CORU wef 15 Jun 45 (Auth: CRU/408/Aux/1 (PTA) 452/Coffey J H/1 d/13 Jun 45)
L 100126 (2)	Pte	Harder B G (Veh Coy) 4 VRD	SOS to Y3 List 1 CONRU wef 9 Jun 45 on adm to 22 Cdn Gen Hosp
L 100661 (3)	A/Cpl	Matlow S J (HQ) HQ (Clerk "C")	SOS to 1 Cdn Depot wef 18 Jun 45 (Auth: CMHQ (A62b) AT 3033 d/15 Jun 45 Def 5624)

.....
for (A.F.Henderson) Brigadier
Commandant, 1 Cdn Central Ord Depot

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M.16313	Pte.	Davies, R.D.	HQ 1 Cdn COD, RCOC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec. 15(1) — 11 times.
For A.A. Sec. 40 — 2 times.
For ____ — ____ times.
For ____ — ____ times.

Date of first entry in Field Conduct Sheet 3 Aug 40
Date of last entry in Field Conduct Sheet 31 Mar 45

Het 2. [redacted]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in close custody; and for Six days in military custody, i.e., Six days in open arrest; Nil days in close arrest; of which Nil days were spent in hospital.

Het 5. The present age of the accused is 41 years, 6 months

Het 6. The date of his attestation is 29 Sep 39

7. The service which the accused is allowed to reckon is 5 yrs, 9 mths.

8. The accused is in possession of† CVSM & Clasp D.O.86 d/ 9 Jul 45

†State the military decorations (if any) held by accused.

Het 9. [redacted]

Het [redacted]

Het [redacted]

Het [redacted]

EXB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(72057) W1.30771/3761 30,000 9/44 A.S.E.W.Ltd. Gp.A/93

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NO PREVIOUS CONVICTIONS BY FGCM		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 9th day of July, 1945

H. E. Thorne Lt

M.F.M. 6

No. M. 16313 Name DAVIES R.D. | Sqn., Battery, or Company | Corps R.C.O.C. | Date of enlistment 29 Sep 39 | G.C. Badges N/A. | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet 9-1-40 | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. H C. McGoun Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
								L.R. Sanders Lieut.	
				Previous Sheet destroyed on completion of 6 months service			7-8-40	Maj. Adair	5 days Forf.
Field	3-8-40	Pte.		AWL 1230 hrs 3-8-40	Cpl Smith	7 days C.B.			
Field	6-11-40	Pte		Improperly dressed on parade	Sgt McKenzie	3 days C.B.	6-11-40	Lt. A.J.Duck	1 days
Field	4-1-41	Pte		WOAS AWL from Tattoo 2215 Hrs 4-1-41 to Tattoo 2215 5-1-41. Total 24hrs.	A/Sgt Smith	7 days C.B. 4	7-1-41	G. Kennedy Lt.	Forf.
Field	17-3-41	Pte.		Sec.40 A.A. Neglect to the prej. etc. in that he neglected to have his boots repaired thus causing them to be in a condemnable condition.	CQMS Gould, A.	7 days C.B.	9-3-41	E.B. Wilson	LT.COL.

M.F.M. 6

No. M. 16313 Name Pte. Davies R.D. | Sqn., Battery, or Company | Corps R.C.O.C. | Date of enlistment 29 Sep 39 | G.C. Badges N/A | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	27 Nov 43	Pte		AA Sec 15(1) AWL from 2359 hrs 27 Nov 43 until surrendering to Civil Police at Oxted 2045 hrs 6 Jan 44 (Absent 41 days 20 hrs 46 mins.)	Documentary PC 45 Smith (Civil)	28 days F.P. Forf. 28 dys pay FR&I 149 (1)(b) and stoppage of pay to cover cost of apprehension 4/11d	13 Jan 44	F.M. Bailey Col.	Forf. 42 days pay FR&I 149(1)(a)
Field	11 Mar 44	Pte		Sec.15(1) AA WOAS AWL from 1400 hrs 11 Mar 44 until 2245 hrs 3 Apr 44. Absent 23 days 8 hrs 45 mins.	Documentary	Awarded 28 days F.P. 28 days forf of pay.	5 Apr 44	T.J. Warner Major	Auto. forf. 24 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25-4-41	Pte		Sec.15(1) A.A. AWL from 0800 hrs 25-4-41 to 0800 hrs 29-4-41 Absent 4 days.	Cpl. O'Donnell	Admonished	15-5-41	K.B. Wilson Lt Col.	Forf. 4 days pay.
Field	4-12-41	Pte		Sec.15(1) AA AWL from 0800 hrs 4-12-41 until 1845 hrs 15-12-41 Absent 11 days 10 hrs 45 mins	L/Cpl Stainton	28 days F.P.	16-12-41	G.M. Beaton Major	Forf. 12 days pay
Field	4-1-42	Pte		Sec.15(1) AA AWL from 2230hrs 4-1-42 until 1300 hrs 24-1-42 Absent 19 days 14 hrs 30 mins.	RSM Sachse CPL Tulloch L/C McGee	28 days F.P. 28 days Forf. pay	9-2-42	G.M. Beaton Major	Forf. 20 days pay
Field	20-1-43	Pte		Sec.15(1) AA AWL from 0800 hrs 20-1-43 until 1031 hrs 20-1-43 Absent 2 hrs 30 mins	L/C Wingfield	3 days C.B.	21-1-43	D.C.R. Sims Capt.	
Field	26-5-43	Pte		AWL from 0600 hrs 26-5-43 to 2130 hrs 26-5-43 AA Sec 15(1) Total 15 hrs 30 mins.	Cpl. Bodine	Admonished	27-5-43	Lt.Col. Hervey	Forf. 1 days Pay
Field	27 Sep 43	Pte		AA Sec.15(1) AWL from 2200 hrs 27-9-43 to 2240hrs 11-10-43 Total 14 days 40 mins.	L/Cpl Crowder	5 days pay FR&I 149(2)	12 Oct 43	G Williams Major	Forf.15 days pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31 Mar 45	Pte.		AA Sec 15(1) WOAS AWL from 2359 hrs 31 Mar 45 until reporting in at 2320 hrs 19 Apr 45. Absent 18 days 23 hrs and 20 mins.	Documentary	28 days pay FR&I 149(2)	21 Apr 45	Lt.Col. R.C. Kelly	Forf. 19 days pay FR&I 149(1)(A) Total 47 days pay.

CERTIFIED TRUE COPY

9 Jul 45 .....

Officer Having Custody
of Original Document

LIST OF WITNESSES FOR THE PROSECUTION

C.15508 CSM Jamison, L.G. — HQ 1 CCOD, RCOC

H.100728 L/Cpl. Ogroskin, D. — HQ 1 CCOD, RCOC

LIST OF WITNESSES FOR THE DEFENCE

NIL

LIST OF EXHIBITS

Exhibit "A" - Certified True Copy of 1 CCOD Part II D.O. 77 D/18 Jun 45.

STATEMENT BY THE ACCUSED

I wish to have Capt. H.F. Gibson, HQ 1 CCOD, RCOC defend me at my trial by F.G.C.M.

R. D. Davies
H.16313 Pte. Davies, R.D.

I certify that I have received the following documents in connection with my trial by F.G.C.M.:

Copy of Charge Sheet
Copy of Summary of Evidence
Copy of List of Witnesses for Prosecution
Copy of List of Witnesses for Defence
Copy of List of Exhibits

R. D. Davies
H.16313 Pte. Davies, R.D.

COUNTER NUMBER 540156

HOUR 15 15

OPERATOR'S INITIALS BH

RELIEVING OPERATOR PD

5 H - 43
Pte. Davies, R.D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-16313 Pte DAVIES, Ronald David - 1 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 43 days, of which 2 2 days were spent in hospital.(1)

(1. See RP 46(A) fn 2, information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of sixty (60) days.

(Sgd) ..... 23 NOV 45 .....

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 24 Nov 45. (Sgd) ..... Brigadier, Commanding "C" Group, Cdn. Reinforcement Units. Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
M 16313 Pte Davies RD.	24 Nov 45	J K Matheson Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AR 150 5W-43 1-2/D/A

7 Mess BRANCH No 8

FIELD GENERAL COURT-MARTIAL

CPARO (To Hes of APAS) 40/F de 8/1944 (6144) 4/388

Convened by Order of Brig E.C. Plow, CBE DSO Comd "C" Gp, CRU dated 21 Nov 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-16313	Pte		Ronald David	DAVIES	1 CGRU

PROCEEDINGS REVIEWED

8 Recs Lty Brad, nat

REVIEWING OFFICER, AG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 23 NOV 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 753. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The interpreter is sworn.~~(1) Do you object to [illegible] as shorthand writer? Ans NO : I.W. The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO. I.W.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D L REDMAN VD	HQ CRU
Member	CAPT	C CHABOT	1 CGRU
Member	LIEUT	H JOHNSTON	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT	R. SKINNER	1 CGRU
Defending Offr	LIEUT	W.E. HAGEN	1 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See bl p 8.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 118), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO - SIR .(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ~~A~~, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereupon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 353 or MFB 256. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Background
(1. RP 37(C), 44(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which should affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(4), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also by JA, if any~~.(2)
(1. When several accused tried sepatately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 42. As to sentences see AA 44, 138, 162, RP 46-50, 69, 118, 119(A), KR Con 308, 320, 563-566, Overseas AO 309, 2322, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see notes on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, M16313 Pte Ronald David DAVIES, RCOC, on the strength of No 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

SECTION 15 (1)

ARMY ACT

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 0800 hrs 6 Sep 45 until surrendering himself at 2230 hrs 9 Oct 45.

Absent: 33 days, 14 hrs, 30 mins.

Comd No 1 Canadian General
Reinforcement Unit
Canadian Army Overseas

Field,

19 Nov 45

To be tried by Field General Court Martial

Brigadier
Commanding NW Group, Cdn Reinforcement Units
(Convening Officer)

21 Nov 45
Bordon, Hants

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-16313	Pte		Ronald David	DAVIES	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offences set forth in the Charge Sheet attached and on (date) this date endorsed by me, [redacted], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court-Martial; [redacted]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-Colonel (Rank.)	D.L. Redman, VD (Must be named. RP 106.)	HQ CRU (Unit.)

MEMBERS.

Captain	To be detailed by CO	1 CGRU
Lieutenant (Rank.)	To be detailed by CO (Named or detailed. RP 106.)	1 CGRU (Unit.)
(Rank.)	[redacted] (Named or detailed, if any. RP 106.)	(Unit.)
(Rank.)	[redacted] (Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

In ENGLAND (Country.)

Dat 21 Nov 45

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding "C" Group, Cdn Rft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 95 (In lieu of AFA 3) W/F & S. 1207 (8543)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TÉMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 86(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A.12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of registered books see AA 162 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 114(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S REPORT

I certify that No. M. 16313 Davies, R.E.

of #1 C.G.R.U. is in a satisfactory state of health,

and fit to undergo Trial by Court martial.

J. F. Brumberger
Medical Officer

Station Field

Date 23 Nov 45

M. F. B. 246
25M—6-41 (792)
H.Q. 1172-39 480

Plea in Mitigation for M16313 Pte Davies R.D.

Sir:

This soldier was on leave terminating on 6 Sept 45 but he took sick in Oxted, Surrey where he was staying on leave. I have a certificate from doctor stating that he treated Pte Davies on 8 Sept 45. Pte Davies wife became very ill with a nervous breakdown and in spite of the fact that the accused was still very ill himself he stayed up ~~with her~~ looking after her. She became dangerously ill and very nearly died. Under doctor's care she did recover and when the crisis had passed Pte Davies returned and surrendered himself. Even at the time of his surrendering himself Pte Davies was ill as evidenced by the fact that he was sent to hospital for over three weeks from C.G.R.U. Pte Davies enlisted in Sept 39 and came overseas in Dec 39. He is 44 yrs of age and so is his wife. His category is A. established by a S.M.B. in 1939. Pte Davies wife is still ill he desires nothing more than to get home to her side and be of some help to her. Pte Davies

E-3
MY

is not a young man and his whole life is built around his wife. He has been waiting 45 days for this C.M. In view of these factors I beg the court that Pte Davies be awarded a forfeiture of pay rather than a further period of detention so that he can return to his home.

W.C. Hagan Lt

E-3

Bucknoff
Oxted
8-9-45

I certify that Pte Davies R.D.
attended by surgery this evening

C G Walker
M.C.

9

SUMMARY OF EVIDENCE

In the case of,

M16313 Pte Ronald David DAVIES, RCOC, on the strength of No 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

"I produce the following documents pursuant to Overseas Routine Order 5352, which have been read over and shown to the Accused, and which are attached hereto as Exhibits:"

(1) Certified True Extract from No. 2 Canadian General Reinforcement Unit Part II Order No 45 dated 14 Sep 45 which declares in Section "B", Para 9, sub-para (c) that M16313 Pte Davies R. D. was absent without leave from 0800 hrs 6 Sep 45.
(Marked Exhibit "A")

(2) Certified True Extract from No. 1 Canadian General Reinforcement Unit Part II Order No 242 dated 11 Oct 45 which declares in Section "B", Para 1, sub-para (k) that M16313 Pte Davies R. D. surrendered himself at 2230 hrs 9 Oct 45.
(Marked Exhibit "B")

.....Capt
(J.P. Hodgins) Capt
Officer detailed to take the Summary of Evidence

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one page was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with."

.....Capt
(J.P. Hodgins) Capt
Officer detailed to take the Summary of Evidence.

Field,

16 Nov 45.

EXA

Exhibit "A"

CERTIFIED TRUE EXTRACT
FROM NO 2 CGRU PART II
ORDERS NO 45 d/14 SEP 45

NO 2 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

PART II ORDERS
Issued by

LAST ORDER	COLONEL W. A. TOWNSLEY OBE MC ED	THIS ORDER
NO. 44	COMMANDING OFFICER	NO. 45
13 SEP 45		14 SEP 45

SECTION "B" OTHER RANKS

9. ABSENT WITHOUT LEAVE:

(c) Absent without leave from time and date shown, and still absent over 24 hrs. On strength "B" Wing.

M-16313 PTE DAVIES R. D. 0800 hrs 6 Sep 45

"G.C. SMITH Major"
"for" (W.A. TOWNSLEY) COLONEL
COMMANDING OFFICER
No. 2 Canadian General Reinforcement Unit

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT
HELD IN MY POSSESSION.

6 Oct 45

C E Ennis
(C.E. Ennis) Lieut RCA
Officer having custody
of original document

Exhibit "B"

Certified True Extract from No. 1 Canadian General Reinforcement Unit Part II Orders No. 242 dated 11 OCT 45.

NO. 1 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

PART II ORDERS
issued by

LAST ORDER	COLONEL	B.R. KER, ED	THIS ORDER
NO. 241	COMMANDING	OFFICER.	NO. 242
10 OCT 45			11 OCT 45

SECTION "B" OTHER RANKS

1. STRENGTH INCREASE

(k) TOS on surrender from desertion approx 2230 hrs 9 OCT 45

GEN M-16313 PTE. DAVIES, R.D. RCOC

"W. MURRAY, Capt"
"for" (B.R. KER) COLONEL
COMMANDING OFFICER
No. 1 Canadian General Reinforcement Unit

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSSESSION.

16 Nov 45

(J.F. HODGINS) Capt.,
Officer having custody
of original document.

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
M16313	Pte	DAVIES R. D.	No 1 CGRU

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 577, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	AA 15 (1) times	11 times
For	~~ times	~~ times
For	~~ times	~~ times
For	~~ times	~~ times
For	~~ times	~~ times

~~Number of instances of gallantry or distinguished conduct~~

or

~~There are no entries in the conduct sheets of the accused.~~

~~2. The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~ days in civil custody, and 45 days in military custody, making a total of 45 days, of which 22 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~attestation paper~~ is 41 yrs.

6. The date of his ~~attestation~~ specified in his ~~record of service~~ ~~attestation paper~~ is 29 Sep 39

~~7. The cause which the accused is alleged to have assisted discharge or cessation to the enemy is~~

~~8. The accused is entitled to deferred pay at the rate of per annum.~~

~~9. The accused is entitled to reckon service for the purpose of determining his pension as~~

10. The accused ~~is in possession of, or entitled to~~ any military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*). CVSM & Clasp

~~11. (If the accused is a warrant officer.) The accused before his appointment as warrant officer last held the substantive rank of~~

~~(In the case of an officer.) The accused holds or has held the rank of and is in his regiment (or corps or department) next junior to~~

~~and has served as an officer for complete years.~~

~~dated~~

~~W.O. STATIONERY OFFICE. 5/40. P. Ltd. 7/11.~~

EXD

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M16313 Rank Pte Name DAVIES R. D. of No 1 CGHU Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	9 Jul 45	AA 15 (1) AWL	60 days detn	20 days earned remission

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23 day of November, 1945

J F Hodgins Capt
Legal Officer
1 CGRU.

~~In the rank of~~ ~~Date of Promotion~~

In the rank of ~~Date of Promotion~~

~~In the rank of~~ ~~Date of Promotion~~

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph construed amended accordingly.)

MFM 6 (AFB 122)

No. M16313 Name DAVIES, R.D. Sqn, Battery, or Company — Corps R.C.O.C. — Date of enlistment 29 SEP 39 — OC Badges — Service or Proficiency Pay N/A — Character

Date of last entry in Company Conduct Sheet N/A — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 2 — Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
							11Apr44		
U.K.		Pte.		Granted 21 Days Remission of Sent. but no remission of pay		47 Days Pay	21Apr45		
U.K.	31Mar 45	Pte.		A.A.15(1)AWL from 2359hrs 31Mar45 to 2320hrs 19Apr45		60 Days Detn. 89 Days Pay.	9Jul45	FGCM	
U.K.	10Jun 45	Pte.		A.A.15(1)AWL from 2359hrs 10Jun45 to 2130hrs 3Jul45			14Aug45		
U.K.		Pte.		20 Days Remission					

Certified True Extracts from the original MFM 4 held in my possession.

(J.F.Hodgins) Capt

(PTO)

MFM 6 (AFB 122)

No. M16313 Name DAVIES, R.D. Sqn, Battery, or Company — Corps R.C.O.C. — Date of enlistment 29 SEP 39 — OC Badges — Service or Proficiency Pay N/A — Character

Date of last entry in Company Conduct Sheet N/A — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.		Pte.		A.A. 15(1) AWL		3 Days C.B. Forfs 1 D.P.	9Jan40		
U.K.		Pte.		A.A. 15(1) AWL		7 Days C.B. 5 Days Pay	8Aug40		
U.K.	4Jan 41	Pte.		A.A. 15(1) AWL from 2215 hrs 4Jan41 to 2215hrs 5Jan41		7 Days C.B. 1 Days Pay.	9Jan41		
U.K.		Pte.		AWL 25 Apr 41 4 Days Admonished		4 Days Pay	14May41		
U.K.		Pte.		A.A. 15(1) AWL		40 Days Pay	16Dec41		

P.T.O.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.		Pte.		AWL 4Jan42 to 24Jan42 Total forf of 64 Days Pay Total forf of 55 Days Pay 9 Days forf conc with Previous award of 28 Days Pay awd 16 Dec41		28 Days F.P. 55 Days Pay.	9Feb42		
U.K.		Pte.		A.A. 15(1) AWL ADMONISHED		1 Days Pay	27May43		
U.K.	27Sep 43	Pte.		AWL from 2200 hrs 27Sep43 to 2240 hrs 11Oct43 A.A. 15(1)		20 Days Pay	12Oct43		
U.K.	27Sep	Pte.		AA 15(1)AWL from 2359 hrs 27Sep43 to 2045hrs 8Jan44		28 Days F.P. 50 Days Pay Cost of App of 4/11	12Jan44		
U.K.	11Mar 44			AA 15(1)AWL from 1400hrs 11Mar44 to 2245hrs 3Apr44		28 Days F.P. 53 Days Pay.	5Apr44		

THE CASE OF M16313 Pte Ronald David DAVIES

(i) LIST OF WITNESSES FOR PROSECUTION

Nil

(ii) LIST OF WITNESSES FOR DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Certified True Extract from No 2 CGRU Part II Order No 45 dated 14 Sep 45 concerning the absence without leave of M16313 Pte Davies R.D. (Marked Exhibit "A")

(b) Certified True Extract from No 1 CGRU Part II Order No 242 dated 11 Oct 45 concerning the surrender of M16313 Pte Davies R.D. (Marked Exhibit "B")

(iv) LIST OF EXHIBITS FOR DEFENCE

Nil

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE

I hereby acknowledge that I have been served with a true copy of the Summary of Evidenc taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

R.D. Davies
(M16313 Pte Davies R.D.)

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of.....
if he is available.

R.D. Davies
(M16313 Pte Davies R.D.)

Signed in the Field,

this 9.?. day of Nov 45.

5A-83

Tyr. Davies, R. D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D125253 Spr Roy Douglas DAVIES, 4 PLDG.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn e.)

~~All~~ the period under sentence for ~~Beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for eighteen months

(Sgd) W M D Shaw Capt — Judge-Advocate, if any. — 13 Feb 45 — Date awarded. — (Sgd) G A Henderson Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentence of the Court.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) H.R.

(1. AA 57A. Delete if not used.)

Date 13 Feb 45 (Sgd) J. Lind Brig.

Commanding 12 Can Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D125253 Spr Roy Douglas Davies	14 Feb 45	W M D Shaw Capt for Asst A Adjt 4 PLDG.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5A-83

RECEIVED 4 APR 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFAMR (To issue by AFAS) 40/P & B/1866 (1940)

Convened by Comd 12 C I B dated 12 Feb 45

ACCUSED.

(For the trial of two or more charged jointly see RP 6, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
D125253	Spr	Roy Douglas	DAVIES,

PROCEEDINGS REVIEWED
64 Apr 45
Judgment to hold.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.
MT

4 PLDG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 13 Feb 45

28 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 25/70.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereinafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The Court initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~Prisoner to accused: Do you object to the interpreter is sworn.(1) Do you object to the shorthand writer is sworn.(2)~~ ~~the interpreter? Ans~~ ~~as shorthand writer? Ans~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G A Henderson	Lan + Ayr Sdrs R
Member	Capt	J W H Wilson	Westmr R (MR)
Member	Lt	C J Platt	4 PLDG
Judge-Advocate	Capt	W M D Shaw	HQ 5 Can Armd Div
Prosecutor	Co Lt	J H McLeod	4 PLDG
Defending Offr	Lt	W L VanVliet	4 PLDG

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused before arraignment makes(s) (no) (a) plea. Nil

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addmnsn made in support or opposn, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(not)~~ arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does ~~(not)~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 32. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is advised)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No, Sir.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court ~~considers the accused's statement~~ (1) ~~The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ~~charge(s).~~ The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is ~~amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 90*(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40*(*A*), *see 80*(*D*). 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AYS. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46*(*A*) *fn 1, 86*(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103*(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117*(*A*). *See Notes in Part I of Schedule.* 2. *RP 44*(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54*(*3*) (*a*), *RP 45, 120*(*A*). 2. *AA 54*(*3*), *RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No, Sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37*(*C*) *fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and them to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *AFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, I do so now.(2)

(1. *RP 37*(*C*), *46*(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37*(*F*) *fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54*(*3*), *RP 120*(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71* (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119*(*A*), *KR Con 308, 330, 563-566, Overseas RO 3019, 3323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41*(*5*), *MML p 130. Where accused already under sentence of imprisonment or detention see AA 44*(*3*), *68*(*1*), *KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D 125253 Tpr Roy Douglas DAVIES 4th Princess Louise Dragoon Guards, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Army Act
Sec 15(1)

When on Active Service, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, after his Squadron had been warned for action, absented himself without leave from the unit lines of the 4th P.L.D.G. from 0700 hours 27th December 1944 until he surrendered himself to the Military Police in Florence at 1200 hours the 30th of January 1945.

In the field
10 FEB 45

(C. PETCH) Lt-Col.,
Commanding Officer
4th Princess Louise Dragoon Guards.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J. S. Lind

(J S H Lind) Brig
Comd 12 Cdn Inf Bde

12 Feb 45

SRH
WMWS

CFA95 (In lieu of AFA3)
40/P&S/1697 (2843)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 125253	Tpr		Roy Douglas	DAVIES	4 PLDG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 12 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G A Henderson	Lan & Ren Scot R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by CO WESTMR R(M)	
Capt or Lt	To be detailed by CO 4 PLDG	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	To be detailed by CO 4 PLDG	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W M W Shaw	HQ 5 Cdn Armd Div

On Active Service in the Fd

in ITALY (Country.)

(J S H Lind) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 12 Feb 45

Commanding 12 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

SAH WMWS

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TÉMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following *order of procedure* (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 46 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST be INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 *after* minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 769.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL CERTIFICATE

I have this date examined the accused D 125253 Tpr Davies, R.D.

and findhim Fit to undergo trial

F?G?C.M.

In the field

13 Feb 45

(L.J. CALVERT) Capt.,

RMO., 4th Princess Louise Dragoon Guards.

Character Evidence

First Witness, Lt Ma Sparrow, 4 PLDG - duly sworn states:

"Recognize accd, Tpr Davies - tp offr of accd - about 3 wks in my tp mostly in action - was a good soldier and carried out duties very well -

Cross-Exam: Nil

R.P. 83(B) complied with

2nd Witness L 66631 Sgt McKenzie JR - 4 PLDG duly sworn states:

"Recognize accd Tpr Davies - in same tp for some time I was a cpl at time - was in same tp about 3 wks - carried out his duties well - as well as any man in tp.

Cross-Exam - Nil

Court: never mentioned any worry about going into action - good reliable soldier in action.

R.P. 83(B) complied with

Plea in Mitigation - point out accd only 21 yrs of age - 3 yrs in Army 1½ yrs overseas - served well since joining regt - good character references - wounded once - sole support of mother prior to Christmas accd received word that brother sick with mental illness went absent shortly after - surrendered to MP not apprehended - ask these points be taken into consideration in passing sentence.

W.M.W. Shaw
Capt

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D 125253 Tpr Roy Douglas DAVIES 4th Princess Louise Dragoon Guards, Canadian Army Overseas.

By direction of the Commanding Officer, evidence is taken upon Oath.

First Witness
For the prosecution

C 37480 L/Sgt Simmonds, R.P. 4th P.L.D.G. having been duly sworn states:-

I am C 37480 L/Sgt Simmonds, R.P. "B" Sqn 4th P.L.D.G. On the 27th Dec 44 I was Section Commander of 1 Sec 10 troop "B" Sqn 4th P.L.D.G. (acting Platoon Sgt in the absence of Sgt Reilley) On the 27th Dec 44 at 0700 hours I checked my Section and found Tpr Davies whom I recognize as the accused absent. I reported his absence to the Orderly Room. Tpr Davies did'nt return to the Sqn during that day and I did'nt see him until taken before the Coy Commander for orders on the 9th Feb 45.

R.P. Simmonds L/Sgt

The accused decines to cross examine this witness.

Second Witness
For the prosecution

Capt., W.H. Powell, 4th P.L.D.G. having been duly sworn states:-

I am Capt., W.H. Powell. From 25th Dec 44 until 27th Dec 44 I was with 10 troop "B" Sqn 4th P.L.D.G. of which I was Troop Officer. ~~On the morning of 27th Dec 44 D 125253 Tpr Davies, R.D. whom I recognise was reported to me as absent as from 0700 hours on that date.~~ On the 26th Dec 44 I attended an Orders Group at approx 1300 hours where I learnt that the Sqn would be returning into the line the following day. I arranged a troop parade to the Sqn Stores on the afternoon of 26th Dec 44 and at the same time warned all the troop to get their kit and equipment ready to return into action the following day. ~~I am able to state that if Tpr Davies was still present with the troop on the afternoon of the 26th Dec 44 he recieved the warning that the Sqn would be going into action again.~~

I present tothe Court a certificate in accordance with Sec 168 (1)(j) of the Army Act purporting to be signed by Capt., B. McNeill., O.C. 507 Provost Coy., C.M.P. This document refers tothe accused man.

(W.H. POWELL) Capt.,
4th Princess Louise Dragoon Guards.

The accused declines tocross examine this witness.

The certificate referred toby the witness, produced, read over to the accused, marked exhibit "A", signed by me and attached tothis summary.

"A"

(J.H. MacLeod) Lieut.,
4th Princess Louise Dragoon Guards.

Third Witness
for the prosecution

C 37480 L/Sgt Simmonds, R.P. 4th Princess Louise Dragoon Guards, recalled, still under oath states:-

On the 26th Dec 44 I was on a troop Q.M. Parade held at approx 1600 hours. The troop was being reissued shortages of kit and equipment. On that parade Capt., Powell warned 10 troop that they would be going back into action the following day. As no roll call was taken I cannot state whether Tpr Davies was on that parade. However, at 1800 hours 26th Dec 44 Tpr Davies came to me asking me for under clothes. ~~As~~ The whole Sqn was living in the same building ~~it is obvious that Tpr Davies whether he had been on the Q.M. Parade or not knew that the Unit was going back into the line as the troop had been warned an hour or so before that or otherwise he would not have came to me for clothing.~~

delete
JHM

The accused declines to cross examine this witness.

R.P. Simmonds
R.P. Simmonds L/Sgt

The accused having been warned as follows:-

" Do you wish to make any statement or to give evidence upon Oath? You are not obliged to make any statement or to give evudence unless you wish todoso, but whatever you say or any evidenceyou may give will be taken down in writing and may be given in evidence",

declines to make any statement or to give evidence.

Certified that R.P. 4 (c) (d) (e) & (f) have been complied with.

This summary of Evidence consisting of two (2) pages was taken down by me in writing in the presence and hearing of the accused.

J H MacLeod Lieut.
(J.H. Mac Leod) Lieut.,
4th Princess Louise Dragoon Guards.,
Officer taking this summary.

In the field
11 Feb 45

"A" Comds

EXHIBIT "A"

3 FEB. 1945

913

Certificate under Section 163 (i) (j) Army Act

I CAPT. S.McNEILL. Certify that No D 125253 Rank TPR.

Name DAVIES, R.D. of the 4th. PRINCESS LOUISE DRAGOON GUARDS.

surrendered himself to No S 73561 Rank CPL. Name MITCHELL, R.

at FLORENCE on the 30 Jan 45 at about 12.00 hrs as a

deserter/absentee without leave.

S.McNEILL. Captain
O.C., 507 Provost Company
Corps of Military Police.

COMMANDING

(Commanding Officer of the person or portion of His Majesty's Forces to whom surrender was made).

Attached to Summary of Evidence of D125253 Tpr Davies, R.D. as Exhibit "A".

J. N. MacLeod Lieut
"B" Sqdn 4 P.R.O.G.

WMAJS

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D 125253	Tpr	Davies, R.D.	4th P.L.D.G.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entrants in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special rets of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. ~~The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—~~

For _____ times.

For _____ times.

For _____ times.

For _____ times.

~~Date of first entry in Field Conduct Sheet—~~

~~Date of last entry in Field Conduct Sheet—~~

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.—~~

*3. ~~The accused at the present time is under sentence for~~ _____ ~~beginning on the~~ _____ ~~day of—~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for _____ days in civil custody; and for 14 days in military custody, *i.e.*, _____ days in open arrest, 14 days in close arrest; of which 3 days were spent in hospital.

5. The present age of the accused is 21 years

6. The date of his attestation / ~~calling up for military service~~ is 6 Nov 41

7. ~~The service which the accused is allowed to reckon is—~~

8. ~~The accused is in possession of†—~~

9. ~~(*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—~~

†State the military decorations (if any) held by accused.

Date of Promotion.

In the substantive rank of _____

In the war substantive ~~rank of~~ _____

~~In the~~ acting rank of _____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

"C"

WMWS

[illegible] 21,000 [illegible] Forms/B.296/War/[illegible]

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 12 day of Feb 45.

(W.H. POWELL) Capt.,
Adjt., 4th Princess Louise Dragoon Guards.

No D125253 Name Davies, R.D. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 6 Nov 42 | Trade Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/126 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Supplementary Copy only. No Original available 12 Feb 45					
				(W.H. POWELL) Capt., Adjt., 4th Princess Louise Dragoon Guards.,					

(PTO)

LIST OF WITNESSES

For the Prosecution

C 37480	L/Sgt	Simmonds, R.P.	4th P.L.D.G.
Capt	W.H.	Powell	4th P.L.D.G.

For the Defence

Nil

List of Exhibits

1. Certificate of apprehension

Prosecuting Officer

Lieut	J.H.	Mac Leod	4th P.L.D.G.

Defending Officer

I request the Convening Officer to detail an Officer to represent me at my trial.

In the field

H.D. Davies Spr.

4R-5

Pte Davies R.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K 73869 PTE R.J. DAVIES

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st CHARGE	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ____ beginning on (date) ____ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 45 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

18 MONTHS IMPRISONMENT WITH HARD LABOUR

(Sgd) ____ Judge-Advocate, if any. 4 JAN 45 Date awarded. (Sgd) A.L. Gollnick Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding ____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

Date 6 Jan 1945 (Sgd) J.H. Whitteridge Brig Brigadier. Commanding 7 Can Infantry Brigade. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
K-73869 Pte Davies, R.J.	8 Jan 45	(D.CCrofton) Lt Col OC 1st Bn C Scot R (AF)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4R-5

CANADIAN FORMS OF AFAB1 (REVISED) 1945 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of BRIG. J.G. SPRAGGE. Comd 7 C.I.B. dated 6 JAN 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or acting rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-73869	Pte	Richard Jonathon	DAVIES	1 C Scot R

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 4 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 0945 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

~~A5. Permitted to consult. Do you object to ____ as interpreter? Ans ____~~

~~Re Interpreter if sworn(1): Do you object to ____ as shorthand writer? Ans ____~~

~~Re shorthand writer if sworn(1)~~)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	A.L. GOLLNICK	1 Regiment R.R.
Member	CAPT.	J. FAWCETT	1 C. SCOT R.
Member	LIEUT.	RM. FORTUNE	R. WPG. RIF.
Judge-Advocate			
Prosecutor	LT	W.G. MACINTOSH	1 C.SCOT R.
Defending Offr	LT	C. MILTON	1 C.SCOT R.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused K 73869 PTE. R.J. DAVIES before arraignment make(s) (no) (~~a~~) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A66 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

p 2.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interests the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides NOT to advise accused to change his (their) plea(s) of Guilty to Not Guilty on FIRST charge(2). The accused is (are) so informed, and he (they) elects to change(s) his (their) plea(s) on the charge(s).
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KA Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7), (8), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 225 or MFB 296. 2. MFB 6. 3. RP 46, KA Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NO .(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(8), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, congruent of the punishment of punishments laid down in AA 40, 44 and its proviso, in so far as awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 136, 183, RP 46-50, 69, 118, 119(A), KA Can 308, 330, 562-564. Overseas RO 309, 2123, MML p 60, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KA Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 547. As to assembly and disposal of record after trial see letters on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K73869 Private Richard Jonathon DAVIES, 1st Battalion, The Canadian Scottish Regiment, a soldier of the Canadian Army, being on Active Service Overseas, is charged with:

First Charge
Army Act
Section 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, was illegally absent without leave from 1800 hours 4 October 1944, until apprehended in Brussels at 2145 hours on the 19 November 1944 (absent 46 days, 3 hours, 45 minutes).

In the Field
31 Dec 44

(L S HENDERSON) Major
A/OC, 1st Bn C Scot R (AF)

To be tried by Field-General Court Martial.

Date: 3 Jan 45

Place:

(J C SPRAGGE) Brig
Comd 7 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-73869	Pte	Richard Jonathom	DAVIES	1 C Scot R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~the~~ committed the offences set forth in the Charge Sheet attached and on (date) 2 Jan 45 endorsed by me "~~(Copy or Copies of Charge Sheet)~~ To be tried by Field General Court Martial".

2. And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for recourse to a superior qualified offr~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby appoint as President for the Court the Offr as President for the case I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

GRG

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A L COLLNICK	Regina Rif

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J FAWCETT	1 C Scot R
Lt	R M FORTUNE	R Wpg Rif

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	R A COUCHE	HQ 7 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

(J. [illegible]) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 2 Jan 45

Commanding 7 Canadian Infantry Brigade

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 2) (See overleaf for oaths and names for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 16 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 95(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 44 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 44 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) If Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).* *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Con 560. As to certified copies of registered books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 115(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Summary of Evidence in the Case of K 73069 Pte, Davies, R.J., 1st Bn C Scot R., (AF) of the Canadian Army Overseas,

Ex 'A' QRG

By direction of the Commanding Officer, the Summary of Evidence is taken on path.

1st Witness for the Prosecution

M100265 L/Sgt. Nadeau, C.E., 1st Bn. C. Scot. R., (AF) having been duly sworn states:-

"I am M100265 L/Sgt. Nadeau, C.E., 1st Bn. C. Scot. R., (AF). On the night of 4 October, 1944, I was acting platoon sergeant of number seven platoon. Before getting ready to move to our new destination, at approximately 2200 hours I fell in the platoon and found that K 73069 Pte. Davies, R.J. was missing. I made a thorough search of the area and could not find Pte. Davies. I reported his absence to the sergeant Major. I was number seven platoon Sergeant continually from the night of 4 October 44 when I reported Pte Davies as missing until he returned to the unit on the 24 November 44. During this period Pte Davies did not answer daily roll call and I did not see him until the 24 November 1944 when he was escorted back to the unit."

Accused declines to cross examine the witness.

E E Nadeau
Signature of Witness

2nd Witness for the Prosecution

K 69639 L/Cpl. Holowaty, R., 1st Bn. C Scot. R., (AF) having been duly sworn states:-

"I am K 69639 L/Cpl. Holowaty, R., 1st Bn. C Scot. R., (AF). On the night of 4 October 1944, I was acting platoon sergeant of number seven platoon. At approximately 2200 hours I fell my platoon [illegible] to move to its new destination. I [illegible] some roll call for Pte Davies which I take it was present. Later that evening I had some more roll call for Pte. Davies which I took out to the platoon. Pte. Davies was not around and could not be found. This would be about 2200 hours."

Accused declines to cross examine the witness.

R. Holowaty
Signature of Witness

3rd Witness for the Prosecution

Capt E M Fraser, 1st Bn. C Scot R (AF), having been duly sworn states:-

"I am Capt E M Fraser, Adjutant, 1st Bn, C Scot R (AF). I present extract from Daily Part II Order No. 73, dated 30 Nov 44, para 9, which states:
K73069 Pte Davies, R.J.
"Absent without leave from 2200 hrs 4 Oct 44,
Ret from AWL 2145 hrs 19 Nov 44."
as evidence of Return from AWL of the accused.
(Attached as exhibit "B").
At approximately 1000 hrs 24 November 44 K73069 Pte Davies, R.J. arrived back at the unit under Military escort and was delivered to me."

The accused declines to cross-examine the witness.

E M Fraser
Signature of Witness

M.F.M. 6

No. K73869 Name Davies, R.J. Sqn., Battery, or Company — Corps Cdn Infantry — Date of enlistment 22Nov41 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. Two — Signature O.C. Company, etc. J.F.Hayman Lt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Feb 43	Pte		AA Sec 15(1) AWL 13 days 8 hrs		28 days detn and cost of appr. 8s.			Forf 14 days pay 149(1)a Forf 28 days pay 149(1)a
Field	23 Mar 43	Pte		AA Sec 15(1) AWL 2 hrs 20 min.		14 days CB and cost of appr.5s.8d.			
Field	4 Dec 43	Pte		AA Sec 15(1) AWL 1 day, 22 hrs, 31 min.		8 days pay FR&I 149(2)	8.12.43 Mothersill	Lt-Col JH	Forf 2 days pay 149(1)a Forf 8 days pay 149(20
Field	20 Feb 44	Pte		AA Sec 15(1) AWL 2359 hrs 20 Feb 44 to 0900 hrs 22 Feb 44 (Absent 1 day 9 hrs 1 min.)	L/Sgt Stoodley	10 days FP	22.2.44	Lt-Col AS Rutherford	Forf 2 days pay 149(1)a 10 days 149(2 (P.T.O.)

M.F.M. 6

No. K73869 Name Davies, R.J. Sqn., Battery, or Company — Corps Cdn Infantry — Date of enlistment 22Nov41 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet 31 Jan 41 — No. and date of last drunk Nil — Period not reckoning towards freedom from extra fine N/A — Sheet No. One — Signature O.C. Company, etc. J.F.Hayman Lt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Parsons Bdge	16 Jun 41	Pte		AA Sec 15(1) AWL 3 days 17hrs 30 mins	L/C Stacey Sgt Jones	7 days CB	25-6-41	Lt.col W. Bapty	Forf 4 days pay 149(1)a
Nanaimo BC	21 Jul 41	Pte		AA Sec 15(1) AWL 5 hrs 45 min	Sgt Jones	8 days detn	1-8-41	Lt.col W. Bapty	For 8 days pay 149(1)b
Pr.Rupert BC	2 Aug 41	Pte		AA Sec 15(1) AWL 5 days 19 hrs 30 mins	Sgt Lawes	14 days detn	18-8-41	Lt.col.W. Bapty	For 6 days pay 149(1)a
Alliford Bay	12 Dec 41	Pte		AA Sec 22 escaping from detn AA Sec 19 Drunkeness (first offence)	Carney	6 days CB 6 days pay FR&I 149(2)	15-12-41	Maj G.S.W. Nicholson	Forf 14 days pay 149(1)b Forf 6 days pay 149(2)
Pr.Rupert, BC	2 Feb 42	Pte		AA Sec 15(1) AWL 3 hrs 30 min	Cpl TweeHope	7 days CB 6 days pay FR&I 149(2)	3-2-42	Maj J.Mac Gregor	Forf 6 days pay 149(2) (P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Mar	44	Pte	AA Sec 15(1) AWL from 1700 hrs 26 Mae 44 till appr. by CPC at 1840 hrs 27 Mar 44. Absent 1 day, 1 hr, 40 mins.	Cpl Dose, E.J.	10 days forf Pay. FR&I 149(2)	31.3.44	Lt.col JH Motherwell	Forf 2 days pay FR&I 149(1)a Total Forf 12 days pay & cost of appr.
Field	14 Apr	44	Pte	Civil offence -- theft	Documentary	Fined $1-0-0 Fine paid	17.4.44	Odiham Petty Sessions	Forf 3 days pay FR&I 149(1)(c)
Field	13 May	44	Pte	AA Sec 40. In that he did obstruct whilst in the execution of duty.	Documentary	27 days detn 27 days pay FR&I 149(1)b.	17.5.44	Lt.col HM Boyson	

CERTIFIED TRUE COPY
(E.M. [illegible]) Capt & Adjt,
1st Bn C SCOT R (AF)

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Pr. Rupert	7 Feb	42	Pte	AA Sec 11 neglecting to obey camp orders AA Sec 10(4) breaking out of barracks.	L/C Peterson	7 days detn	9.2.42	Maj J. Mac Gregor	Forf 7 days pay FR&I 149(1)b
Field	12 Oct	42	Pte	AA Sec 15(1) AWL 8 hrs	Sgt Dakers	7 days CB	14.10.42	Lt.col TH Hewitt	Forf 1 days pay FR&I 149(1)a
Field	14 Dec	42	Pte	AA Sec 15(1) AWL 9 hrs 51 mins	Sgt Fitz-gerald.	14 days CB 3 days pay FR&I 149(2)	15.12.42	Lt-Col TH Hewitt	Forf 1 days pay FR&I 149(1)a Forf 3 days pay FR&I 149(2)
Field	24 Dec	42	Pte	AA Sec 15(1) AWL while a defaulter, 1 day 22 hrs, 15 min. AA Sec 22 escaping close arrest thereby missing defaulters parade 1245 hrs.	L/Sgt Fitz-gerald. Documentary L/Cpl Mc-Pherson	14 days F.P. 7 days pay FR&I 149(2) and cost of appr.11s.5d.	31.12.42	Lt.col TH Hewitt	Forf 2 days pay FR&I 149(1)a Forf 7 days pay FR&I 149(2)
Field	11 Jan	43	Pte	AA Sec 40 neglect to prejudice allowed boots to get into bad state of repair.	CSM Jackson	3 days CB	12.1.43	Maj C. Wightman	

CERTIFIED TRUE COPY
(E.M. [illegible]) CAPT &
ADJT 1st Bn C SCOT R (AF)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K73869	Private	Richard Jonathon DAVIES	1 C Scot R

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be entered in the proceedings. The numbers herein stated should correspond with the number of Forfeits in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For ~~AA~~ 15(1) AWL 12 times.

For ~~AA~~ 22 Escaping 2 times.

For ~~AA~~ 40 Conduct to Prej 2 times.

For ~~AA~~ 41 Civil offence-theft 1 times.

For ~~AA~~ 19 Drunkenness 1 times.

Date of first entry in Field Conduct Sheet 10 Jun 41

Date of last entry in Field Conduct Sheet 13 May 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is ~~under sentence for~~ [illegible] beginning on the [illegible] day of [illegible]

4. The accused has been awaiting trial on the present charges for no days in civil custody; and for 42 days in military custody, *i.e.*, no days in open arrest, 42 days in close arrest; of which no days were spent in hospital.

5. The present age of the accused is 23 yrs 9 mos

6. The date of his ~~attestation~~ enlisting up for military service is 22 Nov 40

7. The service which the accused is allowed to reckon is 4 yrs 1 month

†State the military decorations (if any) held by accused.

8. The accused is in possession of† no

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	A.A.
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Wt 55900/1602 20,000 3/44 51-4751. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 31st day of December 1944

(E. [illegible]) Capt & Adjt
OIC Regtl Records, 1 C Sect R

46-22.

Pte. Davies. W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B47931 Pte Wesley DAVIES - 2 CITR - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of one hundred and twenty (120) days.

(Sgd) ..... 21 Nov 44 (Sgd) Cecil Tripp Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(2); RP 120(F); MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding but commute the sentence to read "to suffer field punishment for 28 days and to forfeit all ordinary pay for a period of 90 days" and I confirm the sentence as so commuted.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) W Blackader

Date 23 Nov 44 (K G Blackader) Brigadier

Commanding 13 Cdn Inf Trg Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 51, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B47931 Pte Wesley DAVIES	25 NOV 1944	

PART TO CHARGE SHEET 22/11/44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 4/F.22.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81) 40/P & B/Edn (6144) 4/38B

Convened by Order of Brig KG Blackader, DSO, MC, ED Comd 13 CITB dated 19 NOV 44

RECEIVED - 7 DEC 1944 JAG BRANCH E.[illegible]

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed ... and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B47931	Pte	Wesley	DAVIES	2 CITR CIC

PROCEEDINGS REVIEWED 7 Dec 44 W.A. Thurston Brigade Major REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the ~~Field~~ (country) England on (date(s)) 21 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

~~The interpreter is sworn.(1)~~ Do you object to N/A as shorthand writer? Ans N/A

~~The shorthand writer is sworn.(1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans .....(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	G TRIPP	4 CITR
Member	Capt	A S GRAYDON	2 CITR
Member	Lt	S FOLEY	2 CITR.
Judge-Advocate			
Prosecutor	Lt	P SAPERIA	2 CITR
Defending Offr	Lt	JP NEVIN	2 CITR

Questions by President: Is the Prosecutor a lawyer? Ans N/A Is the Defending Offr a lawyer? Ans N/A (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused B47931 Pte DAVIES, W before arraignment make(s) (no) ~~(no)~~ plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in All rems and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

No. K73869 Name Davies, R.J. Sqn., Battery, or Company Corps Cdn Infantry Date of enlistment 22Nov44 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 40/F & S/138 (2637)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Two Signature O.C. Company, etc. J.F.Hayman Lt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 20 Feb 43		Pte		AA Sec 15(1) AWL 13 days 8 hrs		28 days detn and cost of appr. 8s.			Forf 14 days pay 149(1)a Forf 28 days pay 149(1)a
Field 23 Mar 43		Pte		AA Sec 15(1) AWL 2 hrs 20 min.		14 days CB and cost of appr.5s.8d.			
Field 4 Dec 43		Pte		AA Sec 15(1) AWL 1 day, 22 hrs, 31 min.		8 days pay FR&I 149(2)	8.12.43	Lt-Col JH Mothersill	Forf 2 days pay 149(1)a Forf 8 days pay 149(2)
Field 20 Feb 44		Pte		AA Sec 15(1) AWL 2359 hrs 20 Feb 44 to 0900 hrs 22 Feb 44 (Absent 1 day 9 hrs 1 min.)	L/Sgt Stoodley	10 days FP	22.2.44	Lt-Col AS Rutherford	Forf 2 days pay 149(1)a 10 days 149(2

(P.T.O.)

Ex. C.

No. K73869 Name Davies, R.J. Sqn., Battery, or Company Corps Cdn Infantry Date of enlistment 22Nov44 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 40/F & S/138 (2637)

Date of last entry in Company Conduct Sheet 31 Jan 41 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine N/A Sheet No. One Signature O.C. Company, etc. J.F.Hayman Lt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Parsons Bdge	16 Jun 41		Pte	AA Sec 15(1) AWL 3 days 17hrs 30 mins	L/C Stacey Sgt Jones	7 days CB	25-6-41	Lt.col W. Bapty	Forf 4 days pay 149(1)a
Nanaimo BC	21 Jul 41		Pte	AA Sec 15(1) AWL 5 hrs 45 min	Sgt Jones	8 days detn	1-8-41	Lt.col W. Bapty	For 8 days pay 149(1)b
Pr.Rupert BC	2 Aug 41		Pte	AA Sec 15(1) AWL 5 days 19 hrs 50 mins AA Sec 22 escaping from detn	Sgt Lawes	14 days detn	18-8-41	Lt.col.W. Bapty	For 6 days pay 149(1)a Forf 14 days pay 149(1)b
Alliford Bay	12 Dec 41		Pte	AA Sec 19 Drunkeness (first offence)	Carney	6 days CB 6 days pay FR&I 149(2)	15-12-41	Maj G.S.W. Nicholson	Forf 6 days pay 149(2)
Pr.Rupert, BC	2 Feb 42		Pte	AA Sec 15(1) AWL 3 hrs 30 min	Cpl TweeHope	7 days CB 6 days pay FR&I 149(2)	3-2-42	Maj J.Mac Gregor	Forf 6 days pay 149(2)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Mar 44	Pte		AA Sec 15(1) AWL from 1700 hrs 26 Mae 44 till appr. by CPC at 1840 hrs 27 Mar 44. Absent 1 day, 1 hr, 40 mins.	Cpl Dose, E.J.	10 days forf Pay. FR&I 149(2)	31.3.44	Lt.col JH Motherwell	Forf 2 days pay FR&I 149(1)a Total Forf 12 days pay & cost of appr.
Field	14 Apr 44	Pte		Civil offence -- theft	Documentary	Fined £1-0-0 Fine paid	17.4.44	Odiham Petty Sessions	Forf 3 days pay FR&I 149(1)(c)
Field	13 May 44	Pte		AA Sec 40. In that he did obstruct whilst in the execution of duty.	Documentary	27 days detn 27 days pay FR&I 149(1)b.	17.5.44	Lt.col HM Boyson	

CERTIFIED TRUE COPY
(E.[illegible]) Capt & Adjt,
1st Bn C SCOT R (AF)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Pr. Rupert	7 Feb 42	Pte		AA Sec 11 neglecting to obey camp orders AA Sec 10(4) breaking out of barracks.	L/C Peterson	7 days detn	9.2.42	Maj J. Mac Gregor	Forf 7 days pay FR&I 149(1)b
Field	12 Oct 42	Pte		AA Sec 15(1) AWL 8 hrs	Sgt Dakers	7 days CB	14.10.42	Lt.col TH Hewitt	Forf 1 days pay FR&I 149(1)a
Field	14 Dec 42	Pte		AA Sec 15(1) AWL 9 hrs 51 mins	Sgt Fitzgerald.	14 days CB 3 days pay FR&I 149(2)	15.12.42	Lt-Col TH Hewitt	Forf 1 days pay FR&I 149(1)a Forf 3 days pay FR&I 149(2)
Field	24 Dec 42	Pte		AA Sec 15(1) AWL while a defaulter, 1 day 22 hrs, 15 min. AA Sec 22 escaping close arrest thereby missing defaulters parade 1245 hrs.	L/Sgt Fitzgerald. Documentary L/Cpl McPherson	14 days F.P. 7 days pay FR&I 149(2) and cost of appr. 11s.5d.	31.12.42	Lt.col TH Hewitt	Forf 2 days pay FR&I 149(1)a Forf 7 days pay FR&I 149(2)
Field	11 Jan 43	Pte		AA Sec 40 neglect to prejudice allowed boots to get into bad state of repair.	CSM Jackson	3 days CB	12.1.43	Maj C. Wightman	

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(E.[illegible]) CAPT
ADJT 1st Bn C SCOT R (AF)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
K73869	Private	Richard Jonathon DAVIES	1 C Scot R

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For AA 15(1) AWL 12 times.

For AA 22 Escaping 2 times.

For AA 11 AA 40 Conduct to Prej 2 times.

For AA 41 Civil Offence-Theft 1 times.

For AA 19 Drunkenness 1 times.

Date of first entry in Field Conduct Sheet 16 Jun 41

Date of last entry in Field Conduct Sheet 13 May 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for beginning on the day of

4. The accused has been awaiting trial on the present charges for no days in civil custody; and for 42 days in military custody, *i.e.*, no days in open arrest, 42 days in close arrest; of which no days were spent in hospital.

5. The present age of the accused is 23 yrs 9 mos

6. The date of his ~~22~~ attestation / calling up for military service is 22 Nov 40

7. The service which the accused is allowed to reckon is 4 yrs 1 month

8. The accused is in possession of† no

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of N.A.	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Wt 63000/1002 20,000 3/64 51-4781. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 31st day of December 1944

[illegible] (RAMSER) Capt & Adjt
OIC Regtl Records, 1 C Sect R

HG-22.
le. Davies. W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B47931 Pte Wesley DAVIES - 2 CITR - CIC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A.(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which 10 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo DETENTION FOR A PERIOD OF ONE HUNDRED AND TWENTY (120) DAYS.

(Sgd) [illegible] Judge-Advocate, if any. 21 Nov 44 Date awarded. (Sgd) [illegible] Major President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(2); RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.66(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign hers personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding but commute the sentence to read "to suffer field punishment for 28 days and to forfeit all ordinary pay for a period of 90 days" and I confirm the sentence as so commuted.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) W Blackader
(K G Blackader) Brigadier
Commanding 13 Cdn Inf Trg Bde
Confirming Officer.

Date 23 Nov 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B47931 Pte Wesley DAVIES	25 NOV 1944	[signature] Maj

PART TO CLOSE ON 23/27 Dec 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 4.4.22

FIELD GENERAL COURT-MARTIAL

CPA98 (To lieu of AFA8) 40/P & R/1698 (6/44) 4/388

Convened by Order of Brig KG Blackader, DSO, MC, ED Comd 13 CITB dated 19 NOV 44

RECEIVED - 7 DEC 1944 JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt. A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 306, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B47931	Pte	Wesley	DAVIES	2 CITR CIC

PROCEEDINGS REVIEWED 7 Dec 44 [illegible] REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the [illegible] (country) England on (date(s)) 21 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1050 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

~~The Interpreter is sworn.(1)~~ Do you object to N/A as shorthand writer? Ans N/A

~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans N. O. C.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	G TRIPP	4 CITR
Member	Capt	A S Grayson	2 CITR
Member	Lt	S Fidler	2 CITR
Judge-Advocate			
Prosecutor	Lt	P Saperia	2 CITR
Defending Offr	Lt	J P Nevin	2 CITR

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 59 (B) and fn 2 were not followed. See QI p 32.)

A8. The accused B47931 Pte DAVIES, W before arraignment makes(s) (no) ~~plea~~ plea(s).(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding only recorded per heads. For forms of record see references in fns to Rule cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per heads.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. [illegible] (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). ~~The accused is (not) an infonnod, and he change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (was) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans..... Do you intend to call witnesses on your behalf ? Ans..... Are they witnesses as to character only ? Ans.....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CJ A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(2) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(1) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (4), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO SIR.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1, para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(2) Ans. YES SIR.

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(185, 188(1), KR Can 566. 2. RP 56. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THIS MAN ELECTED TRIAL BY COURT MARTIAL.

CHARGE SHEET

The accused, B.47931, Pte. Wesley DAVIES, C.I.C., on strength of 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:-

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

Sec 15 (1) Army Act

in that he

in the Field, at 0745 hrs., 18 Oct 44, absented himself without leave until he was apprehended at York at 0900 hrs. 6 Nov 44.

(Time Absent: 19 days, 1 hour, 15 min.)

(J.A. Wilson) Colonel,
Commanding, 2 C.I.T.R.

In the Field,
17 Nov 44

To be tried by Field General Court Martial.

(K G Blackader) Brigadier
Commander
13 Cdn Inf Trg Bde

Field
19 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
B47931	Pte		Wesley	DAVIES	2 CITR CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 Nov 44 endorsed by me, ~~(or by an offr of my staff for me),~~" To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior (pointed out)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~XXX XXXX

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (*whether* all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MED. OFFICER'S CERTIFICATE FGC Pte Davies

K.R.Can.Para 557.

I certify that I have this morning examined No B.47931,

Pte. Davies, W. and in my opinion he is

~~FIT~~ to undergo trial by Court-Martial.

Station: Laurentide Camp.

Date: 21 Nov 44.

.....Capt.
RCAMC, Attached to 2 C.I.T.R.

FGCM. 685

As defending Officer I wish to make a plea for mitigation of sentence in the case of B47931 Pte. Davies W. This man is only past twenty years of age and has been in the army since his 18th year. He enlisted on or about July 24/42 and arrived in England Jan 7/43. He has been in the artillery during his term of service.

He arrived in France on June 24 with a battery in a L.A.A. regiment and remained there until Sept 26/44 when a battery from each regiment was broken up and the personnel returned to England. He was then inserted into the Infantry stream a state of affairs that didn't leave him very happy.

Previous to going to France he had several crimes most of which can be put down to youthful impulsiveness with a motor-cycle as he had been a D.R. only one of his crimes was AWL and that less than a day and caused by overstaying and making poor connections. So up to this time he had been a pretty fair sort of a soldier. But he comes back, is sent up from his mates and stuck into a new branch of the service and his good record starts to go where it shouldn't.

He is A category, very anxious to return to the field as an artillery reinforcement but would be delighted to return to the field as infantry if he could get in as a D.R. a line of work that he has long been trained for. He realizes he has done wrong and will probably have to suffer for it. His last three AWL offences have been brought about by a crazy notion that with a number of offences he might get shipped back to the field to get rid of him.

I beg the court to give these points their consideration and I feel that there are excellent grounds for clemency and it would be a mistake to hold a man of this calibre, who is anxious to get back despite his youthfulness, for too long a time. ~~So I beg the court to consider and~~

To thrown himself on a mercy of a court martial rather than having his OC try him in order that probably higher formations would get to know about him and thereby enable him to return more quickly to the field. In the view of his youthfulness and what has been previously a fairly good record I ask the court to give this man their utmost consideration

Alvin Liart
Officer for the Defense

In the Field
20 Nov 44

Cecil Tripp Major
Pres

FGCM
Ex A

Summary of Evidence in the case of B47931 Fusilier DAVIES, Wesley, 1 Bn Canadian Fusiliers C A, on strength of 1 Bn Canadian Fusiliers C A, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on Oath.

FIRST WITNESS for the prosecution

D191686 Serjeant MUNCEY J.H., 1 Bn Canadian Fusiliers C A, on strength 1 Bn Canadian Fusiliers C A, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At HELMSLEY CAMP, YORKSHIRE, at 0745 hrs 18 October 44, I called the roll and found the accused absent from parade. I made a search of the camp area but failed to locate Fusilier DAVIES W. I called the roll daily until 8 November 44 and at no time did the accused answer to his name and was absent without leave.

J.H. Muncey

D191686 Serjeant MUNCEY J.H.

The accused declines to cross examine the witness.

SECOND WITNESS for the prosecution

M100616 Corporal Dalziel W.B., Corps of Military Police. A written statement of this witness' evidence, purporting to be signed by him and is included in this Summary of Evidence and marked Appendix "A"

Having regard to the exigency of the services, the attendance of this witness cannot in my opinion be readily procured.

G.T. Moore

(G.T.Moore) Capt
Officer detailed to take the Summary of Evidence

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

W. Davies

Signature of Accused

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that RULES of PROCEDURE 4 (c), (d), (e), (f), and (g) have been complied with.

G.T. Moore

(G.T.Moore) Capt
Officer detailed to take the Summary of Evidence

[illegible], YORKS.
8 November 1944

Appendix "A"

1/

Statement of EVIDENCE in the case of B.47931 Pte Davies W. Canadian Fusiliers.

While on patrol in York at about 0900 hours, 6 Nov 44, accompanied by L cpl Rilley, the m/n soldier was checked for a pass. He could not produce one. Neither could he produce his service book for identification. We placed him under close arrest, and placed him in York Police station, to await escort to his unit guard room.

M.100616 W. B. Dalziel Cpl.

I have read over the above statement of evidence and corroborate same.

B.132236 R. Rilley L cpl.

RECEIVED
NOV 7 1944
0900
CANADIAN FUSILIERS (A)

CHARGE

Sub-AFB 252
(See King's Regu

.....Canadian Fusiliers.....Regime
Batter
Squadr
.....Troop
Compan

HARGE against No. B.47931.....Rank. Pte....

ame... Davies W.....

lace. York.....Date of Offence 6 Nov 44...

FFENCE... W.O.A.S.....

...(1) Absent without leave.....

...(2) Not in possession of MBM 1 pts 1,2, or 3.

C.K.R. Rintoul

(C.K.R. RINTOUL) Lt.
OIC Provost Detachment,
att. 13 Cdn Inf Bde.

mes of Witnesses

M.100616 W. B. Dalziel Cpl.

B.132236 R. Rilley L cpl.

gnature of OC Battery
uadron, Troop or Coy.....

unishment
Awarded.....

.....Ad

Ex "B"

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.47931,	Pte.	Wesley DAVIES,	2 C.I.T.R.

1. The following is a fair and true summary of the entries in the ~~Conduct sheets~~ Service and General ~~or~~ Regimental and Squadron, Battery Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For Sec. 40	2	times	Sec. 40	3 times
For Sec 11	1	times	Sec. 11	1 times
For Sec. 15(1)	3	times	Sec. 15 (1)	3 times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 16 days in ~~Air Force~~ military custody, making a total of 16 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service in~~ attestation paper is 20 yrs 6 mos.

6. The date of his ~~commission~~ attestation specified in his ~~record of service in~~ attestation paper 24 July 42.

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc~~

9. The accused is in possession of or entitled to ~~an air force~~ military decoration, or ~~air force~~ military reward (~~or is in possession of or entitled~~ to). State any ~~air force~~ military decoration or reward.

C.V.S.M. & Clasp.

10. (If the accused is a warrant officer.) ~~The accused before he was made a warrant officer was entitled to~~ ~~Air Force~~ ~~the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

Permanent Force
unit

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

Air Force

Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 day of NW 44 [signature] Mrs [illegible] W
A/Adm Offr 2 C ITR

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[signature] Major
Pres.

No B 47031 Name DAVIES W. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 24Jul42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 49/PAS/136 (5438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | EX C | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Sep 43	Gnr		AA Sec 40 cond to the prej etc riding pillion on W.D. M/C without wearing a crash helmet.	Doc Evid	7 dys C.B.	9 Oct 43	C.E. Woodrow Lt col	E. D.
Field	9 Jan 44	Gnr	1	AA Sec 40 Conduct to the prejudice of good order and military discipline in that he, in the field, on 9 Jan 44 did drive a WD M/C at an excessive rate of speed in a built up area.	Doc Evid	10 dys pay	11 Jan 44	C.E. Woodrow Lt col	For 10 dys py FR&I 14 9 (2
				2 AA Sec 11 Neglecting to obey Cdn Army O/S Routine Order, in that he in the field on 9 Jan 44 did carry a pillion passenger on a M/C who was not wearing a crash helmet. Contrary to CARORO 3906 para 6 (Over)	Doc Evid				

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
			3	A.A. Sec 40 Conduct to the prejudice of good order & military discipline, in that, he, in the field, on 9 Jan 44 did use a WD Veh improperly for private purposes.	Doc Evid				
Field	3 Jan 44	Cnr		Sec 15(1) AA WOAB AWL from 2245 hrs 3 Jun 44 to 2200 hrs 4 Jun 44 Absent 23 hrs 15 min	Bdr Percy A.W.	14 dys CB	5 Jun 44	A.V. Malone	For 1 dy pay FR&I 149(1)(a)
UK	24 Sep 44	Fus		AA 15(1) AWL from 2230 hrs 24 Sep 44 to 2045 hrs 27 Sep 44 (Absent 2 dys 22 hrs 15 min)	Doc Evid	5 dys FOP	29 Sep 44	LT Col C.M. MacMillan	FOP 5 dys pay FR&I 149 (2) FOP 3 dy pay FR&I 149 (1)(a)

No. 47931 Name DAVIES W. | Sqn, Battery, or Company | Corps RCA | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/126 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Appealing with time)	By whom awarded	Remarks
Field	8 Oct 44	Fus		Sec 15(1) AA WOAS AWL from 0900 hrs 8 Oct 44 until 2330 hrs 13 Oct 44(5 dys 14 hrs 30 min)	Doc L/Sjt Armstrong W.T.	14 dys FOP	17Oct44	LTCol C.M. MacMillan	FOP 6 dys FR&I 149 (1)(b)FOP 14 dys FR &I 149(2)

CERTIFIED TRUE COPY

(T.N. Dickson) Lt
Offr IC of Regt'l Books
1 Bn Canadian Fusiliers, C.A.

21 Nov 44

(FTO)

LIST OF WITNESSES

In the case against B.47931, Pte. W. Davies , C.I.C.

(For the Prosecution)

1. D.121686, Sgt. MUNCEY, J.H. — 2 C.I.T.R.
2. M.100616, Cpl. Dalziel, W.B. — C.M.P.

(For the Defence)

NIL.

LIST OF EXHIBITS

In the case against B.47931, Pte. W. Davies, C.I.C.

(For the Prosecution)

NIL

(For the Defence)

NIL.

REQUEST FOR DEFENDING OFFICER

I, B.47931, Pte. Wesley Davies, C.I.C. hereby request the Convening Officer to appoint..... Capt. Ritchie, 2 CARU .....to represent me at my forthcoming Court-Martial should he be available.

In the Field, 17 Nov. 44. .....W. Davies..... Pte. (W.Davies)

RECEIPT FOR DOCUMENTS

I, B.47931 , Pte. Wesley DAVIES, C.I.C. hereby acknowledge receip t of a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial and I further acknowledge receip t of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

In the Field. 17 Nov. 44. W. Davies ..... Pte. (W. Davies)

4 Q - 58

Pte. Davies W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B47931 Pte Wesley DAVIES - CIC - 2 CITR

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for _____ beginning on (date) _____ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B353 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which NIL days were spent in hospital.(2)
(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Ninety (90) days and to be put under stoppages of pay until the same is made good 2 2-2 the expenses of his return to his unit.

(Sgd) _____ Judge-Advocate, if any. 17 Jan 45 Date awarded. (Sgd) _____ President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(2) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567 577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(1), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be restored to his position or detention and further orders be~~ (1. AA 57A. Delete if not used.)

Date 18 Jan 45 (Sgd) R Blackader Brig Commanding Comd 13 Cdn Inf Trg Bde

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 573.)

Accused.	Date.	Signature of Offr.
B47931 Pte Wesley DAVIES	23 Jan 45	(AJA Baxter) Maj Adm Offr 2CITR

ENTERED CMHQ No. 21 DATE 25 Jan 45 BY

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 9 FEB 1945 JAG BRANCH O.M.H.Q.

RECORDED AT CMHQ IN AB 160 4Q-58

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA8) 40/P & S/160h (6144) 4/38B

Convened by Order of Colonel C B Ware, DSO A/Comd 13 CITR dated 13 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 14, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B47931	Pte		Wesley	DAVIES	CIC 2 CITR

PROCEEDINGS REVIEWED 3 Feb 45 [illegible] Lieut PROVOST OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 17 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns in RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AB5, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~Shorthand to accused~~ Do you object to _____ as interpreter? Ans _____ ~~The Interpreter is sworn.~~(1) Do you object to P 28126 Sgt CHAMBERS C [illegible] Sgt STANLEY WE as shorthand writer(s)? Ans No ~~The shorthand writer(s) is (are) sworn.~~(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.H. REDMAN	AB, CRN
Member	Capt	A.D. YUILE	3 CITR
Member	Lt	L.P. POIRIER	4 CITR
~~Judge-Advocate~~			
Prosecutor	Lt	G.F. LAKE	2 CITR
Defending Offr	Lt	N. CADIEUX	2 CITR

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 25, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (3) and fn 2 were not followed. See 2d p 2.)

A8. The accused Accused waives 7 days notice that Pros is a lawyer before arraignment make(s) (no) (a) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 75), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 32, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 1(b) to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO, Sir.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 46 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(2)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 123(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO-SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 183(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 552. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans By my Lord, I plead. (NOTE A PT)
(*1. RP 37(C), 46(D). 2. Address, if oral recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the ~~P.M.~~ JA.(2)
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas 803, 809, 1223, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 40(2), MML p 130. Where accused already under sentence of imprisonment or detention see AA 64(1)(c), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 547. As to assembly and dispersal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.47931, Pte. Wesley DAVIES, CIC, on strength of 2 Cdn. Inf. Trng. Regt., a soldier of the Cdn. Army Overseas is charged with:-

SEC. 15 (1) ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at 1100 hrs. 11 Dec 44, illegally absented himself without leave until he surrendered himself at Lancaster at 2300 hrs. 4 Jan 45, thereby incurring costs of apprehension and return from Lancaster to London in the amount of £2-1-2.

(Total Time Absent:- 24 days, 12 hrs.)

Laurentide Camp,

11 Jan 45.

(J A Wilson) Col
Comdr.
2 CITR.

To be tried by Field General Court Martial.

In the Field
13 Jan 45

(C B Ware) Col
A/Comd
13 Cdn Inf Trg Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B47931	Pte	Wesley	DAVIES	CIC 2 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [redacted] committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Jan 45 endorsed by me, ([redacted]), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

[redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

[redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

LT COL (Rank.)	D L REDMAN, VD (Must be named. RP 106.)	HQ CRU (Unit.)

MEMBERS.

Captain	to be detailed by Commanding Officer	3 CITR
Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed. RP 106.)	4 CITR (Unit.)

WAITING MEMBER.

Captain (Rank.)	to be detailed by Commanding Officer (Named or detailed, if any. RP 106.)	1 CITR (Unit.)
[redacted]		
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 13 Jan 45

C B Mare (Signed personally. RP 105 fn 2.)

Colonel (Rank.)

Commanding 13 Cdn Inf Trg Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (Para 1(b) (iii) of AFAG 40/P & S/1807 (4461))

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl R. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 110 provides that for procedure on defence RP 49-62 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr *or accused*. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 537.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (3) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MED OFFRS CERTIFICATE 2 CITR/A1

K.R.Can Para 557

I certify that I have this morning examined No B.47931...

...PTE...DAVIES...W.... and in my opinion he

is FIT ~~UNFIT~~ to undergo trial by Court-Martial.

Station: Laurentide Camp ...C. F. Sears.....Capt. MC

(RCAMC) Attached to 2 CITR

Date: 17-JAN-45

B-47931 PTE WESLEY DAVIES.

E-3
MY

Mr President, Members of the court,

You will have to judge today a peculiar case, that I would like to explain to you before you give your sentence.

This man joins the army as a volunteer in 1942 at 18 years old.

Came in England in 1943 where he was trained as a D.R. with a Light A/A Reg't. to whom he belong when he was in Canada.

He went to France on June the 10th he has been in action from this date to sept of the same year, when his battery being the junior battery of the regiment was remustered to infantry.

Until this date, out of a few minor offences this man never had a trouble on his M.F.M. 6, when he was remustered, he did not feel very happy of the thing because of his having been trained as a D.R. for almost 2 years he was very found of his battery, specially after having been in action with it so long.

The then was sent back to England, where he was sent to a training Reinforcement, he went A.W.L. and was awarded 28 days F.P. when doing this F.P. he was supposed to be trained and then send back in action he was satisfied with that, but instead of being trained he was sent to Reception Coy. in C.I.T.R. where they kept him there doing nothing, no training, this is the reason why

he whent A.W.L. again

This man would like to be trained and send to action.

Every time he was A.W.L. he always "surrender" himself to his Unit

All this is no excused for being A.W.L. but considering the surroundings of this case I would ask the court to be very leinient in giving their punishment and if possible I would also ask the court to do something for this man, because he is ready to go in action again and as soon as possible his medical category is still A.1 and up till now he had always done his duty toward his country.

Jeannot Cadieux Lt
defending officer.

SUMMARY OF EVIDENCE

In the case of B.47931, Pte. Wesley DAVIES, CIC, on strength of 2 Cdn. Inf. Trng. Regt., a soldier of the Cdn. Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

First Witness Prosecution. Lieut. H.J. Boake, H.Q., 2 CITR, having been duly sworn states as follows:-

"I am Lt. H.J. Boake of H.Q., 2 CITR, and I produce the following as exhibits for the prosecution:-

Exhibit "A": Certif. True Extract from 2 CITR Pt. II Daily Order No. 38, d/ 15 Dec 44, showing that B.47931, Pte. Davies, W. illegally absented himself without leave from 2 CITR at 1100 hrs. 11 Dec 44 and that at 1100 hrs. 12 Dec 44 he was still so absent.

Exhibit "B": Certif. in accordance with A.A. Sec. 163 (I) (J) showing that B.47931, Pte. Davies, W. surrendered himself at Lancaster at 2300 hrs. 4 Jan 45.

Exhibit "C": Expense Voucher showing expense incurred in appreh. and returning B.47931, Pte. Davies, W. from Lancaster to London in the amount of £2-1-2.

WHICH ABOVE EXHIBITS PERTAIN TO THE ACCUSED HEREIN.

The accused declines to cross-examine this witness.

H.J. Boake .....Lieut.
(H.J. Boake)

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given ~~xx~~ in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

Laurentide Camp. P. Saperia .....Lt.
(P. Saperia)
11 Jan 45. Officer detailed to take the Summary of Evidence.

Ex A
WM

2 CANADIAN INFANTRY TRAINING REGIMENT

Last Order No: 37 d/14 Dec 44

PART II DAILY ORDERS BY: A/COLONEL J A WILSON, COMMANDER

This Order No: 38 d/ 15 Dec 44

Para 17. (a)

ABSENT WITHOUT LEAVE

AWL from 1100 hrs 11 Dec 44. Still absent 1100 hrs 12 Dec 44.

B47931 PTE DAVIES W (CFUS)

CERTIFIED TRUE COPY

A/Colonel Adjt Lieut

CERTIFIED TRUE COPY OF PART II ORDERS PURPORTING TO BE SIGNED BY J.J. Henslowe Capt Records Officer 2 C.I.T.R.

10 JAN 45

.....

Exhibit B

Certificate in accordance with the Army Act Section 163 (I) (J)

I certify that No; ~~B~~/47931 Rank Pte Nam Davies W.

Unit 2 Canadian Training Regiment Surrendered at Lancaster

at 2300 hours on 4th Jan 45.

Signature of Provost Marshal, A.P.M. or other officer into whose custody the above named was taken on arrest. K Warner Lt ~~Major~~ A.P.M.

LANCASTER

Exhibit C

Expense Voucher Re—

Ref: KR & O (Can) 539

Reg No B-4793 Rank PTE. Name DAVIES W. Unit 2 C.I.T.R.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit from~~ LONDON FROM LANCASTER

Date	Particulars (½ PORTION)	Amount		
7 JAN. 46	Escorts return fare from LONDON To LANCASTER		17	10
7 JAN 46	Prisoners single fare to LONDON From LANCASTER		17	10
	Prisoners fare from to			
7 JAN. 46.	Escorts & Prisoners expenses for Bed, Meals, Bus fares		5	6
CM	Total £	2	1	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W Elliott CAPT. R.C. PROVOST CORPS

Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 100-55 40/P & S/485 (6762)

M.F.B. 155
22M—5-41 (872-E)
H.Q. 1772-30-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.47931,	Pte.	Wesley DAVIES,	2 CITR.

1. The following is a fair and true summary of the entries in the ~~Conduct sheets~~ ~~Service and General~~ ~~Regimental and Squadron, Battery~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For Sec 40	0	times	Sec 40	3 times
For Sec 15(1)	3	times	Sec. 15(1)	5 times
For Sec 11	0	times	Sec. 11	1 times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~ ~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~ ~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 79 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 13 days in ~~Air Force~~ military custody, making a total of 13 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 years 8 mos.

6. The date of his commission specified in his ~~record of service~~ attestation is attestation paper 24 Jul 42.

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to ~~no air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to)~~. State any ~~air force~~ military decoration or reward.

CVSM & Clasp.

10. ~~(If the accused is a warrant officer.)~~ The accused before he was made a ~~Air Force~~ warrant officer last held the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number B47931 Rank Pte.

Name Davies, W. of 2 CITR. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F G C M	Field 21 Nov 44	Sec 15(1)	28 days FP Forf all ord pay for 90 days.	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17th day of Jan 45 Raparie Lant Asst Adm Offr

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

MFM 6
(AFB 122)
40/PAS/126 (3458)

No B 47031 Name DAVIES W. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 24Jul42 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28Sep 43	Gnr		AA Sec 40 cond to the prej etc riding pillion on W.D. M/C without wearing a crash helmet.	Doc Evid	7 dys C.B.	9 Oct 43	C.E. Woodrow Lt col	E. D.
Field	9 Jan 44	Gnr	1	AA Sec 40 Conduct to the prejudice of good order and military discipline in that he, in the field, on 9 Jan 44 did drive a WD M/C at an excessive rate of speed in a built up area.	Doc Evid	10 dys pay	11 Jan 44	C.E. Woodrow Lt col	For 10 dys py FRAI 14 9 (2
			2	AA Sec 11 Neglecting to obey Cdn Army O/S Routine Order, in that he in the field on 9 Jan 44 did carry a pillion passenger on a M/C who was not wearing a crash helmet. Contrary to CARORO 3906 para 6 (Over)	Doc Evid				

EXC

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
			3	A.A. Sec 40 Conduct to the prejudice of good order & military discipline, in that, he, in the field, on 9 Jan 44 did use a WD Veh improperly for private purposes.	Doc Evid				
Field	3 Jun 44	Cnr		A.A. Sec 15(1) AA WORS AWL from 2245 hrs 3 Jun 44 to 2200 hrs 4 Jun 44 Absent 23 hrs 15 min	Bdr Percy A.W.	14 dys CB	5 Jun 44	A.V. Malone	Forl 1 dy pay FR&I I 149(1)(a)
UK	24 Sep 44	Fus		AA 15(1) AWL from 2230 hrs 24 Sep 44 to 2045 hrs 27 Sep 44 (Absent 2 dys 22 hrs 15 min)	Doc Evid	5 dys FOP	29 Sep 44	LT Col C.M. MacMillan	FOP 5 dys pay FR&I 149 (2) FOP 3 dy pay FR&I 149 (1)(a)

1

No. B47931 Name DAVIS, W. | Sqn, Battery, or Company | Corps RCA | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/158 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Oct 44	Fus		Sec 15(1) A.A. WOAS AWL from 0900 hrs 8 Oct 44 until 2330 hrs 13 Oct 44 (5 days, 14 hrs. 30 min)	L/Sgt Armstrong. W.T.	14 days FOP	17 Oct 44	Lt-Col.C.M. MacMillan	FOP 6 dys. FR&I 149 (1)(b)FOP 14 dys FRI 149(2)
Field	18 Oct 44	Pte		Sec 15(1) AWL 19 days, 1 hr. 15 min.	Sgt.Muncey, J.H. Cpl.Dulziel, W.B.	28 days FP & Forf all ordinary pay for 90 days.	21 Nov 44	FGCM	

Certif. True Copy consisting of 3 pages.

11 Jan 45

.....Lt. Officer having custody of Reg. Books.

(PTO)

LIST OF WITNESSES

In the case of B.47931, Pte. Davies, W., CIC, on strength of 2 CITR, a soldier of the Cdn. Army Overseas.

(For Prosecution)

1. Lieut. H.J. Boake — H.Q., 2 CITR.

(For Defence)

NIL

.....

List of Exhibits.

In the case of B.47931, Pte. Davies, W. CIC, on strength of 2 CITR, a soldier of the C.A.(O)

(For Prosecution)

Exhibit "A":- Certif True Ext. from 2 CITR PT. II ORDER No. 38 of 15 Dec 44 showing accused AWL from 1100 hrs. 11 Dec 44.

Exhibit "B": Certif in accord. with A.A. Sec. 163 (1) (j) showing accused surrendered himself at Lancaster at 2300 hrs. 4 Jan 45.

Exhibit "C": Expense Voucher showing costs of appreh. and return of accused in amt. of £2-1-2.

(For Defence)

NIL.

.....

Request for Defending Officer.

I, B.47931, Pte. Wesley DAVIES, CIC, hereby request that the Convening Officer appoint Lieut Cadieux to represent me at my forthcoming trial by Court-Martial, should he be available.

Laurentide Camp. .....Pte.
(W. Davies)

11 Jan 45.

Receipt for Documents.

I, B.47931, Pte. Wesley Davies, hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial and I further acknowledge receipt of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

Laurentide Camp.

11 Jan 45. .....Pte.
(W. Davies).

29-V

A/Sgt (A/Sgt) DAVIES, W.C.

Correspondence to be PINNED here.

29 V.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Second day of January, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of 2nd Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to any superior military officer~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

E.W. Oddleifson Major President F.G.C.M.

* ~~I am unable to appoint any~~

*Omit if not applicable.

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely~~

110

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	~~E.W. Oddleifson~~ E.W. Oddleifson	1st Fd Coy, R.C.E.

Members

Rank.	Name.	Regiment.
Capt.	M. Turner	3rd Fd Coy, R.C.E.
Lieut.	~~H.A.~~ H. Cameron	1st Fd Coy, R.C.E.
(w) Lieut.	J.A. Redick	4th Fd Coy, R.C.E.

*Must be signed personally by the Officer actually in command on the spot, and all alterations in the composition of the Court to be initialled by him.

*Signed (R. A. Lindsay) Lt-Col.
A/Commanding 2 Cdn Inf Bde.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-28129 L/Sgt. (A/Sergent) William Charles DAVIES. 2nd Cdn Fd Park Coy., R.C.E.	1st Charge A.A. Sec 40 NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.	Not Guilty	Not Guilty E.W. Dadleifon Major 6 Jan 1943	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :— No Sir.

(Signed) R.A. Lindsay (R.A. Lindsay) Lt-Col
A/Commanding 2 Cdn Inf Bde.
Convening Officer (e)

(Signed) E.W. Dadleifon Major
1 Cdn Fd Coy R.C.E.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

11 41

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of January 1943, and duly tried the person~~s~~ named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person ~~were~~ was as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The Interpreter)~~
*(4. The officer~~s~~ under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 6th day of January 1943

E.W. Dadleifon Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this E.W. day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 8th day of Jan. 1943.

Brigadier,
Confirming Officer Comdg. 2 Cdn. Inf. Bde.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

SUMMARY OF EVIDENCE IN THE CASE OF

B-26423 L/SGT (A/SGT) W.C.DAVIES OF THE 2nd. Cdn. Fd. Park Coy., R.C.E.

By direction of the A/C.R.E. 1 Cdn. Div., the Summary of Evidence is taken on oath.

First Witness for the Prosecution.

B-28011 L/Cpl. Power, L.M., 2nd. Cdn.Fd.Pk.Coy., R.C.E., having been dulysworn, states;-

"On the night of 25/26 Dec 42 I was L/Cpl. in charge of the guard. At about 1900 hrs 25 Dec 42 I was given the keys of the Men's kitchen by a cook, and I visited the kitchen to check the fires and to see that everything was alright, at about one hour intervals all night. At about 2300 hrs, I inspected the kitchen and found everything in order. As nearly as I can remember, it was about 2345 hrs when I noticed the kitchen lights were on, and unlocked the kitchen door. On entering I found three N.C.O.s and asked them how they had entered the kitchen. They answered that they had entered through the shutters over the serving counter. I then asked them how they had got the door of the food storeroom open, and they told me that it had been open when they arrived. I questioned the senior Sergeant if I was to report this incident and he told me he would take full responsibility for dealing with it, and he would see that the kitchen and storeroom were locked up. At this I left the Mess Hall and returned to the Orderly Room. In about half an hour I again visited the Men's kitchen and found everything securely locked. At about 0230 hrs 26 Dec 42 I woke up L/Cpl. Gibson, the cook, andtold him what had happened. He came down to the kitchen and checked the food storeroom."

Questioned by the Court.

Q.1 "Who were the three N.C.O.s you saw in the Men's Kitchen?"
A.1 "Sgt. Davies, Cpl. Hamilton and L/Cpl. Hoffman. All of this unit."

Q.2 "What were the N.C.O.s doing when you entered the kitchen?"
A.2 "They were in the kitchen eating."

Q.3 "Was the food storeroom open, and how did it appear to have been opened?"
A.3 "It was open and the screws had been removed from the hasp."

The accused declined to cross examine this witness.

L/Cpl Power L.M.

Second Witness for the Prosecution.

B-28065 Cpl. Hamilton, G.R., 2nd.Cdn.Fd.Pk.Coy., R.C.E. having been duly sworn, states;-

"On the night of 25 Dec 42 I had a few drinks and do not feel that I can give evidence in the matter."

Cpl Hamilton G.R.

The accused declined to cross examine this witness.

TO PAGE -2-

Third Witness for the Prosecution.

B-28095 L/Cpl. Hoffman, S., 2nd. Cdn.Fd.Pk.Coy., R.C.E. having been duly sworn, states;-

"I am a Transport L/Cpl. in Bridging Section of the 2nd Cdn.Fd.Pk.Coy., R.C.E. On the night of 25 Dec 42 in company with Sgt. Davies and Cpl. Hamilton, I went to the Men's Mess kitchen to see if we could get a cup of tea. It was then approximately 2330 hrs. We found the kitchen door was locked, but Sgt. Davies noticed the door into the Mess Hall was open. He went to see if anyone was in the Mess, while Cpl. Hamilton and I waited outside. Sgt. Davies called us almost at once and told us that the shutter over the serving counter between the kitchen and the Mess hall was open. We subsequently went into the kitchen and turned on the lights. Sgt. Davies called my attention to the fact that the door leading into the ration room had been forced open previously. I could see that this was true as the screws holding the hasp were just hanging lossely. Sgt. Davies then said that as he was senior N.C.O. in camp, he was going to remove the screws and investigate to see if anything was missing, but that he wished a cook was present. At this time L/Cpl. Power came in and asked what was going on. We told him that Sgt. Davies had found one shutter over the serving counter open, also that we were investigating, and had found that the hasp of the ration room door had been tampered with and the screws were loose in the holes. L/Cpl. Power said that he would report the matter in the morning. Sgt. Davies told him that there didn't seem to be anything missing, and that as it was Christmas night, he didn't wish to make any trouble and would take the responsibility for any further action. At about this time, Pte. Taunton came in and when the matter had been explained to him by Sgt. Davies, they went into the ration room. Shortly afterwards I left the kitchen."

L/Cpl. S. Hoffman

The accused delines to cross examine this witness.

Fourth Witness for the Prosecution.

B-83011 L/Cpl. Gibson, G., 2nd. Cdn. Fd. Pk. Coy., R.C.E. having been duly sworn, states;-

"I am L/Cpl. cook of the 2nd. Cdn.Fd.Pk.Coy., R.C.E. At approximately 0200 hrs, 26 Dec 42, L/Cpl. Power woke me up and gave me information which led me to believe that the kitchen had been broken into, and asked me to check the rations. I did so and found two Christmas puddings and a few eggs were missing. I made sure everything was securely locked up again and went back to bed. At about 0800 hrs 26 Dec 42 I reported to Sgt. Davies, the Senior Sergeant in camp, that the kitchen had been broken into, and that two Christmas puddings and some eggs were missing. Sgt. Davies told me to forget about it and that he would take all responsibility, as it was Christmas and he didn't want any trouble.

L/Cpl G Gibson

The accused declines to cross examine this witness.

TO PAGE -3-

Fifth Witness for the Prosecution.

Major R.B.Fraser, O.C., 2nd.Cdn.Fd.Pk.Coy., R.C.E. having been duly sworn, states;-

"I am Major R.B.Fraser, Officer Commanding 2nd. Cdn. Fd. Park Coy., R.C.E. At about 1430 hrs 29 Dec 42, at the rear of Mountfield Court, in some bushes, I discovered a plum pudding similar to those which had been ordered for the men for Christmas. I proceeded to the kitchen of the Men's Mess where I questioned L/Cpl. Gibson as to whether they had had sufficient pudding for Christmas, and whether any had been missing. About 15 minutes later L/Cpl. Gibson came into my office and gave me certain information which led me to believe that the storeroom, adjoining the Men's kitchen, had been broken into on the night of 25/26 Dec 42. Shortly after this I met the accused in the corridor and he stated to me that he had taken the responsibility for not reporting the break-in to myself, because it was at Christmas time and that he would prefer to take the blame himself, rather than have it laid on the shoulders of some junior N.C.O.s.

On 30 Dec 42 I charged A/Sgt. Davies with neglect in failing to report this incident to me, and remanded the case for higher authority."

R B Fraser

The accused declines to cross examine this witness

Sixth Witness for the Prosecution.

D-81594 Pte. Taunton, J., of the 2nd. Cdn.Fd.Pk. Coy., R.C.E.

"I certify that the attendance of the sixth witness for the Prosecution, Pte. Taunton, J., cannot be readily procured for the purpose of giving evidence at this Summary of Evidence." (R.P. 4 (g))

E.A.Ballantyne Capt

(E.A.Ballantyne) Capt.
2nd. Cdn.Fd.Pk.Coy., R.C.E.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (e), declines to make a statement.

Certified that Rule of Procedure 4 (b)(c)(e)(f)(g) have been duly complied with.

Taken down by me in the presence and hearing of the accused this 30th. day of December 1942.

E.A.Ballantyne Capt

(E.A.Ballantyne) Capt
2nd. Cdn.Fd.Pk.Coy., R.C.E.

FORM OF APPLICATION FOR A COURT-MARTIAL

2ND.CDN.FD.PK.COY., R.C.E. Regiment

Station Field Date 30 Dec 1942

Application for a Field General **Court-Martial**

SIR,

I have the honour to submit one charge against No. B-26423 L/Sgt. (A/Sgt.) DAVIES, W.C. of the unit under my command, and request you will obtain the sanction of G.O.C. 1 Cdn. Div. that a Field General Court-Martial may be assembled for his trial at

The case was investigated by (a) Capt. E.A.Ballantyne 2nd. Cdn. Fd. Pk.Coy., R.C.E.

Prosecuting Officer - Capt. E.A.Ballantyne - 2nd.Cdn.Fd.Pk.Coy., R.C.E.

A Court of Inquiry was held on (b) N/A (date) at (Station).

President
Members
} Ranks, names and corps.

The accused is now at own unit His general character is (c) Good

I enclose the following documents (d):—

1. Original Charge Sheet ~~(e)~~ (e).
2. Summary of Evidence, original (f) and 1 copy. ~~copies~~
3. ~~(g)~~ (g).
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. ~~(h)~~ (h).
6. ~~(g)~~ (g).
7. Statement as to character (M.F.B. 355) and regimental and company, etc., conduct sheets (or Field Conduct sheets) of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h).

Your obedient servant,

Signature of Commanding Officer R B Fraser

(R.B.Fraser) Major
2nd.Cdn.Fd.Pk.Coy., R.C.E.

To: H.Q.,
2nd. Cdn. Inf. Bde.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. B-26423 A/Sgt. Davies, W.C.-2nd.Cdn.Fd.Pk.Coy. R.C.E. Regiment, is* fit to undergo trial by Court-Martial.

V.J. McKinty Capt
Signature of the Medical Officer.

*Insert "fit" or "unfit."

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).
(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 8 and 9 to be sent to the President.
(If the accused has elected to be tried under A.A. 46 (8), the fact should be recorded at the top of this form.)

M.F.B. 321
40 F & S/650

30 Dec 42

"I, B-38129 A/Sgt. Davies, W.C. of the 2nd. Cdn. Fd. Pk. Coy., R.C.E., desire to have Major F.C.Pace, R.C.A.M.C., represent me at my trial."

W.C. Davies

(Major Pace available)

MEDICAL CERTIFICATE

This is to certify that I have today examined B 28139 Sgt. Davies W.C. of the 2 Cdn Fd Pk Coy R.C.E. and he is fit/~~unfit~~ to undergo trial by Court Martial.

V. J. McCurdy Capt

Medical Officer R.C.E. 1 Cdn Div

6 Jan 43

Ear Daalei from Major
Pres. H.G.C.M.

LIST OF WITNESSES FOR THE PROSECUTION IN THE CASE OF

B/28129 L/SGT. (A/S/QT) DAVIES, W.C.
2nd. Cdn.Fd.Pk.Coy., R.C.E.

1. 1st. Witness - B-28011 L/Cpl. Power, L.M. 2nd. Cdn.Fd.Pk.Coy., R.C.E.
2nd. Witness - B-28065 Cpl. Hamilton, G.R. 2nd. Cdn.Fd.Pk.Coy., R.C.E.
3. 3rd. Witness - B-28095 L/Cpl. Hoffman, S. 2nd. Cdn.Fd.Pk.Coy., R.C.E.
4. 4th. Witness - B-28011 L/Cpl. Gibson, G. 2nd. Cdn.Fd.Pk.Coy., R.C.E.
5th. Witness - Major R.B.Fraser 2nd. Cdn.Fd.Pk.Coy., R.C.E.
6th. Witness - D-81594 Pte. Taunton, J. 2nd. Cdn.Fd.Pk.Coy., R.C.E.
7th. Witness - Capt. E.A.Ballantyne

E A Ballantyne Capt
2 Cdn Fd Pk Coy RCE
30 Dec 42

3.

Ewd a deter from Major
Pres F.G.C.M.

CHARGE SHEET

THE ACCUSED ELECTS TRIAL BY FIELD GENERAL COURT MARTIAL.

(A.A. 46 Note 17)

The accused, B-28129 L/Sgt. (A/Sgt.) William Charles DAVIES, 2nd. Cdn. Fd. Park Coy., R.C.E., a soldier of the Canadian Army Overseas, when on active service, is charged with:-

First Charge.
Section 40
Army Act.

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field on 26 December 1942 failed to advise his Commanding Officer of the theft from the Men's kitchen of certain articles, knowing full well it was his duty to do so.

R.B. Fraser
(R.B.Fraser) Major
Commanding
2nd.Cdn.Fd.Pk.Coy., R.C.E.

Signed in the field this 30th day of December 1942.

To be tried by Field General Court Martial.

R.A. Lindsay
(R.A. Lindsay) Lt-Col.
A/Comd, 2 Cdn Inf Bde

In the Field
2 January, 1943.

Ewd

Enclosed in portrait
Pres FGCM.

5

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at The Field on the 16 Ewo day of January 19 43 by order of Lt-Col. R.A. Lindsay A/Commanding 2 Cdn Inf Bde dated the 2 day of January 19 43

President.

Major E. W. Oddleifson - 1 Cdn Fd Coy R.C.E.

Members.

Capt M. Turner - 3 Cdn Fd Coy R.C.E.
Lieut H. A. Cameron - 1 Cdn Fd Coy R.C.E.
Waiting Member
Lieut J. A. Redick - 4 Cdn Fd Coy R.C.E.

, Judge Advocate.

Trial of* B28129 L/Sergt Davies W.C.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that Lieut H.A. Cameron is not available to serve owing to being on leave and Lieut J.A. Redick, 4 Fd Coy R.C.E.

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt E.A. Ballantyne, 2 Cdn Fd Pk Coy R.C.E.

Counsel‡ or defending officer† Major F.C. Pace, R.C.A.M.C.

At 1200 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 221
10M—8-41 (1519)
H.Q. 1772-59-224

Embodied from Maj's Pres. F.G.C.M.

7.

C

Proceedings on Plea of Not Guilty

*Instruction.
(See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No. Sir.

The prosecutor makes ~~an~~ No Evo opening address [~~hands in a written address, which is read, marked~~ , ~~signed by the President, and attached to the proceedings~~].

The prosecutor proceeds to call witnesses.

First witness for prosecution. See attached sheets.

being duly sworn, is examined by the prosecutor.

Evo

Evidence for prosecution
Pres F.G.C.M.

5

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at The Field on the 16th day of January 19 43 by order of Lt-Col. R.A. Lindsay A/Commanding 2 Can Inf Bde dated the 2 day of January 19 43

President.

Major E.W. Oddleifson - 1 Cdn Fd Coy R.C.E.

Members.

Capt M. Turner - 3 Cdn Fd Coy R.C.E.
Lieut H.A. Cameron - 1 Cdn Fd Coy R.C.E.
Waiting Member
Lieut J.A. Redick - 4 Cdn Fd Coy R.C.E.

, Judge Advocate.

Trial of* B29129 Lt/Sergt Davies W.C.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that Lieut H.A. Cameron is not available to serve owing to being on leave and Lieut J.A. Redick, 4 Fd Coy RCE

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt E.A. Ballantyne, 2 Cdn Fd Pk Coy R.C.E.

Counsel‡ or defending officer† Major F.C. Pace, R.C.A.M.C.

At 1200 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

MH. Form B. 271
10M—8-41 (1239)
H.Q. 1772-89-224

B

The President, members ~~and judge advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Capt T.C. Poole, R.C.A.M.C.

Charge-Sheet

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused elected trial by Court Martial.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ ~~Question.~~ ~~Answer.~~

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ ~~Question.~~ ~~Answer.~~

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ ~~Question.~~ ~~Answer.~~

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

Endorsed for Maj in Pres. F.G.C.M.

7.

C

Proceedings on Plea of Not Guilty

*Instruction.
(See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No. Sir.

The prosecutor makes ~~an~~ No opening address [~~hands in a written address, which is read, marked~~ , ~~signed by the President, and attached to the proceedings~~].

The prosecutor proceeds to call witnesses.

First witness for prosecution. See attached sheets.

being duly sworn, is examined by the prosecutor.

Ent

Ewaalerfonmaj - Rec'd GCM 9

1st Witness S/Cpl Power. B-28011. sworn, states:-

I am B28011 S/Cpl Power L.M.
Workshop section 2nd Can Fd Pk Coy RCE.
On the night of 25-26 Dec 1942. I was
NCO. 1/c guard. at 1900 hours I was
given the keys of the Men's Kitchen
my duties there were to check all fires and
see that everything was in order. I did this
at intervals of an hour, and sometimes of half
an hour. I visited the kitchen at 23.00 hrs
on the night of the 25th made up the fires
and checked all around to see if everything was
secure and all right. ~~Then I returned~~

On my next visit at 2345 hours I went
to the kitchen again and noticed the lights were
burning inside, I unlocked the door, and opened
it, and found inside 3 men. I questioned the
men as to how they got in there and what
they were doing there and the senior man
told me. -

Objection by defence as to the preceding
paragraph being hereday widence -

Objection over-ruled by the court.

That they had entered by the
shutters over the serving counter then
I questioned them about the inner room
door being open, and he told me that he
had found it open when he entered.

Objection by the defence as to the preceding
paragraph hereday widence, and that ~~the~~ in the
interests of justice the widence of this witness
be struck from the records due to leading
statements having been made by the prosecution

Objection overruled by the court, & the witness instructed to continue.

The defence requests that the nature of the leading statement be recorded., & it is as follows.

Question by Capt Ballantine - prosecutor

Is it heresay that the conversation (mentioned above.) took place in the presence of the accused.

Statement by Capt Ballantine, prosecutor that he, by witness had already mentioned ~~the accused~~ that he was talking and to the accused.

The court referred to and read back the evidence of this witness

Q, ~~Cpt~~ Question, by prosecutor

Cpl Power will you tell the court the names of the men you found in the mess-hall on the day and date mentioned

A, Ans, Sgt Davis. Cpl Hamilton, Mpl Hoffman. ~~these~~

I then told the Sgt that I should report this matter, and he told me that he would take full responsibility if any thing happened with that I stayed there a few moments, the Sgt told me that he would lock up. and see that every thing was secure. at that I left and continued my rounds.

I went back a half an hour afterward to see if every thing were secure. and it was. the screws had been put back in the latch from where they had been taken out. and at 0230 hrs 26 Dec I informed S/Cpl Gibson

1st Witness S/Cpl Power. B-28011. sworn, states:-

I am B28011 S/Cpl Power L.M. Workshop section 2nd Can Fd Pk Coy RCE. On the night of 25-26 Dec 1942. I was NCO. 1/c guard. at 1900 hours I was given the keys of the Men's Kitchen my duties there were to check all fires and see that everything was in order. I did this at intervals of an hour, and sometimes of half an hour. I visited the kitchen at 23.00 hrs on the night of the 25th made up the fires and checked all around to see if every thing was secure and all right. ~~Then I returned~~

On my next visit at 2345 hours I went to the kitchen again. and noticed the lights were burning inside. I unlocked the door, and opened it, and found inside 3 men. I questioned the men as to how they got in there and what they were doing there and the senior man told me. -

Objection by defence as to the preceding paragraph being hereday widence —

Objection over-ruled by the court.

That they had entered by the shutters over the serving counter. then I questioned them about the inner room door being open, and he told me that he had found it open when he entered.

Objection by the defence as to the preceding paragraph hereday widence, and that ~~the~~ in the interests of justice the widence of this witness be struck from the records. due to leading statements having been made by the prosecution

10
Env

Objection overruled by the court, & the witness instructed to continue.

The defense requests that the nature of the leading statement be recorded, & it is as follows.

Question by Capt Ballantine, prosecutor

Is it hearsay that the conversation (mentioned above) took place in the presence of the accused.

Statement by Capt Ballantine, prosecutor that he, the witness, had already mentioned and that he was talking to the accused.

The court referred to and read back the evidence of this witness

Q, Question, by prosecutor

Col Power, will you tell the court the names of the men you found in the mess hall on the day and date mentioned

A, Ans, Sgt Davis, Cpl Hamilton, Pfc Hoffman.

I then told the Sgt that I should report this matter and he told me that he would take full responsibility if any thing happened with that I stayed there a few moments, the Sgt told me that he would lock up and see that every thing was secure & that I left and continued my rounds.

I went back a half an hour or two and to see if every thing were secure and it was the screws had been put back in the plate from where they had been taken out and at 0230 hrs 26 Dec I informed A/ Col Gibson

E.W. Dadeepon Maj'n Pres. R.C.M. 13.

Ketchen had been broken into asking he would come down and see what was missing, and he came down and checked over and told me what was missing. After that we had a cup of tea and he went back to his bed. I continued till reveille in the morning, checking my fires.

The defence has no questions to ask this witness

2nd Witness T/Cpl. Hoffman B.28095 sworn states:-

I am B28095 T/Cpl Hoffman S. 2Fd Pk Coy RCE

I am a T/cpl in the bridging section of 2nd Fd Pk Coy RCE. On the night of Dec 25. at approximately 23.30 hours in company with Sgt Davies and Corporal Hamilton we went to the Men's mess to see if we could get a cup of tea, when we got there we found the door was locked from the outside. Sgt Davies noted the door leading into the mens mess hall was open and he said he was going in there to see if anybody was there, shortly afterwards - a matter of a few seconds - he called Corp Hamilton and myself around. When we got there he told me that the shutter over the serving counter leading into the men's ketchen was open. He said that he was going in there to see if everything was all right. When we put the lights on he brought my attention to the fact that the door leading into the ration room had been tampered with

4. I could easily see this, as the four screws holding the hasp ~~was~~ ~~which was~~ were hanging loosley in the holes. Sgt Davies then said that as he was senior NCO in camp he was going to enter the room to see if everything ~~were~~ was all right - just then T/Cpl Powers came in, and wanted to know what we were doing in there. Sgt Davies explained to him, just what had happened and that he was looking to ~~see~~ see if there were any thing missing. T/Cpl Powers then said that he would report the matter in the morning. Sgt Davies answered that as it was Christmas night, and there seemed to be nothing missing, and as he was senior N.CO, in camp he would take responsibility for any further action he thought necessary, shortly after that I left.

The ~~[illegible]~~ Eve defence have no questions.

Third Witness T/Cpl Gibson G. B83011

Having been duly sworn states

I am B83011 T/Cpl Gibson G. corporal of the cook house 2nd Fd Pk Coy RCE. at approximately 0300 hours 26 Dec 42. T/Cpl Powers woke me up and informed me that the men's kitchen had been broken into. I went down and checked it over finding there was a few eggs and two christmas puddings missing. I made the kitchen secure and went back to bed. At 0800 hours 26 Dec 1942. I reported to Sgt

16.

Edo.

5 Davies, as he was senior sgt in camp. Sub addl from Maj Pres FOLM 17.

Q2 What did Sgt Davies reply when you reported to him on the day and date mentioned.

A2 He told me to forget about it and that he would take all responsibilities as it was Christmas time and did nt want any trouble

No Questions by defence.

The court wishes ~~to ask~~ to question

Q3 Was the kitchen open when you arrived.

A3 No it was closed.

Q4 When you reported to Sgt Davies did you tell him what had been removed from the kitchen

A4 I reported what was missing

The court has no further questions

Fourth Witness Major R B Fraser O/C No 2 Fd Pk Coy RCE sworn, states

I am Major R B Fraser O/C 2nd Fd Pk Coy RCE On the afternoon of the 24th Dec at about 1430 hours at the rear of this building I found a plum pudding in some bushes. this pudding was similar to the ones obtained for the men's mess for Christmas dinner: I went to the kitchen of the men's mess and made inquiries as to whether the men had had sufficient pudding for Christmas and whether there were any missing

15.

E.W. Dadley from Main Pres. FGCM 19.

4. Shortly after this Hcpl Gibson 1/2 Mens Kitchen reported to me in the office and gave me certain information. This information lead me to believe that the food storage room adjoining the mens mens Kitchen had been broken into on the night of Dec 25-26 Sometime after this on the same date I met the accused in a corner of the building and he corroborated to me that the storage room had been broken into, and that the occurrence had been brought to his knowledge.

I placed a charge against Sgt Davies for neglecting to report this incident and remanded the case for higher authority -

No questions by the Defence.

Questioned by the Court.

Q5 Was there any reason that Sgt Davies should have reported the matter to you.

Q5 I was the only officer in camp other than a new officer who arrived Christmas Eve and in my opinion as commanding officer of this unit, the theft of any articles within the unit should be immediately reported.

No further questions by the court.

Prosecution closed.

- SEE FOLLOWING SHEET FOR DEFENCE PRELIMINARIES -

~~[illegible]~~ The accused Sgt Davies WC 838829.

First Witness Defence having been sworn states

Q6 In the evidence that Hcpl Gibson gave, he said words to this effect quote - "Sgt Davies said he would take all responsibility unquote Tell the court why you assumed responsibility

Ew Dadler for Magis
Pres. F.G.C.M.

21.

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness? -- On Oath?

Answer. Yes. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* No.

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

~~*(Where any evidence is given for the defence.)*~~

~~The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (see overleaf).~~

~~*(Where the accused does not give evidence upon oath.)*~~

~~*Question to the accused.*~~ ~~Have you anything to say in your defence?~~

~~*Answer.*~~ ~~The accused in his defence says†.~~ Ewo.

~~[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

---

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D2

Instruction.
The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

7 for this theft.

Ewd Dadleepon Major Pres. F.G.C.M.

A6 I assumed responsibility for any further action because approximately a month previous to this, my O.C. Major Fraser had called a meeting of all NCO's in the company. At that meeting he told us that we, the NCO's, particularly the senior N.C.O's, were responsible for stopping petty theft and that we ourselves were to look after it. ~~if we could find it was~~ Ewd ~~[illegible]~~ Ewd ~~[illegible]~~ Ewd ~~[illegible]~~ Ewd ~~[illegible]~~ so I assumed responsibility for any further action believing that I was carrying out my O.C's wishes.

Q.2 Will you tell the court briefly what happened in regard to the charge against you on the night of 25-26 Dec 42.

A.9 Ans. On the night of 25 Dec I was senior N.CO. in the camp I was in company with S/Cpl Hoffman & Cpl Hamilton in the orderly room when someone suggested that we go to the men's kitchen and see if we could get a cup of tea, when we came to the kitchen the door was locked. As I had passed towards the kitchen I had noticed that the door entering to the mess hall was open so I went around to the door, switched on the lights, when I put on the lights I found that the shutters above the serving table were open and I called S/Cpl Hoffman and Hamilton and went inside to the kitchen. When I put the lights on in the kitchen I immediately noticed

Edwin.

that the hasp of the ration room had been tampered with. the screws being partly off. I removed them the rest of the way. and went inside to see if any thing had been taken, nothing seemed to be upset. and I came out. at that moment A/pt Cowen knocked on the door of the kitchen unlocked it, and came in. He asked me a few questions, and I told him what had happened. I told him also that I would assume responsibility for any further action. He then left, a few minutes afterward Pte Taunton. came into the kitchen (he is one of the attached R.C.A.S.C cooks). I asked him to check the ration room. and went with him while he checked. he told me that there were 2 puddings gone and he thought a few eggs. I then went out, got a screw-driver, replaced the lock. after that I went into my quarters went to bed. at approx 0700 hours. A/pt Gibson reported to me. that the puddings had been stolen. I told him I'd look after the matter. On the 29 th. A/pt Gibson said to me that the O.C had been checking so I immediately went to the O.C. and told him that I knew about it. I have got any more chance to explain to the O.C., ~~it was apparently he did not mind~~ as he did not listen to my explanations. On the next morning I was brought up on a charge. I still did not have an opportunity

E.W.D.

9/ to explain, and was remanded to the CRE

Ewaddleton Magis Pres. [illegible]

Q.8 Prosecution Witness

Sgt. Davies, in your evidence you have stated that on 2 occasions you told junior NCO's, that you would accept full responsibility for taking any further action in this matter, is that correct?

Ans. 8 - Yes Sir

Q9 You have further stated that as a result of an O.C's meeting previous to this episode you understood that it was the responsibility of all NCOs to attempt to prevent petty theft within the unit, is that correct?

A9 - Yes Sir.

Q10 Did you on the night of 25-26 Dec know who had committed the theft which was reported to you.

A10 No Sir

Q11 Did you prior to the 29th of Dec make any serious effort to fix the responsibility for this theft

A11 Yes sir.

Q12 Will you tell the court what steps you took.

A12 I went through all the huts and the house the morning after the theft. I did not deliberately search any mans kit.

Eur Dadleyson Maj Pres FGCM

Q.3 ~~Do you feel that you did every thing possible to fix the responsibility~~ Eur

Do you feel that you carried out as fully as possible the O.C's intention as to prevention of theft.

A.3 Yes sir.

No ~~further~~ questions by the court.

Second witness for the defence ~~having been~~ Eur

Eur ~~Sgt~~ T/Sgt Thompson HH, B28161 2nd Fuld Pk Coy RCE having been duly sworn states. I am H H Thompson Eur ~~Sgt~~ B28161 T/Sgt 2nd Fd Pk Coy RCE

Q.4 Do you remember an NCO's meeting called by Major R B Fraser five or six weeks ago

Ans.4 Yes I do.

Q.5. Will you please tell the court the substance of Major Frasers instructions at that meeting in regard to dealing with petty theft.

A.5 I recall a statement which major Fraser made and from this statement I took it that we NCO's of this company were to stamp out the petty ~~theft~~ thieving which had been going on, I also took from it that we were to use our own judgement and methods in stopping it.

Prosecution ~~Sgt Thompson did you also understand~~ Eur ~~that having investigated any case of theft without result you were absolved from the~~

~~necessity of reporting the matter to the O.C. or I.C.~~

~~Ans 14 As far as I can recall there was nothing said about reporting these~~

Ewd Daddar from Major Pres F.G.C.M.

Prosecution Q. 16

Did you understand from this meeting that in future any cases of theft did not have to be reported to the O.C.

Ans 16 From the statement I took it that we were to handle any cases that we could and any cases which were too much for us to handle should be turned over to the section officer.

The court has no further question

3rd Witness for the defence.

Sgt Hannah CH. 3 28204. having been sworn states I am Sgt Hannah CH 3 28204 no 2 Fd. Ck Coy RCE.

Q. 17 Sgt Hannah do you remember an N.C.O's meeting called by Major Fraser 5 or 6 weeks ago at which the subject of petty theft in the unit was discussed.

Ans 17 Yes Sir

Q. 18. Can you now tell the court according to your best recollection what directions were given N.C.O's in dealing with cases of this kind. If so repeat these directions according to your best understanding of them.

Ans 18. As I understood it petty thieving would be handled by the N.C.O. without taking it to the orderly room.

2.

Eve Dadlerfron Major
Pres. F.G.G.M.

12. Prosecution. Q.19

Q.19 From this meeting did you understand that in any cases of petty theft ~~and~~ which an NCO. could not fix the responsibility that it was no longer necessary to report the fact to an officer.

Ans 19. ~~I think that~~ Eve No. if the NCO. could not fix the responsibility or solve the petty thieving he would have to report it.

The court has no further questions to ask the witness

Defence's closing ~~defence~~ Eve address as follows.

The first point which the defence wishes to make is that this whole charge evolves from someone wanting an extra bit of plum pudding at Christmas, and I must say that I myself was greatly surprised when I found out the details of the case against Sgt Davies. I have known Sgt Davies for a year. I have seen his conduct sheet and I was very much taken aback that so much to do was being made over so small a matter.

So far as the facts go there has been no attempt on the part of Sgt Davies to conceal that he did not report this ~~[illegible]~~ OC petty theft. and in not reporting it he believed (perhaps mistakenly) that he was acting in accordance with his commanders wishes. This inadvertence or misunderstanding of a verbal order given at a meeting of no great formality was shared by at least 2 other reputable & experienced sergeants

Recto

13. It is not by these remarks intended to cast reflection upon the ability of the officer who gave the instructions, whatever they were but it is hoped to emphasize that from the nature of the meeting & the purport of the C.O.s remarks misunderstanding on the part of several intelligent persons has arisen, & in this connection I refer the court to the provisions of AA 40 footnote as amended by 110 Jan. 5, 6, 33 June 42. The defence maintains this error of judgement was an honest error of judgement (as proven by the testimony of sgts Hannah and Thompson) and the further evidence of the accused shows that in making a search for the missing puddings he displayed a zeal concommittant with the importance of the occasion. Further, he took the trouble to repair the forced locks.

As regards the lapse of time between the occurrence of the break in and his discussion with his company C.O.; the court will probably take cognizance of the season of the year. Saturday was boxing day, Sunday a day of rest; and it is easy on a burg-monday morning to slip up in small matters.

Note May the defence have drawn to the attention of the reviewing authorities the provisions of M M L Chap 5 para 16 in conjunction with the corps to which the officers constituting this court belong. with a view to determining whether or not such provisions apply to an FGCM as described in para 112

Encl. Ladies for Mag Pres F.G.C.M.

Euro.

Endorsed from Lucy in Pres. F.G.C.M. 37.

14. of the same chapter;

Will the court also consider whether or not the provisions of M.M.L. Chap 5 para 56 have been complied with.

May the attention of the reviewing authorities be drawn to this para in relation to the proceedings of this court.

The defence does not feel that any defence other than that of misunderstanding and inadvertence is necessary. The technicalities introduced are precautions ~~only~~ brought to attention only to further protect an individual who was guilty at worst of an error of ~~[illegible]~~ interpretation.

Prosecutions reply.

Briefly the facts of the case would appear to be. a theft was discovered on the night of 25-26 Dec & reported to Sgt Davies. The accused, ~~[illegible]~~ having been unable to fix the responsibility for the theft he failed to report the matter to the O.C. concerning the excuse of an error of inadvertence. Two responsible senior N.C.Os. have stated on oath that at the N.C.O's meeting held some 5 weeks previously they understood that if they were unable to fix the responsibility for a petty theft they should report the matter to the O.C or one of the officers

— 11 —

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused is Not Guilty.

Proceedings on Conviction ~~before Sentence~~

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

(Instruction.—If by reason of the nature of the service of the accused in a disciplinary corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused

Sentence.

22F - Pte Davis A.C.

O. H. M. S.

B-81631 Pte. Davis, A.C.
1 Cdn A.S.C. R.U.

"H"

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 23rd day of January, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[redacted]

*(1. [redacted]

*(2. [redacted]

*(3. [redacted] service]

[redacted]

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	E.J.D. Edmonds	No.3 Cdn Arty Reinf Unit

Members.

Rank.	Name.	Regiment.
Captain	R.B.G. Macdonnel	3 Cdn Div Inf Reinf Unit
Lieutenant	G.D. Jack	No.3 Cdn Arty Reinf Unit
Lieutenant	W.J. Preston	No.1 Cdn M.G. Reinf Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed D.M. Mclaren, Brigadier

Commanding Cdn Reinforcement Units.

Convening Officer.

2

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-81631 PTE. DAVIS, A.C. No. 1 Can A.S.C. Reinf Unit.	First Charge A.A. sec 12(1)(a) Second Charge A.A. sec 40 Alternative Third Charge A.A. sec 40 Fourth Charge A.A. sec 24(2) Fifth Charge A.A. sec 15(1) See charge sheet attached.	not guilty not guilty not guilty not guilty not guilty	AWL AA 24 (2) not guilty not guilty not guilty	Confirmed J.M. Sulman Brig

TENCE

quergo detention for 140 days and
placed under stoppages of pay in
ount of £7-4-8; awarded as follows:
apprehension £2-9-9; Petrol 19s 1d;
for return £2-0-0; deficiencies

Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
(to be recorded on separate sheet if necessary)

Brigadier
Commanding Cdn Reinforcement Units.
(Signed)
Convening Officer (e)

acting rank or acting appointment.
dable, not more than three
to mercy, if any
that the

initials are sufficient.
ions in the first two columns

* To be omitted unless penal servitude or imprisonment for two years awarded, the Confirming Officer either has no authority to confirm or to promote or has some other authority, e.g., suspension

* See footnote (3) on page 767 M.M.L. 1939

extracts taken in the case of
1942. 20 Feb 42 (Signed) OFFICER I/C RECORDS
Promulgated and extracts taken in the case of
(Dated)
(Signed)
Promulgated and extracts taken in the case of
(Dated)
(Signed)
(a) When several cases are promulgated in one
need only sign

3

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 20th day of February, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*3. ~~The interpreter~~
*4. The officers under instruction)

were duly sworn.

Signed this 20th day of February, 1942.

President of the Court Martial.

* Count if not applicable.

B. Certificate of President as to proceedings.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

C. Certificate in case of death sentence

I have dealt with the findings and sentences in the matter stated in the last column of the Schedule, and, subject to and I have there stated, I hereby confirm the above sentences.

~~I direct that the accused named in~~ ~~be released from custody on the expiration of~~

Signed this 24th day of February 1942.

J.M. Sulman Brigadier
Confirming Officer.

D. Confirmation

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-81631 PTE. DAVIS, A.C. No.1 Cdn A.S.C. Reinf Unit.	First Charge A.A. sec 12(1)(a)	not guilty	guilty A.W.L. AA sec 12 (1)	
	Second Charge A.A. sec 40	not guilty	guilty	
	Alternative Third Charge A.A. sec 40	not guilty	not guilty	
	Fourth Charge A.A. sec 24(2)	not guilty	guilty. The charge was amended to one of [illegible] Under section 81.2.c	
	Fifth Charge A.A. sec 15(1)	guilty	guilty	
SENTENCE To undergo detention for 140 days and to be placed under stoppages of pay in the amount of £7-4-8½ awarded as follows: Cost of apprehension £2-9-9; Petrol 19½ ld; Petrol for return £2-4-6; Deficiencies £1-11-4½.	See charge sheet attached.		140 days Stoppages as above. and 3 days cells and stoppages as above £2-9-9 Petrol 19-1 Petrol 2-4-6 Deficiencies 1-11-4½ £7-4-8½	Confirmed J.M. Nelson Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— No.

(Signed) J.M. Nelson Brigadier (Signed) [illegible]
Commanding Cdn Reinforcement Units.
Convening Officer (e) President.

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28th day of January, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 28th day of January 1942.

[signature]
President of the Court Martial.

C. Certificate in case of death sentences

* See footnote (b) on page 762 M.M.L. 1909.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further order.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 18 day of February 1942.

J.M. Nelson Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 24-6-1942. 708##. (Signed) [signature] Capt.
for OFFICER I/C RECORDS
1 CDN A.S.C. REIN. UNIT.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Revision

At Grayshott, Surrey, on the 11 day of February 1942 at 1400 o'clock, the court reassembled by order of Brigadier F.R. Phelan, Commanding Canadian Reinforcement Units, for the purpose of reconsidering their finding on the first charge.

Present, the same members as on the 28 day of January 1942.

The letter directing the reassembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding is read, marked "J", signed by the president, and attached to the proceedings.

The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings; do now revoke their finding and sentence, and find the accused B- 81631 Pte. Davis A.C. No.1 Cdn. A.S.C.R.U. guilty of Absence Without Leave in accordance with A.A. Sect.56 (3) and sentence the accused to 140 days detention.

Signed at Grayshott, Surrey, this 11 day of February, 1942.

President.

CHARGE SHEET

The accused, B-81631 Pte. Alfred Charles DAVIS, No.4 Holding Coy. 1 Cdn ASC Reinforcement Unit, Blenheim Barracks, Farnborough, Hampshire, a soldier of the Canadian Army (Active Force) is charged with when on active service:-

FIRST CHARGE — DESERTING HIS MAJESTY'S SERVICE

in that he

12SEC
12 (1)(a)
A.A.

at Blenheim Barracks, Farnborough, Hampshire, at 2200 hours on the 31st August 1941 absented himself without leave until he was apprehended on the GIRVAN-BARR ROAD, Ayrshire, Scotland, by Inspector James GRAHAM, of the AYRSHIRE CONSTABULARY at 1600 hours on the 29th September 1941, thereby incurring costs of apprehension in the amount of £2-0-0.

SECOND CHARGE — CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

SEC
40
A.A.

in that he

at Blenheim Barracks, Farnborough, Hampshire, between the 1st of September 1941 and 29th September 1941, in company with B-88130 Pte. Leslie Cameron MCLEOD, No.4 Company, 1 Cdn ASC Reinforcement Unit improperly and without authority, used for his own private purposes a Canadian Army Vehicle a (Chevrolet-Panel van) No. CV-199184 thereby using W.D. Petrol to the value of 19/1, causing additional W.D. Petrol and Oil to be consumed returning a Canadian Army Vehicle No. CV-199184 from Ayrshire, Scotland, to Blenheim Barracks, Farnborough, Hampshire to the value of £2-4-6. Total costs £3-3-7.

THIRD CHARGE — (ALTERNATIVE TO SECOND CHARGE) CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

SEC
40
A.A.

in that he

at Girvan, Ayrshire, Scotland, (on the GIRVAN-BARR ROAD), on 29th September 1941, in company with B-88130 Pte. Leslie Cameron MCLEOD, when apprehended by James GRAHAM, Inspector, and Henry BLYTH, Sergeant, of the Ayrshire Constabulary, was in improper possession of public property, namely a (Chevrolet-panel van) No.CV-199184, the property of the Canadian Government.

FOURTH CHARGE — LOSING BY NEGLECT HIS EQUIPMENT CLOTHING AND REGIMENTAL NECESSARIES

SEC
24(1)
A.A.

in that he

at Blenheim Barracks, Farnborough, Hampshire, on or about 1st December 1941 was deficient of the following articles:-

		£	s	d
Anklets, web	1 pair		4	4
Boots, Ankle	1 pair	1	2	6
Helmets, steel	1		7	0
Gloves, M.T.	1 pair		3	6
Sheets, ground	1		10	0
Ointment, A/G	1			9½
Bellets, A/G	1			9

to the total value of £2-15-10½

CHARGE SHEET (CONT'D)

FIFTH CHARGE

ABSENTING HIMSELF WITHOUT LEAVE

SEC 15(1) A.A.

in that he at Blenheim Barracks, Farnborough, Hampshire, while in confinement absented himself without leave from 2359 hours 12th December 1941 until he voluntarily surrendered himself to the Guard Detention Room, Blenheim Barracks, Farnborough, Hampshire, at 2330 hours 1st January 1942.

N.B. MacDonald

(N.B. MacDonald) Lt.-Col.
COMMANDING
1 Cdn. ASC Reinf. Unit.

Farnborough, Hampshire

3rd January 1942.

To be tried by Field General Court Martial

F.R. Phelan

(F.R. Phelan) Brigadier
Commanding Cdn Reinforcement Units.

Farnborough, Hants
This 23rd day of Jan 42.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL

B61631 Pte. DAVIS, A.C. #1 C.A.S.C.R.U.

Rules 22, 23, 24, 25, 26, and 27 are complied with.
Rule 31 is complied with and R.P. 35 (B) on the fifth charge.

First Witness for the Prosecution, having been duly sworn states:
"I am Lieut. A.R. MacFarlane, #1 C.A.S.C.R.U. On 23 Sep 41 I was officer i/c Records at #1 C.A.S.C.R.U. I present the following documents to the court as evidence:
A.F.B. 115 (Appended as Exhibit "A")
Certified statement of evidence (Exhibit "B")
Statement of cost of apprehension (Exhibit "C")
Petrol Vouchers (Exhibit "D")
Question by Prosecutor: "Did you proceed to Kilmarnock, Scotland to bring back W.D. vehicle CV-199154 back to Farnborough?"
Answer: "Yes."

No Cross-examination

Second Witness for prosecution, having been duly sworn states:
"I am Lieut. R.E. Bates, Assistant Records Officer #1 C.A.S.C. R.U. I present to the court the following documents as evidence:
A letter from the accused (Exhibit "E")
Censor's report on the above letter (Exhibit "F")

No cross-examination

Third witness for the prosecution, having been duly sworn states:
"I am H-37228 A/Sgt. Phillipps, R.J. #1 C.A.S.C. R.U. On 31 Aug 41 I was Orderly Sergeant. At 1810 hrs on that date Pte. Davis, the accused, whom I recognize, reported to me at the Regimental post office, having been warned for duty in Part 1 Orders." (Exhibit "G")

No cross-examination

Fourth witness for prosecution having been duly sworn states:
"I am B-35875 Pte. Adkins, E.M. #1 C.A.S.C. R.U. I was warned as M.T. piquet on the night of 31 Aug/1 Sep 41. I was on duty from 0200 hours 31 Aug 41 to 0200 hrs 1 Sep. When I reported for duty I could not find Pte. Davis who I was supposed to relelve. I reported this to the Cpl. who ordered me to try to locate him. I was unable to find him.

No cross-examination

Fifth witness for the prosecution having been duly sworn states:
"I am Henry Blyth, sergeant of the Ayrshire Constabulary at Girvan, Scotland. On monday 29 Sept 41, I was on motor patrol duty with Inspector James Graham on the Girvan/Barr road. At 4 P.M. we were passing the entrance to Penwhapple Reservoir House when we observed a Chevrolet Army van sitting at the side of the road with a soldier in battle dress seated in the driving seat. This van had the number CV - 199157 painted on the bonnet and appeared to be identical with a van described as stolen from Aldershot in the Scottish Police Gazette dated 22 Sept 41, 1941, cases 1 and 22.
We stopped our car and interrogated the driver who informed us that his name was McLeod and that the was a private in the Canadian Army. He also stated that his companion was at a house nearby for a bottle of tea. This man was also interrogated and he stated that his name was Davis and that he was a soldier in the Canadian Army.
The men were detained at Girvan until 9 p.m. that day and were then handed over to an escort from Kilmarnock Burgh Police.
On the following day the van was handed over to a L/Cpl. Gibson from Canadian Army Headquarters in Scotland. I recognize the accused as one of the men mentioned."

No cross-examination

Sixth witness for the prosecution having been duly sworn states:
"I am U-1608 A/L/Cpl Madole, F.L. #1 C.A.S.C.R.U. I was the driver of vehicle CV-199154, On Sept 1 I reported to Cpl. Bass that the vehicle was missing."

No cross-examination

Seventh witness for the prosecution having been duly sworn states:
"I am B-82753 A/Sgt. Nolan, J.E. #1 C.A.S.C.R.U. employed in the M.T. Workshops on 1 Sept 41. On the morning of 1 Sep it was reported that vehicle CV-199154 was missing. Later it was brought back from Scotland, with the last figure changed to "7".

Question by the Court: "How do you know this was the same vehicle?"

Answer: "I recognized it. We had a panel vehicle numbered CV-199157 in the shop at the time. It had been in an accident and was off the road".

No cross-examination.

Eighth witness for the prosecution having been duly sworn states:
" I am Lieut.F.Leaman, Transport Officer, #1 C.A.S.C.RU. On 1 Sep.41 it was reported to me that Chevrolet panel No. CV-199154 was missing. This I found to be the case. As it is the practice to fill all tanks each night this vehicle contained twelve gallons of petrol valued at 19/1. This is based on the price at that time. No work ticket had been issued for this vehicle to be taken away.

No cross-examination.

Ninth witness for the prosecution having been duly sworn states:
" I am D91705 A/Sgt.Finella J.A. #1 C.A.S.C.R.U. I am acting as C.Q.M.S. for No.4 Coy and as such I checked the kit of Pte Davis A.C. on 25 Nov.41 with his M.F.O.600 and found him to be deficient equipment, clothing and necessaries to the amount of two pounds, thirteen shillings and tenpence halfpenny. I produce this statement as evidence. (Exhibit "H")

Question by the defence: " Do you keep a record of boots in repair?"
Answer; "Yes."

Rule 40 complied with. The accused does not wish to give evidence.
Rule 41 B (ii) (a) is complied with. The accused does not wish to make a statement.

First witness for the defence having been duly sworn states:
" I am H37464 Pte.Briar H. #1 C.A.S.C.R.U. employed in the R.Q.M. stores.
Question: "Have you a book showing entries of boots for repair? Answer: "Yes."
The book is produced and the court satisfied itself that the accused had a pair of boots in for repair at the time the inventory was made of the accused's kit. In accordance with Rule 44 footnote 6, this fact is noted by the court.

Statement by the defence: When the accused was taken in custody by the police he was in uniform. When he surrendered himself on 1 Jan 42 he indicated by so doing that he had no intention of deserting.
The prosecution have not established that the accused took the vehicle.
Insofar as the loss of kit is concerned, the book from the R.M. stores proves that he was no minus his boots.

Statement by the prosecution : The letter which has been produced as evidence is definite proof of intention to desert. The defence does not deny the evidence of this letter. If this man is not guilty of desertion, then under section 36 of the Army Act, he is guilty of absence without leave.
The fact that the accused and the vehicle disappeared at the same time and were found together indicates that he is implicated.

The court is closed to make its findings.

The prosecution produced A.F.B. 296 and M.F.M.6 prepared by the court martial officer #1 C.A.S.C.R.U. which the defence accepts.(Exhibit "I")

Statement in mitigation of punishment.
"In civil life the accused is a blacksmith. He is a married man with a family. He has had no civil record or been in trouble, before joining the army. His offences in the army have been minor ones. There is every indication that he has been led astray and has acted on impulse. He has promise and shows signs of being a better soldier.

The court closed to consider sentence.

SUMMARY OF EVIDENCE

in the case of B-81631 Pte. Alfred Charles DAVIS, 1 Cdn ASC Reinf. Unit, Blenheim Barracks, Farnborough, Hampshire.

The Commanding Officer Lt. Col. N.B. MacDonald, 1 Cdn ASC Reinf. Unit, Blenheim Barracks, Farnborough, Hampshire, Canadian Army (Active Force) directs that the evidence be taken on oath.

1st WITNESS

Lieut. A.R. MacFarlane having been duly sworn states:-

I am Lieut. A.R. MacFarlane, and on 23 September 1941 was acting Officer i/c Records, 1 Cdn ASC Reinf. Unit.

I have knowledge of certain documents pertaining to this case and relative to the accused and produce the following:-

(a) A.F.B. 115 - Record-Declaration of Court of Inquiry-d/23 September 1941 showing the accused illegally absent from 2200 hours 31 August 1941. (Kit deficiency since reduced).

(b) Certified true copy statement of evidence signed by James Graham, Inspector & Henry Blyth, Sergeant-d/3 September 1941 relative to apprehension of accused at 1600 hours 29 September 1941 and that he (the accused) was in possession of Chevrolet Panel CV-199154 at that time.

(c) Cost of apprehension signed by Lieut. M.E. Byers, No. 6 Provost Coy. £2-9-9.

(d) Certified true copy petrol vouchers dated Oct 18 1941, Oct 1[illegible] 1941, Oct 17 1941, Oct 18 1941 signed by Lieut. A.R. MacFarlane.

On 16 October 1941 I proceeded to Glasgow with B-86034 A/Cpl. Fisher, J.A. for the purpose of appearing in civil court at Kilmarnock, Ayrshire, in connection with a civil charge laid by the civilian police against Pte. Davis, A.C. and Pte. McLeod, L.C. at the same time I was to take p ossession of W.D. Vehicle Chev. Panel No. CV-199154 which I did and returned it to my Unit-1 Cdn ASC Reinf. Unit, Farnborough, Hampshire. To make this return journey necessitated my drawing 27 gallons of petrol and 3 pints of oil, asper petrol vouchers already mentioned, and submitted above as exhibits.

The accused declined to cross-examine this witness.

A.R. MacFarlane

(A.R. MacFarlane) Lieut.

2nd WITNESS

B-82753 A/Sgt. NOLAN, J.E., having been duly sworn states:-

I am B-82753 A/Sgt. Nolan, J.E., 1 Cdn ASC Reinf. Unit, and am employed in the M.T. Garage Workshops of this unit.

On the morning of 1 September 1941 it was reported to me that B-81631 Pte. Davis, A.C. did not answer his name at the 0815 hrs roll call. I checked to see if he was around and could not locate him. At the same time it was reported that Chev. Panel CV-199154 was missing from the garage. I checked this report and found it to be so. Pte. Davis had been warned for vehicle picquet the night of Aug 31 1941 and morning 1 Sept 1941 as per H.Q. Coy Part I Orders No. 224/225 d/31 Aug 1941 and 1 Sept 1941, copy of which I produce herewith.

The accused declined to cross-examine this witness.

J.E. Nolan

B-82753 A/Sgt. Nolan, J.E.

SUMMARY OF EVIDENCE in the case of B-81631 Pte. Alfred Charles DAVIS (cont'd

3rd WITNESS

B-85875 Pte. Adkins, W.M., having been duly sworn states:-

I am B-85875 Pte. Adkins, W.M, 1 Cdn ASC Reinf. Unit.

I was ordered for M.T. picquet on the night of 31 August 1941 and 1 September 1941 with Pte. Davis and Pte. McLeod. Pte. Davis took the first shift from 1800 hours until 2300 hours. When I reported to the M.T. Garage at approximately 2150 hours Pte. Davis was not at his post and I could not locate him. I reported that he was missing to Cpl. Sass.

The accused declined to cross-examine this witness.

B-85875 Pte. Adkins, W.M.

4rd WITNESS

A-20506 A/Cpl. Sass, C.C. having been duly sworn states:-

I am A-20506 A/Cpl. Sass, C.C., 1 Cdn ASC Reinf. Unit.

On 31 August 1941 I was M.T. dispatcher from 1600 hours until 2400 hours. At approximately 2150 hours Pte. Adkins, W.M. reported to me that Pte. Davis was not at his picquet post when he (Pte. Adkins) went to relieve him. Pte. Davis could not be located consequently Pte. Adkins took over the picquet post and continued his own tour of duty which was from 2200 hours 31 August 1941 until 0200 hours 1 September 1941. At 0745 hours 1 September 1941 it was reported to me that vehicle CV-199154 was missing. I did not dispatch this vehicle out and I could not understand how it was possible for it to be out of the garage as I had the key for this vehicle in my possession.

The accused declined to cross-examine this witness.

C C Sass

A-20506 A/Cpl. Sass, C.C.

5th WITNESS

U-1608 A/L/Cpl. Madole, P.L. having been duly sworn states:-

I am U-1608 A/L/Cpl. Madole, P.L. 1 Cdn ASC Reinf. Unit.

At approximately 0730 hours 1 September 1941 I went to the M.T. Garage to get vehicle CV-199154 to take the said vehicle on a run for the PAP. I looked for the said vehicle but could not locate it. I went to Cpl. Sass and asked him where the vehicle was and he told me that the said vehicle should be in the garage as he had the keys for it in his possession and that he had not dispatched it out on duty. I could not find it and reported its disappearance to Cpl. Bell.

The accused declined to cross-examine this witness.

P L Madole

U-1608 A/L/Cpl. Madole, P.L.

SUMMARY OF EVIDENCE in the case of B-81631 Pte. Alfred Charles DAVIS (cont'd)

6th WITNESS

Lieut. F. Leaman having been duly sworn states:-

I am Lieut. F. Leaman, W/S Officer, 1 Cdn ASC Reinf. Unit.

At approximately 0830 hours 1st September 1941 it was reported to me that Pte. Davis, A.C. was absent without leave from 0815 hours 1 September 1941. He has not reported for duty to the M.T. Garage since that time. On checking vehicles I found that Chevrolet panel No. CV-199154 was missing. I reported this loss to the Provost Marshall, Line of Communication Provost, and local Police. As all vehicles are filled with petrol and oil every night Vehicle No. CV-199154 had 12 gallons of Petrol in the tank, value being 19/1. No work ticket or other authority was given for this vehicle to be out and it was away from the M.T Garage from 1 September 1941 to 18 October 1941 when it was returned by Lieut. MacFarlane. When the said vehicle was returned to Blenheim Barracks, Farnborough, Hampshire, the number had been changed from CV-199154 to CV-199157.

The accused declined to cross-examine this witness.

F. Leaman Lieut.
(F. Leaman) Lieut.

7th WITNESS

D-91308 A/Sgt. Kinsella, J.A., having been duly sworn states:-

I am D-91308 A-Sgt. Kinsella, J.A. 1 Cdn ASC Reinf. Unit.

I am performing the duties of C.Q.M.S. for No. 4 Company, and as such checked the kit of Pte. Davis, A.C. (B-81631) against his M.P.C. 800 on the 28th November 1941 and found him to be deficient equipment, clothing, and regimental necessaries (see appendix which I produce as evidence) to the amount of Two Pounds thirteen shillings and tenpence halfpenny.

The accused declined to cross-examine this witness.

J.A. Kinsella
D-91308 A/Sgt. Kinsella, J.A.

8th WITNESS

James GRAHAM - Inspector - Ayrshire Constabulary, Girvan, Scotland.

9th WITNESS

Henry BLYTH - Sergeant - Ayrshire Constabulary, Girvan, Scotland.

I hereby certify that in my opinion the attendance of
JAMES GRAHAM &
HENRY BLYTH
owing to the expense and loss of time involved are not readily procurable and a written statement signed by them has been read to the accused and is attached hereto.

W.B.S. Carless Lieut.
(W.B.S. Carless) Lieut.
1 Cdn ASC Reinf. Unit.
Investigating Officer.

I do not require the attendance of these witnesses for the purpose of cross-examination.

A.C. Davis
B-81631 Pte. Davis, A.C.

10th Witness

H-37228 A/Sgt. Phillips, R.J. having been duly sworn states;-

I am H-37228 A/Sgt. Phillips, R.J. and am N.C.O. in charge Regimental Post Office, 1 Cdn ASC Reinf Unit.

On 31st August 1941 I was H.Q. Coy. Orderly Sgt. At 1810 hours on that date Pte. Davis, A.C., the accused, whom I now recognize, reported to me at the Regimental Post Office, he having been posted in orders for duty as M.T. picquet for the M.T.Garage. I instructed him to report to the garage and to take the first period of sentry duty, namely, from 1800 hours to 2200 hours as he had made a request to me to perform this duty during the period stated.

The accused declined to cross-examine this witness.

(H-37228 A/Sgt. Phillips, R.J.)

1 CDN. ASC REINF. UNIT Blenheim Barracks, Farnborough, Hampshire

I certify that on 1 December 1941 I checked the equipment, clothing and regimental nedessaries against the M.F.C. 800 of B-81631 Pte. DAVIS, Alfred Charles and found the following articles to be deficient:-

Anklets, web prs	1	4-4
Boots, ankle prs	1	1-8-6
Helmets, steel	1	7-0
Gloves, M.T. prs	1	8-6
Sheets, ground	1	10-0
Ointment, A/G	1	9½
Wallets, A/G	1	9

TOTAL--- £ 2-13-10½

J.A. Kinsella

D-91308 Sgt. Kinsella, J.A.
Acting as C.Q.M.S.
No.4 Holding Company
1 Cdn. ASC Reinf. Unit.

SUMMARY OF EVIDENCE in the case of B-81631 Pte. Alfred Charles DAVIS (Cont'd)

The accused soldier was thereupon warned in accordance with R.P. 4 (e). Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused soldier declined to make a statement.

A. C. Davis
B-81631 Pte. Davis, A.C.

I certify that the foregoing summary of evidence was taken down by me in writing this 9th day of December 1941 at Blenheim Barracks, Farnborough, Hampshire, in the presence and hearing of the accused and that R.P. 4 (c)(d)(e)(f) and (g) have been complied with.

W.D.S. Careless
(W.D.S. Careless) Lieut.
1 Cdn ASC Reinf. Unit.
Investigating Officer.

I, B-81631 Pte. DAVIS, A.C., desire the assignment of an Officer to represent me at my Court-Martial.

A. C. Davis
B-81631 Pte. Davis, A.C.

List of Witnesses

Lieut. A.R. MacFarlane	1 Cdn ASC Reinforcement Unit
B-82753 A/Sgt. Nolan, J.E.	1 Cdn ASC Reinforcement Unit
B-85875 Pte. Adkins, W.M.	1 Cdn ASC Reinforcement Unit
A-20506 A/Cpl. Sass, C.O.	1 Cdn ASC Reinforcement Unit
U-1606 A/L/C. Madole, P.L.	1 Cdn ASC Reinforcement Unit
Lieut. F. Leaman	1 Cdn ASC Reinforcement Unit
D-91808 A/Sgt. Kinsella, J.A.	Ayrshire Constabulary-Girvan-Scotland
James Graham	Ayrshire Constabulary-Girvan/Scotland
Henry Blyth	1 Cdn ASC Reinforcement Unit.
H-37228 A/Sgt. Phillips R.J.	

List of exhibits

A.F.B. 115-Record-Declaration of Court of Inquiry d/23 Sept 41
Certified True Copy statement of Evidence signed by James Graham & Henry Blyth.

Cost of apprehension - 6 Provost Coy.
Certified True Copy petrol vouchers d/17 Oct 41:18 Oct 41: 18 Oct:41 18 Oct 41

Unit Daily Orders of H.Q. Company d/31 Aug 41 & 1 Sept 41.

SUMMARY OF EVIDENCE

In the case of B-81631 Pte. Alfred Charles DAVIS, 1 Cdn ASC Reinf Unit, Blenheim Barracks, Farnborough, Hampshire.

The Commanding Officer Lt Col. N.B.MacDonald, 1 Cdn ASC Reinf Unit, Blenheim Barracks, Farnborough, Hampshire, directs that the evidence be taken on oath.

11th Witness

B-85286 Pte. Dunnett, J.W. having been duly sworn states;-

I am B-85286 Pte. Dunnett J.W. of the Regimental Police, 1 Cdn ASC Reinforcement Unit. On 12 Dec 1941 I was N.C.O. i/c No.1 Detention Guard Room, Blenheim Barracks. At about 2359 hours Pte. Going asked to go to the latrine. I got the keys from the desk and let him out of his cell and let him go into the latrine in the large detention room. I handed L/Cpl. McGugan the keys after letting Pte. Going into the large detention room. I stood by the door. When Pte. Going failed to come out inna reasonable time I went into the room to see what was keeping him. When I entered one or more men grabbed me and pulled me inside the room. I then started to wrestle with Pte. Going. This tussle lasted about a minute and a half. Pte. Going then broke away from me, ran out of the room and slammed the door. I was then locked in account of the automatic lock. I kicked at thedoor to try and attract attention. A few minutes later Pte. Robertson opened the door and let me out. I immediately locked the door behind me to secure the remaining prisoners. Pte. Robertson told me L/Cpl.McGugan was locked in cell No.1 and I released him. He was handcuffed. The Orderly Officer, Lieut. J.K.Manuel appeared and I called the roll in his presence. We found three prisoners to be missing. They were; C-10315 Pte. Going, L.P., , B-85931 Pte. Wilding, W., B-81631 Pte. Davis, A.C.

The accused declined to cross-examine this witness.

Dunnett J.W.
(B-85286 Pte. Dunnett.J.W.)

12th Witness

B-85318 L/Cpl. McGugan having been duly sworn states;-

I am B-85318 L/Cpl. McGugan.R.H. of the Regimental Police, 1 Cdn ASC Reinforcement Unit. On 12 December 1941 I was on duty at the desk in No.1 Detention Guard Room. At approximately 2400 hours I heard a knock on Pte. Going's cell and Pte. Dunnett got up, went to the cell and enquired what he wanted. He asked to be let out to go to the toilet. Pte. Dunnett came and got the keys and let Pte. Going out. He was in his underwear and had his stockings on and Pte. Dunnett let him in the back room where the rest of them are. After he had opened the door Pte. Dunnett tossed the keys back to me at the desk and after a minute or so had elapsed Pte. Dunnett was suspicious and went inside the door. The next thing I saw Pte. Davis come out of the room and advanced towards me. I immediately drew my bayonet and asked him what he was pulling off and he told me not to have any trouble as they were going to pull out of here. I said "Like hell you are" and I no sooner tried to close the door than Pte. Wilding jumped on my back. I tried to get him off my back and in the space of three seconds Pte. Going was on top of me and we had a good fight in the room.

The accused declined to cross-examine this witness.

McGugan R.H.
(B-85318 L/Cpl. McGugan. R.H.)

13th Witness

B-89541 Pte. Robertson, D.W. having been duly sworn states;-

I am B-89541 Pte. Robertson, D.W., 1 Cdn ASC Reinforcement Unit. I was on duty at the switchboard which is a small room partitioned off the main room No.1 Detention Guard Room. My door was approximately six inches open when at approximately 2400 hours my door was pushed open and Pte. Davis appeared in the doorway and jumped me while I was lying on the bed. He grabbed my right wrist and hand and pushed it down between the bar of the bed and the springs and straddled me and held the other hand. In the meantime the switchboard had rung and he just leaned over and pushed the gate up. It rang for fully a minute, Sir. I thought it a good opportunity to start a struggle upsetting everything. Then Pte. Going appeared in the doorway with intention of damaging the board beyond use. I said "For God's sake don't bugger up the board" to which he replied, "Okay," Pte. Going then left the room and I continued to struggle with Davis. He jumped off me and ran out, someone yelling, "Let's go". I got free from the bed and ran for the Orderly Officer, then ran back to the guard room and took the keys to release Pte. Dunnett who was locked in the "Bull Pen" I handed him the keys to release L/Cpl. McGugan who was locked in Pte.Going's cell. As soon as I handed him the keys I ran to the switchboard and phoned No.7 Provost.

The accused declined to cross-examine this witness.

D.W. Robertson
(B-89541 Pte. Robertson,D.W.)

14th Witness.

2/Lieut. J.K.S.Manuel having been duly sworn states;-

I am 2/Lieut. J.K.S.Manuel, 1 Cdn ASC Reinforcement Unit. I was Orderly Officer on the night of 12 December 1941. At approximately 0005 hours I was called by Pte. Robertson who advised me that there had been a prison break and I ordered the telephone operator to notify the Provost immediately. I called my runner and he accompanied me to No.1 Detention Guard Room arriving there at 0012 hours. I found on my arrival a number of military police in the main room of No.1 Detention Guard Room. I immediately asked who was in charge and was advised that Pte. Dunnett was in charge of the guard room. I told the telephone operator to call the M.T.Garage immediately While I was questioning Pte. Dunnett the call was put through and I spoke to the Cpl. In charge and advised him that some prisoners had escaped and to be on the look-out for same. I questioned Pte. Dunnett as to what had happened and after hearing his explanation ordered him to call the roll of the remaining prisoners. I then took a statement from L/Cpl. McGugan and also from Pte. Robertson. I inspected Pte. Going's cell and also the main detention room. At this time No. 7. Provost Coy called me for a description of the escaped prisoners which I gave him to the best of my knowledge. As I had given a chit to a night fatigue man who required this for a midnight supper at approximately 0002 hours I sent my runner to have him brought to the guard room for questioning and upon questioning this fatigue man B-14597 Pte. Dube, R. I found that as he left my office he saw two men coming out of the guard room turning left. They ran down the street towards the M.T.Garage. He stated to me that he thought they were M.P's. He then checked the main room of No.1 Detention Guard Room to see if there was anything missing and were not able to find the following;

One Flashlight
Pte. Going's Greatcoat
All escaped prisoners small Packs.

I then sent my Orderly Sgt. and an M.P. in a lorry to Aldershot to check in the viminity of High Street where the M.P. said that Wilding was friendly with a woman. They reported back that they were unable to find them and I dismissed the transport. I then called both M.T.Garages and told them to check their vehicles. They

14th Witness (Cont'd)

reported back to me that all their vehicles were present.

The accused declined to cross-examine this witness.

(J.K.P. Manuel) 2/Lieut.

15th Witness

D-121102 L/Cpl. Plouffe, P. having been duly sworn states:-

I am L/Cpl. Plouffe, P. of the Regimental Police, 1 Cdn ASC Reinforcement Unit. At about 2330 hours, 1st January 1942, I was in charge of No. 1 Detention Guard Room when Pte. Davis, the accused, whom I now recognize, came in and voluntarily surrendered himself. He was sober and properly dressed. I confined him to a cell.

The accused declined to cross-examine this witness.

D-121102 L/Cpl. Plouffe, P.

16th Witness

Lieut. R. E. Bates having been duly sworn states:-

I am Lieut. R. E. Bates, Assistant Officer i/c Records, 1 Cdn ASC Reinforcement Unit.

I have knowledge of a certain document pertaining to this case and relative to the accused and produce the following:-

(a) Letter written by the accused, Pte. Davis, to his wife-Mrs. A.C. Davis d/25 Sept 41.

(b) Copy of Censor's Report d/3 Oct 41.

The accused declined to cross-examine this witness.

(R.E. Bates) Lieut.

The accused soldier was thereupon warned in accordance with R.P.4 (e).
Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused soldier declined to make a statement.

O. C. Davis
(B-81651 Pte. Davis, A.C.)

I certify that the foregoing summary of evidence was taken down by me in writing this 3rd day of January 1942 at Blenheim Barracks, Farnborough, Hampshire, in the presence and hearing of the accused and that R.P.4 (c)(d)(e) and (f) have been complied with.

V. G. Pearce
(V.G.Pearce) Lieut.
Officer taking Summary.
1 Cdn ASC Reinf Unit.

I, B-81651 Pte. Davis, A.C. desire the assignment of an Officer to represent me at my Court-Martial.

O. C. Davis
(B-81651 Pte. Davis, A.C.)

LIST OF WITNESSES.

B-85086 Pte. Dunnett, J.W.	1 Cdn ASC Reinf Unit.
B-85318 L/Cpl. McGugan, R.H.	1 Cdn ASC Reinf Unit.
B-89431 Pte. Robertson D.W.	1 Cdn ASC Reinf Unit.
2/Lieut. J.K.S.Manuel	1 Cdn ASC Reinf Unit.
D-121102 L/Cpl Plouffe, P.	1 Cdn ASC Reinf Unit
Lieut. R. E. Bates	

List of exhibits

Letter written by the accused to Mrs. A.C. Davis d/25 Sept 41
Copy of Censor's Report d/3 Oct 41

Army Form B 115. "A"

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Blenheim Barracks Farnborough, Hants. on the 23rd day of September 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-81631 Pte. Davis, A.C.

DECLARATION.

The Court declare that B-81631 Pte. Davis, A.C. 1 RCASC Holding Unit, C.A.(O), illegally absented himself without leave from Blenheim Barracks, Farnborough, Hants at 2200 hrs on the 31st day of August, 1941, that he is till so absent, and that on the 1st day of September, 1941 he was deficient and that he is still deficient of t the following articles:-

Anklets, web prs	1		4- 4	Socks, woollen prs	1		1-11
Blouses, B.D.	1	1-	8- 6	Towels, hand	2		3-
Trousers, B.D.	1	1-	0- 6	Shorts, gym	2		4- 8
Boots, ankle prs	1	1-	2- 6	Vests "	1		1-11
Braces, prs	1		1- 6	Shirts, under cott.	2		4- 8
Brushes, button	1		1- 6	Shorts, " "	2		4- 4
" cloth	1		2- 3	Belts, waist	1		3- 6
" tooth	1		5	Braces, (L/R)			3- 6
Combs, hair	1		2	Carriers, cart.	2		8-10
Drawers, woollen prs	1		7- 6	Helmets, steel	1		9
Dressing, 1st Field	1		1- 1	Packs	1		8- 6
Gloves, woollen prs	1		1-11	Straps, shoulder	2		3-10
Housewife	1		7	" web support	2		1- 4
Knife, clasp&lanyard	1		2-11	Gloves, M.T. prs	1		8- 6
Blouses, denim	2	1-	5- 6	Pacepiece, A/G	1		9- 6
Trousers, denim prs	1		11- 9	Container, A/G	1		6- 9
Razors, safety	1		5	Haversack, A/G	1		2-
Shirts, Khaki	1		10-	Eyeshields, A/G	1		
Vests, woollen	2		6	Ointment, A/G	1		
				Outfit, A/G	1		
				Wallets, A/G	1		10-
				Sheets, ground	1		
					TOTAL----	£12	14- 4

Names of President and Members

President Lieut. G.M.Fuller 1 R.C.A.S.C. HU

Member Lieut. J.M.Snowball

" Lieut. B.G.Douglas 1 R.C.A.S.C. HU

N.B. MacDonald Lt Col
Signature of Commanding Officer
1 Cdn. ASC Reinf. Unit

CERTIFIED TRUE COPY.

J.G. Pearce Lieut.
Signature of Officer having custody of the Original Record.
CMO-1 Cdn.ASC Reinf. Unit

(12251) W1,84318/1402 75,000 10/39 A A E.W.Ltd. Co.s/s Forms/B115/54
(13442) W1,83720/700 225,000 1/40 " "

Ayrshire Constabulary,
Girvan, 3rd December 1941.

The Officer Commanding,
No. 1 C.A.S.C.
Reinforcement Unit,
Canadian Army.

Statement re Alfred C. Davis and Leslie McLeod.
Theft of Chevrolet Truck.

We beg to report that on Monday, 29th September, 1941, we the undersigned police officers were on motor patrol duty on the Girvan/Barr Road. At 4 p.m. we were passing the entrance to Penwhapple Reservoir house when we observed a Chevrolet Army van sitting at the side of the road with a soldier in battledress seated in the driving seat. This van had the number C.V. 199157 painted on the bonnet and appeared to be identical with a van described as stolen from Aldershot in the Scottish Police Gazette dated 22nd September, 1941, Cases 1 and 22.

We stopped our car and interrrogated the driver who informed us that his name was McLeod and that he was aprivate in the Canadian Army. He also stated that his companion was at a house nearby for a bottle of tea. This man was also interrogated and he stated that his name was Davis and that he was a soldier in the Canadian Army.

We immobilised the van and conveyed the soldiers to Girvan in the patrol car.

When searched at the Police Station the soldiers had in their possession the undernoted articles:-

ALFRED CHARLES DAVIS - 18/2½; knife; scissors; silver cigarette case; two pay books; Iodine tube; wallet containing photographs; two miniature R.A.S.C. badges; one pair gent's grey suede gloves; lady's wristlet watch with chromium band.

LESLIE McLEOD - 1d; fountain pen; cigarette lighter; pay book; two pencils; one pair gent's brown leather gauntlet gloves.

The following articles were found in the van -

"Leyland" leather golf jacket; 10 gallon oil drum; soldiers pack containing one pair gent's brown shoes (new); one pair gent's black shoes (worn); several pairs of socks; part of a lady's floral dress and three tyre levers."

The men were detained at Girvan until 9 p.m. that day and were then handed over to an escort from Kilmarnock Burgh Police.

On the following day the van was handed over to a L/Corporal Gibeon from Canadian Army Headquarters in Scotland.

James Graham Inspector.

Henry Blyth Sergeant.

CERTIFIED TRUE COPY.

V.G. Pearce Lieut
1. Can. A.S.C. Reinf. Unit

Ref: K.R.& O.(Can.)539

Regt. No. B-81631

Rank Pte.

Name Davis A.C.

Regt. No.1 R.C.A.S.C Hold. Unit.

Unit:

The following expenses were incurred in apprehending and returning the H/N soldier to ~~xxx unit~~ from Glasgow London

DATE	PARTICULARS	AMOUNT		
27 Nov.41.	Escort ~~xxxxxx~~ fare from Glasgow to London ½(Portion)	0.	15.	5.
	Prisoners single fare to London from Glasgow	1.	10.	10.
	Prisoners Single fare from London to			
	Escorts expense for ~~xxx~~ meals, ~~xxxxxxxx~~ and meals for the prisoner. ½(Portion)	0.	3.	6.
	TOTAL ---------- £	2.	19.	9.
		2	9	9

I certify that the above statement of expenses is correct and that the amounts are fair and just.

for McByers Lt.
O.C. No 6 Prov. Coy.
Canadian Provost Corps.

CAN-F-ST 825
40/P & S/784

RECORD OF ISSUES OF PETROL, OIL AND LUBRICANTS

ISSUING UNIT CSY ????????

RECEIVING UNIT 1 RCASC HU Farnborough, Hants.

DATE 17-10-41

ISSUE VOUCHER No. 342

MAKE AND TYPE OF VEHICLE	W.D. VEHICLE No.	PETROL Gallons	DIESEL OIL Gallons	PARAFFIN Gallons	LUBRICATING OIL Type	LUBRICATING OIL Quantity Pints	GREASE Type	GREASE Quantity Lbs.	CONTAINERS Type	CONTAINERS Quantity	DRIVER'S SIGNATURE
Chev.	C-V 199154	14									Lieut.
											A.R.MacFar-
											lane
		CERTIFIED TRUE COPY									
					V.G. Pearce Lieut.						
					1. Cdn. A.S.C. Reinf. Unit						
	TOTALS	14									

INITIALS

CERTIFIED CORRECT J. Nicholson

CAN-F-ST 825
AD/P A 5/744

RECORD OF ISSUES OF PETROL, OIL AND LUBRICANTS

ISSUING UNIT 153rd Light Anti-Aircraft Bty. R.A. DATE 18-10-41

RECEIVING UNIT 1 RCASC (MT) Farnborough, Hants. ISSUE VOUCHER No. 2

MAKE AND TYPE OF VEHICLE	W.D. VEHICLE No.	PETROL Gallons	DIESEL OIL Gallons	PARAFFIN Gallons	LUBRICATING OIL Type	LUBRICATING OIL Quantity Pints	GREASE Type	GREASE Quantity Lbs.	CONTAINERS Type	CONTAINERS Quantity	DRIVER'S SIGNATURE
Chev.	C-V199154	7			M160	2					
					O600	1					Lieut. A.R. MacFarlane
			CERTIFIED TRUE COPY								
					P.G. Pratchett						
					1. Cdn. A.S.C. Recruit. Unit						
	TOTALS	7				3					

INITIALS CERTIFIED CORRECT G.H. Warburton

RECORD OF ISSUES OF PETROL, OIL AND LUBRICANTS

CAN-F-ST 825
40/P & S/784

ISSUING UNIT No. 83 T.T.C.

RECEIVING UNIT 1 RCASC HU Farnborough, Hants.

DATE 18-10-41

ISSUE VOUCHER No. 130

MAKE AND TYPE OF VEHICLE	W.D. VEHICLE No.	PETROL Gallons	DIESEL OIL Gallons	PARAFFIN Gallons	LUBRICATING OIL Type	LUBRICATING OIL Quantity Pints	GREASE Type	GREASE Quantity Lbs.	CONTAINERS Type	CONTAINERS Quantity	DRIVER'S SIGNATURE
Chev.	C-V109154	6									Lieut. A.R. MacFarlane
		CERTIFIED TRUE COPY									
	TOTALS	6									

V.G. Pearce Lieut
1. Edn. A.S.C. Reinf. Unit

INITIALS

CERTIFIED CORRECT E. Locke

CAN-F-ST 825
40/P & S/744

RECORD OF ISSUES OF PETROL, OIL AND LUBRICANTS

ISSUING UNIT "Q" Sec. 7th A.A.Div.W/S Coy. R.A.O.C. DATE 18-10-41

RECEIVING UNIT 1 RCASC HM Farnborough, Hants. ISSUE VOUCHER No.

MAKE AND TYPE OF VEHICLE	W.D. VEHICLE No.	PETROL Gallons	DIESEL OIL Gallons	PARAFFIN Gallons	LUBRICATING OIL Type	LUBRICATING OIL Quantity Pints	GREASE Type	GREASE Quantity Lbs.	CONTAINERS Type	CONTAINERS Quantity	DRIVER'S SIGNATURE
Chev.	C-V109154				0600	3					Lieut.
											A.S.
											MacFarlane
			CERTIFIED TRUE COPIES								
											V.G. Pearce Lieut
											1 Cdn. R.A.S.C. Reinf. Unit
	TOTALS					3					

INITIALS JR CERTIFIED CORRECT

The accused wishes to ensure that the attached letter will not on any account be forwarded to the addressee, his wife. He respectfully asks that it be destroyed when it is no longer required as evidence.

President

Date 28 Jan 42

This is to certify that Regt. No. B-81651 Ex Pte. Name. DAVIS. A.G.

is FIT to undergo Court-Martial.

Signed [illegible]

[illegible]

Dont let any one read this
letter Sweetheart. A.G.

Sept. 25/41.

Dearest Thelma + Bobby.

Hello Sweetheart I've finally been able to write you another letter Darling. I'm so sorry I haven't been able to write in the past three weeks and I haven't been able to get any of your mail yet. I'll explain the reason to you Darling in this letter. I hope you and Bob are well and that you haven't been worrying too much about me as I am in good health. I got into a jam over here Darling and I'm trying to get back home to you and Bob. You see there was a motor cycle and a truck stolen from our Garage over here when I was on guard and they never found them well they where going to make me pay for them and give me two years in the Glass house and I could never stand that so I beat it in other words I'm A.W.O.L. I'm at a Seaport now Darling and expect to sail on a ship any shortly I'm in Civvy clothes and hope to get back to you soon. What ever you do don't let any one else read this letter outside of Mom + Dad

I hope you will understand why I haven't wrote before on account of I was afraid they might trace me from the letters but I'm not any more I'll write you as often as I can Darling and tell Mom & Dad they will have to be satisfied to read your letters until I get back. When I come back to you Darling we will have to move away from Toronto altogether I guess you know where we will go don't you.

Don't let anyone know I'm coming out side of Mom & Dad. I love you and miss you so much Darling and it sure will be a happy day when I get back to you. I'll be able to tell you more Darling when I get back to you I don't want to write to much in case this envelope gets opened. Bye Bye for now Darling With all my Love to you and Bob.

From your Loving Husband

Give my love to Mom & Dad and the rest of the family

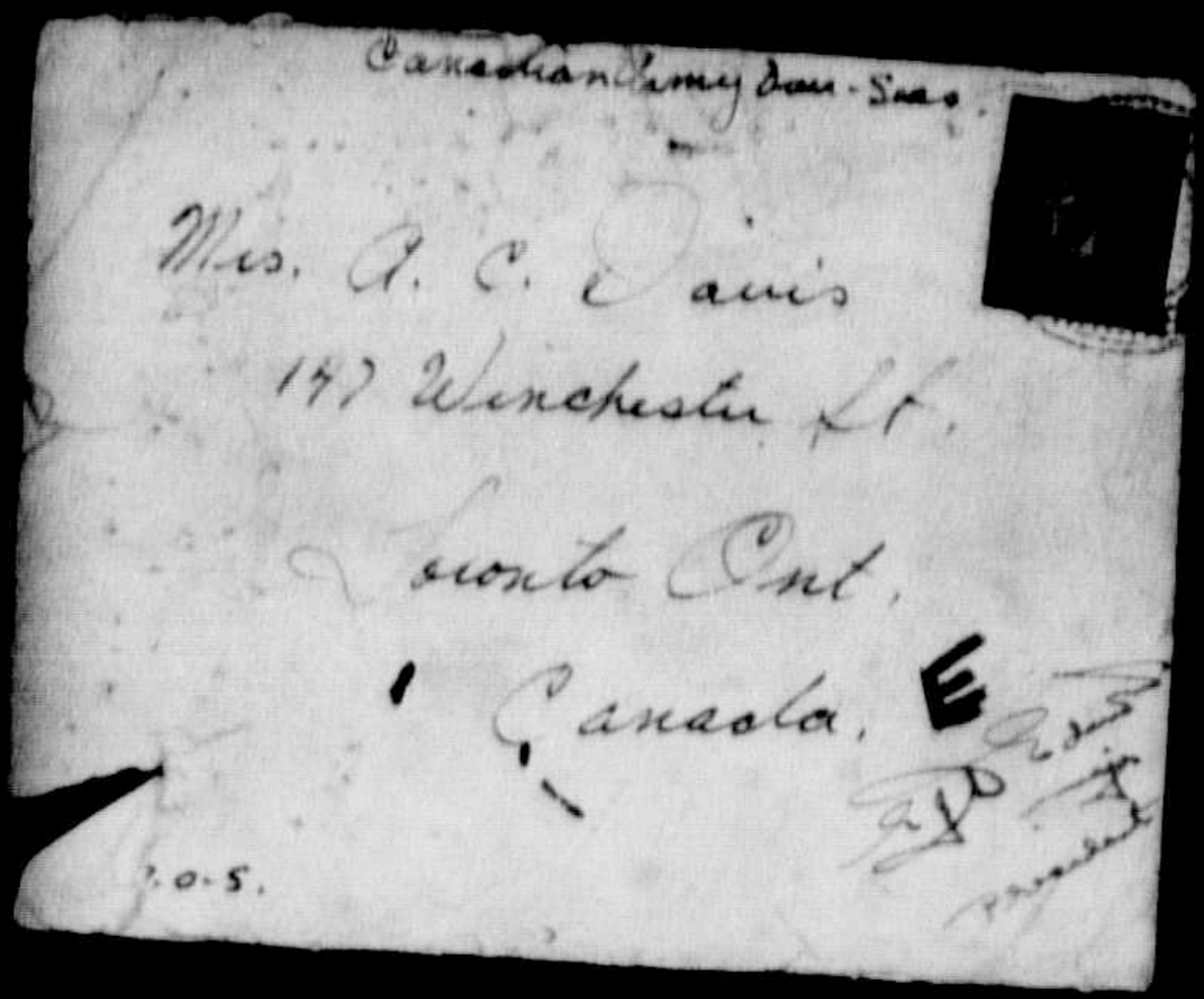
A. G.

Love and ~~and~~ a big  to you Darling love you.

also one for Bob. (XXX.)

A. G.

I
Love You
Darling.
A.G.


Canadian Army Overseas.

Mrs. A. C. Davis

177 Winchester St.

Toronto Ont.

Canada.

E

P.O.S.

476/T.211 500,000 5/41 S.T.P. 51-324

PLC.

POSTAL & TELEGRAPH CENSORSHIP. SUBMISSION No. Liv/55865/41

P.C.72.

Terminal Mail Air / Surface

Letter from	To
Address or postmark: A.I.F. Canadian Army Overseas.	MRS. A.C. DAVIS, 147 Winchester St., Toronto, Ont., Canada.
Date of letter or postmark: 25.9.41.	Language

ORIGINAL LETTER:	SUBMITTED TO:
Submitted X Photographed	Original to M.I.12
Retained Released	Copies to I.R.B.
Returned to Sender	

Seen by: Naval Adviser Air Adviser M.I.12 P.B.T. for T.R.P

SUBJECT

(Include necessary references to Watch Lists, with Authority requiring the Watch)

Canadian soldier, faced with two years imprisonment, has gone A.W.O.L. with intent to desert. He has obtained civilian clothes and is now at a seaport waiting for a passage to Canada.

Page 1, line 3: "I'm so sorry I haven't been able to write in the past three weeks and I haven't been able to get any of your mail yet. I'll explain the reason to you darling in this letter. I hope you and Bob are well and that you haven't been worrying too much about me as I am in good health. I got into a jam over here darling and I'm trying to get back home to you and Bob. You see there was a motor cycle and a truck stolen from our garage over here when I was on guard and they never found them, well they where going to make me pay for them and give me two years in the glass house and I could never stand that so I beat it in other words I'm A.W.O.L. I'm at a seaport now darling and expect to sail on a ship very shortly I'm in civvy clothes and hope to get back to you soon. What ever you do don't let anyone else read this letter outside of Mom and Dad.

Operating Unit Section Examiner D.A.C. / Date

Liv. Private 23 6804 E.McC pp K.E.A. 8.10

..... When I come back to you darling we will have to move away from Toronto altogether I guess you know where we will go don't you. Don't let anyone know I'm coming outside of Mom and Dad ... I don't want to write to much in case this envelope gets opened."

E.E.H. / A.C.
3.10.41.

FOR MINISTRIES ONLY
Recommendation for Disposal of Letter and Reason

FOR CENSORSHIP INTERNAL ACTION

Letter Condemned Returned to Sender Released

G

D.O. 124 & 125
31 August & 1941. &
1 Sept. 1941.

BLUEWATER BARRACKS
PARAMATTA ROAD

HEADQUARTERS COMPANY
No. 1 R.C.A.S.C. HOLDING UNIT
PART I ORDERS
BY
MAJOR T.A. LUCAS OFFICER I/C ADMINISTRATION

1. DUTIES.

field officer	31-8-41	capt. W.C. shepard
field officer	1-9-41	major E.V.R. payne
orderly officer	31-8-41	2/Lt. D. [illegible]
orderly officer	1-9-41	Lt. [illegible]
coy blackout officer	30-8-41	2/Lt. [illegible] navies
coy blackout officer	31-8-41	Lieut. J.C. Thompson
coy blackout officer	1-9-41	Lieut. J.C. Reid
coy orderly sgt.	31-8-41	sgt. Bellinson W.H.
coy orderly sgt.	1-9-41	sgt. Phillips R.

2. PARADES

church parade(compulsory) this parade must be as strong as possible.

[illegible] -- 0830 hrs. R.C. --- 0830 hrs.

dress.- clean dress, respirator slung.

reveille	0600 hrs.
breakfast	0700 hrs.
sick parade	0730 hrs.
dinner	1200 hrs.
supper	1700 hrs.
tattoo roll call	2200 hrs.
lights out	2215 hrs.

3. GUARD

The following will parade for guard at 1745 hrs. 31-8-41 at m.t. coy. orderly room. Dress:- skeleton web, steel helmets, respirator at the slort.

→ S-55875 pte. Adkins J. S-81631 pte. Davis J.C.
S-56130 pte. Wragood J.

4. DISCIPLINE.

All clothes lines will be removed from between barrack blocks immediately.

All equipment must be scrubbed and cleaned by 0600 hrs. 1-9-41. room orderlies will clean up outside of barrack rooms daily.

MONDAY 1 SEPT. 41.

1. PARADES

reveille	0600 hrs.
muster parade	0645 hrs.
breakfast	0700 hrs.
sick parade	0730 hrs.
muster parade	1145 hrs.
dinner	1200 hrs.
muster parade	1645 hrs.
supper	1700 hrs.
bath parade	1800 hrs.
tattoo roll call	2200 hrs.
lights out	2215 hrs.

All W.C. coy. personnel will attend these parades with the exception of waiters and cooks.

H.Q., C.B.U.

MILITARY ENTERTAINMENT PARTIES

REPORT FOR MONTH OF 1941

UNIT OR FORMATION	No. of ORGANIZED UNIT CONCERT PARTIES	No. of PERFORMANCES GIVEN	TYPE	AVAILABILITY FOR CONCERT PARTY WORK	TOTAL PERSONNEL IN EACH CONCERT PARTY	QUALITY OF ENTERTAINMENT GIVEN

(J.M.Pocock) Lt. Col.
Commanding
No.1 R.C.A.S.C. Holding Unit
Canadian Army (Overseas)

2. MUSTER PARADE

ALL H.Q. Personnel will attend Muster parade at H.Q. Orderly Room at 1800 hrs. 1-9-41 with towel and soap.

3. GUARD

The following will parade for guard at 1745 hrs. 1-9-41 at H.Q. Coy. Orderly Room. DRESS:- Skeleton web, steel Helmets, Respirator at the alert.

B-89450 Pte. Parsons R.M. B-89495 Pte. MacDougall H.
B-95045 Pte. Anderson R.

4. MEAL PARADE

All ATTACHED PERSONNEL will parade with H.Q. Coy. for meals.

5. BLACKOUT TIMES

Commences 2030 hrs. Ends 0540 hrs.

(W.A. LUCAS) Major
Officer i/c Administration
R.C.A.S.C. Holding Unit C.A.(O)

1 CDN. ASC REINF. UNIT Blenheim Barracks, Farnborough, Hampshire

I certify that on 1 December 1941 I checked the equipment, clothing and regimental necessaries against the M.F.C. 800 of B-81631 Pte. DAVIS, Alfred Charles and found the following articles to be deficient:

Anklets, web prs	1	4-4
Boots, ankle prs	1	1-2-6
Helmets, steel	1	7-0
Gloves, M.T. prs	1	8-6
Sheets, ground	1	10-0
Ointment, A/C	1	9½
Wallets, A/S	1	9

TOTAL--- $ 2-15-10½

Sgt. J.A. Kinsella

B-81600 Sgt. Kinsella, J.A.
Acting as C.A.M.S.
No.4 Holding Company
1 Cdn. ASC Reinf. Unit.

H.
Ed. Edwards
President

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~[illegible]~~ 28th day of ~~December 1944~~ January 1945

[illegible] CORPORATE
[illegible] UNIT

I

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-81631 Pte.Davis,Alfred Charles of the 1 Cdn. ASC Reinf. Unit

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

†See Para. 861, K.R. 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTIONS.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For AA Sec.15 (1)	1	times	2	times.
For AA Sec. 40	1	times	1	times.
For		times		times.
For		times		times.

~~[illegible]~~

or,

~~[illegible]~~

2. ~~[illegible]~~

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

[illegible]

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~
~~[illegible] days~~

4. The accused has been in confinement, awaiting trial on the present charges

for 0 days in Civil Custody,

and 27 days in Military Custody.

Total 27 days.

Of which 18 days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ is 26 years

6. The date of his ~~attestation~~ specified in his ~~attestation paper~~ is 7 Sept 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of years' service.

9. The accused is entitled to reckon years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion
In the rank of	years,	
In the rank of	years,	
In the rank of	years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name B-81631 Pte. Davis, A.C. of the 1 Cdn. ASC Reinf. Unit

NOTE.—*A verbatim extract from the regimental books, stating these conditions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
Civil	Kilmarnock, Scotland 17 Oct 42	House breaking and Attempted House Breaking.	60 days imprisonment	

(*Continued overleaf.*)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Gardaw	18-6-41	Pte		A.W.L. from 2359 hrs 15-6-41 to 1230 hrs 18-6-41. Sec 15(1) A.A. Total time absent 2 days, 12 hrs 31 min.	Sgt Bennett Sgt Holan	7 dys Fd pay and 7 dys CB	19-6-41	J.M. Pacock Lt Col	Forfeit 7 dys pay FRI 149(1)(c) 3 dys pay FRI 149(1)(c)
Fruitwright	14-8-41	Pte		Not being shaved on Cond Officers inspection Sec 40 AA	R.S.M. Mazzolo Sgt Holan	5 dys CB	15-8-41	M.A. Lucas Mayor	
Hilsmanah Stagon Scotland		Pte		Civil charge (1) attempted Housebreaking (2) Housebreaking Certified true copy [signature]		60 dys Reformatory	17-10-41		Forfeit 60 dys pay FRI 149(1)(c) 18 dys pay FRI 149(1)(c)

OFFICER I/C RECORDS
I.R.C.A.S.C. HOLDING UNIT

M.F.M. 6
(A.F.B. 122)
Section 8, 19 (17/03)
H.Q. 1772-61-18

No. B 81631. Name PTE DAVIS A.C. Sqn. Battery or Company

Corps 1st Div Petrol Company RCASC

Date of enlistment 7 Sept 39 G.C. Badges

Service or Proficiency Pay

Character

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc. J. FITZARDOLPH — MAJOR

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Reigate Surrey	28-9-40	Pte.		A.W.L. from 2359 hrs. 28-9-40 to 2217 hrs. 19-10-40 Contrary to Sec. 15(1) A.A.	M/S/M McKenzie	28 days Det		JFR — MAJ	FORFEITS 28 days Pay 21 days Pay
				Released from the Detention Barrack ALDERSHOT on 13 NOV 40. Sentence having expired. Remission earned under Rules for Detention Barracks and Military Prisons 4 days. Commandant initials					

(P.T.O.)

H.Q. Cdn Reinforcement Units CRU 5-4-CM

5 Feb 42

Major E.J.D. Edmonds
No.3 Cdn Arty Reinf Unit.

F.G.C.M.
B-81631 Pte. Davis, A.C.
No.1 Cdn A.S.C. Reinf Unit

1. You were President of a F.G.C.M. sitting for the trial of the m/n soldier on a charge (inter alia) of desertion.

2. The proceedings of this case have been considered and I am of the opinion that the letter alleged to have been written by the accused to his wife should not have been admitted without some evidence that the accused was the author. The proceedings do not show that any such evidence was introduced.

3. Further I am of the opinion that the actions of the accused are not consistent with his alleged declared intentions in the letter. This letter is dated 25 Sept 41. The writer stated he was in civilian clothes in a sea-port town waiting to get a boat back to Canada. Four days later the accused was arrested in uniform in possession of a Cdn Gov't vehicle.

4. There is no evidence beyond the contents of the letter to show any intention of desertion . I therefore direct you to re-assemble the court for reconsideration of the finding on the first charge. Absence without leave was proved and under Sect 56(3) Army Act the Court may make a finding of guilty of A.W.L.

5. Proceedings are returned to you in accordance with Sect 54 Army Act R.P. 120. You will be guided by form of revision on pp 759 - 60 M.M.L.

(F.R. Phelan) Brigadier
Commanding Cdn Reinforcement Units.

VVV 98
CPL DAVIS AD

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A32092 Cpl. Arthur D Davis RCAPC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	
2nd	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of N A days, of which N A days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) ..... 8 Sept 44 (Sgd) F Winger Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 13 SEP 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 VOL 98

CFAAG (To Hdq of AFAG) 407-1 & B/1608 (6000) 4/38B

FIELD GENERAL COURT-MARTIAL

Convening Order of Major General P.J. Montague Comd CMHQ dated 29 Aug 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A32092	Cpl.	Arthur D	Davis	Unit payrolled RCAPC

PROCEEDINGS REVIEWED

J.R. Lumsden Capt. 14 Sept 44

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at the Ed Int (building) / Englewood on (date(s)) 5 & 6 Sept 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns to RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1010 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

The Interpreter is sworn.(1) Do you object to Barbara Constance WM 6 Sept 44 as shorthand writer? Ans N O

The shorthand writer is sworn.(1) D Watson WM 6 Sept 44 N O

E Brockbank 6 Sept 44

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N O (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F Winger RCA	HQ 2 CARU
Member	Capt	J.R. Lumsden RCA	HQ 2 CARU
Member	Capt	A.T. O'Reilly RCAPC	Unit payrolled
Judge-Advocate	N/A	N/A	N/A
Prosecutor	Capt	David L Matheson RCA	JAG Branch CMHQ
Defending Offr	Lieut	W. Epstein RCA	JAG Branch CMHQ

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused A32092 Cpl Arthur D Davis before arraignment makes(s) (a) plea in bar to the trial separately, (b) 2nd charge to be tried first. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109) or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in (1) to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5; *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement(1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*B*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a supplement sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) [illegible] opening address.(1) Separate on each charge. AH
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1) Separate on each charge AH
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the [illegible] charge.

D.4. The Prosecution is closed on the first charge(1). The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first charge.(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is allowed on AH the first charge.
solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans Do neither
Do you intend to call witnesses on your behalf?
Ans Yes. Are they witnesses as to character only? Ans No
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E2 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(1). The finding(2) of the Court is (are) recorded in Part I of the Schedule.(3) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the findings of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)~~ AH
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 6; 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 103(1) (*g*) Gii, and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *AFB* 251 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP* 37(*C*), 44(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 43, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 42. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 838, 336, 363-364, *Overseas AO* 309, 1323, *MML p* 66, 307-319. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 166(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

First Charge.
Sec.40.
Army Act.

The accused, A.32092 Cpl. Davis, Arthur, D., Unit Pay Detachment, R.C.A.P.C. a soldier of the Canadian Army Overseas, is charged with, when on Active Service :-

an act to the prejudice of good order and military discipline -

in that he

between 1 Jan 42 and 28 Oct 43 was in possession of a document purporting to be a genuine paybook Soldier's Service Paybook M.B.M.1 (Part I) issued in the name of A.32092 Parkinson Arthur Domville well knowing that it was not genuine.

Second Charge
Sec.41.
Army Act.

committing a civil offence that is to say fraudulent conversion of property contrary to Section 20 (1) (IV)(b) of the Larceny Act 1916 -

in that he

not guilty

at Lancaster, England between 1 Jan 42 and 28 Oct 43 fraudulently converted to his own use the sum of £26. os od, being the proceeds of certain goods delivered to him for sale by Mrs. Mary E.Vickers of Lancaster.

Approved on behalf of JAG overseas pursuant to RR (Can) 500 and overseas RO 4750 (15)
16 Aug 44 (E. G. Morden) Lt-col.
A.J.A.G., C.M.H.Q.

(M.M. Wyndham), Major.
O.C., Unit Pay Detachment, RCAPC.

Lancaster,
17 Aug 44.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(P.J. Montague) Major-General
Canadian Military Headquarters
28 AUG 1944

In the Field
29 Aug 44

(P J Montague)
Major-General
In Charge of Administration
CANADIAN MILITARY HEADQUARTERS

By the Convening Order issued by me at London on the 29th day of August 1944 in the matter of a Field General Court Martial for the trial of A-32092 Cpl Arthur Domville Davis, Unit Pay Detachment, R.C.A.P.C., Captain J.K. Barnard, RCA, 2 C.A.R.U. was appointed a member of the said Court.

Such appointment of Captain J.K. Barnard as a member of said Court is hereby cancelled and Captain J.R. Causley, RCA, 2 C.A.R.U. is hereby appointed a member of said Field General Court Martial in his place and stead.

Dated at London this 2nd day of September, 1944.

P Montague

(P.J. Montague) Major-General
In Charge of Administration
CANADIAN MILITARY HEADQUARTERS
Convening Officer

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FAS/1697 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.32092	Cpl		Arthur D.	DAVIS	Unit Pay Detachment RCAPC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) this date endorsed by me, (~~and by all offrs of my staff (if any)~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reasons to be specified other~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. (I am unable to appoint (a) three Offrs to form the Court, (b) a 3'd Offr as President, for the reasons I have attached here~~.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate the Offr sometimes hereunder~~.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Major	F. Wingert, RCA.	2 CARU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Captain	J.K. Barnard, RCA.	2 CARU
Captain	A.T. O'Rielly, RCAPC	Unit Pay Detachment

WAITING MEMBER.

Rank.	Named or detailed, if any. RP 106.	Unit.
Captain	R.L. Oxley, RCAPC	Unit Pay Detachment

JUDGE-ADVOCATE.

Rank.	Must be named, if any. RP 106.	Unit.
	Nil	

On Active Service in the Fd

in England (Country.)

Date 27 Aug 44

(Signed personally. RP 105 & 2.)

P. Montague Major-General (Rank.)

Commanding (P. J. Montague) Major-General In Charge of Administration CANADIAN MILITARY HEADQUARTERS

Approved
Brig
Offr Comdg
(G. Morden) Lt-Col D.
A.J.A.G., C.M.H.Q.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10b)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 89.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN.) PARA.557

I certify that I have this morning examined

No. A.32092 Cpl. Davis, A.D.....

of .....R.C.A.P.C..... and in my opinion he

is fit ~~unfit~~ to undergo Trial by Court Martial

J.R. Lawson Capt RCAMC
.....
Medical Officer

Station LANCASTER

Date. 6 Sept 44

M.F.B.246

FW.

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN.) PARA.557

I certify that I have this morning examined

No. A32092 CPL. DAVIS. A. D.

of R.C.A.P.C. and in my opinion he

is fit to undergo Trial by Court martial.

Medical Officer

Station Lancaster

Date 6 Sept 1944

M.F.B.246

Miss B.Ponsford.

FIRST WITNESS

Mrs. Mary E. Vickers, having been duly sworn, states:-

Questions by Prosecuting Officer

1. Q. What is your address?

A. 19, St. Nicholas Street, Lancaster.

2. Q. What is your occupation?

A. Housewife.

3. Q. Did you at any time keep a boarding house in Lancaster?

A. Well, I have had boarders - yes it was a boarding house - I have some now as a matter of fact.

4. Q. Do you know Cpl. A.D. Davis of the Canadian Army?

A. Yes.

5. Q. Can you identify him?

A. Yes.

6. Q. Is he present in Court?

A. Yes.

Witness indicates accused.

7. Q. Was he at any time a boarder in your home Mrs. Vickers?

A. Yes.

8. Q. When?

A. Well, I have not the dates exactly.

9. Q. Well, can you give us an approximate date?

A. It was in 1940 some time - It is no good me saying - I have not the exact date - I cannot give you the exact ones.

10. Q. Did you have any business dealings with him at any time?

A. Well, through him for Miss Wright.

11. Q. And what were they?

A. Lengths of satins, silks and crepe-de-chine - goods left from my business. They were for the Auntie of Miss Wright at Blackpool, and he was to bring the money back to me - he got the parcel of goods.

12. Q. Did you hand any instructions to Cpl. Davis?

A. Yes, those were the instructions - to bring the money to me.

13. Q. What was he to do with the goods?

A. Deliver them to Miss Wright.

14. Q. How many parcels of goods did you give to him?

A. I do not know - I think there were two - I know I brought them up myself - I had to go twice to see him.

(Cont'd).

15. Q. Did you have any conversation with him?

A. Only to the effect that he would bring the money to me.

16. Q. What price did you have on these goods?

A. Various prices; according to length. They were all ticketed separately and priced.

17. Q. And what did they add up to? - What was the total?

A. £27. 0. 0.

18. Q. Did you receive that money?

A. No.

19. Q. Did you have any conversation with the accused about that?

A. Yes.

20. Q. About the money?

A. Yes.

21. Q. What was the conversation?

A. Well, he said Miss Wright had not paid.

22. Q. When did he tell you that?

A. Each time I saw him - during the whole 12 months - he said she had not paid.

23. Q. During the what?

A. The 12 months that followed

24. Q. How long ago was that Mrs. Vickers?

A. Well, I do not exactly know of the dates - all of the correspondence is lost.

25. Q. I will show you here a document - what is that?

A. This is a document I made out and he properly signed.

26. Q. Is that his signature?

A. Yes.

27. Q. And what does the document say?

A. I hereby certify that I will make a payment each week amounting to 10/- to cover this account. (Exhibit "A").

28. Q. When did he sign that document?

A. October 28th, 1943.

29. Q. Was anyone present with you at that time?

A. Yes, Miss Wright and a Canadian soldier.

30. Q. It was signed then by Cpl. Davis in your presence.

A. Yes.

31. Q. Was there any conversation between you and Miss Wright while the accused was present?

(Cont'd).

A. Yes.

32. Q. What was that conversation?

A. I asked her had she paid for the goods, and she said yes. She turned to Cpl. Davis and asked for a written statement to that effect that she had paid.

33. Q. What was that date again?

A. October 28th, 1943.

Document produced marked Exhibit "A".

34. Q. What is on that document?

A. The board money owing was £6. 0. 0. and £8. 0. 0. owing to my daughter Mollie and my £20. 0. 0.

35. Q. You agreed with Cpl. Davis to settle with him?

A. Yes.

36. Q. For £20. 0. 0.

A. Yes.

37. Q. Why did you do that Mrs. Vickers?

A. Well, he promised to pay, and furthermore I thought I would get it quicker - I thought it was an incentive for him to pay.

38. Q. Did he pay you anything on this agreement?

A. He paid £8. 0. 0.

39. Q. Up to the present date he has paid £8. 0. 0?

A. Yes.

40. Q. When did he make the last payment?

A. In March.

41. Q. What year?

A. This year.

42. Q. Concerning his statement that you mentioned to Miss Wright - would you look at that document, please?

A. Yes, this is the one I gave to him.

43. Q. Whose signature?

A. Same one.

44. Q. Were you present?

A. Yes.

45. Q. Would you read it out, please?

A. This is to certify that there is no debt existing between Miss Edna Wright concerning articles sold by her for me. Agreement dated 28 Oct 43. (Exhibit "B").

46. Q. That was when three of you were present together?

A. Yes.

(Cont'd).

47. Q. Did Cpl. Davis say anything to Miss Wright?

A. Yes.

48. Q. What did he say to her?

A. He said he was sorry.

49. Q. For what?

A. For saying she had not paid when she had.

50. Q. Now the two items here, apart from the £20. 0. 0d., are the item for £6. 0. 0d., which you say was owing (yes) and the other item of £8. 0. 0d. was on account of your daughter Mollie?

A. Yes.

51. Q. When did you first see Miss Wright about this transaction?

A. The same date she came down with Cpl. Davis - the date on the agreement.

52. Q. Had you seen her before that time - after the goods were delivered to Cpl. Davis.

A. No.

53. Q. You did not?

A. I went to the Treasury to see her - I asked her to come to see me, but she did not.

54. Q. How long after the original sale of the goods was this agreement made?

A. It would be 12 months approximately.

55. Q. Approximately 12 months?

A. Yes.

56. Q. The item of £20. 0. 0. referred to in Exhibit "A" Mrs. Vickers was for the sale of silk goods.

A. Yes.

57. Q. Did the accused have any further conversation with you or any correspondence with you?

A. Well, those letters he had, and then he had correspondence appertaining to a lady's raincoat, attache case and black suede shoes - When the man came up from London to take the statement he took all that down.

58. Q. Are you familiar with the handwriting of the accused?

A. Yes.

59. Q. How so?

A. Well, letters I have had from him - Miss Wright asked for a written statement to that effect that she had paid.

60. Q. What statement do you refer to - Exhibit "B"?

A. Yes.

(Cont'd).

61. Q. Well, this statement says Mrs. Vickers that:there is no debt existing between Miss Edna Wright and myself concerning articles sold by her for me - what does this mean - was there any conversation?

A. Yes, she said that she had sold these goods for me - she wanted a written statement to prove that she did not owe for them.

62. Q. You said that Cpl. Davis said that he was sorry to Miss Wright - what was he sorry about.

A. That he had lied about the debt.

63. Q. Lied to whom?

A. To me.

Questions by Defending Officer

1. Q. Mrs. Vickers - how long did Cpl. Davis board with you?

A. Well, I should think in all about 6 months.

2. Q. Can you tell me the approximate dates?

A. I am sorry I cannot - I do not remember.

3. Q. Can you tell me the amount of rent paid?

A. 30/- a week.

4. Q. And was that paid in advance?

A. No.

5. Q. How was it paid?

A. When he received his pay.

6. Q. And was it paid regularly?

A. At first - yes.

7. Q. And when did it start falling off?

A. Well, it fell off a month after he came - then he straightened it up again.

8. Q. Did he continue to pay it regularly after that?

A. Until he left.

9. Q. So when he left he was cleared up?

A. He left in debt - for £6. 0. 0.

10. Q. £6. 0. 0. would mean how many weeks?

A. I do not know.

11. Q. 6 weeks?

A. No it would not be 6 weeks - I do not know how long.

(Cont'd).

12. Q. You know he owed £6. 0. 0d., but you do not know for how many weeks he owed?

A. No I do not - I know that was the amount.

13. Q. Where did you get these goods?

A. My shop.

14. Q. You had a shop at this time?

A. No, I'd just sold the business - I had a lot of stock from the shop.

15. Q. And you kept this stock - where?

A. At home.

16. Q. And were you licensed to sell these goods by the Board of Trade.

A. I did not need to be.

17. Q. Now Mrs. Vickers, you know and I know that no one in this country can sell goods without a license from the Board of Trade - is that not right?

A. No, you can sell privately - I went to the Town Hall first.

18. Q. Now Mrs. Vickers I put it to you that you cannot sell over a continuous series of transactions without a license.

A. Privately.

19. Q. Every sale is a private sale you know?

A. Oh no.

20. Q. Were you selling these for coupons?

A. No, I was not entitled to take coupons - I had not given coupons.

21. Q. Did you know that you had to sell only with coupons according to the law?

A. I did not - I should have been liable had I taken coupons.

22. Q. So you are telling me that you were permitted to sell these without a license and without coupons?

A. Yes, because they were my own private stock.

23. Q. From your shop?

A. Yes - kept for my daughter and myself originally.

24. Q. Then you decided to sell them?

A. Yes.

25. Q. How did you happen to ask Cpl. Davis to sell these?

A. Well, he brought Miss Wright to our home.

26. Q. Well?

A. We talked about these silks. She said her Auntie would like some, and then she said she was going over to Blackpool. (Cont'd).

Davis confirmed that and asked me to bring a parcel up here to give to Miss Wright.

27. Q. I see. Then Miss Wright was not buying these herself - she was buying them for her Aunt. So actually you were selling these to Miss Wright - Cpl. Davis was just a messenger boy.

A. Yes.

28. Q. So the sale was from you to Miss Wright and Davis was to deliver the money - was that discussed with Miss Wright?

A. Yes.

29. Q. And when did you discuss that with Miss Wright?

A. When we were all together.

30. Q. And how many times did you see her?

A. She came a lot.

31. Q. A lot.

A. Yes, off and on she did.

32. Q. And he was with you, you have told me, for six months?

A. Approximately.

33. Q. And during that six months Miss Wright came to your place quite a lot.

A. Yes, right up to when he left.

34. Q. In fact Miss Wright got him a new place to live?

A. She contradicted that.

35. Q. You say Miss Wright did not get him a new place to live?

A. She told me she did not. Davis said he was going to live with Miss Wright's sister - they were sorry for him and would keep him for a £1. 0. 0. a week. This Miss Wright denies - he never went.

36. Q. Mrs. Vickers did not Miss Wright get Cpl. Davis in a billet?

A. I do not know - I only know that Miss Wright said she did not.

37. Q. She told you that she did not get Cpl. Davis in a billet.

A. Yes.

38. Q. Now you have told my learned friend that there are two parcels in all - is that right?

A. Yes.

39. Q. And what was the space of time between these two parcels?

A. The same date.

40. Q. The two parcels were sold on the same date?

A. Yes, One was bought at noon; one earlier.

(Cont'd).

41. Q. By whom?

A. By him.

42. Q. For whom?

A. Miss Wright.

43. Q. And that was the only sale - is that right?

A. Yes

44. Q. You are absolutely positive as to that are you - that is the only money owing?

A. Yes.

45. Q. How many sales were there to Miss Wright?

A. She had a few dealings with me - just small transactions.

46. Q. How many transactions in all?

A. I do not know.

47. Q. 50?

A. No.

48. Q. Many as 20?

A. I don't think it was.

49. Q. 10?

A. Yes, maybe.

50. Q. Of this, approximately 10, how many would be through Cpl. Davis.

A. Well, they were all through his instructions - I did not know her previously.

51. Q. Then of these approximately 10 items you were paid for all, with the exception of those two on that day.

A. Yes - by Miss Wright.

52. Q. You were paid by whom?

A. Miss Wright.

53. Q. In each case?

A. Yes, with the exception of the two parcels on this one day.

54. Q. By Miss Wright personally?

A. Yes.

55. Q. You are quite sure as to that?

A. Quite - it was in my home.

56. Q. What would be the approximate value of all these other 8 or 9 parcels?

A. I do not know.

(Cont'd).

57. Q. No estimate?

A. In the shillings.

58. Q. Approximately when were these sales, you told us about, directed to Miss Wright?

A. During that six months must have been - I did not know her before.

59. Q. Were they before these others, those two you are talking about now, or before that.?

A. Yes.

60. Q. Did not you just tell the Court Mrs. Vickers that you did not know Miss Wright until Cpl. Davis introduced her to you one evening and you arranged to send these two parcels to her. ?

A. No, I have seen her several times - first in my home - he introduced her.

61. Q. How long had you known Miss Wright before any articles were sold to her at all. ?

A. I did not know her until Davis brought her.

62. Q. And how soon after Davis brought her did you sell her any article.?

A. The second time she came.

63. Q. And was that a direct personal sale?

A. Yes.

64. Q. Was Cpl. Davis present?

A. Yes.

65. Q. And Miss Wright paid you then and there?

A. Yes.

66. Q. And then approximately how much was involved that time?

A. We have been through all that.

67. Q. You cannot tell me?

A. Not exactly

68. Q. You do not know the amount, you do not know the article, and I suppose that holds equally true for the 8 or 9 items she made direct purchase from you.

A. Yes, they were only small transactions.

69. Q. Was this particular purchase of the 2 parcels in the middle of your acquaintance with her or the earlier part?

A. The end.

70. Q. Towards the end?

A. The end of both of them.

(Cont'd).

71. Q. The end of which?

A. Davis and her.

72. Q. Do you mean towards the end of his staying at your place?

A. I mean the end of the transaction - I never saw her again - it was not at the beginning.

73. Q. Approximately how long was it after that transaction that Davis moved out of your place?

A. I do not know.

74. Q. Would that particular sale we are talking about have taken place 3 or 4 months before he moved.

A. I do not know how long.

75. Q. What were in those two parcels?

A. The goods the young lady has put down before. - Crepe-de-chines, satins in lengths - all ticketed and priced separately.

76. Q. Have you an account of it?

A. I had only my home went into storage.

77. Q. You have no account of it?

A. I have lost them all.

78. Q. How do you know the price is £27. 0. 0.

A. He knew - we checked it over.

79. Q. Are your documents in storage or are they lost?

A. Lost - everything.

80. Q. They went into storage?

A. They were lost in storage.

81. Q. You were relying purely upon your memory for the amount?

A. I am not likely to forget.

82. Q. It was £27. 0. 0. to the penny?

A. Rather more - a few shillings more - Miss Wright agreed that it was that amount.

83. Q. Do you remember the value of each parcel?

A. I do not.

84. Q. You remember the approximate value of each parcel.

A. .....

85. Q. Is this fair then - you do not remember the dates Davis boarded with you - you do not remember the number of weeks he owed you - is that right?

(Cont'd).

A. Yes.

86. Q. You do not remember the dates of the sale or sales to Miss Wright?

A. No.

87. Q. You do not remember the number of articles exactly you sold to Miss Wright?

A. No.

88. Q. You do not remember the amounts of the other items of sale?

A. No.

89. Q. You did not know when the sales took place?

A. No - not of the dates.

90. Q. You do not remember the amount of each parcel?

A. No.

91. Q. You do not remember exactly what was in each parcel?

A. No - silks.

92. Q. All you know is that Davis owes you £27. 0. 0d. - is that right?

A. £20. 0. 0. for the £27. 0. 0.

93. Q. All you know is that these two parcels originally totalled £27. 0. 0?

A. Yes.

94. Q. And you remember that from your memory?

A. Practically - and I remember him too.

95. Q. You remember giving evidence under oath at a summary of evidence?

A. I have been up here befors.

96. Q. Do you remember giving evidence under oath to Capt. Mathieson, the Prosecuting Officer, at a summary of evidence of this case?

A. Yes.

97. Q. Do you remember this question being asked you by Cpl. Davis:

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Q. In that case can you tell me how the £26. 0. 0. or £27. 0. 0. is made up - would there be 20 pieces of silk or 10 pieces of silk - is it itemized?
A. Yes
Q. You can submit a bill showing this account in full.
A. Yes.

98. Q. Were these questions asked you?

A. Yes. (Cont'd).

99. Q. Were these questions made by him?

A. Yes.

100. Q. Are they true?

A. Yes.

101. Q. Look Mrs. Vickers maybe you and I do not understand each other - I am absolutely positive you made a statement here a few minutes ago that you could not remember the exact items in the parcels and that you could not remember the exact prices and all that you knew was that it came to about £27. 0. 0.

1 A. I had it in storage to my belief that account.

102. Q. And when was it lost from storage?

A. Well, it has been a matter of six weeks.

103. Q. Six weeks ago it was lost - right?

A. No, I went for it the day I saw this gentleman - we sold a bureau to a person when the furniture was in storage and I went to collect the papers - there was nothing in - they were missing.

104. Q. Mrs. Vickers I suppose it is true that Miss Wright continued to come to your place with Cpl. Davis after this individual transaction?

A. No.

105. Q. When did Cpl. Davis move out then?

A. That is best known to himself.

106. Q. Did he move out about this time.

A. I cannot give you the date he moved out

107. Q. Would this transaction be some weeks before he moved out.

A. I do not know.

108. Q. You would not know whether it was the date he moved out, or two months before?

A. I do not know the date.

109. Q. For all you know the sale in question may have taken place 5 months before he moved out?

A. All that I know is that the sale in question took place, and that he took the money - that is all I know, and that is why I am here.

110. Q. Now, look Mrs. Vickers this is a serious charge against this young man, and it is up to you to prove it and you must answer my question - I want to know from you whether this sale could have taken place 5 months before Cpl. Davis moved out of your home?

A. I do not know the date.

111. Q. You are not prepared to say then whether this particular sale took place one month before he left your place or 5 months, or one day?

A. I repeat, I do not know the date. (Cont'd).

112. Q. Do you remember the season of the year that this sale was supposed to have taken place.

A. Cpl. Davis left in the fall.

113. Q. Cpl. Davis left your house in the fall?

A. .....

114. Q. Do you remember the season of the year these 2 parcels were sold to Miss Wright?

A. I do not know the date - I don't pretend to guess.

115. Q. Do you know the season of the year?

A. No.

116. Q. But you did know absolutely positively that from the time that these two parcels were delivered to Cpl. Davis Miss Wright never came again to your home ?

A. No.

117. Q. That is right is it not?

A. Yes.

118. Q. Now Cpl. Davis moved out of your place in the fall of 1942?

A. Yes.

119. Q. And that these statements, Exhibits "A" and "B", are dated Oct 43?

A. Yes.

120. Q. So Cpl. Davis was gone about a year?

A. Yes, approximately.

121. Q. During that time did you ever see Miss Wright on the street?

A. Not to speak to her - I only saw her once a distance away.

122. Q. Did you ever write to her?

A. No

123. Q. Did you ever telephone her?

A. No.

124. Q. You have already told the Court that Cpl. Davis had told you all along that Miss Wright had not paid him the money?

A. Yes.

125. Q. And you believed that?

A. I did - he said he could not ask the family for that money, because the brother was going to marry into it.

126. Q. In other words you believed that - all this was before this meeting in Oct 43 - Miss Wright had not paid this money. ?

A. Yes, and I believed Davis would pay as he had promised

(Cont'd).

127. Q. And during all this time you did not once communicate with Miss Wright with a view to getting this money.

A. I had no need.

128. Q. Do you mean you did not need the money.

A. I mean I needed it badly.

129. Q. What do you mean?

A. Miss Wright had paid Davis - he was to bring the money to me - I believed that.

130. Q. Not two minutes ago Mrs. Vickers you told this Court under oath that you believed Miss Wright had not paid Davis.

A. No, I never believed that.

131. Q. Mrs. Vickers you have told this Court before that Davis was telling you all along that he had not yet received the money from Miss Wright.

A. Yes.

. . . . . .

President Will you be here at 2 O'clock Mrs. Vickers?

Mrs. Vickers. I'd rather call the whole thing off - I have never been so disgusted in all my life.

. . . . . .

Court adjourned for lunch.

Mrs.D.Nötson.

Questions by Defending Officer (contd)

Q. Mrs. Vickers, I now show you Exhibit "A". This shows that Cpl.Davis has undertaken to pay you 10/-d a week to discharge this amount, and the account was made up of Board £6., Mollie £8 and yourself £20, making a total of £34. Is that correct?

A. That's right.

Q. And I suppose you regarded all of this as money owing to you?

A. Yes.

Q. It was a debt to you - is that right?

A. Yes, by Cpl.Davis.

Q. You considered that this was a satisfactory way of having this debt paid off, by payments of 10/-d a week?

A. I thought it was the only way.

Q. That it was the best way you could get the money back - you considered that all of this money was owing to you by him?

A. Yes.

Q. What is this item of £8. to Mollie.

A. He owed that to my daughter.

Q. What for?

A. I don't know.

Q. How do you know that he owed that to Mollie?

A. Well, she said he owed it to her.

Q. The basis for you saying that he owed this to Mollie was that Mollie told him he owed it to her?

A. In my presence, yes.

Q. In your hearing?

A. Yes.

Q. Have you any idea how this £8. happened to be owing to her?

A. I don't know how he came to borrow it?

Q. Do you even know that it was borrowed?

A. She said it was. That is what I have always understood. Actually I was away from home when it transpired.

Q. My information, Mrs.Vickers, is that this is money which was obtained in some unknown way, and was given by Mollie to Cpl. Davis to hold for her as she did not want you to know that she had it. Could that be correct?

A. No I don't think it is correct.

Q. But you don't know?

A. I don't know why she should not want me to know she had it.

Q. You don't know how it happened to be in her possession?

A. No, it was her own money.

Q. You don't know how she got it or where it came from?

A. I know she saved it.

Q. Did she tell you that in the presence of Cpl.Davis?

A. I don't know about that.

Q. Is she available?

A. Well she is with the Pay Corps in Penny Street.

Q. Then why should you ask that this money be paid to you?

A. Well I had written this down when Cpl.Davis wrote that underneath - I had written these three amounts down.

Q. It was no business of yours - what business had Mollie's money to do with you?

A. It is really, she is not of age.

Q. Did she ask you to get this from him?

A. Yes.

Q. Have you any letter of authority to collect this for her?

A. No I did not think I required one.

Q. Amongst other things you claimed Cpl.Davis owed you, you decided you had better get this £8. back for Mollie too?

A. When I wrote these three items down I did not know he was going to sign on this paper at all.

Q. What you had in mind, as well as collecting the other money owing to you, you thought you would also collect money owing to Mollie?

A. As her mother, yes.

Q. This item of Board for £6. you have already told us you do not know for what period of time that covered. Do you recall a Sgt.McLean and his wife who stayed with you for a period of two weeks?

A. Yes.

Q. They stayed 2 weeks did they not?

A. Yes.

Q. How much did you collect from them?

A. I don't know - £2. each they paid me.

Q. My information is that you collected and insisted upon and did receive £16.

A. No. £2. each they offered when they came -

Q. My mistake - that you insisted and did receive the sum of £13. for their having stayed there for a period of 2 weeks?

A. I received £2. each per week, they offered that when they came. They paid that in London.

Q. You received in all £8. ?

A. Yes.

Q. Did you ask for any more than that £8 ?

A. No.

Q. All you received was £8 ?

A. I took their offer.

Q. There was no other sum mentioned by you?

A. No.

Q. This item of £20. You have told us you did not know exactly what the amount owing to you was - that it was in the neighbourhood of £27 ?

A. £27. and a few shillings.

Q. And you decided to accept £20. instead of the £27. to clear it?

A. Yes.

Q. You wrote these items down before the meeting with Cpl. Davis and Miss Wright?

A. I had that in my handbag.

Q. You had it written down before - this item of £20. was all that you had in mind and all that you ever dreamt was owing?

A. It was all I thought of getting.

Q. I suppose it was not in your mind that the sum owing was more than £20?

A. I had agreed to settle for £20.

Q. I suggest that was the entire amount owing to you?

A. No I had reduced it - it couldn't have been the entire amount.

Q. When did you reduce it?

A. After talking to Cpl.Davis.

Q. After talking to him after your meeting with Miss Wright or previously?

A. I had hoped to touch for the whole amount rather than wait for little bits.

Q. Are you content to accept little bits of payments of 10/-d a week?

A. If that was the only way, yes.

Q. You were content to accept £20. before you knew this was the only way to get this back?

A. Yes to get the full amount.

Q. You have told the Court he did make payments totalling £8?

A. Yes.

Q. Are you absolutely positive it was no more than that?

A. Yes.

Q. You have taken your oath on that?

A. Yes.

Q. Did you give receipts for those payments you have received?

A. Yes.

Q. For all of them?

A. Yes.

Q. And did you give receipts for previous payments you had received from him

A. Yes.

Q. Did you give receipts for any previous payments?

A. I did not receive any other payments.

Q. Did you get receipts from Cpl.Davis for his Board and room as he went along?

A. No it is not customary.

Q. Is it a fact then that the only receipts you gave to Cpl. Davis at any time were for payments on account of this agreement in Exhibit "A"?

A. Quite right.

Q. And they total £8 - is that right?

A. The one item is £8 - the item for Mollie is £8 - the board is £6.

Q. The total receipt you gave is £8?

A. Yes.

Q. Did you not occasionally tell Cpl.Davis that he could make payments owing to you under this agreement of Exhibit "A" to Mollie?

A. No by letter, for his own convenience.

Q. But it was acceptable to you that he should pay some of this money to Mollie.

A. I accepted a letter.

Q. The payment was in the letter?

A. Yes.

Q. And that you would accept receipts given by Mollie?
A. Yes.
Q. Did you give receipts on these forms? (Exhibit "C" was shown to Mrs.Vickers). Is that a receipt dated 15 Nov 43 - received from Arthur D. Davis the sum of £1?

A. Yes.

Q. Is that another receipt given by you? (Exhibit "D" produced and shown to Mrs.Vickers). Receipt dated 15 Dec 43 for £2. to Arthur D. Davis Jr.

A. Yes.

Q. And is this another receipt which you gave dated Jan 15th? (Receipt produced and shown to Mrs.Vickers, dated Jan 15th 44 receipt for £2. from Arthur D. Davis - Exhibit "E")

A. Yes.

Q. Another receipt from yourself to A.D.Davis dated Feb.16th for £2 (Exhibit "F"), and another receipt d/Mar 44, Receipt to A.D.Davis for £1 - Exhibit "G". Another receipt d/15 Mar received from Cpl.Davis £1 - Exhibit "H". Mrs. Vickers you have told us that Cpl.Davis paid you the sum of only £8. pursuant to this agreement of 43, is that right?

A. Yes. But I don't think I received that last one.

Q. And you have also told us that you are absolutely positive that you received none of the £27. from him prior to this date, and that there was the sum of £27. owing to you, and I suppose it is fair to say that your evidence with respect to the payments received by you under this Exhibit "A" agreement - your evidence with respect to that is just as good as your evidence with respect to the £27 you claim?

A. Yes.

Q. Have you totalled the amount of the receipts I have just shown you.

A. No.

Q. Are you good at figures?

A. Yes.

Q. Are you good at accounts?

A. Yes I think so.

Q. And you can remember quite well monies owing to you and monies received by you?

A. Yes.

Q. Would it surprise you to learn that these figures total to £9 and not £8 ?

A. No.

Q. Why would not it surprise you? You have just given an absolute positive oath it was £8 and nothing more.

A. I just said when I saw the last one I didn't receive that payment.

Q. Are you in the habit of sending receipts for monies you don't receive?

A. Well I sometimes have the receipts ready.

Q. Are you suggesting Cpl.Davis stole that receipt from you?

A. Oh no.

Q. How would he get it?

A. I don't know.

Q. And you have told the Court that your evidence with respect to the payments received by you is just as good as your

evidence with respect to the £27. claimed by you - is that so?

A. I claim £20 - I agreed to settle for £20 not £27.

Q. Did you put this matter in the hands of solicitors?

A. Yes.

Q. Do you like writing letters?

A. No.

Q. Do you write a lot?

A. If they are necessary.

Q. How many letters have you written Cpl.Davis in the period of the last year?

A. I don't know - not quite as many as he has written to me.

Q. Have you written him to Canada?

A. No.

Q. Have you threatened to? Do you know his address?

A. No I don't know his address.

Q. Did you at any time ever know his address?

A. When he stayed with me.

Q. I suggest to you Mrs.Vickers that you wrote nasty letters to him.

A. No.

Q. Anything pertaining to this debt?

A. I have never mentioned this debt to his people.

Q. What have you written to his people.

A. Nothing offensive as you suggest. No not on this matter I haven't.

Q. On what matters have you written to his family or people?

A. Private.

Q. What?

A. Well, it was in answer to a letter I had from them.

Q. Specifically what, Mrs.Vickers?

A. It was nothing much - only just about a little child - thats all.

Q. Did you write letters to his wife suggesting that he was playing around with other women?

A. No.

Q. Did you know that he had trouble at home with his wife?

A. Well he said he had.

Q. As a result of your letters?

A. No, before that.

Q. And do you think your letters helped any?

A. Well, I don't think they hindered.

Q. I put it to you Mrs.Vickers - you are trying to blackmail him into paying you.

A. No he knows he owes the money, I don't know anything about his private affairs.

Q. You did not know anything about his girl friends?

A. I may have done in passing - I don't know.

Q. Is that your handwriting?

A. Yes.

Q. Is that your letter you wrote?

A. That's my writing.

Q. And you wrote this letter? - it bears the date 7/4/44?

A. Yes.

Q. And this letter headed "M.Dyson" - was that your business?

A. Yes - I see.

Q. Have you ever made Cpl.Davis any threats?

A. No.

Q. Have you ever suggested you would take drastic action if he did not pay you this money?

A. Action? Yes.

Q. You suggested dire consequences to him if he did not pay it?

A. No.

Exhibit "I" shown to Mrs.Vickers - letter d/7/4/44 to Cpl. Davis.A.D.Jnr - this was read aloud to Mrs.Vickers.

Exhibit "J" produced - letter d/Mar 27th, and read aloud:

Q. What do you mean about tattling to Capt.Rodgers?

A. Davis knows what I mean.

Q. I want to know - the Court wants to know. Will you answer the question please?

A. Yes, it was telling tales of all the others - him of all people.

Q. What tales?

A. Anything he found out about them.

Q. About the boys? - Let's have all this story - what is this story about tattle? Tattling about what and about whom?

A. Oh about anything he could get.

Q. Name one specific instance. Capt.Rodgers is here, we can call him. Name me one instance.

A. No I don't want to - not in public.

Q. Did Capt.Rodgers tell you to send these cartridges on? They were live cartridges.

A. Yes.

Q. And you are suggesting to me that he would tell you as a civilian to forward live cartridges by messenger to another soldier?

A. He asked me to send the things along.

Q. Your oath is Capt.Rodgers told you to send these cartridges on to Cpl.Davis.

A. Everything here.

Q. Did he tell you to send these cartridges?

A. Yes.

Q. Were the cartridge s mentioned?

A. No. They were when I was talking to him but they weren't when I sent them.

(Capt.Epstein continued to read out the letter)

Q. When you say he did not reply to your letters, do you mean Captain Rodgers?

A. Yes.

Q. Have you been writing to him too?

A. Yes.

Q. How many letters did you write to Capt.Rodgers?

A. Several - I don't know - more than one probably.

Q. Not probably - you know definitely.

A. Well, our matter is not bearing upon that.

Q. With respect to Cpl.Davis and others in his Unit?

A. No not all of them, no. Other matters.

Q. What other matters?

A. Private. My affairs.

Q. With respect to the Army?

A. Yes.

Q. Well, just to test your credibility, I would like you to tell the Court.

A. Private.

Q. Private? - How private?

.....

Q. You refuse to say? Well, I wont press you for an answer.

continuing reading the letter -

What was the affair of Feb 29th of the Sgt. and L/Sgt. you discuss?

A. When McLean said that about Britain.

Q. And who is the L/Cpl?

A. I suppose it was the one with him. It was after the Pay Corps dance. He had to leave.

Q. And this business of Feb 29th is the remark that Sgt.McLean was alleged to have made?

A. Oh it was an all night sitting. My husband made him go, he was creating a disturbance all night long.

Q. And did you discuss with him the question of the board you charged?

A. No.

... continuing reading the letter aloud -

Q. What was Mollie supposed to be there for? What was he supposed to see Mollie for?

A. To give her some mail I presume.

Q. You presume! - you wrote this.

A. Yes, he had given her some envelopes.

Q. How much money do you know he gave Mollie?

A. The money I got the receipts for.

Q. How do you know he did not give her more?

A. I opened them.

Q. Do you open all Mollie's letters?

A. No I open my own.

Q. And Mollie's?

A. No.

And who are Edna and Bob?

Miss Wright and her Canadian boy friend.

And what were they supposed to come for?

They were to come together to meet Davis and ask him if he had paid.

This letter was written March 27th 44 wasn't it? That was written this Spring wasn't it?

Yes.

March 27th 44?

Yes.

And he was supposed to come with Edna on March 27th 1944?

May I see that again, please..... They were to come again together.

They did come again in Oct 43, and he signed this release saying that she didn't owe him any money.

A. They bought a dog from us - a Scottie dog.

Q. Does he also owe you for a dog?

A. No, he paid for the dog.

Q. I suggest to you Mrs.Vickers that Edna and Bob were to see you with respect to some letters of Davis's which you had sent to Edna.

A. No - not in that letter which Davis had sent me about Edna.

Q. Have you sent letters to Davis about Edna and Bob?

A. No.

Q. At no time?

A. No.

Q. Now, you told us a moment ago Edna and Bob were to come with Davis to re-affirm that she did not owe you anything.

A. Pardon me - that is since, about the letters, and they did come about the letter. They all read the letter and we agreed to burn it, the letter that Davis had sent me about Edna.

Q. She read it?

A. He read it.

Q. What about the dog?

A. Well he bought a dog - he has been three times in all since then.

Q. Davis bought a dog?

A. Bob bought a Scottie dog.

Q. And Edna? She was with him? She hadn't bought a dog?

A. No.

Q. What is this raincoat business?

A. The raincoat that is mentioned before.

Q. Let us hear all about the raincoat.

A. Well, he borrowed it for a W.A.A.F friend.

Q. Davis borrowed what?

A. The raincoat.

Q. From whom?

A. It is Mollie's raincoat - he borrowed it from me.

Q. Was Davis present then?

A. Yes.

Q. My suggestion is Mrs.Vickers that you loaned a raincoat to some lady when Davis was not even present.

A. He was with her, he had stayed the night there, a lady by the name of Parkinson.

Q. What about the shoes?

A. He got the other one, she took it to try to see if it would fit her.

Q. The same girl with the raincoat?

A. Yes.

Q. Cpl.Davis took a shoe from you?

A. He was there when she took it. He was seeing her the following Saturday, he was to bring the money the following Saturday.

Q. Is this another sale you were making?

A. She was his friend.

Q. Why should he volunteer to carry on all these transactions for you?

A. Because he was enamoured with the dame I suppose.

Q. Why should you when he failed to pay you this £27 - why should you trust him to carry on further transactions?

A. Well, why shouldn't I?

Q. O.K. I suggest to you that you sent this shoe to him in a box to the address of this Unit.

A. No he asked me for it. One shoe was no good without the other.

Q. Which did you send him, the first shoe or the second shoe?

A. The second shoe.

Q. And you are telling me that he took a shoe - that some friend, some Miss Parkinson took a shoe from your place, he was to collect the money from her to pay it to you and eventually you had to send the other shoe to his address here?

A. He was taking the other shoe when he had paid - that was the arrangement.

Q. He was to take the second shoe when he had paid the money?

A. Yes.

Q. And you forwarded it on to him without ever getting paid.

A. A while after.

Q. Why?

A. Well, the one shoe was not any use to me.

Q. Why didn't you ask for the shoe?

A. I don't know where she lives.

Q. Who is the "dame who whopes to become Mrs.Davis?"

A. The dame who has the shoe.

Q. How did you know he would be hearing from her?

A. If you read the letter there, it tells you.

Q. Not a word here about it. If she had been to visit you

why didn't you ask her for the shoe?

A. She hadn't been to visit me after she took the shoe - not in between seeing Davis, I saw him several times about it.

Q. She took the shoe after you had discussed her in this letter.

A. No I discussed the shoe with Davis in the meantime several times.

Q. It was the same woman who took the shoe?

The P.S. of the letter was read to Mrs.Vickers who said :

He did and its right. I don't know where he is but if he were here he would substantiate that.

Q. When did you decide to take military steps against Cpl. Davis.

A. On Capt.Rodgers' advice.

Q. Capt. Rodgers advised you to do that - did he?

A. Yes.

Q. And what about your legal adviser?

A. He said it would have been different had he been a civilian.

Q. Had you written Messrs.Winder & Cliff, Solicitors, of 23 Sun Street, Lancaster?

A. Yes.

Q. And did they on your instructions write a letter to Cpl.Davis?

A. I believe they did.

Q. Is that the letter carrying out your instructions? (Exhibit produced and shown to Mrs.Vickers)

A. No I haven't had any copy of a letter.

Q. Are those the instructions you gave them?

A. No they had that paper with the £8. and £20.

Q. Did you tell them on May 4th 1944 that Cpl.Davis owed you £20 for goods you supplied to Miss Wright?

A. I left it with them.

Q. Did he owe you £20. at that date?

A. When I took the -

Q. Did he owe you £20?

A. I went to the solicitors about it.

Q. What is the date?

A. 4th May 44. I took the exhibit with me and left it.

Q. Did Cpl.Davis owe you £20 on that date?

What about the monies he had paid you on account?

A. Well I had given them to Mollie.

Q. The £8. owing to Mollie - you had given it to Mollie? Did Cpl.Davis ask you to give it to Mollie? Don't you think he wants accounts for money he is supposed to owe you?

A. He admitted he owed her £8.

Q. What about the extra £9 he had paid you.

A. We have gone into that before.

Q. Oh, he didn't pay it to you - was that what you said before?

A. I said I couldn't account for that one.

Q. You took the case away from the solicitors?

A. No.

Q. Is it still in their hands?

A. I asked their advice on it and I just told them I was coming here to-day.

Q. Did you take the case away from the solicitors? Would you look at this letter please? Your own solicitors withdrew from a case without even telling you?

A. I have not had any letter from them. It is funny Mr.Cliff didn't tell me so yesterday.

Q. Solicitors as a rule do not withdraw from cases except on instructions.

A. He said he would prefer it with a civilian - that was the only thing - he could have dealt with it differently.

Q. (Def.Officer produced Exhibit "K" for Mrs.Vickers perusal) Can you remember the date you sent that letter?

A. I suppose it would have the date on the envelope.

Q. Can you remember the date?

A. No.

Q. Is this your writing?

A. Yes.

Q. And also that?

A. Yes.

Q. This is on April 11th, 1944?

A. Yes.

Q. On the face of it it says ....(Exhibit "L" produced and read aloud in Court by the Def.Officer) - You wrote quite regularly to Cpl.Davis didn't you? Is that your writing?

A. Yes.

(Exhibit "M" produced and read aloud in Court)

Q. Did you Write this - this is another post card d/4 May?

A. Yes.

Q. You knew his address at that time did you not? - the 4th May?

A. I had it given here.

Q. Why did you include it in your letter to him in London?

A. So that they could trace who he was.

Q. I suggest that you put that in as a threat to him - if he did not meet your demands you would write again to his family.

A. No.

Q. And your story is that they might have difficulty in tracing him in London so you put his home address in Canada on the post card ?

A. Yes.

Q. I see. Is that the best story you have?

A. It is the truth. It isn't a story.

(Exhibit "N" produced and read aloud in Court)

Q. Is "Wyndham" Major Wyndham?

A. Yes.

Q. And was he selling Cpl.Davis's lighter to Mary Johnstone?

A. She said so.

(Exhibit "O" produced and shown to Mrs.Vickers)

Q. You sent this?

A. Yes.

Exhibit "O" was then read aloud in Court.

Q. Why did you put that in block letters instead of ordinary writing?

A. I don't know.

Q. Just to bring a little bit more pressure to bear on him?

A. No.

Q. What are these..."something I thought he would be interested in"

A. It was an advertisement he might be interested in.

Q. Why should he be interested in this advertisement?

A. He knows why.

Q. You tell us why.

A. I thought he would be, that's all.

Q. Well why?

A. From a conversation we had.

Q. Where did you get Cpl.Davis's home address from?

A. From him.

Q. On this Exhibit "N" you addressed to him in London, you put "London, Ontario, 125, York Street", you told us you got that from somebody else.

A. I got the copy of it here.

Q. Who from?

A. Capt.Rodgers.

Q. Capt.Rodgers gave you his address in Canada and his regimental number?

A. Yes.

Q. I suggest to you Mrs.Vickers that for a long period of time you engaged on a long deliberately thought out course of bringing the utmost pressure to bear in forcing him to pay.

A. I thought he owed the money and should pay.

Q. And as a result of that you bombarded him with letters in England.

A. No.

Q. Bombarded his home in Canada with letters.

A. No.

Q. You sent him letters in addition to those I have produced to-day, did you?

A. I may have done. He sent me plenty.

Q. You badgered Capt.Rodgers and other officers here?

A. No.

Q. So that Capt.Rodgers had to give instructions that you were not to be allowed in this building?

A. That is news to me.

Q. It surprises you?

A. Yes greatly.

Q. You did not think you had bothered him?

A. I don't think I have. He has not told me that.

Q. I suggest to you further that Cpl.Davis when he left your place he left a kit with articles which you went through.

A. Just a kit - a cardboard box.

Q. And it was open ?

A. There was nothing to go through.

Q. You found cartridges, a cigarette lighter and other things.

A. No the cigarette lighter had nothing to do with me. He left it with me to pay his debts,

Q. Do you know of an interview between your husband and your daughter Mollie and Captain Rodgers?

A. My husband has never interviewed Capt.Rodgers. Davis said

he had, and he said he had never seen Capt.Rodgers. I went to his place of employment when he was working nights and he said "Never"!

Q. And you had this prosecution brought in order to get this Cpl. to pay you your money.

A. To get payment, yes.

Q. Your sole interest in this Court-Martial is to get Davis to pay you your money.

A. To pay me what is my own.

Q. Apart from that you have no interest in it?

A. I have not.

Q. You want to get your debt paid off?

A. Yes.

Q. Mrs. Vickers have you ever been to see a mental doctor.

A. I have not.

Q. You have not - at no time?

A. No.

Q. Would you take your oath on that?

A. Absolutely.

Q. Have you ever been to see any Doctor about mental disturbances.

A. Never.

Questioned by the Prosecuting Officer.

Second Witness. Miss Edna Wright, 54, Torrisholme Road, Lancaster, sworn, states:

Q. Where are you employed Miss Wright?

A. Canadian Treasury Office, and have been for some time.

Q. Do you know the accused, Cpl.Davis?

A. Yes.

Q. Is he in Court to-day?

A. Yes.

Q. When did you first know Davis?

A. August 42.

Q. Where was he living then, Miss Wright?

A. With Mrs.Vickers at 19, St.Nicholas Street, Lancaster.

Q. Did you have any business deals with him?

A. Yes.

Q. What were they?

A. Goods that he got from Mrs.Vickers and he asked me if I wanted to buy any.

Q. What sort of goods?

A. Silk goods.

Q. And what was the arrangement about them?

A. Cpl.Davis asked if I would like any. He brought me the parcels and I sold them and gave him the money - that was all I knew about it.

Q. How many parcels did you obtain from Cpl.Davis?

A. I can't tell you to be exact.

Q. About how many?

A. About 9 or 10.

Q. And did you make any agreement about the price you would pay?

A. Mrs.Vickers put a slip in the parcel of each piece of material and I used to send the slip back to her with the money.

Q. To whom did you deliver the money?

A. Cpl.Davis.

Q. Had you previously examined these goods anywhere.

A. No.

Q. And you first saw them in Cpl.Davis's possession?

A. Yes.

Q. Did you know who the owner was?

A. Yes, he told me who they were from.

Q. He told you they were from Mrs.Vickers?

A. Yes.

Do you remember what period of time you purchased these articles?

I can't remember what any exact dates at all. I met him in August 42 I think, or the end of September - he left Mrs. Vickers then so it must have been between that period.

Between August and September 1942?

Yes.

How did you pay Cpl.Davis?

On each parcel I received I took out what goods I could sell, or what goods I wanted myself, gave him the money and the things I didn't want back in a parcel with the money.

You paid him in cash?

Yes. I can't tell you any amounts, they came over a period and I never kept any account. There was just one parcel I kept an account for.

How much did you pay for it?

A. It just happens to be some of the goods I kept for myself that is why I wrote it down.

Q. Did you make these entries at the time?

A. Yes. All the parcels were not like that. Some of the parcels just came with one length of material in.

The witness produced a notebook.

Q. That is one particular parcel of goods which you had at one time?

A. (reading from her notebook)

2 yards Lemon	15s	10d
2.1/8 yds Blue silk...	13s	8d
3¾ yds blue crepe.....1.	17s	3d
4 yds rust linen.....	18s	0d
4 yds brown "	18s	0d
	£5. 2s	9d

I am not sure whether we kept all those though.

Q. Did you have any conversation with Mrs.Vickers about this business deal and its payment in the presence of the accused?

A. Yes.

Q. What was the nature of that conversation?

A. I was clearing myself - it was Cpl.Davis and he signed a statement to say I had given him the money.

Q. Why were you clearing yourself with Cpl.Davis?

A. He told me that Mrs.Vickers told Cpl.Davis I had not paid him.

Q. As a result of the conversation you had with Mrs.Vickers you had a conversation with the accused and Mrs.Vickers together?

A. Yes that's right.

Q. Just tell us what happened - what was said between the three of you.

A. Well, I said to Cpl.Davis"will you prove to Mrs.Vickers that I have given you the money for all the stuff I have received from you" and he said "Yes" and I asked him if he would write a paper out to prove I had given him this money, and he did and gave it to me.

Will you look at this paper please (Exhibit "B" produced) - that is the document you refer to? Is that his signature?

Yes.

Did he give any explanation to Mrs.Vickers at that time?

No, he hardly spoke at all. She asked him if he would sign a statement to her to pay so much back a week, and he turned round to me and he said he was very sorry I had been troubled by this - that I had been worried by her.

You had been worried by Mrs. Vickers?

Yes, She had been up twice with then you see to the office - a business office.

Q. He told Mrs.Vickers in your presence that you had paid him?

A. Yes.

Q. And that you had received the goods.

A. Yes.

Q. The date of that agreement is October 29th 1943 is it not?

A. The 28th.

Q. Sorry - the 28th. So that agreement was signed approximately a little over a year after the actual transaction?

A. Yes.

Questions by Defending Officer.

Q. Miss Wright, you have told my learned friend that there may have been 9 or 10 of these transactions in all.

A. Yes.

Q. Was each one from Cpl.Davis?

A. Every one was from Cpl.Davis.

Q. Did you make any purchases or accept any deliveries, or pay any monies to Mrs.Vickers direct at any time?

A. No.

Q. Are you absolutely positive about that.

A. Yes I am positive.

Q. The reason I ask you is that Mrs.Vickers has told us here to-day of 8 or 9 occasions you purchased articles direct from her and paid her at the time.

A. No, I never did.

Q. In each one of these cases you paid the money to Cpl.Davis?

A. Yes.

Q. Could you remember what would be the largest individual amount ?

A. I should think this would be the one - £5.

Q. That was the reason you kept track of it?

A. Yes because I was buying it myself.

Q. With respect to some of the other articles, you were passing them on to others?

A. Yes.

Q. The reason I ask you that is because Mrs.Vickers has told us there were two parcels delivered to Cpl.Davis here for you on one day which totalled £27. 0s 0d.

A. Ridiculous.

Q. Would you be prepared to venture some sort of an estimate as to the total price of all the articles?

A. I don't see how I can really.

Q. Would it have been as much as £50?

A. Oh no.

Q. Would it have been more than £10?

A. Yes it could have been more than £10.

Q. Would it have been more than £20?

A. I don't think so.

Q. You do not think the total of the 9 or 10 purchases would come in all to more than £20?

A. No. We didn't keep them all. We sent some of the things back to Mrs.Vickers.

Q. You are quite sure that on no occasion there were two parcels totalling £27. Os Od or anywhere near to that?

A. Quite sure.

Q. During the period when you were making these purchases were you over at the Vickers house at all?

A. I only went there about twice. I don't know whether it was during this time.

Q. Did you at any time see these dress materials at Mrs.Vickers' house?

A. No.

Q. I understand that sometime in the Fall of 42, Cpl.Davis moved out of Mrs.Vickers' place.

A. That's right.

Q. I understand further that you in fact helped him to get another billet.

A. Yes.

Q. That is definite?

A. Yes.

Q. Have you any idea why he moved out?

A. Well, I could say something. I met Mrs.Vickers you see, and I had been in the house once, I think, then I saw the condition of the place and I told him it was a terrible place to stay in and she was an awful woman, and I did find him somewhere else to go, and he had lost one or two things out of his kit.

Objection by P.O.

D.O. The whole case stands or falls on the credibility of Mrs.Vickers. I asked Mrs.Vickers why Cpl.Davis moved out. She gave her reasons. If this witness has personal knowledge - if she has - as to why he moved out, I think we are entitled to that knowledge. Mrs. Vickers you will remember told the Court that Miss Wright had nothing to do with obtaining another billet for Cpl.Davis. Miss Wright tells us she, in fact, had. I am saying that, since the issue of the credibility of the chief witness is so highly in issue, that all these circumstances which might help the Court to arrive at some estimate as to the reliability of the evidence of Mrs.Vickers are submissible evidence going to the credit of

Mrs. Vickers. My point is that anything the witness has said, such as the conditions of the house, are reasons which may contradict Mrs.Vickers' reason.

P.O. I have no objection to that, but as to the witness giving her own opinion as to what sort of a woman Mrs.Vickers is - the Court itself will form an opinion of the witness.

D.O. Since Cpl.Davis' intentions are in issue - since he is charged with fraudulent intent - any statements he made at that time to Mrs.Vickers which would throw light on his own state of mind at the time, is I think submissible evidence, and I propose asking the witness of statements made to her by Cpl.Davis, in her own words, but actual statements made by him to her.

P.O. I think that is fair.

The Defending Officer continued his questioning:

Q. Did Cpl.Davis tell you about that time as to any reasons he might have had for wanting to move?

A. Yes, but I don't think that I'd be allowed to say them in Court. Well, one morning he met me and told me he had to turn her out of his bed, and I said he had no right to be in a house like that?

Q. Any other reasons?

A. Can't remember at the time.

Q. Would it refresh your memory at all if you were to cast your mind back to letters to his home in Canada?

A. Yes definitely.

Q. Would you tell the Court what he had to say about that?

A. He told me that she had got his address from his personal belongings and was writing to his wife and family about different girl friends he had made while he was over here.

Q. Any question raised with respect to accounts with her or charges?

A. No I don't think so.

Q. The fact of the matter is that you did get another billet for him?

A. Yes. I asked a friend of mine and she got another friend of hers who lived opposite to take him in.

Q. And he left Mrs.Vickers' place about what month?

A. The end of September or the beginning of October.

Q. It wasn't until Oct 43 that you had this meeting you have told us about with Mrs.Vickers and Cpl.Davis a year later?

A. Yes.

Q. During that period of a year, were you approached by Mrs.Vickers about monies owing to her by Davis or yourself?

A. No never, only two days before this was signed.

Q. You said something to the Court about her coming to your office.

A. Two days in succession. That is - one day when I went down to her house and the day before that.

Q. And during the interval of a year or so, did you see Mrs. Vickers at all?

A. Yes I saw her in the streets.

Q. Did you ever talk to her?

A. Just "Hello" - I think she once stopped me and started to tell me about someone else she seemed to have a grudge against.

Q. You did see her on the street and exchange words with her?

A. Yes.

Q. Did she ever during these times mention the fact of yourself or Cpl.Davis owing her money?

A. No.

Q. If you or Cpl.Davis owed her money, I expect you would have expected her to mention it?

A. Yes certainly.

Q. What were your reactions when she came up to the office claiming this money in Oct 43?

A. I was just shocked - I couldn't believe it.

Q. You hadn't the slightest reason for believing anything was owing?

A. No.

Q. You assumed from her actions everything was paid?

A. Yes. Cpl.Davis was still living with her while I was getting the things you see.

Q. Then he moved out - he was away for a period of a year before the thing was ever mentioned to you?

A. Yes.

Q. Did the amount claimed surprise you?

A. Yes I had no idea - I mean I can't tell you now any figures.

Q. You told us it might possibly come up to £20?

A. Yes. I had no idea what amount until Mrs.Vickers mentioned it to me you see.

Q. And since that meeting of 28 Oct 43, has Mrs.Vickers been bothering you at all?

A. Yes.

Q. In what respect?

A. When Cpl.Davis went to London to work she came up the following day and said he had missed paying her her money, and I told her it was nothing to do with me, and she sent me a card or something to say.....

Q. Has she been sending you letters?

A. Yes.

Q. More than one?

A. She sent me one yesterday or the day before. Yesterday I think it was. She sent one to a friend of mine that I had written to when I knew him. She sent it to a boy I started going out with.

Q. Did Cpl.Davis ever tell you as to why he stopped making payments to Mrs.Vickers under this agreement?

A. Yes.

Q. Why?

A. Because she had not kept her promise about writing home to his people.

Q. She was still writing home to his people?

A. Yes.

Q. Did he ever tell you why he signed that document that he had?

A. He said he didn't want any more trouble at home.

Q. Did he say anything that might indicate that he didn't owe it.

A. I told him I didn't know who to believe. He said when I went down there "I was a fool for signing that paper". He thought she would stop writing home but she didn't so he stopped paying her.

Q. Did he at any time ever tell you that he had in fact paid over the proceeds of the sale to Mrs.Vickers at the time and did not owe her any money?

A. Yes he told me that.

.....

DEFENDING OFFICER.

I intend to be very brief in my submission if it pleases this Court. This entire charge stands or falls on the evidence of Mrs.Vickers. The accused is charged with fraudulent conversion - a very serious crime - which means that he made up his mind fraudulently to deprive her of money that was rightfully hers. I do not propose to go into each item point by point showing that Mrs.Vickers is an absolutely untrustworthy witness who has allowed herself to get twisted up, whose affairs are in such a muddle that neither she nor anybody else can figure them out; I merely wish to make a bald statement, which I do - that it will be impossible for any Court of Law to convict an accused person on the muddled testimony produced and heard in this Court to-day. Miss Wright, who is an absolutely independent witness, who owes nothing to either Mrs.Vickers or Cpl.Davis, has come and contradicted Mrs.Vickers on some of the most essential points. The fact that there was no purchase in her opinion that would amount to more than possibly £5. - the fact that the total number of the purchases would come to perhaps £20. - the fact that she did not at any time make a direct purchase from Mrs.Vickers and Mrs.Vickers has sworn that on 8 or 9 occasions she did and paid cash to her; the fact that she saw Mrs.Vickers on a number of occasions

and exchanged words with her during the intervening year - from Oct 42 to Oct 43, and not one word was mentioned. I suggest to this Court that Mrs.Vickers' affairs are so confused and her mind so confused, that she does not know what this is all about. She has bothered Cpl.Davis - as he has told Miss Wright - by writing to his family. He finally decided to get out of her place and still she bothered him, and in a moment of weakness thought it was better to sign this document and stop the trouble with his family, even though he was not responsible for the amount that he signed to, hoping it would stop these notes. He still got the letters and decided he had better stop paying entirely. I submit to this Court respectfully, the only reasonable conclusion they can come to is that there is not the slightest trace of fraudulent intent to convert anything owing to Mrs.Vickers, or that, if anything, she has converted some of his things and that the charge should be dismissed.

PROSECUTING OFFICER.

My submission to the Court is that this is not the time for the Court to consider the credibility of the witness. They are considering now the charges and what has been alleged, and then whether there is any answer, any explanation, which may be required from the accused. You are not deciding now that the accused is guilty or innocent, you are deciding whether there is any evidence on which a Court might reasonably convict at all and the charge is fraudulent conversion of a certain sum of money - the exact amount is not material - if it differed by a few pounds the Court could make a special finding. The evidence so far is that Mrs.Vickers had delivered certain goods to the accused with instructions to sell to Miss Wright, and that she did not receive the money. That is corroborated by Miss Wright who says that she purchased the goods and paid the money to Cpl.Davis, and that subsequently Cpl.Davis admitted to her and to Mrs.Vickers that he had received the goods. In view of the evidence I submit that this is not the time for the Court to decide there is no case against the accused and not the time for the Court to decide as to the credibility of the witness Mrs.Vickers.

DEFENDING OFFICER.

Entirely apart from the question of the credibility of witnesses, it will be noted that the charge against the accused is fraudulent conversion of property contrary to the Larceny Act in that he fraudulently converted £26. being the proceeds of certain goods delivered to him for sale by Mrs.Vickers. Now Mrs.Vickers has told the Court of her own mouth that in the first place she regarded this merely as a debt owing to her. Well that is not fraudulent conversion. If I signed the signature of any member of this Court to a cheque and afterwards find that its O.K. - sure! go ahead and owe me the proceeds - that is not forgery. In this case, even assuming (which I don't for a minute) that Cpl.Davis had received this money and had not paid her, and at no time intended to pay her, just the same the actions of Mrs. Vickers change the character of the transaction from the conversion - which it could have been I could mention - to a straight business matter of debt. She was content to regard him as owing her so much money - that is the only way in which she regarded this transaction. A straight matter of civil debt and not of Criminal law. I think Mrs.Vickers put the matter most aptly towards the end of my cross examination of her when she said she instituted these proceedings in order to force Cpl.Davis to pay her the money he owed her. In other words, she is using the instrumentality of a Court-

Martial - using this Court - as a debt collecting agency. My submission is, therefore, entirely apart from a question of credibility whatsoever. The charge as laid has not been proven.

PROSECUTING OFFICER.

I submit that any condonation or forgiveness of a person injured by crime does not excuse the crime. I made a note of that particular point. It obviously strikes one immediately that, although a crime has been committed, what is the result if the person injured forgives the wrongdoer? Does that then make what was a crime purely an innocent act as far as Criminal Law is concerned? I quote now from Cranshaws Canadian Criminal Code & Notations of a similar section in the Canadian Criminal Code :

(The P.O. read the section out in Court).

When that happens it does not affect the fact that a crime has been committed. What the individual does who has been injured does not affect the Criminal [illegible], and does not affect his punishment.

(The P.O. reads Sections 1 and 2 from 9 Halsbury Laws of England)

"A crime is an unlawful act which is an offence against the public and renders the person guilty of the act liable to legal punishment". While the crime is often an injury to a private person, who in this case has a remedy in a Civil action, it is an act contrary to the order of peace and well-being of society when a crime is punishable by the State. The Civil proceeding has resulted in recovery of property, the enforcement of a right for the advantage of a person suing, but a Criminal proceeding is a punishment of a public offence and it has been described as the standing forward as a Prosecutor on behalf of a subject on public grounds. A similar case in MilitaryLaw - we are talking Military Law - for instance - a Pte. soldier steals a carton of cigarettes from his comrade, and his comrade says "Well you owe me 300 cigarettes" but his Company Commander hears about it and for the sake of discipline in his Unit, he is quite entitled to have the man tried and if found Guilty, have the man punished - it is exactly the same situation. For the sake of discipline in the Unit. The same as the case here, except it is for the Public Welfare.

.....

Third Witness. Mrs. Audrey McLean, 23A, Queen Street, Lancaster, having been duly sworn states:

Q. Mrs.McLean I believe you and your husband lived for a time at the home of Mrs.Vickers - the woman whom you have seen in this Court - I believe you also know Cpl.Davis.

A. Yes.

Q. How long was your husband there?

A. Mac was there a month. - Just a little over 4 weeks.

Q. How long were you there?

A. About a little over 3 weeks.

Q. And for your Board and room, what were you to pay?

A. £4. a week for the two of us.

Q. And for the first week your husband was there before you?

A. He gave her £2.

Q. And the next week you were there?

A. I gave her £4.

Q. And each of you were there for the balance of 2 weeks - normally you would pay her £8, how much did she claim from you?

A. £12. 19s 0d.

Q. Did you eventually pay it to her?

A. I gave it to her.

Q. Why?

A. Well, we were leaving the next day, we did not want anything more unpleasant to follow. I gave her the money purely and simply because I did not want any more bother.

Q. Then you overpaid her £4. 19s 0d?

A. Yes.

Questioned by the President:

Q. Have you any receipts for the money you paid?

A. No.

Q. Did you pay this money to Mrs.Vickers - just the two of you? Had you any witnesses there when you paid the money?

A. No. Just the two of us. I have no witnesses.

.....

4th. Witness.

Capt. John Rodgers, Unit Pay Detachment, R.C.A.F.C. having been duly sworn states:-

Questions by Defending Officer:-

Q. What is your position in the Army?

A. In this Unit I am Adjutant, Quartermaster and Paymaster.

Q. You know Cpl. Davis?

A. Yes.

Q. How long have you known him?

A. About 1 year 10 months.

Q. We have heard evidence in this Court from a witness, Mrs. Vickers, to the effect that she communicated with you to enquire what she should do with some live cartridges belonging to Cpl. Davis. Is that so?

A. She did not communicate with me, she came to see me in the office and told me.

Q. Did you tell her to send these to Cpl. Davis?

A. No.

Q. We have also heard some evidence about a woman's black suede shoe. Do you recall the incident some time ago when Cpl. Davis received a single black shoe through the mail?

A. Yes.

Q. Woman's shoe?

A. Yes.

Q. Did you know who that shoe was from?

A. Mrs. Vickers.

~~PROSECUTING OFFICER READS FROM M.111, P.108, Sec.116.~~

Q. You have known Mrs. Vickers for some time. You have seen her a number of times here?

A. Yes.

Q. Did you take some course of action with regard to permitting or not permitting her to enter this building.

A. After the visit from her, I decided that I should not see her any more and instructed the guard that she was not to be allowed in the building.

Q. From your conversation and knowledge of her generally, would you be prepared to place any truth on any statement she would make under oath?

A. I would believe nothing she said or swore too.

Q. Have you had any letters from her?

A. Many letters.

Q. From your experience and knowledge of Cpl. Davis during the 1 year 10 months, what would you say with respect to his reliability or integrity?

A. His military character while with this Detachment was good.

Q. Have you ever had any information or any grounds for suspecting that his honesty or character as an individual was not good?

A. Not in his military character, but of course Mrs. Vickers cast some reflection on him.

Q. Apart from Mrs. Vickers?

A. No.

Q. Are you in a position to make any comment on this question from your experience with Cpl. Davis. Is he the sort of man who would try to make money out of anyone.

A. I do not know him socially.

DEFENDING OFFICER.

I intend to be very, very short in summing up my two points that were raised in my submission yesterday with respect to the law. Well with respect to the law, even if Mrs. Vickers' story were true, which we do not attempt to refute, but solely for the purpose of argument, assuming it is that the charge has not been made out because the character of the transaction has been changed by her. I am not suggesting that a condonation or mere forgiveness by her would wipe out the agreement, because the agreement is not a matter between two individuals, but is a matter between the Army and this soldier, or the law and this soldier, but I do suggest that were the person who claims that they have been defrauded, or whose goods have been converted, themselves change the character of the transaction from one of conversion to a straight civil matter of debt, thus my submission that there are no grounds whatsoever for regarding the transaction as other than what the person whose goods are involved, themselves are content and willing to regard. I do not wish to labour that point, however, because in this particular case a far more important argument I think, was the argument of a fact rather than the law, that is the question of the credibility of the Chief Witness, Mrs. Vickers. My submission is that this case cannot be better than the evidence of the credibility of the chief person involved. I do not propose going through the multidudinous points in which the witness, Mrs. Vickers has been caught out in absolute lies, the point in which she is obviously mistaken or confused, and I am content to leave that question entirely to the sound discretion of this Court, and merely say that the evidence of Mrs. Vickers was absolutely worthless in any court of law in the land. I am making respectful submission that this court should not, as any court in the world could not, make a finding respecting fraudulent intent on the perjured, muddled, confused and inconsistent story of the complainant. I wish again for just a moment to draw the attention of this Court to the contention of Commercial Law and Justice, but before the accused can be placed in jeopardy, the evidence against him must be clear and pointing to his guilt beyond any reasonable doubt. If the court entertains any

reasonable doubt whatsoever as to whether every single ingredient or any single ingredient of a charge has been made out, the Court must, in accordance with the law, give the accused the benefit of that doubt. I go so far as to say that I can recall no case in which the evidence upon which a charge has been laid, has been so poor, been so bad, as in this case. I think perhaps the Court might well wonder with me why the charge was ever proceeded with.

PROSECUTING OFFICER.

Concerning the Defence submission as to the law in this case, I submit again the statement of the law which I have read to the Court (9 Halsbury and Cranshaw Commercial Code) in substance that is, that a crime in a criminal proceeding has for its object, punishment of a public offence, and any agreement between the individuals concerned cannot affect the question as to whether or not a crime has been committed. It might ~~in fact~~ ~~cause considerable~~ punishment. As to the facts, I agree with the Defence that the case ~~for us~~ on the credibility of the evidence of the Chief Witness, Mrs. Vickers. There is no doubt that a sale of goods between Mrs. Vickers and Miss. Wright took place, using the accused as an agent for Mrs. Vickers. The whole question for the Court to decide is whether or not Cpl. Davis having received the proceeds of the goods, paid over the money he received from Miss Wright to Mrs. Vickers.

If the Court has any reasonable doubt; that the decision be possibly given in favour of the accused.

FINDINGS OF THE COURT

NOT GUILTY.

PROSECUTING OFFICER.

In this connection the charge is an act of the prejudice in having possession of a soldier's Paybook issued in the name of another person, and knowing that the Paybook was not genuine.

One witness, Mrs. Vickers, will be called to establish that the accused was in possession of the Paybook and that he gave the book to the witness.

.....

Mrs. Mary Vickers of Lancaster - housewife, having been duly sworn states:-

Questions by Prosecuting Officer:-

Q. The accused was boarding with you for six months?

A. Yes.

Q. When he left your house did he leave any articles with you?

A. Yes.

Q. What did he leave?

A. Several things.

Q. I will show you a document here Mrs. Vickers. What is that?

A. Paybook I should imagine.

Q. Have you anything to say about that Book?

A. No.

Q. In whose name is it?

A. A32092 Parkinson, Arthur Domville.

Q. Did you ever see this Book before?

A. Yes.

Q. In what circumstances?

A. I handed the book in to you. I do not know who handled it.

Q. You gave it in to the Unit here?

A. Yes.

Q. Where did you obtain the book?

A. It was left with me by Cpl. Davis.

Q. When was that?

A. When he left.

Q. When did he leave?

A. I haven't the date.

Q. What time of the year was it?

A. In the fall.

Q. Was it last fall?

A. No.

Q. Was it the previous fall?

A. Leave it just at that, I do not know.

Q. Was it 3 years ago?

A. I do not know the date.

Q. Do you know the date?

A. No.

DEFENDING OFFICER OBJECTED TO THE CROSS-EXAMINATION OF THE WITNESS. - OBJECTION OVER-RULED BY THE COURT.

Q. Did you have any conversation with the accused about this Paybook?

A. Yes.

Q. What was this conversation?

A. He said that if he did not pay the money in to me, I had to hand this Paybook in to here, otherwise he would collect it along with the things that he had left.

Q. Did you ever see him with that Pay Book?

A. No.

Q. Except on one occasion?

A. That's right.

THE WITNESS SAID THAT SHE PREFERS NOT TO GIVE THE DATE.

EXHIBIT "A" PRODUCED IN COURT.

DEFENDING OFFICER.

No questions.

Questions by Prosecuting Officer:-

Q. Did Cpl. Davis give you this Paybook himself?

A. Yes.

Q. It was not with the other articles left there?

A. I did not take it if that is what you mean. It was to be handed in by me if he did not meet his obligations. This I did.

Q. Did you know it is illegal to have a soldier's Paybook in your possession?

A. I did not know it was illegal for him to leave anything.

DEFENDING OFFICER.

If it please this Court I would like to now tender a submission that the case against the accused be dismissed. There are a number of grounds which I would like to mention, but the one ground upon which I have based this submission at the present time, is that the charge has not been made out. The charge reads that the accused between 1 Jan 42 and 28 Oct 43 was in possession of this document. The only evidence with respect to dates is that it was some time in the fall. We do not know whether this was in the fall of 39, 40, or what fall. Accordingly, since the charge as laid has not been proven, my submission must be dismissed.

PROSECUTING OFFICER.

No reply.

PRESIDENT.

There is no case and this case is absolutely washed out.

FINDINGS OF THE COURT.

NOT GUILTY ON THE FIRST CHARGE.

FGCM - 5 & 6 Sep 44
A-32092 Cpl Davis AD

Exhibit "A" - Soldiers Service & Pay Book MBM 1 (Part I) covering period 8.9.39 to 27.4.40, the property of A-32092 Cpl Davis A.D., Unit Pay Detachment, RCAPC.

Certified that the above has been substituted for the original exhibit in the m/n FGCM proceedings.

Nov 44

(EE Wasson) Capt
JAG Rep 2

~~Exhibit "A"~~ ~~B~~

This is to certify that there is no debt existing between Miss Edna Wright & myself concerning articles sold by her for me.

Arthur D. Davis Jr

28.10.43

"Exhibit "B"

~~£11 0~~
WM

Board £6-00.
Mollie £8-00.
Mrs Vickers 20-00.

Oct 28, 1943

I hereby certify that I will make a payment each week amounting to 10/- to cover this acct.

A. D. Davis

Exhibit "A"
JW

No. March 1 1944

Received from A. Davis

the sum of One Pound ~~Pounds~~

Shillings and ~~Pence~~

£1---

M. Vickers

RECEIVED WITH THANKS

Exhibit "C"

No. Feb. 16th 1944

Received from A. D. Davis

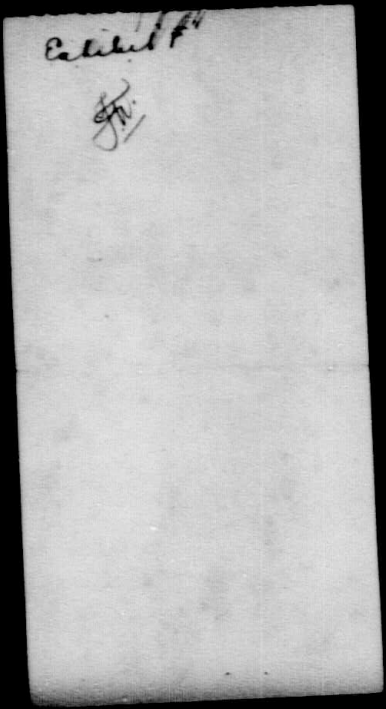
the sum of Two Pounds

Shillings and Pence

£2 - - -

M. Vickers

RECEIVED WITH THANKS



No. Jan 15 1944

Received from Arthur D. Davis

the sum of Two ——— Pounds

——— Shillings and ——— Pence

£2 — — — By Cash. M. Vickers

SCANNED WITH THANKS

No. Jan 15 1944

Received from Arthur D. Davis

the sum of Two ——— Pounds

——— Shillings and ——— Pence

£2 — — — By Cash. M. Vickers

WITH THANKS

No. Dec 15th 1943

Received from

Arthur D. Davis Jnr

the sum of Two Pounds ~~Pounds~~

_____ Shillings and _____ Pence

£2 - - - By cash. M. Vickers

WITH THANKS

No.

Dec 15th 1943

Received from Archie D. Davis Jnr

the sum of Two Pounds ~~Pounds~~

_____ Shillings and _____ Pence

£ - - - By cash M. Vickers

WITH THANKS

No. 1 15th Nov 1943

Received from

Arthur D. Davis

the sum of one Pounds

Shillings and Pence

£1 — 0 — 0d.

M. Vickers

No. 1 15th Nov 1943

Received from Arthur D. Davis

the sum of one Pounds

Shillings and Pence

£1 0s 0d.

M. Vickers

RECEIVED WITH THANKS

99a, GODWIN STREET,
BRADFORD,
YORKS.

M. DYSON.

DRESS FABRICS,
SILKS, LININGS, ETC.

19 Nicholas Street
7.12.18 A

Copy Ref 44 7444

To Cpl Davis A.D. Jnr

Although I gave message to be passed along to you, decided to notify you in person & deliver same by hand in person.

You did not send any explanation firstly re missing raincoat which you promised faithfully to replace or pay for another & provide coupons, also to replace shoes & leather attache case if you could not trace same. This I have in writing and my husband says I am a bloody fool to be so soft with you after the rotten way you treated us & lied about Edna in addition, so get cracking brother & quick or else, & I DON'T mean maybe (as formerly) I have had enough yours caused here by your pie crust promises, lies & weak, kneed excuses, but I have interviewed our family solicitor at home & he is waiting instructions from me. He will be told to proceed, if in every way you do not meet your "overdue obligations" to us all as a family.

Understand, I am very serious, have left all documents with the lawyer & fullest particulars, should witnesses be required. I am ashamed that English women & girls (me among Em & my daughter) should be "Cuilled" by you & your soft soapy way with women, coupled with LYING. I could kick myself for "entertaining" you in any shape or form, & you of all people "spy" on others & tattle to Rodgers PPP. Well well (Tombs House to you) She means business & She is SLICK (remember) Well I too have ALL my buttons on & zip fastener too with phoney Canuck around yes sir.

M. Vickers

I am truly glad that ALL Canucks are not LIKE YOU. By the way tell me clean I'm still my proud to be a bloody Lenny living of this medieval UNK of SHIT as he calls BRITAIN.

Exhibit "1"

M. DYSON.

DRESS FABRICS.
SILKS. LININGS
ETC.

99a, GODWIN STREET,
BRADFORD,
YORKS.

Mch 27th

Cpl Davis
Enclosed, as instructed by C. Rodgers, are the cartridges etc, which you preferred to leave, here as security? until your debts to us, are settled.

As he did not reply to my letters, am doing as stated, so strongly do I feel re the affair of Feb 29th & the Sgt, also Lce Cpl, we discussed. Had I thought that I should have been held up to ridicule after leaving, I should certainly have taken the matter further, earlier. You have not yet seen Mollie, as you promised, or come here with Edna & Bob, as the latter stated.

Will you send your payment on the 30th as I have an obligation to meet, also please increase payments as you definitely promised, in view of the "amount" owing, length of time it has been "overdue", & bearing in mind also, length of time it will take before same is settled. I shall be more than pleased when I have no further interest, in any Canadians, or the Kings Arms Hotel. It is with deep regret I have to acknowledge this but to be quite truthful I have just had enough; an Esteemed Bellyful so to speak. By the way, the one who refers to this as the "Tomb House", was here to see if your divorce was settled. She hadnt the manners to bring Mollie a raincout, what about it? & the coupons for same?, as you promised in writing. Also I am still waiting for you to send or replace, the

hide attache case, 1 Black Suede Shoe (new Size 4)
Coupons, 7 are required for Shoes, you can have the other
one, it is no use to me.

I shall expect a reply as to your intention re these articles, to you will be hearing from the Dame who hopes to become Mrs Davis, now the coast is clear as she puts it.

Yours etc
(Mrs) Mary Vickers

P.S. Why was a statement made that I sent a letter to Rob? what proof have you? Nil. I dont even know his surname or rank. You are a back biting deceitful set of I dont mean maybe! Jack Andrews opened our eyes, he came especially to do it, yes Sirree he sure "told" us about the Canadians, by heck he did.

Exhibit "J"

Copy Ref.
88 11/4/44

19 St Nicholas Street
Lancaster
as Post Date

Corporal Davies
R.C.A.P.C.
Royal Kings Arms Hotel
Lancaster.

This to notify you, Mr Vickers, is on Wednesday paying a very special visit to our family legal advisor & amongst other things, you will be under discussion, re steps to be taken from a military angle. Had you been a civilian, we should not have tolerated so long, your evasiveness etc, re your overdue obligations to us.

You never came as promised when meeting me in Penny Street nor acknowledged receipt of shoe, or explained re same, raincoat or coupons involved, & lastly your missing payment on the 30th March. This is to respectfully point out we intend to act fully on expert advice sought

Yours etc
Mary Dyson Vickers

Exhibit "K"

April 11th 44

Mr Vickers + myself going today specially together, re all matter outstanding; to receive expert advice on same, + get satisfaction + settlement. From evasiveness this matter has been delayed, far too long. All our affairs are being overhauled legally + I feel it is high time you attended to articles mentioned. Promises in writing + verbally have never been kept + furthermore, your manner leaves much to be desired. Never mind Miss, I having to be paid her instalment each pay day. I intend you to keep to your promise + meet long overdue obligation to me. Madison. N.J.

Exhibit "L"

POST CARD

THE ADDRESS TO BE WRITTEN ON THIS

message given verbally to Mollie over phone, in error, communicate ONLY with me here at 19 Nicholas Street or Later Solicitors

Bradford
Forks.

Re. Shoes, hide attache case, ladies raincoat coupons (clothing) involved

M. VICKERS.

Can. Fashion of all

Cpl Davis A D.
R.C.A.P.C
Royal King Arms Hotel
Lancaster

Had this matter have been concerned with a civilian repeat procedure re forcing settlement would have BEEN VERY DIFFERENT

POST CARD

ADDRESS ON THIS SIDE

Dawes Am

Seeing Clift solicitor
Sun Street Lancaster
of Winder & clift at
3.30 may 4
re you & non payment
Exhibit "M" etc etc

Hows Grace & Ridgeon
DOREEN
Fiddler

Yes see you again cent
dearie in LONDON

in addition to par Book Parkinson
& all your letters (French) etc
am taking Edna S Signed
statement by you also
mine per agreement
now Broken? sadly
Capt Rogers say why when
I know Davis to be a liar
believe him at all
salute the Rudy soldier

Hows your Poppa

Hows Verlie NAVAL JOHNNY

Exhibit "N"

POST CARE

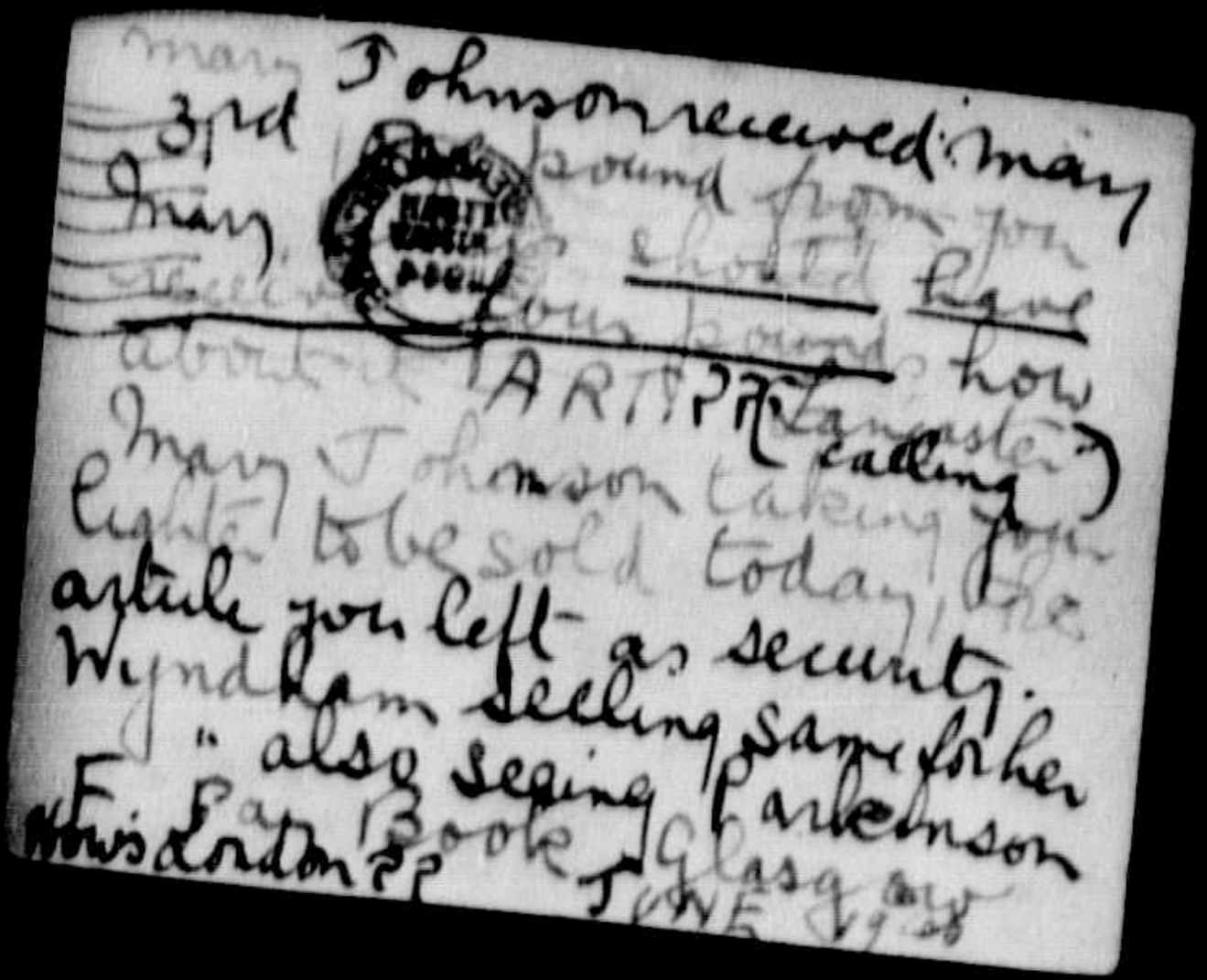
JANCASTER & MORE
11 AM
4 MAY
1944

R 32092

Cpl Davis A. D
(of London Ontario 125 YORK STREET)
R.C.A.P.C.
Can Army Overseas.
London

ACTON Maybe
How's Muriel Parkinson

Mrs Jolley, McClean
regarding attention
Talks MRS McClean



POST CARD

THE ADDRESS TO BE WRITTEN ON THIS SIDE

R320 92 UNIT R.C.
FORMERY CANADIAN
FUSILIERS

CORPORAL DAVIS A.D
R.C.A.P.C UNIT PAY. DET.
C. ARMY. OVER. S.
LONDON.

SAVE CANADIAN BANKS

Loans for [illegible]

PARKINSON
WRITE AT ONCE OR IT
MAY BE TOO LATE
RE WRIGHT. E & VICKERS M.
LANCASTER LANCS

"ONE R DUE" ACCOUNT
RE BOARD. DRAPERY PER
SIGNED AGREEMENTS

MCH 30 LAST PAYMENT
E. WRIGHT & MR WRIGHT
ANNOYED

M. VICKERS DITTO

Exhibit "O"

SUMMARY OF EVIDENCE.

Summary of Evidence in the case of No. A.32092 Cpl. Davis, Arthur,D., R.C.A.P.C. att'd. Unit Pay Detachment, R.C.A.P.C., C.A.O. charged with, w.o.a.s., an act to the prejudice of good order and military discipline in that he made use of a document purporting to be a genuine pay book, well knowing that it was not genuine. (A.A.40)., and comitting a civil offence, that is to say, Conversion of Property contrary to Section 20 (a)(IV)(b) of the Larceny Act 1916.

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness. Miss Edna Wright, 54, Torrisholme Road, Lancaster, sworn, states :-

I knew Cpl.Davis when he was stationed at Lancaster approximately August 42. He was staying with Mrs.Mary Vickers, 19, St.Nicholas Street, Lancaster. Cpl.Davis came to me and said that Mrs.Vickers had some material left over from her stock which she would like to sell, so he asked me if I would like to buy any. I said "yes" and he brought the parcels to me and I bought them and sold some to my friends and gave him the money, and I thought that he had paid it to Mrs.Vickers. I did not know anything about it after that. It was silk material and I purchased goods to the value of approximately £26. I bought about 10 different packages at certain times, but we sent some of the material back that we did not require. I do not know if Cpl.Davis paid the money to Mrs.Vickers - I have no proof at all that he did and I have no proof that he did not.

At certain times he came and said Mrs.Vickers would like the money - she was going away for the day and she'd like the money to go with. I gave it him and as far as I know he took it down there. As he was living at the place I did not think anything about it.

I had conversations with Mrs.Vickers after Cpl.Davis returned from Canada which would be about August. About August 1943 Mrs.Vickers came up to the office to see me. As a result of my conversations with Mrs. Vickers I went down to see Cpl.Davis and asked him to accompany me to Mrs.Vickers to prove that I had paid the money because that was all I was interested in and he went down to sign that paper for me to say that I was in the right. (Statement produced signed by Arthur D.Davis,Jr. dated 28.10.43, marked exhibit "A").

The statement is as follows:-

"This is to certify that there is no debt existing between Miss Edna Wright and myself concerning articles sold by her for me".

I asked him if I had paid the money and to tell Mrs. Vickers in front of me that I had given it to him, and he said Yes I had so I asked him to sign a note for me to prove that I had, and Mrs.Vickers then asked him if he would sign a paper to say that he would pay so much a week, which he did while I was there, and then I think he left the house after he had signed the papers, and that he left the house and went home.

Cross examined by accused :-

Q. You are quite sure that you did not know.... I did not approach you any time prior to August 42?

A. I am not sure, no.

Q. You are not sure. The amount of £26 - until Mrs. Vickers brought it to my attention at her place, had you any definite knowledge that it was £26.?

A. No, but I know it must have been going up to that amount.

Q. With reference - your statement that Mrs.Vickers saw you about two months prior to the statement being signed would bring it approximately to August 1943. Do you feel that is when Mrs.Vickers came to see you after I had returned to this country?

A. Yes.

Q. I might refresh your memory by stating that I was still in Canada in Aug 43.

A. Well I don't remember any exact dates. I am just trying to get it from that statement. I know it was just after you returned from Canada that she came to see me, although I had seen her around town and she had never mentioned the matter.

Q. While I was away?

A. Yes.

Q. Can you give any approximate date as to when I left Mrs.Vickers' residence?

A. About the end of September 42.

Q. You would be quite sure of that time in your own mind that it would be then, would you?

A. Yes.

Q. You have something conclusive to prove it if necessary?

A. Yes.

Q. You did arrange for me to go to a new billet to a friend of yours from Mrs.Vickers did you not?

A. Yes.

Q. You took me there and introduced me to the people?

A. Yes.

...G. Wright.....

Second Witness.

M.36743 Sgt. Matthews.A., S.I.S. Cdn.Provost Corps, C.M.H.Q.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as exhibit "B".

..[illegible]....

Pay book M.B.M.1. Part I referred to in statement of Sgt.Matthews produced in evidence and marked exhibit "C".

I do not require the attendance of M.36743 Sgt. Matthews.A. for the purpose of cross-examination.

A. W. Davis.

Third Witness. Mrs. Mary E. Vickers of Lancaster, Lancashire, Married Woman, having been duly sworn, states:-

I know Cpl. Davis, he boarded at my home in Lancaster for about six months in 1942. I don't remember the date he came to board but he left in the Fall of 1942. He was still stationed in the town after he left.

In 1942 I had a quantity of silk dress goods which were left over from my shop. I formerly had a business in Bradford. In that year I gave a parcel of silk goods, there may have been two parcels, to Cpl. Davis, to take to Miss Edna Wright of Lancaster. She was disposing of them for me. I had seen her several times about it and she had seen the goods. I was to be paid straight away as soon as Miss Wright received the goods. The goods I sent to Miss Wright were valued at £27. 0s 0d. I marked the prices and the length in yards on each separate piece of goods and they totalled £27. 0s 0d. I did not receive any money. My instructions to Cpl.Davis were to bring the money to me after delivering the goods to Miss Wright. I asked him about the money several times. He said Miss Wright hadn't paid. I had no conversation with Miss Wright about the matter until I went to see her at the Treasury Office where she worked. That was on 28 October 1943. As a result of that conversation, she came down with Cpl.Davis to my home. He said in my presence and in the presence of Miss Wright, that Miss Wright had paid him for the silks when she got them. He gave her a statement in writing to that effect. The statement, marked Exhibit "A" now shown to me, is the one I refer to. At the same time he gave me a statement. This was about one year after the original sale of goods. In this statement he undertook to pay me £20. 0s 0d for the goods Miss Wright had. I reduced the account by £7. 0s 0d because I thought it would be an incentive to pay me. Now produced and shown to me is a copy of the original statement, which is not now in my possession. Statement marked Exhibit "B". The statement shows an account for £6. 0s 0d board and £8. 0s 0d for "Mollie". On these three accounts totalling £34. 0s 0d he agreed to make payments of 10 shillings a week. He paid me since the date of the agreement, 28 Oct 43, the sum of £8. 0s 0d about, I am not sure of the exact amount. The last payment was made in March 1944. The account for £8. 0s 0d opposite the word "Mollie" was for a debt of that amount owed my daughter Mollie Vickers. The account for £6. 0s 0d board was board money owed by Cpl. Davis to me. I do not know the dates for which board was due. I consider that Cpl.Davis now owes me £26. 0s 0d.

Concerning a paybook, I know nothing about the contents whatever. I made a statement a few weeks ago to a man dressed in civilian clothes, who said he was representing the military. I don't know his name. I don't see the need of giving the statement again.

Cpl.Davis left a paybook with me, when he left my home, together with other articles. He said if he didn't pay me that I could hand the book in. Pay-book in the name of Parkinson, Exhibit "G" now shown to me is the paybook I refer to. I know nothing about the paybook. I just did what I was instructed to do, just hand it in. Davis said nothing to me about the paybook at any time, except that he left it as security. I never saw Cpl.Davis use the paybook, nor saw it in his possession before he gave it to me.

Cross-examined by the accused :

Q. At the time you were giving me the goods that you sent to Miss Wright, did you keep an account of the amount of the goods going to Miss Wright?

A. Yes.

Q. In that case, can you tell me how the £26. 0s 0d or £27. 0s 0d is made up. Would there be twenty pieces of silk or ten pieces of silk - is it itemized?

A. Yes.

Q. You can submit a bill showing this account in full?

A. Yes.

Q. There are also two other items on the account - one is board - would that be board owing at time I left?

A. Yes.

Q. You are not in a position to say when that was.

A. It was the last month you were with me.

Q. What was the month?

A. I don't know the month it was. I don't know the exact date.

Q. I have a bill from W.N.Winder & Clift - Solicitors, stating sum owing is £31. 2. 6d - are they acting on your behalf?

A. Yes.

Q. Did you withdraw the case from them?

A. No, they wrote and said military were dealing with it.

Q. The sum of £8. 0s 0d due to Mollie, do you know what that was for?

A. I know you owed it to her.

Q. You have no idea why?

A. No.

.....
(sgd) Mary E.Vickers.

The accused was cautioned as follows:

Q. Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make any statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of five pages, was taken down by me in the presence of the accused and that KR 4 (C), (D), (E), (F) and (G) have been complied with.

.....
D.L. Mathieson, Capt.
J.A.G. Branch, CMHQ.
Officer detailed to take Summary of Evidence.

Lancaster,
Lancs.
16 Aug 44.

Mrs. Mary E. Vickers of Lancaster, Lancashire, married woman, being duly sworn states:

Third Witness

I know Cpl Davis. He boarded at my home in Lancaster for about six months in 1942. I don't remember the date he came to board but he left in the Fall of 1942. He was still stationed in the town after he left.

In 1942 I had a quantity of silk dress goods which was left over from my shop. I formerly had a business in Bradford. In that year I gave a parcel of silk goods, there may have been two parcels, to Cpl Davis to take to Miss Edna Wright of Lancaster. She was disposing of them for me. I had seen her several times about it and he had seen the goods. I was to be paid straight away as soon as Miss Wright received the goods. The goods I sent to Miss Wright were valued at £27.00. I marked the prices and the lengths in yards on each separate piece of goods and they totalled £27.00. I did not receive any money. My intention to Cpl Davis was to buy the money & me after delivery to Miss Wright. I asked him about the money several times. He said Miss Wright had to pay. I had no contact with Miss Wright about the matter until I met & saw her at the Treasury Office when she called. That was on 28 October 1944. As a result of that conversation she came down with Cpl Davis & my boy. He said in my presence and in the presence of Miss Wright that Miss Wright had paid him for the silk when he got there. He gave her a statement in writing to that effect. The statement, marked

about the paybook. I just did what I was instructed to do, just hand it in. Davis said nothing to me about the paybook at any time, except that he left it as security. I never saw Cpl Davis use the paybook, nor saw it in his possession before he gave it to me.

Cross-examined by the accused

Q At the time you were giving me the goods that you sent to Miss Wright did you keep an account of the amount of the goods going to Miss Wright.

A. Yes

Q In that case can you tell me how the £26-0-0 or £27-0-0 is made up. Would there be twenty pieces of silk or ten pieces of silk. is it itemized?

A. Yes

Q. You can submit a bill showing this account in full?

A. Yes.

Q There are also two other items on the account - one is board - will that be board ~~when~~ owing at time I left.

A. Yes.

Q. You are not in a position to say when that was.

A. It was the last month you were with me.

Q What was the month?

A. I don't know the month it was. I don't know the exact date. &

Q I have a bill from W. H. Winder & Clift.

Solicitor stating sum owing is £31-2-6d are they acting on your behalf

A. Yes.

Q But you withdrew the case from them.

A No, they wrote and said nothing was dealing with it.

Q. The sum of £8-0-0 due 8 Months, do you know what that was for.

A. I know you owed it to her

Q You have no idea why

A. No

Mary. E. Vickers

The accused was cautioned as follows:

Q. Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I do not wish to make any statement

The accused does not call any witness.

I certify that the foregoing Summary of Evidence, consisting of pages, was taken down by me in the presence of the accused and that R.P.A. 1(C), (2), (3), (4) and (7) have been complied with.

Dated 16 August 1944

D.C.H. Latham, Capt
J.A.G. Branch, C.M.H.Q.
Officer detailed to take
Summary of Evidence

Lancaster Force.

Exhibit "A" now shown to me is the one I refer to. At the same time he gave me a statement. This was about one year after the original sale of goods. In this statement he undertook to pay me £20-0-0 for the goods Mrs Wright had. I reduced the account by £7-0-0 because I thought it would be an incentive to pay me. Now produced and shown to me is a copy of the original statement which is not now in my possession. Statement marked Exhibit "D". The statement shows an account for £6-0-0 board and £8-0-0 for "Mollie". On these three accounts totalling £34-0-0 he agreed to make payments of 10 shillings a week. He paid me since the date of the agreement, 28 Oct 43, the sum of £8-0-0, about. I am not sure of the exact amount. The last payment was made in March 1944. The account for £8-0-0 opposite the word "Mollie" was for a debt of that amount owed my daughter Mollie Vickers. The account for £6-0-0 board was board money owed by Cpl Davis to me. I do not know the ~~[illegible]~~ dates for which board was due. I consider that Cpl Davis now owes me £26-0-0.

Concerning a payback I know nothing about the contents whatever. I made a statement a few weeks ago to a man dressed in civilian clothes, who said he was representing the military. I don't know his name. I don't see the need of giving the statement again. Cpl Davis left a payback with me when he left my house, together with other articles. He said if he didn't pay me that I could hand the book in. Payback, in the name of Parkinson, Exhibit "C" now shown to me is the payback I refer to. I know nothing about

Exhibit "B"
DM

Exhibit B
DM

Statement of No. M 36743, Sgt. Matthews, A. S.L.S., Cdn Provost Corps, C.M.H.Q. made at London, Eng. this 12th day of August 1944:

Acting on instructions from O.C. S.L.S., I investigated certain ~~charge~~ complaints against A 32092 Cpl Davis A.D. between 21 Jul 44 and 27 Jul 44. My investigation concerned allegations that Cpl Davis was indebted to a Mrs M. C. Vickers of Lancaster, for board and for returning certain monies belonging to her as well as for other accounts. It also concerned the improper use by Cpl Davis of a false paybook.

I proceeded to Lancaster on 21 Jul 44 and there interviewed Mrs Vickers, her daughter Miss Mollie Vickers and a Miss Edna Wright. On 27 Jul 44 I interviewed Cpl Davis at London. I called at the office where he is employed as a pay clerk, and after disclosing my identity I told him I had been investigating complaints made against him by Mrs Vickers of Lancaster. I asked him if he wished to make a written statement, and he asked what that would amount to. I explained to him that he would be cautioned and then that any statement he gave I would take in writing and that it could be used in evidence. He said he had already given two written statements and that he didn't think it advisable to make another one. I then had a conversation with him on the subject. I had no intention at the time to charge Cpl Davis with any offence. He stated that he owed Mrs Vickers £25.00 in

in connection with an agreement he had signed for at Lancaster to pay £34-0-0 on which he had already paid £9-0-0.

I asked him about a paybook in the name of "Parkinson", which I showed to him. The paybook I showed to him is the one now before me. It is MBMI, Part II I, purporting to be issued to A32092. Parkinson, Arthur Donnelle

He said it was a paybook he had at Lancaster, that he had had it since he was a Battery Sgt. Major in the R.C.A., when he had access to paybooks which he could get without difficulty. I asked him about the name Parkinson and he stated it was the name of a girl friend he had while in Lancaster and that he had made the paybook out in that name to suit his own purposes. He denied having left the book with Mrs. Vickers, but alleges she stole it from him.

He said the reason he stopped paying Mrs. Vickers the debt he owed her was because she had been writing home to his wife in Canada, and he thought if he stopped payment she would desist from writing.

[signature] Sgt.
D.S. Con. Prov. Cpl. C.M.H.Q.

18th August 1944.

LIST OF WITNESSES FOR THE PROSECUTION.
(In the case of A.32098 Cpl.Davis.A.D)

Miss Edna Wright,
54, Torrisholme Road,
Lancaster.

M.36743 Sgt. Matthews, A.
S.I.S. Cdn.Provost Corps, C.M.H.Q.

Mrs. Mary E. Vickers,
19, St.Nicholas Street,
Lancaster.

.....

LIST OF WITNESSES FOR THE DEFENCE.

N I L.

LIST OF EXHIBITS.

(In the case of A.32092 Cpl.Davis.A.D).

Statement signed by Cpl.Davis,A.D. d/28 Oct 43	EXHIBIT "A".
Statement signed by Sgt.Matthews A. Cdn.Provost Corps	EXHIBIT "B".
Soldiers Service Pay Book, M.S.M.1. (Part I) issued in the name of A.32092 Parkinson,Arthur Domville.....	EXHIBIT "C".
Statement of Cpl.Davis,A.D. d/28 Oct 43 undertaking to pay the sum of 10/-d per week	EXHIBIT "D".

5 U- 86
Tpr. Davis, A. L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-63094 Tpr Albert Lance DAVIS, HQ Sqn 7/XI H) 5 Cdn Armd Bde.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for Civil Trial~~ beginning on (date) ~~12 Jul 45~~ 5.

(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which NIL days were spent in hospital.[2]

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo C.A. for a period of 125 days.

(Sgd) _____ Judge-Advocate, if any. 8 Oct 45. Date awarded. (Sgd) E W Bauer President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 45. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court.

~~I direct that the accused be not required to undergo any part of the sentence.~~

~~(If AA 57A applies & you wish to~~

Date 11 Oct 45 (Sgd) (I H Cumberland) Brig Comd 5 Cdn Armd Bde Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr

B 63094 Tpr Davis AL 13 Oct 45 [signature] Major. OC HQ Sqn (for) 5 Cdn Armd Bde

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 16 54-86

RECEIVED 22 OCT 1945 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED R Lemieux Capt 22 Oct 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED J.A.

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig I H CUMBERLAND, DSO, OBE, ED Comd 5 Cdn Armd Bde dated 5 Oct 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substantive rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B63093	Tpr	Albert Lance	DAVIS	HQ Sqn (7/XI H) 5 Cdn Armd Bde

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 8 Oct 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed. 38/16

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fine bits. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0915 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~ E.W.B.

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to E.W.B. as interpreter? Ans.~~

~~The Interpreter is sworn.(1) Do you object to E.W.B. as shorthand writer? Ans.~~

~~The shorthand writer is sworn.(1) E.W.B.~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	G W BRUCE	5 Cdn Armd Regt (8NSR)
Member	~~Lieut~~	R M O'KELL	WESTMINSTER Regt (M)
Member	Lieut	W E WATSON	2 Cdn Armd Regt (LdSH)
Judge-Advocate			
Prosecutor	Capt	L SHER.	5 Cdn Armd Regt (P&WR) at 5 Cdn Armd Bde HQ Sqn (7/XI H)
Defending Offr	Capt	R C RUTHERFORD	5 Cdn Armd Bde

~~Offr detailed by PC / Requested but not being available~~ ~~waiting member~~ ~~named~~ ~~not present~~

Questions by President: Is the Prosecutor a lawyer? Ans. NA Is the Defending Offr a lawyer? Ans. No (3)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 68 (8) and fn 2 were not followed. See RP p 31.)

A8. The accused B63093 Tpr DAVIS A.L. before arraignment makes(1) no (a) plea (2)

Guilty E.W.B.

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), (68), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB result and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

1745

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) : The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ E.O.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) E.O.
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.))

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....Do you intend to call witnesses on your behalf ?
Ans .....Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 8.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 101(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B. and Ex C respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes through my defending Offr.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)
(*1. When several accused tried separately see RP 71(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 116, 119(A), KR Con 208, 330, 563-566, Diversion AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of present after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ew B

MEDICAL OFFICER'S REPORT

I certify that No. B-63093 Tpr DAVIS, A L
of HQ Sqn (7/XI H) 5 Cdn Armd Bde is in a good state of health,
and fit to undergo Trial by Court martial.
He has an impetigo of face - ~~[illegible]~~ undergoing treatment.

E. Feldman Capt.
Medical Officer

Station In the Field

Date 8 Oct 45

M. F. B. 246
MM-6-41 (792)
H.Q. 1172-39 480

Ew B

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not at any time whatsoever disclose or discover the vote or opinion of any particular member of the court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 68(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 562(*a*).)

(vii) Summing up by JA, *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by Presidents or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 96(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 759.)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Exh. D.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
B63093	Tpr		Albert Lance	DAVIS	HQ Sqn (7/XI H) 5 Cdn Armd Bde

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Oct 45 endorsed by me, for by an offr of my staff or comd, To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified authority,~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint a Judge-Advocate to attend the Offr exercising the~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	G W PRUCK	5 Cdn Armd Regt (SNRH)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	to be detailed by	1 Cdn Armd C Regt (PGD)
Capt or Lt	to be detailed by	Westmr Regt (Mot)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	to be detailed by	2 Cdn Armd Regt (LdSH)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND
(Country.)

(Signed personally. RP 105 fn 2.)

Brig
(Rank.)

Date 5 Oct 45

Commanding 5 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

4/3BA (Pads (to Dirs of AFW) 42/7 & 8/1997 (Gen))

E.D.

A Capt or Lt to be detailed by 1 Cdn Armd C Regt (RCD being not available to sit as Member of this Court-Martial Waiting Member, Lieut W E WATSON, 2 Cdn Armd Regt (L & SH) sat in his stead.

E W Bruce

Ew B.

CHARGE SHEET

The accused, B-6309 Ew B Trooper Albert Lance DAVIS, HQ Sqn (7/XI H) 5 Cdn Armd Bde, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE WHEN ON ACTIVE SERVICE ABSENTING HIMSELF
AA Sec 15 (1) WITHOUT LEAVE

in that he

in the field, did absent himself without leave from 2359 hrs, 12 Jul 45 until apprehended by C Pro C at Clapham Common, London, England at 1415 hrs, 7 Sep 45. (Absent 56 days, 14 hrs, 15 mins)

D McQ Shaver Maj
(D McQ Shaver) Maj
Comd HQ Sqn 5 Cdn Armd Bde.

In the Field
4 Oct 45

To be tried by Field General Court Martial.

(J H Cumberland) Brig
Comd 5 Cdn Armd Bde

5 Oct 45

Ew B

Ex 3 E.1

Mr. President and members of the Court:

I am not giving an excuse for going AWL but just the reasons that I did so. Commencing last April letters from my wife, who usually wrote 3 and 4 times a week, began to become fewer and fewer, dropping down to once a week and then gradually to one every two weeks. The letters seemed to be different. I wrote to my wife quite often asking her what the matter was, but she was evasive and would give me no satisfactoy answer. Although it worried me a great deal, we were in action at that time and it helped me to keep my mind off it.

Around this time I had mentioned to my brother, with whom I correspond quite frequently, about the trouble I was having. My brother and I were going to start a small business after we got home and I had saved quite a bit of money towards this end. He wrote me to the effect that my home seemed to be going all to hell. I have three children and it seems that my wife had another girl staying with her whom she was giving free room and board on condition that she looked after the children while she went out, which apparently was quite often. This information came from my mother and sister, to my brother, who in turn sent it to me when I asked him for the truth of the matter. Around that time I also got a couple of letters from some friends of mine stating that my wife was running around with some transport driver.

I know that at that time I should have gone to the Padre or the organization that deals with that sort of trouble, but the war was over then and I figured that it wouldn't be too long until I was home and that I would be able to fix things up myself. A man doesn't like to admit even to a padre that his wife is running around and his children neglected. I still had a great affection for my wife and wrote to her repeatedly trying to find out the trouble but I got no reply. This went on until the 27th of June when I was offered a leave to the UK which I took.

On or about the 7th of July, I met my wife's cousin in London. He had just been overseas a couple of months and as he only lived 10 doors from my wife, I asked him if there was any truth in what I had heard. After a lot of evasive answers he finally admitted that my wife had been running around for some time and that one of my boys had been left at her Aunt's in Hamilton all summer and also that she had left one with her mother in Toronto and one with her sister in Agincourt. This was later confirmed in a letter from my sister. It was after hearing this news that I seemed to lose interest in everything. I didn't seem to care about going home, the army or the consequences. I went out and got drunk. It seemed that my whole life had gone on the rocks. All the money I had saved, I spend on drink. It wasn't drinking to have a good time, it was drinking to forget that I didn't have anything to go home for--there was no point in trying to start a business--I had nothing to start it for. Nothing seemed of any importance any more. This state of affairs existed until the provost picked me up. Since then I have been under close arrest for a little over a month. Although I've had lots of time to think since then, I still see no solution for my home life, but I do see where I was a fool and was hurting no one but myself by going AWL.

Ex 2

Defending Offr Capt LC Rutherford, in mitigation of Punishment states;

Mr President,
Members of the Court

Exh B
E.3

Tpr Davis has pleaded guilty and has given his evidence on oath, but before the court reaches a verdict, there are several points that I wish to draw to your attention.

Tpr Davis volunteered and came overseas in 1942, leaving his wife and three small children behind. He was posted to Hq Sqn 5 Cdn Armd Bde and fought through the Italian campaign and later in this theatre as a tank driver. With the except of a few minor charges of AWL while the division was not in action, his record is good. During operations his service was extremely good.

Tpr Davis loves his wife and children very much and you can well imagine the effect the news that his home was broken up and that his three children were living with relatives would have upon him. He received this news from his wife's cousin ~~the day~~ a few days before he should have returned to his unit. In this state of mental unrest Tpr Davis lost interest in everything. All the plans he had made for the future seemed lost and nothing seemed to matter.

In conclusion, Gentlemen, I wish to point out that Tpr Davis has already spend 32 days under close arrest and I ask you to consider this in reaching your verdict.

Exh B

Ex "A" Ens 5

SUMMARY OF EVIDENCE in the case of B-63093 Tpr DAVIS, Albert Lance, of HQ Sqn (7/XI H) 5 Cdn Armd Bde, a soldier of the Canadian Army Overseas.

By Direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution

A-34877 Sgt PEARSE, F G, Orderly Room Sergeant, HQ Sqn (7/XI H) 5 Cdn Armd Bde, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

I produce and read Para 7 of Part II Order No 28, d/23 Jul 45 issued by Cdn Sec 2 Ech HQ 21 A GP for HQ 5 Cdn Armd Bde, which states that Tpr DAVIS, A L was AWL from 2359 hrs, 12 Jul 45 (still absent). I also produce and read a certificate of apprehension signed by DAPM, CMHQ, which states that Tpr DAVIS, AL, was arrested at Clapham Common at about 1415 hrs on 7 Sep 45.

The Part II Order is marked Exhibit "A" and the Certificate of apprehension is marked Exhibit "B", both are annexed hereto.

The accused declines to cross-examine this witness. A L Davis

The accused was cautioned as follows: "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given as evidence.

The accused decines to make a statement and reserves his defence.

I Certify that the foregoing summary of evidence consisting of one page was taken down before me in the presence of and hearing of the accused and that Rules of Procedure 4(c), (d), (e) and (f) and (g) have been complied with.

D McL Shaver Maj
(D McL Shaver) Major
Offr taking summary of evidence

Haren, Holland
4 Oct 45

Appendices attached:-

"A" Part II Order No 28, d/23 Jul 45
"B" Certificate of apprehension

Ex "A"

Last Order No 27 19 Jul 45

HEADQUARTERS, 5 CANADIAN ARMOURED BRIGADE
Part II Orders issued by
CANADIAN SECTION 2nd ECHELON HQ 21 ARMY GROUP

No 28 23 Jul 45

"A" OFFICERS

1. STRENGTH INCREASE
(a) T.O.S. from HQ 4 Cdn Armd Div, 11 Jul 45. Auth: HQ FCA/MS/25 d/ 11 Jul 45
Capt H L BROWN CAC

2. ATTACHED
(a) Ceases att to 9 Cdn Armd Regt, 12 Jul 45
H/Capt(A/H/Maj) H A MERKLINGER CCS

3. LEAVE OF ABSENCE
(a) Granted 11 days PL to UK and allowances in lieu of rations and proceeded on 22 May 45. Returned 1 Jun 45. (dates inclusive)
Capt D B SHAVER

4. APPOINTMENTS AND PROMOTIONS
(a) To be GSO 3: Capt H L BROWN, CAC, 11 Jul 45. (Auth: Cons Sub Ser 80).

5. STRENGTH DECREASE
(a) T.O.S. to 2 Cdn Repatriation Depot, 12 Jul 45. Auth: CMHQ MS/4617 d/6 Jul 45
H/Capt(A/H/Maj) H A MERKLINGER CCS

"B" OTHER RANKS

6. STRENGTH INCREASE
(a) T.O.S. from X-3 list CAC 'C' date shown. Auth: EA2/9676 d/19 Jul 45
B 1650 Tpr BOUVETTE F J Dvr Mech MV 'C' 15 Jul 45
G 531 Tpr MILES A J 21 Jun 45

7. ABSENCE WITHOUT LEAVE
(a) A.W.L. from 2359 hrs, 12 Jul 45. (1st publication)
B 63093 Tpr DAVIS A L

8. TRADESMEN'S QUALIFICATIONS
(a) Qualified Armourer Gp 'A', 7 Jun 45. Auth: 5 CAD TTB Rep #2192, d/28 May 45.
C 16559 WOII(AQMS) KELLY H A

9. TRADESMEN'S RATES OF PAY
(a) Granted tradesmen's rates of pay Armourer 'A', 7 Jun 45.
C 16559 WOII(AQMS) KELLY H A Armourer 'B'

10. PUNISHMENTS
(a) On 16 Jul 45, awarded a Severe Reprimand for an off under AA 19, Drunkenness - First offence
B 74507 Sgt CAMERON J A

11. NEXT OF KIN
(a) The name and address of N of K is now verified as shown
14 F 78281 A/Cpl ROSS J D M Mrs. Mary Margaret Eileen Ross (Wife)
161 JAMES STREET
Belleville, Ontario, Canada.

12. HONOURS AND AWARDS
(a) Awarded Second Good Conduct Badge, 19 Jun 45
14 B 48752 Tpr BINANE J J PB
B 48695 Tpr FENTON J W PB

(b) Awarded First Good Conduct Badge, date shown
F 86915 Pte AMON J W 9 Jul 43 PB
B 48829 Tpr BUCKLEY W H 21 Jun 43 PB
B 48829 Tpr BUCKLEY W H 27 Jun 45 PB
B 48660 Tpr DUNCAN E 29 Jun 45 PB
14 D 131267 L/Cpl MITCHELL J L S 17 Aug 44 PB.
B 62547 Tpr METCALFE H J 19 Jan 44 PB
B 62547 Tpr METCALFE H J 18 Jul 44 PB
K 40107 Tpr SIMMONDS D H 21 Oct 44 PB
L 53812 Tpr WIGG L 29 Jun 45
B 48702 Tpr WILSON R P 7 Jun 45

(c) Forf One Good Conduct Badge, date shown PB
B 48829 Tpr BUCKLEY W H 27 Jun 45 (Awd 7 days FP & a forf of 7 days pay 27 Jun 44)
14 B 62547 Tpr METCALFE H J 18 Jul 44 (Awd 7 days CB & forf 7 days pay 18 Jul 44) PB

13. STRENGTH DECREASE
(a) S.O.S. to X-3 list CAC 'C' date shown
F 30065 Tpr PRIME G L 16 Jul 45 Veh Mech MV 'A'
14 L 104535 Tpr REYNOLDS H K 9 Jul 45 Dvr Mech Tk 'C'
B 134784 Tpr SMITH A F 12 Jul 45 Op CAC 'C'

W.A. Murray

(W.A. Murrey) Lt
for Officer i/c
Cdn Sec 2 Ech HQ 21 A Gp

Inc

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I certify that No. B-63093 Rank Tpr. Name Davis A.L.

Unit 5.C.A.B. H.Q.Sqd.1st.Cdn.Army. Was arrested at Clapham Common (Place)

at 1415 (Hour) On 7 Sept. 45 (date) and that at the time of his arrest he was wearing (Military Uniform) or ([redacted]), Signature of Provost-Marshal, Assistant Provost-Marshal, or other officer or the Commanding Officer of the protion of His Majesty's Forces or the officer, Warrant Officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest (Strike out part inapplicable.)

F. R. Stinson CAPT.

D.A.P.M. -- C.M.H.Q.
(R.J.Stinson)

London
8-9-45.

4 Oct 45

I, B-63093 Tpr DAVIS, Albert Lance, HQ Sqn (7/XI H) 5 Cdn Armd Bde, desire to have an officer assigned to defend me at my forthcoming trial by Field General Court Martial.

A. L. Davis
(B-63093 Tpr DAVIS, AL)

LIST OF WITNESSES

FOR THE PROSECUTION

A-34877 Sgt PEARSE, F G

FOR THE DEFENCE

"NIL"

Ex. B.

Ex "B" Ew B.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number B-63093 Rank Tpr Name DAVIS, A L Regiment (or unit)
HQ Sqn (7/XI H) 5 Cdn Armd Bde

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery Conduct sheets ~~XXXXXXXX~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AA Sec 15 (1) - Two	times	Six	times
For	AA Sec 40 - NIL	times	Three	times
For	AA Sec 11 - NIL	times	One	times
For		times		times

~~[illegible]~~

or,

~~[illegible]~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~[illegible]~~ Air Force Act ~~Section 47 of the Army Act~~ and dispensations with trial under A.F.A. 73 ~~A.A. 73~~ are set out in the Schedule ~~[illegible]~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ ..... beginning on the ~~day of~~ .....

4. The accused has been in confinement awaiting trial on the present charges, for ..... days in civil custody, and ~~28~~ 12 days in military custody, making a total of ~~28~~ 12 days in custody, of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ MEM 1 ~~attestation paper is~~ 31 yrs, 4 months, 20 days

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ ~~Attestation paper~~ 21 Jul 42

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. ~~[illegible]~~ military ~~[illegible]~~ military ~~[illegible]~~ military

10. (1 ~~[illegible]~~ Air Force ~~[illegible]~~

Ew B. Ex. "B"

11. (If the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ~~Pte~~ Permanent Force unit

~~dated~~, and in the regiment (or corps) the rank of ~~Pte~~

~~dated~~ ~~Pte~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the ~~present date~~ ~~Pte~~

Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 41 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

~~Pte~~

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this the fourth day of October 1945

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

MFM 6 (AFB 122) 40/PAM/136 (3438)

No 8-63093 Name DAVIS, A L | Sqn, Battery, or Company | Corps CAC | Date of enlistment 21-7-42 | GC Badges | Service or Proficiency Pay Fx N/A | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc C I Stuart, Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Clean Sheet 6-6-43 (sgd) M S MacKinnon, Lt					
In the Field	16-7-43	Tpr	Nil	AA Sec 15(1); AWL from 2300 hrs 16-7-43 to 1100 hrs 17-7-43 (Absent - 12 hrs)	Sgt Waters	3 days cay 7 days CB	22-7-43	Major Grant	Forfs 1 days pay FR&I.
In the Field	24-7-43	Tpr	Nil	AA Sec 40(2); Failed to do maint on WD Veh	WO[illegible] Welock	5 days CB	26-7-43	Major Grant	
In the Field	18-9-43	Tpr		AA Sec 40(2); Failed to carry out instructions with reference to Cgd Rm Duties.	Tpr DelRizzo Sgt Bone	5 days CB	20-9-43	Major J W Grant	
In the Field	21-2-44	Tpr		AA Sec 15(1); AWL 6 hrs, 36 mins	Doc Evid	2 days FF	25 Feb 44		Forfs 1 days pay FR&I 149
In the Field	21-3-44	Tpr		AA Sec 15(1); AWL 7 hrs, 55 mins	QSM Hill, T	Admonished	23 Mar 44	FW Nash Major	Forfs 3 days pay FR&I.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4-4-44	Tpr		AA Sec 11: Left WD Veh unattended	Documentary	5 days FP Forf 5 days pay	11-4-44	Maj FM Nash	
Field	16-6-44	Tpr		AA Sec 40: Leaving kit in untidy condition	F-41575 Sgt MERVIN, RE	14 days CB	19-6-44	FM Nash, Major	
Field	5-8-44	Tpr		AA Sec 15(1) AWL absent from 2200 hrs 5-8-44 until 1315 hrs 6 Aug 44. Absent - 15 hrs, 15 mins	G-121 Sgt Scott, J J D-77298 A/Sgt LEIBSON, A	Forfs 7 days pay	7-8-44	GD Smith Major	Forfs 1 days pay FR&I 149(1)(a)
Field	18-11-44	Tpr		AA Sec 15(1): AWL from 2200 hrs 18 Nov 44 to 1745 hrs 19 Nov 44. Absent 19 hrs, 45 mins	Sgt Flack Cpl Mowbray	6 days FP	20-11-44	Major FP Andre	Forfeits 1 days pay FR&I 149(1)(a)
Field	23-5-45	Tpr	Nil	AA Sec 15(1): AWL from 1600 hrs 23-5-45 to 2100 hrs 24-4-45 (Absent 1 day, 5 hrs)	Sgt Cowan Cpl Mowbray	7 days CB	25 May 45	Major F P Andre	2 days pay FR&I 149(1)(a)

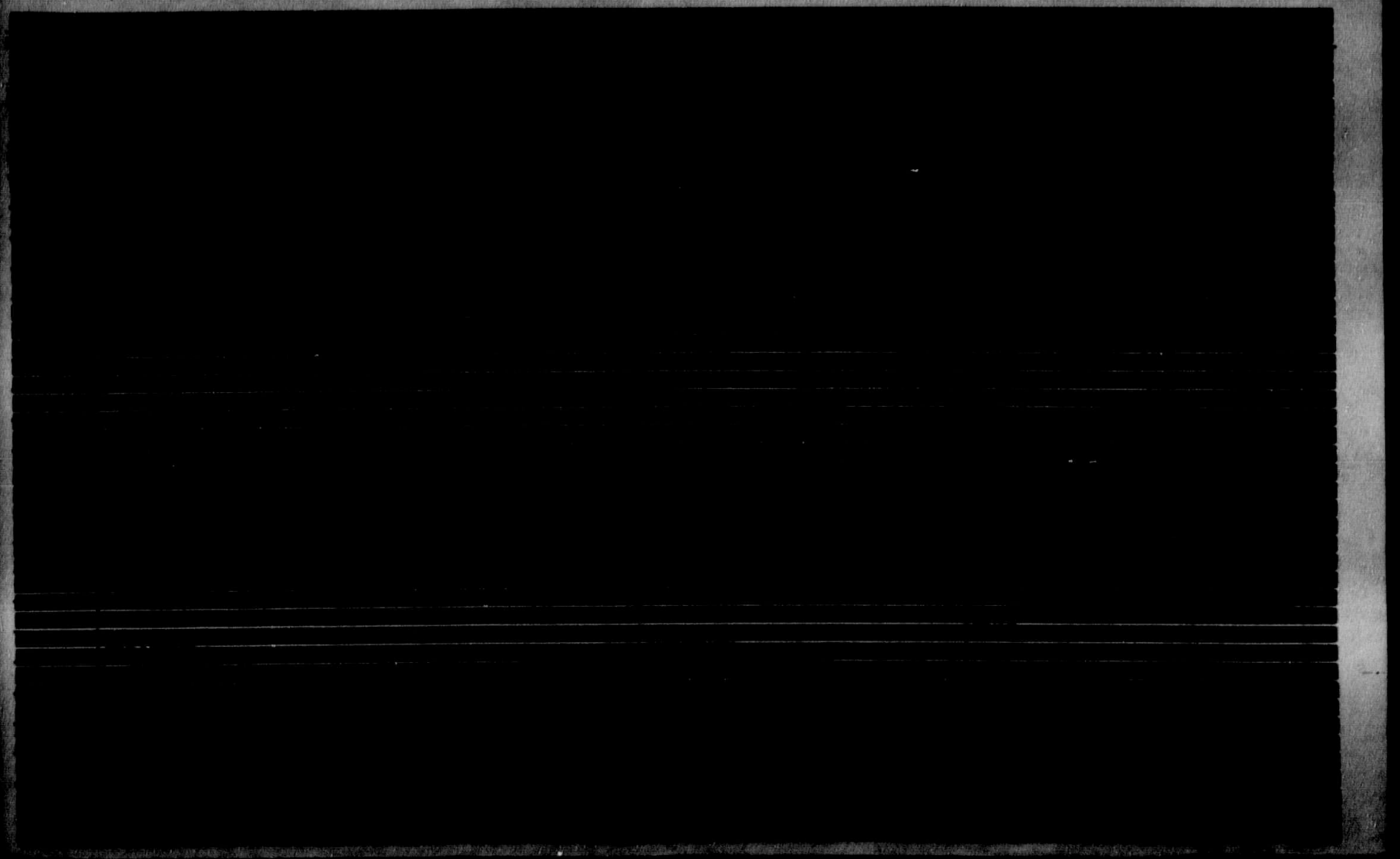
"CERTIFIED TRUE COPY

(D McQ Shaver) Maj

Comd HQ Sqn 5 Cdn Armd Bde

DEFR HAVING CUSTODY OF REGTL BOOKS

52-40 Davis C.



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B55451 Pte Connie DAVIS 3 C.T.C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) wdf

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one hundred and twenty days

(Sgd) ..... Judge-Advocate, if any. 13 Mar 46 Date awarded. (Sgd) W.W. Lockhart Lt Col. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I mitigate the sentence to read to undergo detention for a period of sixty days and I confirm the finding and the sentence as so mitigated

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1) wdf

(1. AA 57A. Delete if not used.)

Date 14 Mar 46 (Sgd) H.W. Butterfield Brig

Commanding Deputy Comd. C.F.N.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B55451 Pte Connie DAVIS	16 Mar 46	R.P. Stewart Capt (R.P. Stewart) Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 169-52-40

CMHQ JAG BRANCH RECEIVED 26 MAR 1946

FIELD GENERAL COURT-MARTIAL

CFAPP (In lieu of AFA81 40/P & B/1098 76(44)) 4/38B

Convened by Order of Brig T.J. Rutherford CBE Dep/ Comd HQ CFN dated 12 Mar 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B55451	Pte	Connie	DAVIS	3 Canadian Transit Camp

PROCEEDINGS REVIEWED

27 Mar 46 C.H. Tuft, Maj.

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 13 Mar 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~ wdf assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns in RO's. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to app/priate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet, ~~if~~ wdf attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ wdf amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ wdf brought before the Court. At 1435 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ wdf fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt summarily by the CO.~~ wdf

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

~~A5. Provided no accused: Do you object to the interpreter? Ans~~ wdf

~~The Interpreter is sworn.(1) Do you object to the shorthand writer? Ans~~ wdf

~~The shorthand writer is sworn.(1)~~ wdf

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ wdf are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt. Col.	W.W. LOCKHART	RCCS	3 C.T.C.
Member	Lt. Col.	E.L. de PENCIER	RCA	3 C.T.C.
Member	Lt. Col.	A.P. DODDS	RCA	3 C.T.C.
~~Judge-Advocate~~ wdf				
Prosecutor	Lieut.	E.R. WOOD	C.I.C.	3 C.T.C.
Defending Offr	~~Capt~~ wdf Lieut	W.D. CALLAGHAN	C.I.C.	3 C.T.C.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused Pte. Connie DAVIS before arraignment makes(s) (no) ~~objection~~ wdf (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~then~~ wdf arraigned ~~separately~~ wdf on all charges in the charge sheet.(1) The accused does ~~not~~ wdf object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 102. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, discuss and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ wdf considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 169 P. 69

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and to call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused : Do you wish to make a statement ? Ans. No sir (4)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement (5). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) is (are) charge(s) him (them) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Do you intend to call witnesses on your behalf ?
Ans. Are they witnesses as to character only ? Ans.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or MFB 276. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes herewith written statement - (Copy attached) (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). Give sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, in lie awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 343-346, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 136. When accused already under sentence of imprisonment or detention see AA 44(6), 96(1), KR Can 344. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 367. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

WL

MEDICAL OFFICERS CERTIFICATE

(Rpt Cmd Para 537)
(MIL-MED 173)

I certify that I have this day examined B 55-[illegible]
(Rank)

Pa DAVIS C. and in my opinion he is
(Rank) (Name)

fit to under go trial by Court-Martial.
~~unfit~~

Station In the Field

Date 13 Mar 46

[signature] (Sgd).
Medical Officer

(Unit) 32 FDS

wl

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/F&S/1607 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-55451	Pte		Connie	DAVIS	3 Canadian Transit Camp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 March 46 endorsed by me, (~~or by an offr of any other Army~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~[illegible]~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Lt-Col	W.W. LOCKHART	R.C.C.S.	3 C.T.C.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Lt-Col	E. L. de PENCIER E.D.	RCA	3 C.T.C.
Lt-Col	A.P. DODDS	RCA	3 C.T.C.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)		(Unit.)
Lt- Col	R.G.L. PARKER O.B.E. E.D.	CIC	3 C.T.C.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in the Field (Country.)

T J Rutherford
~~(Signed personally.~~ RP 105 fn 2.)
(T.J.Rutherford, C.B.E.)

Brigadier (Rank.)

Date 12 March 1946

Commanding Deputy Comdr. H.Q., C.F.N.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. " DEFENCE PROCEDURE " : RP 116 provides that for procedure on defence RP 40-42 will apply so *far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 86.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or *on new matter*, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been *no* statement by accused or *any* evidence given *as to facts*, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can* 563(*a*).)

(vii) Summing up by JA, *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (g) (ii).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after intimation of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 799.)

4. The President or JA, *if any*, will return proceedings, promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

CHARGE SHEET

The accused, B-55451, Private Connie DAVIS, (X-3A List) Canadian Infantry Corps, on strength of 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas, is charged with:-

Sec. 15(1) Army Act — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, at 0315 hrs on 13 November 1945, absented himself without leave until surrendering himself to the Corps of Military Police at GHENT at 1910 hrs on the 24 February 1946

(Absent 103 days 15 hrs 55 mins)

In the Field
12 March 1946

M.A. Frank

(M.A. Frank) Major
Officer Commanding
3 Cdn Transit Camp
C.F.N.

To be tried by Field General Court Martial.

In the Field
12 March 1946

(T.G. Rutherford, C.B.E.) Brigadier
Deputy Comdr. H.Q., C.F.N.

 APPENDIX "I" WS

Statement of Pte Davis C B55451 in mitigation of punishment.

I am B55451 Pte Davis C at present on strength 3 Cdn Transit Camp C.F.N. I enlisted in Feb 1941 and came overseas. In June 1945 I served in France & Germany from Aug 6/44 to the present time. I went on leave to England on Aug 16/45 for 12 days During this time I become sick I had a decease of the hands and feet. While in hospital I contacted my officer by letter asking him what to do He replied by letter that I should get a doctors certificate from the Hospital and return to the unit as soon as I was discharged This I did I got a certificate from the Hospital that is the Miners Hospital at Redruth Cornwall Eng and started back to my unit. I was picked up by the Provost in London on 19 Sept 45 on my way back to my unit. The Provost put me under close arrest and sent me to Hedly at aldershot. Here I was held under close arrest for a period of 32 days As there is no custody in Hedly I was held the same as those undergoing detention. This was because they could not locate my documents I was finaly sent under close arrest to 13 Bn. C.F.N. Here I was paraded befor the C.O. charged with A.W.O.L. for the period of my sickness The doctors certificates were attached at this time to the charge Not being familiar with orderly room procedure

when the CO asked me if I would accept
his punishment I said yes He then gave
me 14 days F. P. and I was sent under
open arrest to my unit I immediately took it
up with my Officer who said he would take
the matter up with the CO of 1st Bn as
the unit had no record of any crime.
I completed my 14 days F.P. and as
nothing had been done about the treatment
I had received I went A.W.O.L. in disgust
I worked in Holland and established myself
in this country and prepared a home for
my wife and baby girl. I made arrangement
to bring them over from England. However
by the time I realized I had made a
mistake by going A.W.O.L. so I decided to
surrender myself and have the whole
matter cleared up. So I surrendered
myself to the Provost and I would
ask you sir to consider the circumstances
outlined above when you sentence me and
I would ask also that you be as lenient
as possible as any lengthy punishment
will surely jeopardize my future life

Connie Davis

Witnessed

Ballaghaderreen

EXHIBIT "A". WJ

SUMMARY OF EVIDENCE

In the case of B-55451 Private Cennie DAVIS, (X-3a) List, Canadian Infantry Corps, on strength of 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

The following documents were laid before the Officer detailed to take the Summary of Evidence and initialled by him for the purpose of identification and pertaining to the accused.

"A" A certified true extract from X-3A List CIC Unallocated Pt II Order No. 258 dated 27 Nov 45, showing the accused as AWL from 0315 hrs 13 Nov 45.

"B" A certificate of the surrender of the accused to the Corps of Military Police in GHENT at 1910 hrs on the 24th February 1946

The accused does not question the documents.

DR Saunderson

(D.R. Saunderson) Lieut.
Officer detailed to take
the Summary of Evidence.

The accused was cautioned as follows:-

Do you wish to make a statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but anything you say or any evidence you may give will be taken down in writing and may be given in evidence.

The accused reserves his defence.

Certified that all the provisions of R.P. 4 (c)(d)(e) and (f) have been complied with.

Taken down by me in writing in the hearing and presence of the accused, this 11 day of March 1946, in the Field.

DR Saunderson

(D.R. Saunderson) Lieut.
Officer detailed to take
the Summary of Evidence.

WS

- LIST OF WITNESSES -

In the case of B-55451 Pte Connie DAVIS.

(For the Prosecution)

None

(For the Defence)

None

LIST OF EXHIBITS

In the case of B-55451 Pte Connie DAVIS.

(For the Prosecution)

"A" A certified true extract from X-3A List CIC Unallocated Pt II Order No. 258 dated 27 Nov 45, showing the accused as AWL from 0315 hrs 13 Nov 45.

"B" A certificate of the surrender of the accused to the Corps of Military Police in GHENT at 1910 hrs on the 24th February 1946.

(For the Defence)

None

CERTIFICATE OF ACCUSED

I, B-55451 Pte Connie DAVIS, hereby acknowledge that I have received, free of charge, a copy of the Summary of Evidence with a copy of the Charge Sheet therein.

I also request that an officer be appointed to act as my defending officer at my forthcoming court martial.

C. Davis

(C. Davis)

PART II ORDER EXTRACT FORM

D & P

99/20/

15 JAN 46 19

EXTRACTS FROM: UNIT X-3A LIst CIC Unnll

Part II Order No. 258 dated 27 NOV 45

ABSENT WITHOUT LEAVE

AWL from 0315 hrs 13 Nov 45 (X3A List 19 CSEC)

B55451 PTE DAVIS C

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Originating Clerk's Initials

for

Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70

Ex "B" 109

TC

CERTIFICATE OF SURRENDER UNDER ARMY ACT SEC. 189(1)(3)

I CPL. MARKHAM. G. (rank & name) certify that No. R. 554571

Rank. PTE. Name. DAVID. C. of 19. SPECIAL EMPLOYMENT COY

(Unit) surrendered himself to No. 4404866 Rank. CPL. Name. MARKHAM. G.

of 244 PROVOST COY. C.M.P. (Unit) at GHENT (place) at 1215.

hrs on 24th FEB 1944. (date) as a deserter (or absentee without leave).

He was dressed in uniform/~~plain clothes~~.

Signature [signature]
Officer Commanding

Date 26/2/44 O.A.P.M. H.Q. L. OF C. SUB AREA (Unit).

NOTES:

1. If the surrender was made to an OR, this certificate MUST be signed personally by HIS Commanding Officer.
2. If the surrender was made to an officer, this certificate may be signed either by that officer or by his Commanding Officer.
3. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.
4. In no circumstances should the place of surrender be described as "in the Field". The actual place of surrender should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

(Appx 'D' to 21 AGp CMO 677/44)

EXHIBIT "B" WS

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or at the case may be).*
B-55451	Pte	DAVIS, C.	3 Cdn Transit Camp - CFN

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereon stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Not Known ——— times.
For " " ——— times.
For " " ——— times.
For " " ——— times.

Date of first entry in Field Conduct Sheet Not known

Date of last entry in Field Conduct Sheet Not known

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. [redacted]

4. The accused has been awaiting trial on the present charges for ——— days in civil custody; and for 17 days in military custody, *i.e.*, ——— days in open arrest, 17 days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 28 yrs 9 mos

6. The date of his attestation [redacted] 13 Feb 40

7. The service which the accused is allowed to reckon is

8. The accused is in possession of† CVSM & Clasp, Fr-Germany Star, Defence of Britain Medal

9. [redacted]

[redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike out if not applicable.

†State the military decorations (if any) held by accused.

[illegible] 30,000 8/44 21-4761. Form B.296(War)(2)

B-55451 No. DAVIS Name Connie | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | EXHIBIT "C" | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET					
				Certified true copy of the original in my possession. J.H. Watson Lieut. (J.H. Watson) Lieut. Officer having custody of the original.					

(PTO)

EXHIBIT "B" WJ

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-55451	Pte	DAVIS, C.	3 Cdn Transit Camp - CFN

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Not Known times.
For " " times.
For " " times.
For " " times.

Date of first entry in Field Conduct Sheet Not known

Date of last entry in Field Conduct Sheet Not known

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. [redacted]

4. The accused has been awaiting trial on the present charges for ____ days in civil custody; and for 17 days in military custody, *i.e.*, ____ days in open arrest, 17 days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 28 yrs 9 mos

6. The date of his attestation [redacted] 13 Feb 40

7. The service which the accused is allowed to reckon is

8. The accused is in possession of CVSM & Clasp, Fr-Germany Star, Defence of Britain Medal

†State the military decorations (if any) held by accused.

9. [redacted]

[redacted]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W: 55000/1401 30,000 3/44 81-4781. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Dated this 13 th day of March 1946

EXHIBIT "C" WS

B-55451 No. DAVIS Name Connie | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET					
				Certified true copy of the original in my possession. J.H. Watson, Lieut. (J.H. Watson) Lieut. Officer having custody of the original.					

(PTO)

1000-125

PTE. DAVIS D.B.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-53024 Pte DAVIS, Donald Beaufort - 4 CGPC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 18(4)	Guilty	Guilty	except that he did not steal
2nd AA Sec 18(4)	Guilty	Guilty	money in lieu to the value of £1-1-0
3rd			the property of Sgt. Howard James Cpl.
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

707. At present under sentence for ~~sentence for~~ ~~beginning on (date)~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for fifteen (15) months

(Sgd) [illegible]
Judge-Advocate, if any.

15 Feb 44
Date awarded.

(Sgd) F D Tweedie Lt Col
President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date

(Sgd)
Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Quashing after promulgation: KR Con 573. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 4.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and Sentence Confirmed.

~~I direct that the accused be not committed to prison on detention, suspension vested thereon ordered.~~ (1)
(1. AA 57A. Delete if not used.)

Date 17th Feb 44

(Sgd) [illegible] Brigadier
Commanding (Cdn. Reinforcement Units) C.A.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 574, 577.)

Accused.
K-53024
Pte. Davis, D.B.

Date.
22 Feb 44

Signature of Offr.
[signature]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

DAD D-125

CFA86 (In lieu of AFA3) 40/P & S/1668 (2804)

Convened by Order of (G. Francoeur) Brigadier Comd "D" Group, CRU dated 14 Feb 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-53024	Pte	Donald Beaufort	DAVIS	4 Canadian General Pioneer Company

PROCEEDINGS REVIEWED

[signature] Major
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 15 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

707. A1. The President, Members, ~~waiting Members, JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

707. A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(4)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

707. A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1005 hours trial commences.

707. A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 537. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 543(c). Delete, if not applicable.)

707. President to accused: Do you object to ~~S/Sgt CHAPLAIN RC~~ as interpreter? Ans ~~No~~

The interpreter is sworn.(1) Do you object to ~~S/Sgt CHAPLAIN RC~~ as shorthand writer? Ans No

The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Mc (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 58(2). If objection, see procedure AA 54, RP 25, 71, 18, MML p 742.)

707. A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	F D TWEEDIE	
Member	Capt	" CHRISTIANSEN	HQ CRU
Member	Lt	J D PATTERSON	4 CIHU
Judge-Advocate			3 CIHU
Prosecutor	Capt	M H HEAN	
Defending Offr	Capt	A H CLAYTON	4 CIHU
			1 CACRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)
(1. RP 28, 37, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See Div p 2.)

A8. The accused ~~before arraignment makes(s) (no)~~ ~~plea(s)~~ (1) ~~plea~~ (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(6), 108), or as to the jurisdiction of the Court (RP 34, 35(6), 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the arguments made in support or opposite, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

707. A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 12. If otherwise, state and make appropriate record per Notes.)

A10. The Court ~~re-cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*E*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. ~~The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning~~ of the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans Not.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans Not.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decides (not)~~ to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 17(*E*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused its charge such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D or p* 3. *RP* 17(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E on p 3~~.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No.(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(no)~~ (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed on the ~~former, but the accused is (are) found Not Guilty on the latter~~ charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Make a statement. Do you intend to call witnesses on your behalf? Ans No. Are they witnesses as to character only? Ans ——.

(1. *RP* [redacted] 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* #5. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up to the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the findings, if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*J*) (*i*), *RP* 45, 120(*A*). 2. *AA* 54(*J*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to *give* evidence yourself or to call any witnesses as to your character?(1) Ans No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) ~~soldier(s)~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex F and Ex G respectively.(3)

(1. *AFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes.(2)

(1. *RP* 27(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*J*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* [redacted]. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-52, 69, 118, 119(*A*), *KR Can* 538, 538; 543-546. *Overseas* 80 309, 1323, *MML p* 90, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 132. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 96(3), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 562. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K-53024 Private Donald Beaufort DAVIS, on the strength of 4 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas, is charged with: -

FIRST CHARGE
SECTION 18(4)
ARMY ACT

WHILE ON ACTIVE SERVICE

Stealing Property belonging to a Person subject to Military Law.

In that He,

In the Field, at approximately 2245 hours, 2 February 1944 did steal One Ronson Lighter, engraved with the initials, "AB." and One Leather Wallet, the property of B-19665 Sergeant Alfred Henry BAYLISS, a person subject to Military Law.

SECOND CHARGE
SECTION 18(4)
ARMY ACT

WHILE ON ACTIVE SERVICE

Stealing Property belonging to a Person subject to Military Law.

In that He,

In the Field, at approximately 2245 hours, 2 February 1944 did steal One Leather Wallet, stamped - "D.H.R. B-42502" and money in coins to the value of £1-1-6, the property of B-42502 Sergeant Howard James COGGER, a person subject to Military Law.

In the Field,
11 February 1944

J.H. Donnelly

(J.H. Donnelly) Capt.,
A/Officer Commanding,
4 Cdn Gen Pioneer Coy C.A.(O)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

G. Francoeur

(G. Francoeur) Brigadier
Commander
"D" Group, Cdn Rft Units.

In the Field
14 Feb. 1944.

J.D.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K-53024	Pte		Donald Beaufort	DAVIS	4 Canadian General Pioneer Company

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (date) 14 Feb 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Lt-Col	P.D. Tweedie	HQ CRU

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
A Captain	to be detailed by CO	4 CIRU
A Lieutenant	to be detailed by CO	3 CIRU

WAITING MEMBER.

Rank.	Named or detailed, if any. RP 106.	Unit.

JUDGE-ADVOCATE.

Rank.	Must be named, if any. RP 106.	Unit.

On Active Service in the Fd

in England (Country.)

G Francoeur (Signed personally. RP 105 fn 2.) (Rank.)

Date 14 Feb 44

Commanding "D" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA95 (In lieu of AFA2) 40/F & S/1697 (4931)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 98(C)*), any objections (*RP 98(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 93(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 93(A), be taken by him verbatim. (*RP 98 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the page in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-43 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 46 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 46 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 46 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(5), KR Can 863(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting an evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 98(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can) proc 557

I certify that I have this morning examined No K53024

Name Pte DAVIS D.B. and in my opinion he is fit

to undergo trial by Court Martial

In the Field

Date: 15-2-44.

Medical Officer,
4 Cdn Gen Pioneer Co, C.A.(O)

F.G.C.M. K-53024 Pte O.F.Davis 4 C.I.R.H.

- PROSECUTION -

NOTE:

The Defending Officer waives notice under RP 89)3) that the Prosecutor is a lawyer and states that he desires to proceed with the case today.

First Witness for the Prosecution

E.11025 Pte (A/L/Cpl) MATHESON ML, 4 Cdn Gen Pioneer Coy, having been duly sworn is examined by the Prosecutor:

Q1 To what unit are you at present attached?
A1 The Pioneers, Sir.

Q2 Is that the unit to which the accused belongs?
A2 Yes, Sir. I know the accused and recognize him in Court. (Witness points to accused). My quarters are in Tslevera Barracks. I occupy the same room as the accused; there are approximately 15 men at present, Sir. On or about 2nd February, 1944 there were 15 men there also. On the evening of 2nd February, 1944, just before lights out at 10.15, 2215 hours, the accused came in and some of the boys were having lunch, and he asked the boys if he could have some with them. About 5 minutes later he went out, and from that time on we had not seen him until after lights out, 2230 hours, he came in about 2240 hours. He went to the toilet in the back of the barracks. I know that he went there because he was the only one up and about at that time. After he came out of the lavatory he went towards his bed and just as he reached his bed, the Sjt from upstairs came in. The Sjt put the lights on, and Davis was standing at the foot of his bed, Sir. He then asked the accused to empty his pockets. The accused emptied his pockets. After this the Sjt found that there was nothing from the contents of the accused's pockets that belonged to him, the Sjt. The Sjt asked him what he had done with the wallets. There was nothing on the table that belonged to the Sjt . By this time I had got up. Another man came into the barrack room after that with 2 wallets and said that they had been found in the washroom. He had nothing besides the 2 wallets. They were talking for awhile then, then the Orderly Sjt had the accused put under arrest. There was no one in the room at 2215 hours except the accused. The lavatory is at the far end of the barrack room. (Witness prepares a sketch of the barrack room)

PLAN PREPARED BY WITNESS OFFERED AND RECEIVED IN EVIDENCE AND MARKED EXHIBIT "A".

Cross-examined by Defending Officer:

Q3 Cpl Matheson, you said all the men were in bed when you turned out the lights, except the accused.
A3 Yes, Sir.

Q4 Who took the accused into custody?
A4 They came up from the Guard Room, Sir.

Q5 Did this Sjt tell any men to fall in and take the accused into custody?
A5 That I could not say, Sir.

Q6 Who was this Sjt?
A6 I don't know, Sir.

Q7 Were any of those other rooms on that floor occupied?
A7 Yes, Sir, by men from my company.

Prosecutor declines to re-examine this witness.

Questions by the Court:

Q8 This washroom that you have marked on the plan which is now before the Court, is that used by others than those in your hut?

A8 Yes, Sir.

Q9 There is only the one entrance to your hut, the one you marked on the plan?

A9 No, Sir, there is another but it is always kept locked.

Q10 Is there another entrance to that lavatory from another barrack room?

A10 No, Sir, but from the reading room there is, and it also is always locked.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE WITNESS WITHDRAWS.

Second Witness for the Prosecution

C.51603 Pte GARVOCK JJ, 4 Cdn Gen Pioneer Coy, having been duly sworn is examined by the Prosecutor:

Q11 Do you know the accused?

A11 Not very well, Sir. We occupy the same living quarters, at least on the evening of 2 Feb 44. I'm not there now myself. At about 2200 hours we were having a bit of lunch at approximately a quarter after 10. Pte Davis joined us and later left the room. The lights went out at 1030. A commotion was later made by Davis coming into the room, and a Sjt was trailing him. The Sjt put the lights on. Later the accused was put under arrest. No one else had left the barrack room except Davis before or after the lights went out.

Cross-examined by the Defending Officer

Q12 You said there was a commotion when Davis came in?, but he came in by himself, with a Sjt trailing him? Did the Sjt say anything to Pte Davis?

A12 He questioned him as to where he had been and I guess he figured right away that he had the right chap.

Prosecutor declines to re-examine this witness.

Questions by the Court:

Q13 Are there any night lights in the hut?

A13 No, Sir, there are no lights like that; there are no night lights.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B).

THE WITNESS WITHDRAWS.

Third Witness for the Prosecution

R.19665 Sjt BAYLISS AH, 4 Cdn Inf Reinf Unit, having been duly sworn, is examined by the Prosecutor:

Q14 Will you describe to the Court where your quarters are Sjt?

A14 Our quarters are the top floor of Televera Barracks at the extreme end, just past the Pioneers. Our room is the one at the far end, the most westerly end. When I got back in my quarters at approximately 10 o'clock, I went to bed, and at approximately 1030 or 1045 I was awakened by someone who was in the room and who had kicked the bench as they were going out. I wasn't actually

asleep and I heard the door open and someone go outside. I immediately got out of bed and made for the door. When I got outside the door I saw a man going down the stairs. The stairs are right at the door as you go out. Sjt Burr, was at this time coming up the stairs. I hollered to Sjt Burr to stop him and immediately Sjt Burr went down after the man. When I got back to the room my clothes and Sjt Cogger's clothes were on the floor. We both went through our clothes and found certain articles missin . I got dressed and Sjt Cogger and I were just going out when we met Sjt Burr who said he had a man downstairs. We all then went down and Sjt Burr identified the man that he saw on the stairs. He made him empty his pockets but I found nothing from the contents that belonged to him. The accused was present all this time. Sjt Burr left the room to go to the lavatory and came back with two wallets and one Ronson lighter and said he had found them in the washroom.

Q15 Is this the lighter that Sjt Burr gave to you when he returned?
A15 Yes, Sir, that is my lighter.

(LIGHTER MARKED "X" FOR IDENTIFICATION)

Q16 Do you know this wallet?
A16 Yes, ~~Sir,~~ that is my wallet.

(WALLET MARKED "Y" FOR IDENTIFICATION)

Q16 What happened then?
A16 Immediately then Sjt Cogger and myself went over to the Unit Guard Room and got the RPs to come over and place the man under arrest.

Q17 Sjt, will you indicate on this plan the position of your room?
A17 (Witness referring to plan which is marked "A") - Our room is directly above the washroom, Sir.

Cross-examined by Defending Officer:

Q18 Does anyone else sleep in this room occupied by you?
A18 Yes, Sir, there are 4 other Sjts.

Q19 About how long did you say you had been asleep?
A19 I would say approximately half an hour, Sir.

Q20 What aroused your suspicions when there were 4 other Sjts in that room with you?
A20 Someone kicking the bench had wakened me, Sir, and I thought it kind of funny for any other Sjts getting up would put the lights on, so I jumped out of bed to put the lights on.

Q21 Did you see this person that knocked the bench?
A21 No, I could not recognize him, Sir, no, but I saw him going out the door. At that time there was men sleeping all the way along, but the Sjts had the room at the far end. The men were all from 4 CIRU including the room I am in. The Pioneers slept below. I recognized Sjt Burr coming up the stairs. It was a very bright night that night, Sir.

Q22 Then the accused was ordered to empty his pockets did he have any articles belonging to you?
A22 No, Sir.

Q23 Did you conduct any other search?
A23 Yes, Sir, after we had taken him to the Guard House we got the Cpl of that room to look through some of the accused's clothing and kt bags to find any other articles that were still missing.

Prosecutor declines to re-examine this witness.

Questions by the Court:

Q24 Are there any lights in the hall or on the stairs where you saw this man?

A24 No, Sir, but there was a full moon at that time. The stairs are outside the building, but it was a very bright night, Sir.

Q25 Were there any other articles missing in that room other than the lighter and wallets?

A25 Yes, there was one watch and 21 shillings and something in coins, Sir.

XXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Q26 When did you know you last had your lighter and wallet?

A26 When I went to bed, Sir because I used it to light a cigarette before I went to bed. My wallet was in my pants pocket, the lighter was in my top tunic pocket.

Q27 Could you see the man well enough being downstairs to give a description of him?

A27 No, I could not, Sir, he had his back to me.

Q28 When Sjt Burr came into the hut with these articles did the accused say anything or did anyone say anything to the accused?

A28 No, Sir, not to my knowledge. The door to our room is right at the top of the stairs. There are stairs on both ends of the building.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B)

THE WITNESS WITHDRAWS

Fourth Witness for the Prosecution

B.42502 Sjt COGGER HJ, 4 Cdn Inf Reinf Unit, having been duly sworn is examined by the Prosecutor:

Q29 Where are your quarters, Sjt?

A29 I occupy the same room as Sjt Bayliss. On 2 Feb 44 at approximately 2345 hours Sjt Bayliss woke me and asked me to look through my clothes. I got out of bed and found my trousers lying on the floor. I examined them and found that 21 shillings and 6 pence had been taken from a side pocket and a leather wallet from my back pocket.

Q30 Do you recognize this wallet?

A30 Yes, Sir, that is my wallet. I recognize it by my regimental number and initials.

(WALLET MARKED "Z" FOR IDENTIFICATION)

Q31 What happened then?

A31 I got dressed and Sjt Bayliss and I went down stairs. We entered the accused's room and the accused was standing by the table. In the middle of the table were lying the wallets, or I should say, at the end of the table. I picked up mine and I identified it. Sjt Burr and I then reported to the RPs and had the accused placed under arrest.

Cross-examined by Defending Officer:

Q32 You say you went downstairs with Sjt Bayliss?

A32 Yes, Sir.

Q33 How did you know what room to go to?

A34 On the way down we heard Sjt Burr's voice. Sjt Bayliss went on to the accused's room while I lingered behind with my torch looking for anything I might find that might have been dropped.

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Q35 How long were yout out looking?
A35 Not very long, Sir, not more than a minute and a half I would say. I met no one in the passageway while I was following Sjt Bayliss. I went to bed at 9.30, Sir, and was the only one in the hut when I went to bed, Sir. I am certain that this wallet was in my pocket as I had occasion to count some money after paying some I owed not very long before, and that is how I came to have the loose money in my pocket. I just left it there before going to bed, not bothering to put it in my wallet.

Prosecutor declines to re-examine this witness.

Questions by the Court:

Q36 You said when you went to bed you were alone in the room?
A36 Yes, Sir.

Q37 At the time you were woke up, were you and Sjt Bayliss the only ones in the room?
A37 That is right, Sir.
Q38 But there are 6 Sjts in the room? They occupy that room?
A38 Yes, Sir, that is right, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B).

THE WITNESS WITHDRAWS.

Fifth Witness for the Prosecution

B.65800 Sjt BURR GR, 4 Cdn Inf Reinf Unit, having been duly sworn, is examined by the Prosecutor:

Q39 Sjt Burr, do you live in the same quarters as Sjt Cogger and Sjt Bayliss?
A39 Yes, Sir, and on the night of 2 Feb 44 I was coming up to my room after being out and it was approximately 2245 hours, and I was just about to the top of the stairs, or the landing I should say, when Sjt Bayliss came out through the second door of our room and said "catch that fellow, he's just been in our room".

Q40 Whom did he mean by that fellow?
A40 It was a fellow that had passed me on the landing as I was coming up the stairs, the landing midway between the second and third floor. I immediately hollered "hey", wheeled around and ran down the stairs. As I got to the second landing on the second floor I heard a door close in the near vicinity, right close at hand, so I knew it was the washroom door.

Q41 There is a door into the washroom from or off the landing?
A41 No, Sir, it is off the hallway. I immediately went into the hallway and as it was kind of dark in there I got out my torch from pocket and shone it in the hallway. The door to the big room was padlocked, so upon finding that I knew there was only one other door and that was the one leading into the washroom. I opened the washroom door and put my hand in feeling for the light switch, but on switching it no lights came on and just then I heard water being turned on behind the partition.

(WITNESS AT THIS TIME AT REQUEST OF PROSECUTOR, PREPARES A SKETCH OF THE WASHROOM)

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SKETCH PREPARED BY WITNESS OFFERED AND RECEIVED IN EVIDENCE AND MARKED EXHIBIT "B".

Q42 You heard water running?
A42 Yes, Sir, I heard it turned on just as I was finding the switch. I eased more or less into the room with my torch,

and I then went around behind the partition to see who was in there and found the man who gave me his name as Pte Davis and I recognize that man in this Court room now. (Witness points to accused). He had no soap nor towel with him and he told me he was washing. He was just dipping his hands into the water. Ther were no lights on at all. I took his name and number, and as I did not know what had been taken until I found the Sjt that had hollered at me from the doorway upstairs I went outside and waited on the landing for him to come out. There was only one way out. He came out and I followed him into his room to find out into which bed he slept, still not knowing what was missing or if anything was missing I immediately went to get the other two Sjts. I went upstairs for them and then I found out what they were missing. They were by this time fully dressed to come down and I took them down to where I had found the accused slept and being as how I had the flashlight I went to research the washroom. Nothing to my knowledge occurred in the meantime. When I went into the washroom I flashed my torch around where the accused had been standing and found under the washbasin right next to where he had been standing, two wallets and a lighter and case.

(WITNESS IS SHOWN RONSON LIGHTER MARKED "X" FOR IDENTIFICATION AND SAYS THAT IS THE LIGHTER)

LIGHTER OFFERED AND RECEIVED IN EVIDENCE AND MARKED EXHIBIT "C".

(WITNESS IS SHOWN WALLET MARKED "Y" FOR IDENTIFICATION AND SAYS THAT IS ONE OF THE WALLETS HE PICKED UP IN THE WASHROOM)

WALLET OFFERED AND RECEIVED IN EVIDENCE AND MARKED EXHIBIT "D".

(WITNESS IS SHOWN WALLET MARKED "Z" FOR INDENTIFICATION AND SAYS THAT IT LOOKS LIKE THE SECOND ONE FOUND IN THE WASHROOM)

WALLET OFFERED AND RECEIVED IN EVIDENCE AND MARKED EXHIBIT "E".

Q43 What did you do with these articles?
A43 I took them into the room and put them on the table. We went around the washroom afterwards and I went back through the washroom and tried to look in there. There was no trace of the missing watch, after being told by another Sjt of a missing watch.

Cross-examined by Defending Officer:

Q44 Did you know which Sjt it was that spoke to you at the top of the stairs?
A44 Yes, Sir.

Q45 This man whom you identify as Pte Davis, and found later in the washroom, is he the same man who passed you on the stairs?
A45 I could not be sure of that Sir, the man who passed me had walked past me, and one can't be sure.

Q46 Were there any other people around?
A46 No, Sir, there was only one man who passed me on the stairs. There was nobody else in the hallways or landings.

Q47 Did three of you Sjts come down to the room of the accused and enter the room together?
A47 Yes, Sir, I remember that Sjt Bayliss did enter the room with me - I could not say for sure of Sjt Cogger.

Q48 When were you informed of the nature of the articles missing?
A48 On the way down, Sir.

Q49 Was it light enough for you to see along these landings?
A49 Yes, Sir, there was a full moon that night, Sir.

Prosecutor declines to re-examine this witness.

Questions by the Court:

Q50 Is there a toilet in that washroom?
A50 No, Sir.

Q51 Did you meet or see anyone else on the stairs or in the hallways?
A51 No, Sir.

Q52 When you turned to follow the man you met on the stairs did or could you see his back then?
A52 He was just out of my sight and that's all, Sir, he was on his way down the second set of stairs.

Q53 Did he come into your view at all after that?
A53 I can't say that he did, Sir.

Q54 Did you run?
A54 Yes, Sir, I took 2 or 3 steps at a time, Sir. Where I first saw this man is marked "X" on the plan. That was in front of a wash basin. The spot where the articles were found is marked "Y" on the plan.

Q55 Were they hidden at all?
A55 They were on the floor, Sir.

Q56 Could they easily have been seen?
A56 If the lights had of been on, yes, Sir.

Q57 How much time elapsed between the time you were first called by Sjt Bayliss, from that time until the time you saw the accused in the washroom?
A57 About a minute and a half I would say, Sir.

Q58 Is that washroom used by everyone in that block, or just Sjts in particular?
A58 For anyone, Sir.

Q59 When you first saw the accused did he have his clothes on?
A59 Yes, Sir.

[redacted]

Q60 Shoes?
A60 Yes, Sir.

Q61 Cap?
A61 I can't recall whether he had his cap on or not, Sir.

Q62 When you first brought the articles into the hut did the accused say anything?
A62 No, Sir.

Q63 Did anyone say anything to him about them?
A63 I can't recall, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B).

THE WITNESS WITHDRAWS.

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THE COURT RECALL THE THIRD WITNESS FOR THE PROSECUTION FOR FURTHER EXAMINATION.

B.19665 Sjt BAYLISS AH, 4 Cdn Inf Reinf Unit, having been recalled by the Court, on his former oath, states:

Questions by the Court:

Q64 Sjt Bayliss, when you had the accused turn out everything in his pockets did you find any money?
A65 Yes, there was quite a bit in change, Sir, I don't know exactly what there was.

Q65 Any idea?
A65 Not at that time, Sir, but I knew how much when he went to the Guard Room.

Q66 How much?
A66 27 shillings, Sir.

Q67 Was it in silver or notes?
A67 It was all in silver, Sir, and I believe there was two £1 notes.

Q68 When the accused was arrested did he say anything?
A68 No, Sir, not to my knowledge.

Defending Officer declines to re-examine this witness as a result of any questions by the Court.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B).

THE WITNESS WITHDRAWS.

THE PROSECUTION IS CLOSED.

THE DEFENDING OFFICER SUBMITS THAT THE EVIDENCE FOR THE PROSECUTION DOES NOT ESTABLISH A PRIMA FACIE CASE AGAINST THE ACCUSED.

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION.

THE COURT IS RE-OPENED AND THE PRESIDENT ANNOUNCES THAT THE SUBMISSION IS DISALLOWED, AND THAT THE TRIAL WILL PROCEED ON THE CHARGES.

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-STATEMENT BY THE ACCUSED-

The accused, K.53024 Pte DAVIS DB, 4 Cdn Gen Pioneer Coy, makes the following statement not under oath.

Sir, on 2 Feb 44 I came back from downtown after meeting a girl. I had lunch with some of the boys in there and in a few minutes I went downtown to meet this girl, but she did not show up and I waited around a while and then I came back to my billet. I had been there several minutes when this Sjt came in and turned on the lights and asked me if I had come from upstairs which I said "No" to and he then asked me my name which I told him. This Sjt then left my hut and came back with two other Sjts and one of them asked me to turn out my pockets. I looked at him in amazement and being he was my superior I obeyed his order. Then one of the Sjts left the hut and returned later with two wallets and a lighter. Then one of the Sjts suggested that I be put under close arrest. There was a couple of our own chaps standing around the table and one of the Sjts told him to fall in and take me to the Guard Room, in which they refused to do, and the Sjt argued with them for awhile and then they left and returned with their own RPs and I was taken to our Guard Room. That is all I have to say, Sir. This was the second night I had been in occupation of this room.

- CLOSING ADDRESS BY THE PROSECUTION -

Sir, the statement made by the accused man has borne no way at all in clearing up the points which required clearing up. I can only repeat once again that the conduct on the part of this accused calls aloud for an explanation. There was a theft of certain articles from these quarters, and a man who had been in these quarters was pursued down the stairs in the barracks in which Davis lives. The period through which all this took place was the time Pte Davis is alleged to have been out of his quarters and the time when he was discovered again. He was found in a washroom completely without lights standing there in the dark dipping his hands in the water, apparently in the act of washing himself, but without either soap nor towel, by a Sjt to which the door has only been opened a fraction of a second before. The articles were found very close indeed to the place where Pte Davis was found washing himself. Those circumstances are far too strong to wash away that Pte Davis is not the man. I submit that a conviction must be registered.

- CLOSING ADDRESS BY DEFENDING OFFICER -

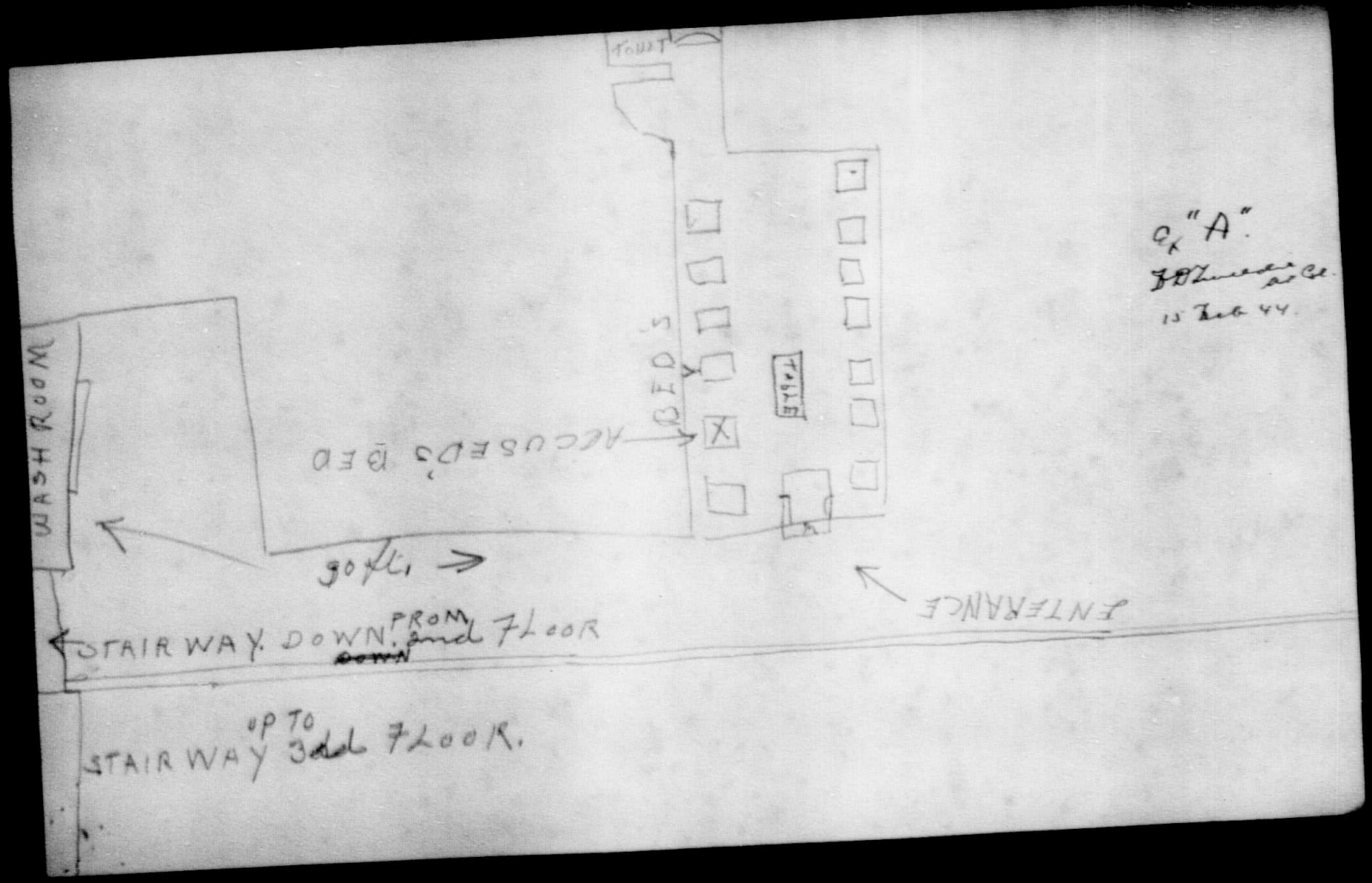
On the statement of the accused he went out to meet a girl whom he did not want to be seen around with and she wasn't there, so in a short time after he came back to his billets and went to his room is witnessed by Cpl Matheson who says he went to the latrine and came back by his bed when a Sjt came into his room and asked him if he came from upstairs, asked him his name and which he gave him. Later the Sjt went out and came back with 2 other Sjts, and he was told to turn out his pockets and it was found that the accused had nothing belonging to them. Sjt Burr apparently went to this washroom where he said he found a man, and also found some articles there. They are not all the articles which have been lost and two of the articles which were lost have never been recovered. It would seem very strange that someone would apparently steal articles from Sjts quarters, and then only have part of them found later, and but a very few minutes later. The fact that Pte Davis was not in the washroom is substantiated by Cpl Matheson's statement and Pte Davis that he came back into his room directly and got ready for bed. As he was getting ready for bed these Sjts came in and found him up. Apparently the Sjts did not make any effort to check any other rooms to see if men were awake. It is possible that Sjt Burr lost tract of a man whom he was following and this man could have ducked into any number of rooms on that second

landing, and as I see the facts before the Court there is nothing, and there has been nothing, to prove that Pte Davis is the man who could have been in the room from which the articles were taken. He would not know the layout of the rooms for one things as he had only been in these quarters but a night or so, and to come into a strange room where men were sleeping, and search through people's pockets is rather a tricky business and would I should think, take some time for a man who does not know even his way around. I submit that there has been nothing proved in evidence of what Pte Davis is charged.

THE COURT IS CLOSED TO CONSIDER THE FINDING.

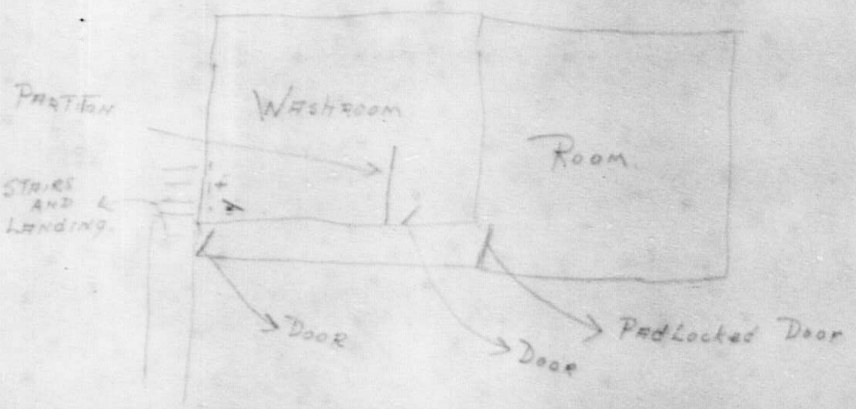
-PLEA IN MITIGATION BY DEFENDING OFFR-

I have known this Pte Davis since 1940 when I came overseas in July and I first met him in September in the 2nd Reconnaissance Sqn and since that time I have been with the unit most of the period. Pte Davis left the regiment in Scotland just before they went overseas due to the fact that he had a motorcycle accident and was sent to hospital and therefore could not be taken with us. During the time he was in the Sqn he had a few minor charges against him which were and are shown against his conduct sheet, but not of any serious nature whatsoever and I have always found him a very reliable soldier and I think his service and record should be taken into mind. I can't understand him getting mixed up in any trouble like this, for although he is not happy here with this unit at the present time he has been trying to get back to his own unit for some time now but the medical authorities have not let him return, for the present time at least. That is all I have to say, Sir.


TOILET
WASH ROOM
BED'S
ACCUSED'S BED
TABLE
90 ft.
ENTERANCE
STAIR WAY. DOWN PROM and FLOOR
STAIR WAY UP TO 3rd FLOOR.
Ex "A".
15 Feb 44.

Spot. First Saw Accused is marked with an X.

Ex B
J D Leedie Lt Col
15 Feb 44



LIST OF EXHIBITS

List of Exhibits in the case of K-53024 Private Donald Beaufort DAVIS, on the strength of 4 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas.

EXHIBIT "A"

One Ronson Lighter, the property of B-19665 Sergeant Henry BAYLISS, 4 Canadian Infantry Reinforcement.

EXHIBIT "B"

One Leather Wallet, the property of B-19665 Sergeant Henry BAYLISS, 4 Canadian Infantry Reinforcement Unit.

EXHIBIT "C"

One Leather Wallet, the property of B-42502 Sergeant Howard James COGGER, 4 Canadian Infantry Reinforcement Unit.

LIST OF WITNESSES

List of Witnesses in the case of K-53024 Private Donald Beaufort DAVIS, on the strength of 4 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas.

FOR THE PROSECUTION

1. E-11025 Private (Acting Lance Corporal) Martin Luther MATHESON - 4 Canadian General Pioneer Company.

2. C-51603 Private James John GARVOCK - 4 Canadian General Pioneer Company.

3. B-19665 Sergeant Alfred Henry BAYLISS, 4 Canadian Infantry Reinforcement Unit.

4. B-42502 Sergeant Howard James COGGER, 4 Canadian Infantry Reinforcement Unit.

5. B-65800 Sergeant Gerald Reginald BURR, 4 Canadian Infantry Reinforcement Unit.

FOR THE DEFENCE

N I L

35

ACKNOWLEDGEMENT BY THE ACCUSED

(1) I hereby acknowledge that I have been served with a true copy of the Summary Of Evidence taken In the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Dated In the Field
this 7th day of
February 1944

D B Davis
(D.B. Davis)

(2) I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken In the Field preliminary to my Court Martial.

(3) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Court Reid H.C.I.R.U.

..... if he is available.

Dated In the Field
this 7th day of
February 1944.

D B Davis
(D.B. Davis)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of K-52024 Private Donald Beaufort DAVIS, on the strength of 4 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

FIRST WITNESS
FOR THE PROSECUTION

E-11025 Private (Acting Lance Corporal) Martin Luther MATHESON, on the strength of 4 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On 2 February 1944 at approximately 2210 hours, we were having something to eat in the Hut. Private DAVIS, whom I recognize as the accused, came in the Hut. He then went over to one of the boys bed and asked if he could share their lunch with them, they said, "Yes". Approximately 5 minutes later Private DAVIS, D.B. left the Hut. At approximately 2240 Private DAVIS came back, lights were out. He then went to the lavatory, as he reached his bed a Sergeant came in looking for him. He turned the lights on and told the accused to empty his pockets on the table. It appeared that the accused had nothing belonging to them. Then two other Sergeants came in. I then heard one Sergeant saying, "Here's one of my two wallets, I've just found them in the Washroom". We also searched his kit and found nothing belonging to them.

M.L. Matheson

The accused declines to cross-examine this witness.

SECOND WITNESS
FOR THE PROSECUTION

C-51603 Private James John GARVOCK, on the strength of 4 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On 2 Februarry 1944 at approximately 2200 hours, I was in Hut #42 when Private DAVIS, D.B. the accused whom I now recognize, came in the room. We were having a bit of lunch and Private DAVIS joined us. At approximately 2215 hours Private DAVIS went out of the Hut and did not return till 20 or 25 minutes later, the lights were out. He came in to his own bed and immediately afterwards a Sergeant came in looking for him, he switched the lights on. Everyone in the hut was in bed except Private DAVIS. The Sergeant accused Private DAVIS of going into their quarters and stealing some articles belonging to them. Shortly after two more Sergeants came in. They suggested that Private DAVIS be put under close arrest. That is all I know about what took place in the Hut.

J.J. Garvock.

The accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of K-53024 Private Donald Beaufort DAVIS, on the strength of 4 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas. (Cont'd)

THIRD WITNESS
FOR THE PROSECUTION

B-19665 Sergeant Alfred Henry BAYLISS, on the strength of 4 Canadian Infantry Reinforcement Unit a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

At approximately 2245 hours, 2 February 1944 I was woke up by someone that was in our room, and he woke me up by knocking against the bench as he was going out. I then heard someone open the door and immediately I was out of bed, put on the lights and through the door I went outside. The top of the stairs is right beside the door to our quarters, as I got outside the man that was in our room was going down the stairs and Sergeant BURR was coming up the stairs. I then shouted to Sergeant BURR, "Stop that man, he's been in our quarters," Immediately Sergeant BURR chased him down the stairs. Immediately afterwards I went back to the room to find out if anything was missing. I then woke up Sergeant COGGER. Immediately he got up and we both found our Battle Dress laying on the floor. One Leather Wallet and One Ronson Lighter, bearing the initials "A.B." were missing - these articles I now identify as my property. A few minutes later while I was getting dressed, Sergeant BURR came into the room and told me that he had caught the man and that he was in his quarters downstairs. After that, Sergeant COGGER and myself went downstairs to the man's room. As we arrived in the room, Sergeant BURR picked out the man and told me he was the one that he had followed and caught in the Wash Room. I then told the man to empty his pockets, which he did, but we found nothing in his possession belonging to myself. Sergeant BURR said that he would go back to the Wash Room and see if he could find anything there. A few minutes later he came back with two leather Wallets and one Ronson Lighter and said that he had found them underneath the wash basin in the Wash Room, that is the same Wash Room that he had followed the man into a few minutes previously. Afterwards Sergeant COGGER and myself went to the Guard Room and two Corporals and the R.P. put the accused under close arrest.

A.H. Bayliss
A.H. Bayliss.

The accused declines to cross-examine this witness.

FOURTH WITNESS
FOR THE PROSECUTION

B-42502 Sergeant Howard James COGGER, on the strength of 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:-

On 2 February at approximately 2245 hours, Sergeant BAYLISS awoke me and asked me to look through my clothes and see if anything was missing. I got out of bed and found my trousers laying on the floor. On examining them I found coins to the value of £1-1-6 missing, also a Leather Wallet, stamped with my regimental number, D.H.R. B-42502, I identify this wallet as my property. Together we went down to see where Sergeant BURR was, and found him

SUMMARY OF EVIDENCE

Summary of Evidence in the case of K-53024 Private Donald Beaufort DAVIS, on the strength of 4 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas, (Cont'd)

FOURTH WITNESS
FOR THE PROSECUTION (Cont'd)

in the accused's room with two Wallets and a Ronson lighter laying on the table. We opened the Wallets to identify our property and then we went to the RP's and placed the accused under arrest.

H.J. Segger

The accused declines to cross-examine this witness.

FIFTH WITNESS
FOR THE PROSECUTION

B-65800 Sergeant Gerald Reginald BURR, on the strength of 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

On the night of 2 February 1944 at approximately 2245 hours I was coming in and I was about halfway up the last flight of stairs when a soldier went past me walking. I did not pay any attention to him until Sergeant BAYLISS came out through the door and shouted, "Stop that man, he's been in our room". I immediately hollered, "Hey" and followed him. I was behind him and when I got to the landing on the second floor I heard a door close in the vicinity where I was standing. I shone my torch on one door and it was padlocked, there was only one other door in the vicinity and that was the Washroom door. I went in this Washroom door, switched the lights and there were no bulbs in the sockets. I shined my torch around, and as I shone it in the far end I heard the water turned on behind the partition. I walked around the partition, shone my torch on the fellow in question, the soldier whom I now recognize as the accused, he had not soap nor towel. I asked him for his name and number. He gave me his name as Private DAVIS of 4 Canadian General Pioneer Company. At that time I did not know what it was all about, I walked out and waited for him on the landing. He came out and I followed him into his hut. I found out in which bed he was sleeping and immediately went for Sergeant BAYLISS, who was coming down the stariway. We went back together and I showed him the fellow I had found and found out what was missing. Being that I had the torch, I left Sergeant BAYLISS and went to search the Washroom. Upon searching the Washroom, I found two wallets, one Ronson lighter and case under the wash basin, next to where Private DAVIS was standing when I found him in the Washroom. I took the articles into the room in which the accused sleeps, layed them on the table and suggested that this man be put under close arrest. We searched around the hut but couldn't find of the balance of the missing articles.

G.R. Burr

The accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of K-53024 Private Donald Beaufort DAVIS, on the strength of 4 Canadian General Pioneer Company, a soldier of the Canadian Army Overseas. (Cont'd)

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused has been duly warned in accordance with Rule of Procedure 4(e) and reserves his Defence.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c),(d),and (f) have been complied with.

R.F. Dionne

for (R.F. Dionne) Lieut.,
Officer detailed to take the Summary

In the Field,

7 February 1944

1001

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2068)

No. K-53024 Name Davis, D.B. Sqn., Battery, or Company — Corps C.A.(O) — Date of enlistment 16 Jan 40 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No. 1 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed - 16 Jul 40 - No cases of Drunkenness.									
						27 Days Det	-	-	27 days pay 149(1)(b)
Field	8-10-40	Pte		A.A. Sec.15(1) AWL					
"	29-11-41	Tpr		Conduct to the prej. etc., in that he, was involved in a W.D. accident. A.A. Sec.40	DOC'Y	28 " F.P.	16-3-42	Lt. Col. Foster	28 days pay 149(1)(b)
"	30- 4-42	"		Conduct to prej. etc., A.A. Sec.40	"	28 " F.P.			28 Days pay 149(1)(b)
"	20- 7-42	"		A.A. Sec.15(1) AWL 7 hrs 15 mins.	Cpl.Duryer	7 " C.B. 2 " Pay	22-7-42		1 days pay 149(1)(a) 2 days pay 149(27)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24-6-43	Tpr		Conduct to the prej. etc. in that he, was found in bed at 1315 hrs whilst supposed to be on parade. A.A. Sec.40	Cpl. Mason	7 Days C.B.	25-6-43	Major C.E.S. Walls	
"	6-11-43	"		A.W.L. from 2200 hrs 6-11-43 to 25-11-43 (18 days, 23 hrs, 45 mins. A.A. Sec.15(1)	L/Cpl. Iceton	7 Days F.P.	26-11-43	Major H.B. Goodings	19 days pay 149(1)(a) 7 days pay 149(1)(b)

Certified true copy of documents in my possession.

15 Feb 44.

(J.H.Donnelly) Capt.,
A/Officer Commanding,
4 Ddn Gen Pioneer Coy C.A.(O)

STATEMENT AS TO CHARACTER & PARTICULAR OF SERVICE OF ACCUSED

1. The following is a fair and true summary of the entries in the Regimental Conduct sheet of the accused, exclusive of convictions by Court Martial or a Civil Court, and of cases in which trial has been dispensed with:

Number K-53024 Rank Pte Name DAVIS, Donald Beaufort

4 Canadian General Pioneer Coy

SINCE ENLISTMENT		WITHIN LAST 12 MONTHS
3	A.A. Sec. 15(1)	1
3	A.A. Sec. 40	1

Number of instances of gallantry or distinguished conduct N.A.

2. The accused is not under sentence at the present time.

3. The accused has not been previously convicted by a Court Martial or a Civil Court.

4. The accused has been in confinement, awaiting trial on the present charges for 0 days in Civil custody and 15 days in military custody, making a total of 15 days in custody of which 0 days were spent in the hospital.

5. The present age of the accused according to his attestation paper is 26 years, 112 days.

6. The date of his attestation specified in his attestation paper is 16 Jan 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 years, 21 days.

8. The accused is entitled to deferred pay or gratuity in respect of 4 years, 21 days

9. The accused is entitled to reckon 4 yrs 21 days service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to no military decorations or military reward. Canadian Volunteer Service Medal

SCHEDULE OF CONVICTIONS BY COURT-MARTIAL

~~Schedule of convictions by a Court-Martial or a civil court~~ and of cases in which trial has been dispensed with of the accused.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

J.H. Donnelly Capt. & Maj.
(J.H. Donnelly)
4 Canadian General Pioneer Company.
A/Officer Commanding.

In the Field
Date: 15 Feb 44

Ex. F.

43-67

GNR DAVIS E.L.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C42858 Gnr Lyons Howard Denis

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 19	Guilty	Guilty.	
2nd	AA 41	Guilty	Guilty.	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ... beginning on (date) ... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for 15 months

(Sgd) Kjellarson Capt — 19 Oct 44 — (Sgd) K F Maasson Maj

Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding & sentence but remit three months detention

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 21 Oct 44 — (Sgd) J. N. Lane — (J. N. LANE) Brig — Commanding — CRA 4 CDN ARMD DIV — Confirming Officer.

No illegalities or irregularities such as would warrant withholding confirmation:

Date 23 Oct 44 — (Sgd) Kjellarson Capt — ADC to GOC HQ 1 Corps

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C42858 Gnr Lyons Howard Denis.	23 Oct 44.	H Adelmeady Capt

5 CDN. ANTI-TANK REGT., R.C.A. (A.F.)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4267

RECEIVED 7 NOV 1944 AG BRANCH C.M.H.Q.

CRA(A) (To item of AFA2) D/P & R/1608-4-6(D1)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Brig J. N. Lane Comd 4 Cdn Armd Div dated 19 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C42858	Gnr	Edward Lyons Howard	Denis	5 Bty 5 Cdn A Tk Regt RCA.

PROCEEDINGS REVIEWED 7 NOV 44 H. C. Lynch Capt

PROCEEDINGS REVIEWED OSS GHQ 21 Army Gp 23 OCT 44

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH, G.H.Q. on (date(s)) 19 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/59

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and such charge discloses an offence.(3) J.

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences. J.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: Do you object to Lt Ritchie as interpreter? Ans No. J.

The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ... The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans ...(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	R. F. Willson	Line Houses R.
Member	do	N. A. McNeans	15 Can Fd Regt RCA
Member	do	A. B. N Eadie	4 Cdn Armd Div HQ RCA.
Judge-Advocate	Capt	Kjellarson	HQ 4 Cdn Armd Div.
Prosecutor	Capt	R. R. Maasson	5 Cdn A Tk Regt
Defending Offr	do	M. H. Thomas Pubi	HQ 5 Cdn A Tk Regt

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused ... before arraignment make(s) (not) no plea. J.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is arraigned on all charges in the charge sheet.(1) The accused does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. J.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. No 24

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court ~~considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No.(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 1, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 185. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 165(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans yes, strongly by Offr.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*B*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 343-346, *Overseas AO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(2), *KR Can* 564. 2. *RP* 50. *As to reminder from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of persons after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COUNTER NUMBER 5'405'03

HOUR 15:30

OPERATOR'S INITIALS RD

RELIEVING OPERATOR AMB

B.7h.

CHARGE SHEET

The accused No C42858 Gnr Lynons Howard DAVIS, 3 Bty; 5 Cdn A Tk Regiment, RCA, a soldier of the Canadian Army, Overseas, is charged with:-

First Charge
Sec 19
Army Act

WHEN ON ACTIVE SERVICE DRUNKENESS

in that he

in the field on 30 Sep 44 was drunk.

Second Charge
Sec 41
Army Act

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, SHOP BREAKING AND LARCENY, CONTRARY TO SECTION 26 (1) OF THE LARCENY ACT 1916

in that he

in the field on 30 Sep 44 broke and entered the shop of Georgetta Maria Haeck and stole 1150 francs the property of the said Georgetta Maria Haeck in the said shop.

D S Harkness

(D S Harkness) Lt-col GM
Commanding Officer
5 Cdn A Tk Regiment, R.C.A.

In the Field
12 Oct 1944

To be Tried By Field General Courts-Martial

1 Capt
SCRA 4 Cdn Armd Div
for Brig J N Lane
CRA 4 Cdn Armd Div

17 Oct 44

R.Th.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C42858	Gnr		Lynons Howard DAVIS,	3 Bty 5 Cdn A Tk Regt RCA	

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 17 Oct 44 endorsed ~~by me for~~ by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	R. F. WILLSON (Must be named. RP 106.)	Linc & Welld Regt (Unit.)

MEMBERS.

Lieut	K. W. McKEARNS	15 Cdn Fd Regt RCA
Lieut (Rank.)	A. B. K. EADES (Named or detailed. RP 106.)	28 CAR (Unit.)

WAITING MEMBER.

Capt (Rank.)	G. B. W. BECKETT (Named or detailed, if any. RP 106.)	4 Cdn Armd Div Sigs (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	H. A. HANSON (Must be named, if any. RP 106.)	HQ 4 Cdn Armd Div (Unit.)

On Active Service in the Fd

in Belgium (Country.)

(Signed personally. RP 105 fn 2.)

Brig (Rank.)

(J. N. LANE) Brig
CRA 4 CDN ARMD DIV

Date 17 Oct 44 Commanding Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*D*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so *far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn, or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address *after* the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by *JA, if any.* (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *JA, if any.* RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA,* if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 162* (3) (g) (ii).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 758.*)

4. The President or *JA, if any,* will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

R.F.h

I certify that I have this date examined

No. C42868 Gnr. DAVIS L.H.

of 5 Cdn A/Tk Regiment R.C.A.

and in my opinion he is fit ~~unfit~~ to undergo trial by Court Martial.

Station Field

Date 18.09.44

Medical Officer

Plea in Mitigation

The accused was quite drunk at the time of the offences. That he was sober he would not have committed the crime. While drunkenness is no excuse yet it can afford mitigating circumstances. In awarding sentence the Court asked to consider this.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C42858 Gnr.; DAVIS L H, 3 Bty; 5 Cdn A Tk Regiment, RC.A., a soldier of the Canadian Army Overseas, is charged with:-

CHARGES

WHEN ON ACTIVE SERVICE DRUNKENESS. Sec 19 Army Act

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, SHOP BREAKING AND LARCENY, CONTRARY TO SECTION 26 (1) OF THE LARCENY ACT 1916

By the direction of the commanding officer the evidence is taken on OATH.

First Witness L27846 Sgt Holness L, 8 Cdn Pro Coy having been duly sworn states:-

"I am, L27846 Sgt Holness L, a section Sgt with 8 Cdn Pro Coy. On 30 Sep 44, I was and still am a Sec Sgt with 8 Cdn Pro Coy. At approximately 1205 hrs, I was on duty as Orderly Sgt in the Orderly Sgts' Room, when two ladies came in and notified me that two Canadian Soldiers were shooting up the place.

One lady later proved to be GEORGETTA MARIA HAECK, the owner of a bake shop at 49 Kerk Straat, EECLOO. As they spoke little English, I could not understand exactly what they were trying to tell me, so I went to a shop which turned out to be a bakery; where I saw as I entered, a blond haired soldier, who later upon examining his MB M I, proved to be C42858 Gnr DAVIS L H 3 Battery, 5 Cdn A Tk Regt RCA, taking money out of a drawer behind the counter.

I asked him what he was doing behind the counter and he replied, "These people are collaborators". "Are you sure of this", I questioned, and he replied, "Iam not sure", with which he took all the money out of his pocket and threw it back in the drawer.

I placed this man under close arrest and left H15515 Pte McLaughlin N H, 8 Cdn Pro Coy., who had accompanied me to the scene, to guard him. He remained with the accused while I attended to another urgent matter. Upon its completion, I returned and took C42858 Gnr Davis L H to the Guard Room.

THE ACCUSED DECLINED TO CROSS-EXAMINE THIS WITNESS

Question by Officer taking Summary of Evidence.

Question 1 Did there appear to be any damage done to the establishment?

Answer 1 I noticed a broken pane in the front door and in the kitchen a cupboard ramsacked, which contained only clothes. A gramaphone was tampered with.

Question 2 Do you consider that the accused was drunk?

Answer 2 Yes, he was drunk, not paralized but quite intoxicated.

L. Holness

(L27846 Sgt Holness L)
8 Cdn Pro Coy

Second Witness Julia Cyrille Miel, No 69 Kerk Straat, KECLOO, a barmaid having been duly sworn States:-

"I am, Julia Cyrille Miel, and I work at the Rene Maes Cafe as a barmaid and do house duties for my uncle who owns the cafe.
At about a quarter to twelve on the 30 Sep 44, two soldiers entered the cafe and asked for cognac, but I did NOT serve them as it was too early, under the law, to serve them. The soldiers, one of whom proved to be the accused here (C42858 Gnr DAVIS L H), went into the private room without my permission. I tried to stop them but they pushed me into an arm chair. At that moment I saw this man, Gnr Davis had a pistol which the other soldier took from him and pointed it at me, demanding cognac and money. They were both drunk and I don't think they knew what they were doing. A little later I saw my chance to get away and ran outside with C42858 Gnr DAVIS L H running after me. He passed me in the crowd and did not see me. I saw him go into a bakery in the same street.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

Question by Officer taking Summary of Evidence.

Question 1 Did the accused threaten you at any time with a pistol?

Answer 1 No, the other man had the pistol then and the accused acted like a fool.

Question 2 In what way did he act like a fool?

Answer 2 Because he was so drunk he did not know what he was doing.

Question 3 Did you see the accused, C42858 Gnr Davis L H, use force to enter the bakery.

Answer 3 I could only see the entrance from where I stood in the street and don't know whether or not he forced his way in.

Question 4 Were you previously on friendly terms with the accused?

Answer 4 I only saw him the night before and he was just an ordinary soldier to me like the other customers.

Julia Miel

(Julia Cyrille Miel)
No 69 Kerk Straat, KECLOO

.....3

THird Witness Georgetta Maria Haeck, 49 Kerk straat, EECLOO, having been duly sworn, states:-

"I am Georgetta Maria Haeck, owner of a bakery business at 49 Kerk Straat, EECLOO. On 30 Sep 44, I was standing in the doorway at 1215 hrs and I saw one Canadian soldier standing opposite my shop in front of a butcher shop and I saw that he was drunk. I at once shut the door because I was frightened of a drunken man, as I am of all drunken men.
I had no sooner shut and locked the door than this same drunk man came and kicked and broke the glass panel in the door. I at once ran away through a private entrance door and went to the Military Police for help. I was all alone at home.
I explained what had happened to the police and they went away immediately in a Jeep to investigate and I followed on foot.
When I entered the bakery, I saw the Military Police taking money away from the drunken soldier, who I learned then was C42858 Gnr Davis L H, who I identified as being the person who kicked my front door in. The police gave back the money to me and I counted it and there was 1150 Francs with nothing missing. On entering my kitchen, I saw all my clothes thrown out on the floor, my phonagraph open and the spring broken. I reported this to the police who were there to examine the damage. The Military Police then took the drunken soldier (C42858 Gnr Davis L H) away with them.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

Question by Officer taking Summary of Evidence.

Question 1 How did you know the money which the drunken soldier had was yours?

Answer 1 The Military Police told me they saw him with his hand in the money drawer and I knew how much money I had there, as I had just counted it a few minutes before the man came in. There had been 2500 Francs in the drawer and the soldier had only taken 1150 Francs out.

Question 2 Did the soldier know what he was doing when he broke into your shop?

Answer 2 I don't think he knew what he was doing, because he was drunk.

Question 3 In what way did the soldier threaten you?

Answer 3 I never spoke to the soldier nor he to me, but as soon as he started breaking through the door I ran away. He never threatened me.

Question 4 Did you see the soldier coming up the street towards your shop or was he just standing across the road?

Answer 4 Standing across the street.

Question 5 How do you place a value of 100 Francs on the broken panel in your front door?

Answer 5 The man who put in the new glass charged me 100 Francs.

.....4

Question 6 Also how dop you place a value of 25 Francs for the value of repairing of your gramaphone?

Answer 6 Where they repair phonographs they told me that was the price for a new spring.

Georgetta Haeck

(Georgetta Maria Haeck)
49 Kerk Straat, EECLOO

Fourth Witness B15515 L/Cpl McLaughlin N R, 8 Cdn Pro Coy., having been duly sworn, states:-

"I am, B15515 L/Cpl Mclaughlin N R of 8 Cdn Pro Coy and was a Pte at the time of the occurance I am about to relate. On 30 Sep 44, on a report of a holdup taking place at a bakery on Kerk Straat, I went with L27846 Sgt Holness L, entering the establishment behind him. When I entered the accused (C42858 Gnr Davis L H) was standing behind the counter. L27846 Sgt Holness L left him in my charge while he went about other duties. Others made the investigation, I only acted as a guard."

THE ACCUSED CROSS-EXAMINED THIS WITNESS.

Question 1 Did you see any money taken from my pocket?

Answer 1 Yes. L27846 Sgt Holness L took money out of your pocket and placed it on the counter.

Question by Officer taking Summary of Evidence

Question 1 Did the woman from the bakery go back with you?

Answer 1 No. We went ahead in a Jeep and arrived there before she did. But came in while we were there.

N R McLaughlin

(B15515 L/Cpl McLaughlin N R)
8 Cdn Pro Coy

Fifth Witness Lieut John Tweddle, 2 IC 8 Cdn Pro Coy having been duly sworn, states:-

"I am, Lieut John Tweddle, 2 IC 8 Cdn Pro Coy, 4 Cdn Armd Div. I was and still am Lieut John Tweddle. On 30 Sep 44 I was on duty at Coy Hqs, when the Orderly Sgt reported to me that two women had come in to report a holdup in progress. I detailed L27846 Sgt Holness L to proceed with the complaintants to investigate. About ten minutes later I proceeded to the scene of the occurances, namely a bakery at 49 Kerk Straat, where I saw the accused (C42858 Gnr Davis L H) standing at the end of the counter. As I entered he pulled some money from his pocket and placed it on the counter. L27846 Sgt Holness L was beside the accused, slightly behind the counter. A drawer containing more money was open. Sgt Holness informed me that, another soldier was connected with the occurance but did not know where he was. Leaving C42858 Gnr Davis L H under the charge of B15515

.....5

Fifth Witness Cont'd Pte McLaughlin, Lieut C H Ray who came with me from Coy Hqs and Pte Martin R (his driver) and I made a search of the remainder of the establishment; but we did not find the missing soldier involved on the premises. Upon my return to the front of the bakery, I was informed that Lieut C H Ray and L27846 Sgt Holness L had proceeded to the Rene Maes Cafe. I, therefore, proceeded to the cafe and when I returned to the bakery I saw that C42858 Gnr Davis L H was conducted to our Guard Room.

THE ACCUSED DECLINED TO CROSS-EXAMINE THIS WITNESS.

Question by Officer Taking Summary of Evidence.

Question 1 — Did the accused appear drunk?

Answer 1 — He had been drinking but he seemed to understand all questions put to him.

Question 2 — Did you see the money being placed in the drawer or was it there when you arrived?

Answer 2 — No, the money which was in the drawer was already there.

Question 3 — What made L27846 Sgt Holness L think C42858 Gnr Davis L H had an accomplice?

Answer 3 — I dont know. Something which had happened before I arrived lead him to believe such was the case.

Question 4 — Did you notice any property damage done?

Answer 4 — I noticed that the glass in the door had been broken.

Question 5 — Did C42858 Gnr Davis L H have a revolver or pistol on him when arrested?

Answer 5 — Not to my knowledge.

(Lieut John Tweddle)
2 IC 8 Cdn Pro Coy

Sixth Witness Lieut C L Ray a Platoon Comdr of 8 Cdn Pro Coy, having been duly sworn, states:-

"I am, Lieut C L Ray a Platoon Comdr of 8 Cdn Pro Coy. I was on 30 Sep 44 and still am Lieut C L Ray. On 30 Sep 44 shortly after 1200 hrs, I went with Lieut John Tweedle to a barkery at 49 Kerk Straat, EECLOO, to investigate a reported holdup. I walked through the bakery with Lieut J Tweedle and L27846 Sgt Holness L, but took no active part in arresting C42858 Gnr Davis L H. I was then conducted by a soldier from the Linc & Welld Regt to a cafe along the street where Sgt Holness and I had a Sgt pointed out to us by this soldier from the Linc & Welld Regt as the person who had held him up and, also the woman in the cafe, a Julia Cyrille Miel, who worked there identified this soldier who proved to be C42856 Sgt Norton D B.

Sixth Witness Cont'd

She also accused the soldier by pointing at him, as the person who had caused the trouble in her cafe. C42858 Sgt Norton D B was taken back to the bakery by L27846 Sgt Holness L, where he (the accused) and C42858 Gnr Davis L H were placed in My Jeep and taken back to Coy Hqs.

(Lieut C L Ray)
2 Can Fre Coy

THE ACCUSED DECLINED TO CROSS-EXAMINE THIS WITNESS.

THE ACCUSED WAS WARNED AS FOLLOWS:-

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so; but whatever you say or any evidence you may give will be taken down in writing and may be given in evidence."

ACCUSED: "I have nothing to say at this time."

(C42858 Gnr Davis L H)
3 Bty; 5 Cdn A Tk Regiment, R.C.A.

Certified that RP 4 (C)(D)(E)(F) and (G) have been complied with in the preparation of this Summary of Evidence.

"I certify that the foregoing Summary of Evidence consisting of (six) pages was taken by me in the presence and hearing of the accused this 6th day of October 1944."

Ray R Manbert

In the Field
6 Oct 1944

(Ray R Manbert) Captain
Officer deligated to take Summary of Evidence.

Exhibit 'B' R.J.H.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
042858	Gnr.	DAVIS L H	5 Cdn A Tk Regt, RCA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with the statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provision being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 40	1 times	3 times.
For AA Sec 75 (1)	3 times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 14 days in military custody, making a total of 14 days, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 22

6. The date of his ~~enlistment~~ attestation specified in his record of service is 10 Jun 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of ~~no military decoration or military award (or is in possession of or entitled to)~~ (*state any military decoration or reward*) CVSM & CLASP

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (or corps or department) the rank of N/A dated

(Revised) W.O.8450/1720 50,000 10/42 A.& E.W.Ltd. Gp.698
(Revised) W.O.8450/1440 15,000 3/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C42858 Rank Gnr. Name DAVIS L H of 5 Cdn A Tk Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13 day of Oct 44

(W R deGruchy) Captain
Officer i/c Regimental Records.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of , years, ____

In the rank of , years, ____

In the rank of , years, ____

(INSTRUCTIONS.—*If any matter in any of the above five columns cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs converted accordingly.*)

Exhibit 'C' RBM

MFM 6 (AFB 122) 10/P&S/136 (3438)

No. C42858 Name DAVIS L H | Sqn, Battery, or Company | Corps RCA | Date of enlistment 10 10 40 | GC Badges | Service or Proficiency Pay N A

Date of last entry in Company Conduct Sheet NA | No and date of last drunk NA | Period not reckoning towards freedom from extra fine NA | Sheet No 1 | Signature OC Company, etc Ray R Manbert Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 10.10.42 on completion of 2 yrs service					
Field 2	Mar 43	Gnr		AA Sec 40 Conduct to prejudice Unfit for duty due to alcoholic stimulants	Documentary	10 days F P	12 Mar 43	Major E B Scott	
Field 6	Dec 43	Gnr		Cond to the prej etc (AA Sec 40)	Sjt McDonald	2 days C B	6 Dec 43	Capt Ray R Manbert	
Field 13	Dec 43	Gnr		Conduct to the Prej etc Improperly Dressed AA Sec 40	[illegible] BSM Mitchell	3 days C B	13 Dec 43	Maj B E Churchill	
Field 21	Jan 44	Gnr		WOAS AWL from 1515 hrs 21 Jan 44 until 1735 hrs 21 Jan 44 AA Sec 15 (1)	Sjt McCauley Sjt Cook	5 days C B	25 Jan 44	Capt Ray R Manbert	
				ANDED FIRST GOOD CONDUCT BADGE wef 10 OCT 42 AUTH: G O 3088					
Field 19	Mar 44	Gnr		WOAS Cond to the Prej etc wearing a khaki collar & tie with Battle Dress Uniform AA Sec 40	Documentary	7 days C B	23 Mar 44	Major RE Churchill	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				AWDED FIRST GOOD CONDUCT BADGE wef 22 MAR 44 Auth: GO 3088					
Field 14	Sep 44	Gnr	(i)	AA Sec 15 (1) AWL from 2200 hrs 14 Sep 44 to 2355 hrs 15 Sep 44 (Absent 1 hr 55 mins)	Sjt McDonald	7 days F P Forf 7 dys pay FR&I 149(1)(b)	17 Sep 44	Lt col D S Harkness	
Field 16	Sep 44	Gnr	(ii)	AA Sec 15 (1)AWL (Whilst in open arrest) from 1200 hrs 16 Sep 44 until 1530 hrs 16 Sep 44 (Absent 3 hrs 30 mins)					

CERTIFIED TRUE COPY:

I hereby certify that I have compared this copy with the original document and find it to be a true copy in all material respects.

Ray R. Manbert

(Ray R Manbert) Capt RCA
3 Cdn A Tk Battery RCA

51T.
Pte. Davis, G. E.

51T.

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court. Forbes Major

On Active Service, this Seventeenth day of November, 19 42

Whereas it appears to me, the undersigned, an officer in Command of ninth Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~.] CWH

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.) CWH

*(2. A Field Officer as President.)

for the following reasons, namely :—]

Proceedings Reviewed [signature] Reviewing Officer (A.G.) [signature] 9 Dec 42.

15

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	D FORBES	N.N.S. Highrs

Members.

Rank.	Name.	Regiment.
CAPT.	D.P. KENNEDY	Lt. of C.
LIEUT.	P.C. KENNEDY	Lt. of C.

*Signed C W Fredenburg

Commanding Comd. 9th Canadian Infantry Brigade

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

511.

Army Form A.8.

Correspondence to be PINNED here

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this Seventeenth day of November, 19 42

Whereas it appears to me, the undersigned, an officer in Command of ninth Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.

*(2. A Field Officer as President.)

for the following reasons, namely :—]

Proceedings Reviewed

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR.	D FORBES	9th S Engrs

Members.

Rank.	Name.	Regiment.
CAPT.	D P KENNEDY.	9th of C.
LIEUT.	P S KEARSEY	9th of C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E Wheadon

Commanding Comd. 9th Canadian Infantry Brigade

Convening Officer.

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held ~~at~~ in the Field on the 21st day of November 1942 by order of Brigadier E.W. Holdenby Commanding Ninth Canadian Inf. Bde. dated the 17th day of November 1942

President.

Major D. Forbes N.N.S.Highrs

Members.

Capt. D.P. Kennedy H.L.I. of C.
Lieut. P.K. Kennedy H.L.I. of C.

~~, Judge Advocate~~

Trial of* C.53525 Pte Davis, G.E. S.D.G.Highrs.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~ ~~to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† CAPT. A.F. MEIKLEJOHN S.D.G. HIGHRS.

Counsel† or defending officer† CAPT. C.V. MATSON N.N.S. HIGHRS.

At 0930 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. NO

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—3-41 (9670)
H.Q. 1772-39-224

B

The President, members and ~~judge-advocate~~ are duly sworn.

~~The following officers under instruction~~ ~~are duly sworn.~~

Charge-Sheet

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 48 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

NOT GUILTY SIR *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

NOT GUILTY SIR *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

NOT GUILTY SIR *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

NOT GUILTY SIR *Answer.*

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

B2

CHARGE SHEET

The accused, 053585 Pte Davis G.E., Stormont, Dundas and Glengarry Highlanders, a soldier of the Cdn Army Overseas on active service, is charged with:

First Charge
Sec 18 (1)
AA

MALINGERING

in that he, in the Field on 31 day of October 1942 pretended to the Unit Medical Officer that he was suffering from sore feet causing him to fall out of a route march whereas, as he well knew, he was not so suffering.

Second Charge
Sec 9 (2)
AA

DISOBEYING LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he, in the Field, on 31 October 1942, when ordered by COMS (acting QMG) Dobson J., to appear for foot inspection, did not do so.

Third Charge
Sec 40
AA

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he, in the Field, on 1 November 1942 did appear at R.A.P. for foot inspection with dirty feet.

Fourth Charge
Sec 9 (2)
AA

DISOBEYING LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

In that he in the field on the 1st day of November 1942, when ordered by Capt. Ross, Unit Medical Officer to attend at R.A.P. for foot inspection, did not do so.

M. S. Dunn

(M.S. Dunn) Lt.-Col.,
Commanding,
S.D. & G. Highrs. CAC.

20 Nov 42
In the Field.

To be tried by Field General Court Martial.

E.W. Haldenby

(E.W. Haldenby) Brigadier
Commanding 9 Cdn Inf Bde.

In the Field,
20 Nov 42.

D. Strathmore

C

Proceedings on Plea of Not Guilty

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO

The prosecutor makes an opening address [hands in a written address, which is read, marked G, signed by the President, and attached to the proceedings].

The prosecutor proceeds to call witnesses.

First witness for prosecution. CAPT. W.H. ROSE. R.C.A.M.C.

being duly sworn, is examined by the prosecutor.

Q Give us the narrative in regard to the first charge of malingering.

A. At about 1100 hrs Nov 14th 37 I examined the accused in the unit M.I.R. On examination I found minor abrasions of one foot these in my opinion were not sufficient reason to cause the accused to fall out from any route march of ordinary length and under ordinary marching condition.

I produce here the morning sick report MFB 2982 which accompanied the accused when he appeared before me for examination. Marked "H" G.

Q Has the accused Pte. Davis ever reported to you previous to this time either after or during route marches claiming that he was suffering from sore feet

Court rule out preceeding question.

Q Dr Rose have you any further evidence in regard to the accused

A. In what regard.

Cross examination by defending officer

Q Capt Rose were you on this scheme or route march which ended 31st of Oct?

A No sir.

Q Did you see the accused on the 31st of Oct?

A No sir.

Q Then you couldn't very definitely state that the accused feet were hurting at that time

A No medical officer can definitely state whether or not a mans feet hurt at any time subjective symptoms come from the mans statements

Q Then it would be possible that the accused feet hurt him on Oct 31 1942

A. They could have hurt but not from the small areas of irritation shown to me Nov 1 1942 at 1100 hrs

Q It is possible that a mans feet may be hurting him without showing visable signs of bruises or injury?

A That is possible. But in this instance the symptoms were definitely related to these areas of inflatation.

Q. Don't you think that a soldier who doesn't know a great deal about medicine is liable to imagine that the reason his feet were sore was on account of the areas which showed some injury?

A Possibly sir a soldier would have had first aid and striven to carry on not to use it as an excuse to fall out.

Q. You did examine his feet at his first appearance at the R.A.P.?

A. At 1100 hours the 1st Nov 1942

Q. The sick report that accompanied him was made out Nov 1 1942?

A It is dated that sir

Q. It is possible for a mans feet to be pretty sore on the march and yet on the next day for them to be recovered enough to carry on

A No sir

Q ~~You mean to say that a man on a route [illegible]~~

Q According to your last answer if a man falls out of a route march for sore feet one day he is

not capable of carrying on route marching the following day?

A. If the soreness were sufficiently severe to warrant falling out he would not have sufficiently recovered the following day to carry out a route march.

Q Have you ever experienced any instances where it has been necessary to put a man on a truck for an hour or so and have him back route marching the next day.

A. No sir.

Question by the court.

Q what part of the foot were these minor abrasions?

A. As I recall it side of the foot by the great toe

Third charge. Same Witness.

Q Your narrative in regard to third charge and found?

A. At about 1100 hrs. Nov 1, 1942 the accused was paraded to the MIR where he presented a foot for medical inspection the filthy condition of the foot was such that I ordered him to bathe the feet and return to the MIR at a later hour, to be exact 1145 hrs.

Q Did the accused appear at or about 1145 hrs as ordered

A No sir.

Q What action did you take if any subsequent to that time.

A. I remained at M.I.R. until 1200 hrs and the accused had not reappeared. I sent Pte. ~~Conle~~ PKR Connolley to ascertain his whereabouts the next I saw him was in my room sometime between 1300 and 1400 hrs the same date when he was paraded there by Pte. Connolley

Q. What connection did Pte Connolly have officially?

A. He is first aid man for A. Coy. who brought Pte Davis to M.I.R. at 1100 hrs

Q What are the bathing facilities for washing?

A Reasonable and adequate and near enough to the quarters to enable the accused to comply

Q Do you think Pte Davis fully understood the order to return?

A. Yes sir. I asked the accused if he fully understood the order.

Q. Why did you take the pains to ask if he fully understood the order?

A Knowing well the men of the Corp. I felt that it was necessary in this particular case

Q Did Pte Davis offer any reason for not obeying your command to report at 1145 hrs

A Yes sir he didnt wish to keep me waiting for my lunch

Q ~~The accused was ordered to return at 1145~~ PKR

Q What time do you usually leave at noon?

A. As a rule from 1200 - 1215 hrs depending on duties.

Q Had the accused any reason to believe that you would be leaving on this day at or a little after 1145 hrs.

A. Not as far as I know sir.

Cross examined by the defending officer.

Q Back to the 3rd charge of dirty feet. Have you had instructions or order placed before the unit in regard to washing feet before appearing before you for foot inspection.

A Instructions have appeared in Part I orders at my suggestion ~~xxx~~ on various dates relative to personal hygiene particularly emphasizing care of feet at all times but more especially prior to, during and following route marches.

Q I want to know has there been Part I orders published in this unit definitely stating that feet are to be washed before appearing before the M.O. for foot inspection

A No sir but numerous and frequent instructions have been given that men appearing on foot inspection must appear with feet clean or disciplinary action would be taken.

Q That is verbal instructions to the different Corps?

A That is right sir

Q By the medical section?

A Yes sir

Q ~~There is a chance xxx~~.

Q Can you say the accused was present when the instructions were given?

A. No sir.

Q Isn't it true that you found the accused feet were dirty and you ordered him to come back for examination after he had washed them?

A. Yes sir.

Q Then you didnt examine his feet on his first appearance at the R.A.P.?

A. I both noted the filthy condition as well as ~~lesions that h~~ of which he complained.

Q Did he report to you on the afternoon of Nov 1 1942?

A Yes sir he appeared accompanied by Pte Connelly.

Q Then we can assume that Pte Connelly had nothing to do with his coming to you the second time.

A I dont know sir.

Re examination by the Prosecuting Officer

Q ~~Accused~~ PKK Has the unit been given any lectures on good march discipline?

A Yes sir at different times.

Q Is there any relationship between good march discipline and care of feet.

A Yes sir next to pesonal hygeine I consider proper march discipline the greatest contributing factor toward marching efficiency.

Examined by the court.

Q. When Pte Davis reappeared on the afternoon of Nov 1 1942 were his feet then clean

A Yes sir.

Rule of Procedure 83B has been complied with.

Witness withdraws.

2nd witness for the prosecution C 54310 Sgt Moss A medical Sgt S.D.G. Highrs. being duly sworn is examined by the prosecutor.

Q Speak on charge 3 please

A. At approximately 1100 hrs Nov 1, 1942. I examined the feet of Pte Davis and found them to be in ~~poor~~ filthy condition

Q Speak now to the 4th charge.

A. I heard Capt Rose tell Pte Davis to report back I was there until 1215 hrs and up until then he had not shown up

The defending officer declines to examine the accused.

Examined by the court.

Q Could the accused have shown up without you seeing him?

A No sir.

Q Did you hear Capt Rose state an exact time?

A No sir

Q

A

Question by defending officer put through the court

Q ~~If the~~ Sgt Were you working on documents at the time the accused came in did you stop work and examine his feet before the MO?

A. I am not sure whether I was working on the documents or whether I examined his feet before or after.

Rule of Procedure 83B has been complied with

Witness withdraws.

3rd Witness for the prosecution c 50763 b.Q.M.S. Dobson J.C. S.D.G. Highes. being duly sworn is examined by the prosecuting officer.

Q. Will you speak to the 2nd charge?

A. The Coy was out on Dorking ranges at the time they left Oct 31 1942 about 1400 hrs to march home I stayd behind to turn over to B Coy at the ranges when returning on Dorking - Horsham highway in the truck I noticed Pte Davis standing by the side of the road. I stopped and inquired what was wrong, he said he had to drop out the truck was loaded and so he said he would make his way back by bus. Back at camp I found Lieut Clarke was a/Coy Commander at the time had made arrangement for a foot parade 1900 hrs. I placed Pte Connelly our first aid man in charge of the parade and told him to see that Pte Davis went on foot parade as soon as he got into camp.

Q Was anyone else warned by name other than Pte Davis

A Pte W. Bates

~~Q Did Pte Bates attend~~ DKK

Q Why did you instruct Pte Connelly to see that Davis in particular attended this parade?

A. I felt that if he was not warned he might not attend

Cross examination by the defending officer

Q Did you see the accused on Saturday ~~afternoon~~ DKK Oct 31 1942 after you talked to him on the road

A. No sir.

Q He was coming towards camp when you saw him?

A They were standing on the corner.

Q They?

A There were two men at the time. Pte Davis was one of them

Q If you would have had room would you have brought them in.

A Probably yes.

Q You didnt doubt Davis' word when he told you he had to drop out?

A Yes sir

Q Why?

A ~~When he told me he couldn't keep up the pace he didn't appear to me to be exhausted~~

A During last 2-3 days on the ranges the men had been wearing rubber boots on account of the mud. On Saturday morning we loaded platoon trucks early & told the men they could still wear their rubber boots but to leave their leather boots out to wear on march home. A couple of the men packed their leather boots on the truck. Pte Bates was one and he informed me at the last minute he couldnt walk home because he had rubber boots on. I told him that didnt make any difference he would have to walk home now. I could see PKK

Q Can you definitely state that Pte Davis heard you ~~order~~ say leave out the boots

A Yes sir.

Q ~~You saw Pte Davis on parade~~ PKK

Q In regard to 2nd charge you didnt give the order personally for Pte Davis to report on foot parade

A No sir to Pte Connelly

Examined by the court

Q What kind of boots was he wearing on afternoon Nov. 1 1942 on the road.

A. I dont remember.

Q What statement did Pte Davis make to you when you found him standing beside the road.

A. The pace was too tough for him.

Q ~~He~~ Did you ask him if his feet were sore

A No sir.

Rule of procedure 83 B has been complied with.

Witness withdraws

4th Witness for the prosecution C 40267 Pte Connolly C.G. A. Coy S.D.G. Highrs having been duly sworn is examinined by the prosecuting officer

Q. What official instructions were you given by A/C S.M. Dobson.

A. I was told to take ~~sick~~ foot parade at 1900 hrs Oct 31, 1942

Q Did the A/C S.M. mention anyone by name for that parade

A Yes he said there were two definitely to go on Pte Bates, and Pte Davis.

Q Why did he name those?

A To find out the cause of their falling out.

Q Did Pte Davis attend parade as ordered?

A No sir not the evening parade

Q Did you attend foot parade 1100 hrs Nov 1/942

A. Yes sir.

Q Was Pte Davis present?

A Yes sir.

Q What happened there?

A He was told to come back at 1145 hrs

Q Where were you at 1145 hrs.

A In my ~~hand~~ HQ hut from 1145 - 1155 hrs after which I returned to the R.A.P.

Q What took place after you returned to the R.A.P.

A. The M.O instructed me to go down to the kitchen and see if Pte Davis was in the line-up.

Q Was he in the lineup?

A Yes sir.

Q What did you say?

A. To report to R.A.P immediately and that I had instructions to ~~fall him prisoner and~~ use him escort if necessary.

Cross examined by the defending officer

Q What did you say to Pte Davis when you saw him ~~on~~ Oct. 31 1942

A I asked him if he had been warned to go on foot parade at 1900 hrs.

Q Anything else?

A. He was definately to go on were my instructions by the a/c SM Dobson.

Q Were you with the Coy on the route march?

A Yes going and coming both.

Examined by the court

Q Did Pte Davis report to you with sore feet during that day Oct 31. 1942?

A No sir

Q Were you on that sick parade 1900 hrs Oct 31. 1942?

A Yes sir.

Q How do you know Pte Davis was not on it?

A I checked personally with the roll

Q What happened at the meal lineup?

A. The C.O.S fell in an escort to conduct him to the R.A.P

Q What happened at the R.A.P.?

A The Cpl in charge told us to come back 1330 hrs which we did.

Rule of procedure 83 B has been complied with

The Witness withdraws.

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. NO SIR

Question. Do you intend to call any other witness in your defence?

Answer. YES SIR

Question. Is he a witness as to character only? *Answer.* NO

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*). D 2

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says† NO.

~~[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

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† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

1st witness for the defence Lieut. J Watt A Coy.
S.D.G. Highrs having been duly sworn is examined by the defending officer

Q How fast was the pace on this day

A A good pace

Q Did you see the accused Oct 31 1942

A I saw him a number of times

Q Did you see him on the march back from the ranges

A I was at the rear of the column when Pte Davis started to drop back I asked him what was wrong and he said his feet were sore and he couldn't keep up I told him to keep plugging and he followed us in.

Q Do you remember what he was wearing on his feet

A No sir.

The prosecutor declines to cross examine the witness

Dorasmgor "R 3" Dt

Closing Address by the Defence.

With regard to the first charge of Malingering. The charge reads that the accused pretended to the unit M.O. on Saturday 31 Oct 1942 that he had sore feet. This was not possible as the M.O. admits in his evidence that he never saw the accused on Saturday 31 Oct.

Also the accused is said to have fallen out of the route march, but did he? As the last witness states, he was seen to drop back, but not to fall out, and when asked by Lieut. Watt, the accused stated that he couldn't keep up the pace, which, according to Mr Watt was a "good" pace

Therefore I feel that the prosecution has failed to prove this first charge.

The second charge has not been proven as laid. C.S.M.s (A/C.S.M.) Jobson did not personally order the accused to attend the foot inspection parade and I would ask the court to read M.M.L. Ch III Pord 10. and also A.A. Sec 8 Note 3. which states that the order must be given personally.

The third charge has also not been proven as there is no evidence to show that the accused ever was told that he must "wash his feet" before going to the M.O. not only that but the accused had just returned from a "scheme" of several days and may

not have had time or felt to tired to get cleaned up.

For Cuamoro

DS

On the last charge I have nothing much to say except that except for the previous circumstances, it would never have happened.

C. F. Watson Capt.

D6
R. Forbes
Major

4

Closing address

On the basis of the evidence herein submitted I ~~believe~~ maintain that the accused has been proven guilty on all 4 charges & that he should be punished accordingly

~~[If the accused is judged guilty on any or all of the pregnancy charges I wish to draw special attention to his M.T.M. 6.]~~ I also wish to call the attention of the court to the fact that the C.O. has seen fit to commit him for court martial considering his maximum punishment inadequate

a Meekly John Capt

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Not guilty of the first charge
Guilty of the second charge
Guilty of the third charge
Guilty of the ~~fourth~~ fourth charge

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt. A Maiklejohn is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "I", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

~~Cross-examined by the accused.~~

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* Yes.

The Court is closed for the consideration of the sentence.

1.

~~C 1~~ G
Dorbes Major

C 53525 Pte Davis G E - 4 Charges

Opening Address

Gentlemen I shall endeavour to prove through witnesses the following narrative of events which has led to the preferment of charges against the accused C 53525 Pte Davis G E.

1 that he did pretend to the unit Med Offic that he was suffering from sore feet
2 {that he did pretend that that this caused him to fall out from the route
3 that this pretence occurred in an effort to escape the duty of marching
4 that this pretence constitutes malingering from [illegible] range

5 {that he did disobey a command ~~given by COMS Dobson~~ to appear for foot inspect Oct 31
6 that it was a lawful command
7 that it was given by his superior officer COMS Dobson

8 that he did appear at R.A.P for foot inspection with dirty feet
9 that appearing thus at R.A.P. constituted conduct to the prejudice of good order and military discipline

10 that he did disobey a command to appear on foot inspection Nov 1 at R.A.P.
11 that it was a lawful command
12 that it was given by his super officer - Capt Rose, unit M.O.

and I believe that the statements of ~~the~~ 5 witnesses for prosec. Capt Rose (unit M.O.) Sgt Moss (M.O.S) A/CSM (COMS) Dobson. Lieut Clarke. Pte Connolly A Coy ~~[illegible]~~ and man & qualify I.B. will fully substantiate the foregoing charges.

A Mickleyohn Capt.
5 Hlt Highrs

Exhibit 'A'

H Coy { Squadron / Battery / Company / Detachment }

S.D + S Highlanders Battalion "H"

N.A. 1 [illegible] 19 44

MORNING SICK REPORT

Regt'l No.	RANK AND NAMES (Christian Name in full)		Age	Religion	Whether for duty a prisoner or defaulter	Married or Single	DISEASE	Medical Officer's Remarks and Initial
C53525	Pte	Davis S.E.	21	P	D.	S	Moderate Irritation of left foot.	M.D.

Insufficient reason for falling out of any route-march. Could have had a piece of adhesive placed over area and carried on.

[illegible] Rose
Capt

[illegible] Rose
Capt

Medical Officer C40267 Pte C.S. Connolly Orderly ~~N.C.O.~~

(OVER)

M. F. S. 292
[illegible]
H.Q. 1772-33-[illegible]

"1"

Dorbis, Major

MEDICAL OFFICER'S CERTIFICATE

K.R.(Can.) Para.557

I certify that I have this morning examined

C53525 Pte. Davis, G.E. and in my opinion
Number Rank Name

he is fit to undergo trial by Court Martial.

Medical Officer, S.D.&G. Highrs.

Date 21 Nov. 1942.

J

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
053525	Pte	Davis G.E.	S.D. & G. Highlanders.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in courts with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.W.L.	2 times	2 times.
For A.A. Sec 40	3 times	4 times.
For A.A. Sec 18 (4)	1 times	1 times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

~~There are no entries in the conduct sheets of the accused.~~

Stat 18.

2. ~~The accused has not been previously convicted, or~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 12 days in military custody, making a total of 12 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ M.R.M.I. ~~attestation paper~~ is 21 yrs

6. The date of his ~~commission~~ / attestation specified in his record of service / ~~attestation paper~~ is 24 June 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (or corps or department) the rank of dated

(*16548) [illegible] 75,000 [illegible] A.A.S.W.Ltd. [illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 day of Nov

A McKlyohn Capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

In the rank of .....

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that on the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No. C53525 Name Davis, G.E. Sqn., Battery, or Company "A" Corps S.D.A.C. Highrs. Date of enlistment 24-6-40 G.C. Badges Service or Proficiency Pay [illegible] K. Character

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert	24-4-41	Pte	Nil	Conduct to the prejudice of good order & military discipline in that he on 24 Apr 41 used improper language to his superior officer.	Cpl Miller	14 days C.B.	25Apr41	Major Cockburn	
Camberly	20-11-41	"	"	AWL from 0700 hrs 20 Nov 41 to 2100 hrs 20 Nov 41(14hrs)AA 15.	A/CSM Dobson	7 days C.B.	22 Nov 41	Coy Comdr.	Forf 1 days pay
In the field	2-7-42	"	"	Stealing property of person subject to military care in that he on 2 Jun 2 stole cigarettes the property of C53544 L/Cpl Phillips C.S. S.D. & G. Highrs (AF). A.A. 18 (4)	CSM Campbell CSM Dobson Pte Crompton	28 deay f.p. 28 days forf of pay.	11-7-42	Lt.-Col. Sutherford	Spec auth from Brig Cmdg 9 C.L.D. to try case.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the field31	Aug 42	Pte	Nil	AWL from parade 0830 hrs 31 Aug 42 (Absent 7hrs 30 mins) AA 15	Cpl Martin	7 days C.B.	2 Sep 42	Maj Mason.	
In the field14	Sep 42	"	"	NOAS did urinate on a public st.	L/Cpl Brocklebank L/Cpl Smulard	7 days C.B.	21 Sep 42		
In the field14	Oct 42	"	"	NOAS neglecting to obey camp order No 183 para 5 in that he was in or near "The Gardens" with intent to take apples from the Orchard belonging to the Gardens AA 4	Mr F. Lloyd	forf of 3 days pay FMI 149	14 Oct 42	Lt.-Col Dunn	
In the field28	Oct 42	"	"	NOAS Conduct to the prejudice of good order & military discipline in that he, in the field, 2 Oct 42 at approximately 2200 hrs when on duty did fail to challenge & stop parties or persons passing station. A.A. 40	Capt Willis H/Capt Brain	7 days C.B.	6 Oct 42	Capt Hamilton	

Certified true Copy R. [illegible] Lt. [illegible]
[illegible]

"L"

List of witness for the prosecution in the case of C55525 Pte Davis, G.E., Stormont, Dundas & Glengarry Highlanders.

1. Capt W.H. Rose, M.C., S.D. & G. Highrs.
2. C54310 Sgt Moss A. S.D. & G. Highrs.
3. C50763 CQMS Dobson J.E., S.D. & G. Highrs.
4. Lieut. G.E. Clarke, S.D. & G. Highrs.

Summary of evidence in the case of C53525 Pte Davis. G.F. Stormont Dundas and Glengarry Highlanders. M

Dundas Major

By direction of the commanding officer the summary of evidence is taken on oath.

1st Witness for the prosecution

Capt W H Rose (M.O.) Stormont Dundas and Glengarry Highlanders having been duly sworn states:- At, in the Field, on Nov 1. 1942 the accused appeared at the R.A.P. at approximately 1100 hrs for an examination of a foot condition, which he claimed had necessitated his falling out from a route march on the previous day. On examination the feet of the accused were found in a filthy condition. He was ordered to wash them before further examination would be made.

The accused was ordered to report back to the R.A.P. at 1145 hrs. Nov 1. after having washed his feet. This he failed to do. I waited till 1200 hrs at the R.A.P. but Pte Davis failed to put in an appearance. I then sent Pte Connolly who had brought him in previously to the R.A.P. to ascertain his whereabouts. Prior to the accused having left the R.A.P. I asked him if he fully understood the order. He replied in the affirmative.

W H Rose Capt.
M.O.

The accused declines to cross-examine the witness

M1

2nd Witness. for the Mosecution

c 54310 Sgt Moss A - Stormont Dundas and Glengarry Highlanders having been duly sworn states :- At in the Field on Nov 1 1942 I examined the feet of the accused at the R.A.P. and found them to be in a filthy condition. I heard the WH Rose MO order the accused to return later for inspection. I was busy at the time this order was given. working on documentation. I was at the R.A.P till 1215. During that time the accused did not put in an appearance

Moss Sgt

The accused declines to cross examine this witness.

M2

Witness for the prosecution

No C50763 C Q M S Dobson J. E. Stormont Dundas and Glengarry Highlanders having been duly sworn states:— At in the Field on 31 Oct 1942 I was acting C S M of A coy. The coy moved off from Dorking ranges homeward at 1400 hrs. I stayed behind in the camp ranges to meet B coy advance party. After the turnover I returned by truck to camp. I found Pte Davis G. E. along the Dorking-Horsham road about 7 or 8 miles from the unit area. I inquired what the trouble was. He replied he had had to fall out because he couldnt keep the pace set. The truck was loaded to capacity. Pte Davis said he would complete the journey by buses. I returned to camp forthwith.

When we came into camp Lieut G E Clarke arranged a foot parade to the R A P for 1900 hrs. I instructed the first aid man Pte Connolly G to see that all men with sore feet attended this parade, and to see that Ptes Davis G and Pte Bates W in particular, attended the parade. Pte Connolly later informed me that he warned Pte Davis G for the parade but that Davis failed to attend.

J. E. Dobson, C.Q.M.S.

The accused declines to cross examine the witness

G. E. Clarke

M3

Witness for the prosecution

Lieut ~~J. A. Watt~~ - Stormont Dundas and Glengarry Highlanders having been duly sworn states :- at in the Field on

31 Oct 1942

31 Oct 1942 ~~the accused~~ I was acting OC "A" Coy - We were on the return march from Dorking Ranges. I had instructed ~~A(CSM) CQMS Dobie~~ ~~of that~~ the parade that all personnel with sore feet were to attend foot parade under the orderly Sergeant 0930 hrs at the R.A.P. I later saw the medical officer's report (exhibit "A") which indicated that the accused was ~~fit~~ physically fit to complete the march.

G E Clarke Lt.

The accused declines to cross examine this witness

M4

The accused No C 53525 Pte Davis E.E. Stormont, Dundas and Glengarry Highlanders having been duly cautioned in accordance with Rule of Procedure 4(E) reserves his defence.

Certified that Rules of Procedure 4 C. D. E. and F have been complied with.

Taken down by me in the presence and hearing of the accused this 11th day of Nov. 1942 at in the Field

A McKlejohn. Capt.
Stormont. Dundas. Glengarry
Highlanders

Statement of accused C53525 Pte Davis G.E., Stormont, Dundas & Glengarry Highlanders.

"I do desire to have an officer assigned to represent me at my trial by court-martial

G E Davis
(C53525 Pte Davis G.E.)

In the Field,
12 Nov 42

5 R-136
Pte Davis, S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K 50330 Pte Harry DAVIS - 1 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	NOT GUILTY	NOT GUILTY	
2nd AA Sec 8(2)	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2-1 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To forfeit all Ordinary Pay for a period of Sixty (60) days

(Sgd) ..... Judge-Advocate, if any. 2 Aug/45 Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:
Finding and sentence confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further order.~~(2) Sgd
(1. AA 57A. Delete if not used.)

(Sgd) F J Rutherford Brig

Date 4 Aug 45 Commanding Comd E Gp RCA
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K 50330 Pte HARRY DAVIS	6 AUG 45	

Promulgated in Part II Order No. 1247A"
d. 7 Aug 45.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 8 SEP 1945 JAG(O) H.Q.

RECORDED AT CMHQ IN AB 163 • 5R-136

FIELD GENERAL COURT-MARTIAL

CFAAG (In lieu of AFAA) 40/F & B/1600 (6144) 4/38B

Convened by Order of Brig T J Rutherford Comd "E" Gp CRU dated 30 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K 50330	Pte	Harry	DAVIS	1 Cdn Repat Dep

PROCEEDINGS REVIEWED
R Lawrence Capt RCA
3 Sep 45
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 2 Aug 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elect(s) to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ~~Lt~~ D P126 ~~as interpreter?~~ Ans ~~—~~

~~The Interpreter is sworn.~~(1) Do you object to SGT T H S INCLAIR as shorthand writer? Ans NO
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO SIR
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.A. REDMAN	HQ CRU
Member	CAPT	J.D. CORLESS	4 CRep D
Member	LT	E.C. BRUMWELL	4 CRep D
~~Judge-Advocate~~			
Prosecutor	LT	D.M. NICHOL	1C Rep D
Defending Offr	CAPT	E. SPAFFORD	1C Rep D

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) plea
.....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32. RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO SIR .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~the~~) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-A1
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not ~~establish a prima facie case~~ against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as ~~to~~ the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans TO GIVE EVIDENCE Do you intend to call witnesses on your behalf ?
Ans NO SIR. ~~Are they witnesses as to character only ? Ans .....~~
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTED AIT
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 2nd charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO, SIR (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(f), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused K-50330 Pte. Harry DAVIS, on Permanent Establishment strenght of No 1 Wing "A", No. 1 Canadian Repatriation Depot (Lorne Scots) a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
See 15 (1) AA

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

IN THAT HE

in the field, absented himself without leave from 1500 hrs 11 Jul 45 to 0800 hrs 12 Jul 45. Total time absent 17 hrs.

SECOND CHARGE
See 9 (2) AA

WHEN ON ACTIVE SERVICE USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

IN THAT HE

in the field, at approximately 0815 hrs 12 Jul 45 after having been ordered to report to the Medical Inspection Room said to D68l868 Sgt COOKE R.J. No 1 Canadian Repatriation Depot (Lorne Scots) "I am not taking orders from a thing like you", or words to that effect.

In the field
23 Jul 45

M.B.K. Gordon

(M.B.K.Gordon) Colonel,
Commanding Officer,
No1 Cdn.Repat Depot (Lorne Scots).

"To be tried by FGCM".

In the Fd
30 Jul 45

(T. E. Rutherford) Brig
Comd
"E" Gp CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K 50330	Pte		Harry	DAVIS	1 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 30 Jul 45 endorsed by me, [illegible] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	D L Redmond, VD		HQ CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CO 4 Cdn Repat Dep		4 Cdn Repat Dep
Lieut	To be detailed by CO 4 Cdn Repat Dep		4 Cdn Repat Dep

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 30 Jul 45

J Rutherford Brig
(Signature of convening officer. RP 105 fn 2.) (Rank.)

(T J RUTHERFORD) Brig
Commanding "E" Gp CRU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Page 1 to Proc of APAB)
(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by *him* in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 129(C), MML p 749.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

I certify that I have this morning examined No K-50330 Rank PTE

Name Davis A of #1 Cdn. Repot. Depot (unit) and im my opini

he is ~~fit~~ unfit to undergo trial by Court Martial.

Station 1 Cdn Repot Depot

Date 2 Aug 1945

L. J. Poirier Capt
Medical Officer
No 1 Cdn. N.E.T.D.
(Lorne Scots)

TRANSCRIPT BY: P28126 SGT AH SINCLAIR

TRIAL OF

K.50330 Pte DAVIS H 1 Cdn Repat D

PROSECUTION

FIRST WITNESS

D.81868 Sgt COOKE RJ, 1 Cdn Repat Depot, having been duly sworn, states:

On Wed as is my custom I have my cooks and helpers report to the MIR for an inspection. I later go to the MIR to see who is not reported. On 11 Jul, the accused whom I now recognize was a vegetable man and he had been with for a few weeks. I noticed that he had not reported [redacted] and I went to find him at about 1500 hrs to tell him to do so, as he should have been working in the vegetable room. I couldn't find him after looking around for him and sent Pte Sklut to find him but he couldn't either.

Q. What happened the next day?
A. The next morning I asked him where he had been and I cannot recall what he said to me. The time then was around 8 o'clock. I then told him to go to the MIR and he said when he finished eating he'd go. However, he was upset at me I guess telling him and on the way out to the back door I think it was Sklut spoke to him or twigged him about something and the accused came back and wanted to know what I was talking about. I told him I had said nothing but for him to get to the MIR. I said to him "get to the MIR in a hurry", and he replied that he was not taking orders from a thing like me and I reprimanded him saying "Sgt to you". Capt Ferris happened along at the time, heard the altercation and he told the accused to as he was told. The accused still said he wasn't taking orders from a thing like me and left then for the MIR and then Capt Ferris said "place that man under arrest, charge him with insolence and name me as a witness". I would think the accused heard what Capt Ferris said.

CROSS-EXAMINED

Q. According to the accused he says his job was finished for the day and that there was nothing for him to do, is that correct?
A. I wouldn't say that, Sir. He is a fatigue man in the kitchen doing vegetables and doing whatever work is necessary. A man is not done until he has finished his day's work.

Q. He was staying in the kitchen?
A. I didn't see him since around dinner time.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THE PROSECUTOR SAID THAT CAPT FERRIS WAS ON LEAVE AND WAS NOT AVAILABLE.

THE DEF OFFR SAID HE DID NOT REQUIRE CAPT FERRIS'S PRESENCE FOR CROSS-EXAMINATION

SECOND WITNESS K.18061 Pte SKLUT, HJ, 1 Repat Depot, having been duly sworn, states:

I recognize the accused and on 11 Jul I saw him in the kitchen in the afternoon around 2 o'clock.

Q. Did you see him after 3 o'clock?
A. No, Sir.

Q. Did you have occasion to look for him?
A. Yes, I looked in Hut 12 where he sleeps to see if he was there, and I couldn't find him. I did this because the Sgt gave me an order to find him and tell him to go to the MIR. I also looked in all the rooms of the kitchen and couldn't find him. The next I saw him was that night at 6 o'clock at the gym before the show started. I saw him again next morning, talking to the rest of the boys and myself in the kitchen.

Q. Was he talking to an NCO?
A. I didn't see him.

Q. Did you hear the Sgt order him to go the MIR?
A. Yes, and he replied that he would go there when he finished eating.

Q. Did you hear the conversation at the door between him and the Sgt?
A. No.

CROSS-EXAMINED

Q. Did you actually look in the accused's bed at Hut 12?
A. Yes, I think it's in an upper bunk he sleeps - I also looked in the washroom

QUESTIONS BY THE COURT:

Q. What was your job that day?
A. General fatigues in the kitchen, Sir.

Q. What time are you dismissed?
A. About a quarter to six, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THIRD WITNESS

B.51956 Cpl MURRAY, FE, 1 Cdn Repat Depot, having been duly sworn, states:

I recognize the accused - I'm the NCO IC of fatigues in the kitchen. The accused was away from duty for 7 hours on Wed 11 Jul 45. His work was finished at the time but we don't let them leave the place because other work might come up. I missed him from around 1 o'clock and the next time I saw him was when he was going to the lavatory around 4 o'clock.

Q. What time is the vegetable man off duty?
A. A little after 5.

Q. Did you see him next morning?
A. Yes.

Q. Speaking to the Sgt cook?
A. No.

CROSS-EXAMINED

Q. Did you dismiss him after he had finished after 4 o'clock?
A. No, they generally quit a little after 5 or so and he stayed till then, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

FOURTH WITNESS

L.110068 Pte HALL SJA, 1 Cdn Repat Depot, having been duly sworn, states:

I recognize the accused. I saw him on the morning of 12 Jul in the kitchen about 8.15 to 9 o'clock when he came in for a cup of tea. I heard him say to the Sgt that he was always trying to boss him and order him around.

Q. What else did he say?
A. I don't know I moved away.

Q. Did you notice anything about his attitude?
A. No.

Q. Did you hear an argument?
A. Yes, they were arguing about something in the back and the accused told Capt Ferris that the Sgt was always arguing with and picking on him. That is all I understood distinctly.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THE PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS

The accused, duly,sworn, states:-

I do not see how I was absent without leave because I remember being in the kitchen until approx 1615 hrs. I was sitting in the dining-room portion of the building. There was a fireman there and I believe a Cook. The cook was sitting across the room from us and I was sitting with the fireman on one of the tables. We sat there for approx one hour and fifteen minutes. I remember listening to two different radio programes in thekitchen on the said afternoon. Each programe was approx one half hour long. During that time I never saw the Sgt come into the vegetable room or Mess Hall and after 1600 hrs I came into the kitchen and I went into the vegetable room to get my Mess Tins and then I had my supper. The cooks were getting the evening meal ready and I stood in there until just before they started to serve the meal. Being as I never help serve food I went to my quarters. During this time from 1500 hrs to 1645 hrs at no time did anybody say or suggest to me that I was to attend a medical parade. I was in the camp area all night and next morning reported to the kitchen at 0805 hrs. As soon as I walked into the kitchen the Sgt Cook said to me "You had better get over to the M.I.R. if you know what is good for your" He gave me no explanation and to my mind his manner was over-bearing and his voice threating. On being given no explanation one way or the other I went over and poured myself a cup of tea and buttered a piece of toast. I had no sooner laid the knife that I had been buttering the toast with down on the table when the Sgt came up to me and grabbed the knife on the table and said you had better wash things and I told him that I wasn't finished with it as yet. He went away for about five minutes and came back and grabbed the knife again and made the same statement in the same manner as before. I again told him and that I hadn't finished with the knife as yet. He took the knife and went over and washed the knife himself and then walked away through the kitchen and leaned against the open doorway. After I had finished eating I went out through this door and as I passed this Sgt he saidsomething in a low voice. As there was nobody around I assumed that he spoke to me and when I asked him to repeat it he refused. At this time Capt Ferris came into the doorway and the Sgt started talking to him about me. I went to the M.I.R. and the Orderly asked me what I wanted and I told him that the Sgt Cook had sent me over to the M.I.R. without any explanation and the Orderly said that he didn't know anything about it so I said maybe it is about this routine check up we are supposed to have in the kitchen. The orderly checked my name and I then left the M.I.R.. About halfway back I met a Sgt and he told me that I was under close arrest.

CROSS-EXAMINED

Q. What hut do you sleep in?
A. 12.

Q. Have you been on inspection parades at the MIR?
A. Yes, once before, about 3 weeks before.

Q. The same day, Wednesday?
A. I don't remember. I've been in the kitchen for about 5 weeks.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)

THE DEFENCE IS CLOSED.

STATEMENT BY THE PROSECUTOR ON THE FINDING

From the evidence it is clear with respect to the first charge that there is an error as to time and I suggest that the Court make a special finding.

However, there can be no doubt in the minds of the Court that the accused was not at his place of duty from the best evidence which is that of Cpl Murray who was NCO IC of the fatigues, and he couldn't be found between 1300-1700 hrs.

With respect to the 2nd charge, from Sgt Cook's evidence who is an NCO of very long standing, and has had considerable dealings with men, and who has nothing to gain and also from other rather indefinite evidence of other witnesses that there was an altercation of some kind, I respectfully submit that the accused was at the time specified guilty of the offence as charged.

STATEMENT BY THE DEF OFFR ON THE FINDING

I would like to deal with the two charges separately.

Regarding the first charge the accused according to his own statement was in the kitchen at a quarter to 5. A witness has said that he saw him in the kitchen around 2 o'clock, sometime between 1 and 3, and another witness says that he was on duty at 4 o'clock and worked there until he was dismissed at supper time. The charge reads that this man was AWL from 1500 hrs until 0800 hrs the following morning. The accused was seen at supper parade and was seen later at 1800 hrs going to a show, and as he was not required for further duty that night it appears to me that the charge of AWL is entirely wrong. There are no restrications placed upon PE personnel of the Camp and as long as they are in their quarters by lights out and on duty the following morning they are not required to have a pass.

Regarding the second charge I have my statement written out and I will read it to the Court (note att)

THE COURT IS CLOSED TO CONSIDER ITS FINDING

THE COURT IS REOPENED AND THE PRESIDENT ANNOUNCES THAT THE COURT FINDS THE ACCUSED NOT GUILTY ON THE FIRST CHARGE.

PLEA IN MITIGATION

THE DEF OFFR SAID HE HAD NOTHING FURTHER TO ADD TO WHAT HE HAD SAID ON THE FINDING.

STATEMENT BY THE DEF OFFR ON THE FINDING
ON THE SECOND CHARGE

Regarding the second charge it appears to me to be rather a case of "Much Ado About Nothing" - Lieut. Cooke, quite rightly, appears to have been rather sharp with Davis in his first order for him to get over to the M.I.R. Davis did not know that Lieut. Cooke had been looking for him the previous evening and further to that did not know of the Medical Inspection. In my opinion it is a natural reaction to get ones back up at being spoken to in this manner with no previous warning and with no knowledge of what was going on. As he was leaving the latter Davis made a natural, mistake and thought that the Lieut had spoken to him again. It appears that throughout their conversation together that Lieut. Cooke did not think Davis' manner insubordinate and it was only on the recommendation of Capt. Ferris who only appeared at the end of the conversation that Davis was put under charge. Surely if a Lieut. Cant make up his own mind

~~trying a~~ whether a man should be charged a lot and has taken no steps the previous evening to locate the accused on mash parade or in his hut to warn him of the Medical Inspection then I maintain that this man is innocent and the whole affair simply a case of a lot of fuss being made over something which with a little more management and understanding would never have happened.

MM

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K-50350	Pte.	DAVIS, H.	No 1 Cdn Repat Depot (Lorne Scots)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	1 times	1 times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

[redacted]

3. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 2.1 days in military custody, making a total of 2.1 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 32

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 28 Jun 43

7. [redacted]

8. [redacted]

9. [redacted]

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)) CVSM & CLASP

11. [redacted]

12. [redacted]

E + B

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. K-50830 Rank Pte. Name DAVIS H. of Cdn Repat Depot Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court, or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		WOAS AWL 5 hrs Sec 40 A.A.		
(JM MELDRUM) Col.	5 Jan 45 No. 5 C.I.T.R.		FBAI 149 (2) Awarded 15 days pay	N/A

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2ND day of AUGUST 45

(J.G. Kimas) Capt.
Adjt., Officer I/C Regimental Books and Records

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of Pte.	45 to present date. years.	
In the rank of	years.	
In the rank of	years.	

(Instructions.—If any matter in any of the above five paragraphs cannot be stated from the regimental books the paragraphs must be struck through, except that on the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

NoK-50330 Name DAVIS, H.

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Sqn, Battery, or Company

Corps CIC

Period not reckoning towards freedom from extra fine

Sheet No.

Date of enlistment 28 Jun43

OC Badges

Signature OC Company, etc

Service or Proficiency Pay

3/17 MFM 6 (AFB 122) 40/P&S/136 (7010)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5-1-45	Pte	Nil	WOAH AWL from 0900 hrs 4 Jan 45 to 1400 hrs 9 Jan 45(Absent 5 hrs) Sec 40 A.A.	L/Cpl. Delmonte, V.S.	15 days pay FRAI 149 (2)		(J.M. MELDROM) Colonel.	Total forf 15 days pay.

Certified to be a true copy of the original documents held in my custody.

J.G. Mimms Capt

(J.G. MIMMS) Capt., Adjt.,
1 Cdn Repat Depot (Lorne Scots)
having custody of the original documents.

(PTO)

SUMMARY OF EVIDENCE

In the case of K-50330 Pte. Harry DAVIS, No. 1 Canadian Repatriation Depot (Lorne Scots) a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

D-81868 Sgt. COOKE, R.J., No. 1 Canadian Repatriation Depot (Lorne Scots), having been duly sworn, states: I am D-81868 Sgt. Cooke NCO i/c Cooks and Helpers, 1 Cdn Repat Depot (Lorne Scots). On Wednesday 11 Jul 45, which is medical inspection day for cooks and helpers handling food I looked for Pte. DAVIS, H. around 1500 hrs to warn him of the inspection but could not locate nor find him. Later I sent another Private to find him and he likewise could not locate him. The man was absent from duty from approximately 1500 hrs 11 Jul 45 until 0800 hrs 12 Jul 45 when he reported for duty. When I spoke to him telling him to get to the M.I.R., as soon as possible, he said that he was in no hurry to go to the M.I.R., and that he was not taking any dirt from me and no orders and that he would go when he was ready. Going out of the kitchen I was standing at the back door when one of the boys further back in the kitchen said something to him and he took the attitude that it was me and came back and asked me what I was talking about. I told him I wasn't talking to him and for him to get to the M.I.R. He still said that he wasn't taking orders from a "thing" like me which Iresented. Capt. Ferris came along during the argument and said "place that man under arrest. You cannot take any nonsense from this man. I will be a witness."

D-81868 Sgt. COOKE, R.J.

THE ACCUSED ELECTS TO CROSS-EXAMINE THIS WITNESS

QUESTION BY THE ACCUSED: - Q-1 Why did you not warn me between 0800 hrs and 1500 hrs in the afternoon as I was in the kitchen during that time?

A-1 As is customary on Wednesday of each week I check on the men to see if they have reported so as not to hold the report up. You had been on this parade on previous Wednesdays and I could not locate you to check you or warn you for the parade.

Q-2 Where did you look for me?

A-2 In the Area of the Kitchen and Mess Hall and buildings adjoining the Kitchen.

SECOND WITNESS FOR THE PROSECUTION

Captain A.G. FERRIS having been duly sworn states:- I am Captain A.G. FERRIS, Messing Officer, 1 Cdn Repat Depot (Lorne Scots). At approximately 0815 hrs I went into the mess kitchen and found Sgt. Cooke having words with Pte. Davis. I heard Pte. Davis being insolent and I told Sgt. Cooke that I would be a witness. I immediately said to put Davis under arrest.

Captain A.G. FERRIS

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

THIRD WITNESS FOR THE PROSECUTION

K-18061 Pte. SKLUT, H.J., No. 1 Canadian Repatriation Depot (Lorne Scots), having been duly sworn, states:- I am K-18061 Pte. SKLUT, a kitchen helper. Sgt. Cooke sent me to the hut to try and locate Pte. Davis the afternoon of the 11 Jul 45 and I came back and said that I couldn't locate him. On the morning of the 12 Jul 45 I was standing in the kitchen when I heard Pte. Davis and Sgt. Cooke arguing about something.

H J Sklut

K-18061 Pte. SKLUT, H.J.

THE ACCUSED ELECTS TO CROSS-EXAMINE THIS WITNESS

QUESTION BY THE ACCUSED -

Q-1 Do you remember about what time you went to the hut?

A-1 Approximately between 1430 and 1500 hrs.

Q-2 Do you remember me coming into the kitchen on the morning of the 12 Jul 45?

A-2 Yes I do.

Q-3 Do you remember what time it was?

A-3 About 0805 hrs.

Q-4 Do you remember what Sgt. Cooke said for me to do?

A-4 Sgt. Cooke told you to get over to the M.I.R. if you knew what was good for you.

Q-5 Do you remember the incident of the knife in the kitchen?

A-5 Yes I do. You had been making toast and put knife down on table after buttering the toast. Sgt. Cooke came along and got after you for leaving the knife there without having washed it first.

Q-6 Do you remember when I was going to the M.I.R.?

A-6 Yes.

Q-7 Did you hear what Sgt. Cooke said to me when I was going out to the M.I.R.?

A-7 No I do not.

FOURTH WITNESS FOR THE PROSECUTION

R-51956 Cpl. MURRAY, F.E. having been duly sworn, states:- I am R-51956 Cpl. MURRAY, F.E., N.C.O. in charge of kitchen fatigue. On Wednesday afternoon Sgt. Cooke asked Pte. Davis "Where have you been." Pte. Davis answered and said "I have been to the lavatory." As far as anything else I do not know what was said.

R-51956 Cpl. MURRAY, F.E.

THE ACCUSED ELECTS TO CROSS-EXAMINE THIS WITNESS

QUESTION BY THE ACCUSED -

Q-1 Did Sgt. Cooke tell you about the Medical Board between 0800 hrs and 1600 hrs and for you to report to the M.I.R.?

A-1 No. I have no need to be examined for I don't handle food.

SIXTH WITNESS FOR THE PROSECUTION

L-110068 Pte. HALL, S.J.A. having been duly sworn, states: I am L-110068 Pte. HALL, S.J.A., a coal truck driver at No. 1 Cdn Repat Depot (Lorne Scots). The morning of the 12 Jul 45 I heard Pte. DAVIS standing with Sgt. Cooke and arguing and then Davis said to Sgt. Cooke that Sgt. Cooke was always picking on him and trying to order him around. I saw Capt. Ferris enter the kitchen and speak to Sgt. Cooke. That is all I saw.

Hall S.J.A.
L-110068 Pte. HALL, S.J.A.

THE ACCUSED ELECTS TO CROSS-EXAMINE THIS WITNESS

QUESTION BY THE ACCUSED -

Q-1 Do you remember what time I got into the kitchen the morning of the 12 Jul 45?

A-1 No I do not remember.

Q-2 Do you remember him asking me to go to the M.I.R.

A-2 No.

Q-3 Do you remember the incident of the knife?

A-3 No.

Q-4 Would you say Sgt. Cooke spoke to me in an Orderly Manner or in an erratic manner.

A-4 I do not know.

QUESTION TO THE ACCUSED:

"Do you wish to make a statement or give any evidence on oath? You are not obliged to make a statment or give any evidence on oath, but if you do make a statement or give evidence on oath it will be taken down in writing and may be brought up in evidence."

THE ACCUSED ELECTS TO GIVE EVIDENCE ON OATH

STATEMENT OF THE ACCUSED: K-50330 Pte. DAVIS, H. having been duly sworn states: I am K-50330 Pte. DAVIS, H. employed as a GD in the kitchen at No. 1 Cdn Repat Depot (Lorne Scots).

Ref: FIRST CHARGE - I do not see how I was absent without leave [redacted] being in the kitchen until approximately 1615 hrs. I was sitting in the dining room portion of the building. There was a fireman there and I believe a Cook. The cook was sitting across the room from us and I was sitting with the fireman on one of the tables. We sat there for approximately one hour and fifteen minutes. I remember listening to two different radio programes in the kitchen on the said afternoon. Each programe was approximately one half hour long. During that time I never saw the Sgt come into the vegetable room or Mess Hall and after 1600 hrs I came into the kitchen and I went into the vegetable room to get my Mess Tins and then I had my supper. The cooks were getting the evening meal ready and I stood in there until just before they started to serve the meal. Being as I never help serve the food I went to my quarters. During this time from 1500 hrs to 1645 hrs at NO time did anybody say or suggest to me that I was to attend a medical parade. I was in the camp area all night and next morning reported to the kitchen at 0805 hrs. As soon as I walked into the kitchen the Sgt. Cook said to me "You had better get over to the M.I.R. if you know what is good for you." He gave me no explanation and to my mind his manner was overbearing and his voice threating. On being given no explanation one way or the other I went over and poured myself a cup of tea and buttered a piece of toast. I had no sooner laid the knife that I had been buttering the toast with down on the table when the Sgt came up to me and grabbed the knife on the

STATEMENT OF THE ACCUSED (CONT'D)

and said you had better wash things and I told him that I wasn't finished with it as yet. He went away for about five minutes and came back and grabbed the knife again and made the same statement in the same manner as before. I again told him and that I hadn't finished with the knife as yet. He took the knife and went over and washed the knife himself and then walked away through the kitchen and leaned against the open doorway. After I had finished eating I went out through this door and as I passed this Sgt he said something in a low voice. As there was nobody around I assumed that he spoke to me and when I asked him to repeat it he refused. At this time Capt. Ferris came into the doorway and the Sgt started talking to him about me. I went to the M.I.R. and the Orderly asked me what I wanted and I told him that the Sgt Cook had sent me over to the M.I.R. without any explanation and the Orderly said that he didn't know anything about it so I said maybe it is about this routine check up we are supposed to have in the kitchen. The orderly checked my name and I then left the M.I.R. About halfway back I met a Sgt and he told me that I was under close arrest.

N. Davis

K-50880 Pte. Harry DAVIS

I certify that the foregoing Summary of Evidence consisting of (4) four pages was taken by me in the presence and hearing of the accused and that Rules of Procedure 4(c), (d), (e), and (f) have been complied with.

In the Field
20 Jul 45.

(H.F. PEGLER) Lieut (CAC)
Officer detailed to take
Summary of Evidence.

LIST OF EXHIBITS

FOR THE PROSECUTION: N I L

FOR THE DEFENCE: N I L

ACCUSED RECEIPT OF DOCUMENTS

I hereby acknowledge receipt of Charge Sheet and Summary of Evidence relative to my forthcoming trial by Field General Courts Martial.

H. Davis

K-50330 Pte. H. DAVIS

STATEMENT OF ACCUSED RE-DEFENDING OFFICER

I hereby request that the Commanding Officer, 1 Cdn Repa t Depot (Lorne Scots) detail a Defending Officer for my forthcoming trial by Field General Courts Martial.

H. Davis

K-50330 Pte. H. DAVIS

LIST OF WITNESSES

IN THE PROSECUTION:	D-81868 Sgt.	COOKE, R.J.
	Captain A.G.	FERRIS
	K-18061 Pte.	SKLUT, H.J.
	B-51956 Cpl.	MURRAY, F.E.
	L-110068 Pte.	HALL, S.J.A.
IN THE DEFENCE:	NIL	

JJJ-137 (Can #2)

PTE DAVIS J.

See A-15 for last case

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 6032 Pte Davies J 119 LAD(Att CTS)

	Charge. (Insert "alternative" where applicable.)	Plea. (See instr p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA-41	not Guilty	not Guilty	
ALT 2nd	AA 40	not Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

R ~~At present under sentence for~~ ~~beginning on (date)~~. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

10 forfeit all Ordinary Pay for a period of 1 month (30) Days.

(Sgd) _____ Judge-Advocate, if any. 20 Apr/44 Date Awarded. (Sgd) _____ President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 2, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised; AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 27 APR 44 (Sgd) (J.H. ROBERTS) Maj-Gen
Commanding CDN REINFORCEMENT UNIT
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. D 6032 PTE DAVIES J Date. 28 Apr 44 Signature & Offr [illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AS 1601

FIELD GENERAL COURT-MARTIAL

CFAA6 (In Rest of AFAA) 40-P & R/1666 (2004)

Convened by Order of Maj-Gen J.H.Roberts Comd Cdn Rft Units dated 20 Apr 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to persons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
6032	Pte	John	DAVIS	119 LAD (Att CTS)

PROCEEDINGS REVIEWED 28 Apr 44

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 20 Apr 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF RP5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 11.00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~the Interpreter~~ or Interpreter? Ans ~~No, Sir.~~

~~The Interpreter is sworn.~~(1) Do you object to P28126 SJT SINCLAIR A H as shorthand writer? Ans No, Sir.

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	DL REDMAN	HQ CRU
Member	Capt	JH GALBREATH	1 CSRU
Member	Lt	JA CHIBERS	1 CERU
~~Judge-Advocate~~			
Prosecutor	Lt	JE PARSONS	119 LAD RDOC
Defending Offr	Maj	EM MILLER	1 CARU

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans NO

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32)

A8. The accused before arraignment make(s) ~~(no)~~ (a) plea. NOTE AII (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 35(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AAs to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

R A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusal to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment are to be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of J A see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of J A or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans _____ (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO SIR (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1) NOTES ATT
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st and 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st and 2nd charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed ~~on the former, but the Court is (are) found Not Guilty on the latter charge~~(s).(4) NOTE ATT
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans To give evidence Do you intend to call witnesses on your behalf ? Ans Yes Sir Are they witnesses as to character only ? Ans NO - SIR
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTES ATT
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(c).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 2nd charge(s) being subject to confirmation, will be promulgated later.(1) ~~(or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2))~~
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans To call witnesses
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB 151 or AFB 294.* 2. *~~below~~ 6.* 3. *RP 46, KR Can 152. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir, may I call witnesses NOTE ATT.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court may hear statement accused or his witnesses to prove an oath anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the Court, if any.~~(2)
(1. *When several accused tried separately see RP 79(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charges sheets on which accused found guilty. RP 40. As to sentences see AA 44, 138, 182, RP 46-50, 88, 118, 119(A), KR Can 308, 330, 563-564, Overseas RO 30th, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 562. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FGeCM			
D.6573	Gnr LESSARD	CE	1 CARU
D.6032	Pte DAVIS	J	119 LAD (Att CTS)
C.11478	Spr DOAN	HL	7 CCC RCE
B.32708	Pte GERIGS	T	4 VRD
L.59796	Gnr BRASS	WW	1 CARU

These cases were tried on 20-21 Apr 44. On the 19th I took exception to the Charge Sheet, being a charge laid under AA 41 under Reg 42 Defence (Gen) Regs 1939. I objected first because all the element in the Regs were not in the charge and I stated that I thought from the summaries that it could not be proven that the games were organized for gain and I suggested an alternative charge. The Charge Sheets were redrawn, the additions put in the first charge and an alternative charge laid under 40; improperly gambling with dice for money at Bordon Camp (Sec 440 KR(Can) forbidding gambling in bks, camps or cantonments) On the morning of the 20th the new charge sheets were signed and handed to each of the Defending Officers. None of them wished to ask for an adjournment. One of the accused was acquitted on both charges because there was no evidence whatever that he was playing; he was merely a spectator. All were acquitted on the charge under Reg 42 as there was no proof whatever that the games were organized games although there is no doubt that they were. The other 4 accused were convicted under the alternative charge, Sec 40. All had been in custody for 21 days awaiting trial. Three of them were sentenced to forfeit 30 days pay and the 4th, an older man, to forfeit 45 days pay.

The police did not succeed in getting any of the organizers, only tho small fry were caught. I do not see why the police should not have had one or two Provosts transferred to units at Bordon to carry on their duties for some weeks and arrange for a raid when the organizers were present or otherwise get the evidence on which the organizers could be charged and convicted. The private soldier will take a poor view and properly so of the administrative ability of an organization which cannot convict the organizers and can only catch the small player. Gambling is so prevalent that the ordinary soldier will generally only be able to see why it should be stopped when it can be brought out that the organizers are victimizing the ordinary player in large sums of money. I think the police should make another and more intelligent try at getting the organizers.

At the trial Capt Hayes, S/Capt "F" Gp CRU, produced an Ordnance Map showing that King George Gerdens lay within the W.D. property shown on the map as Bordon Camp, and that that Camp is served by a W.D. railway and has a military phone system and that it has many bks. The Camp therefore under the meaning of the words in KR(Can) 440 may be regarded as either a camp or cantonment, the latter being defined in Cassels Dictionary as a permanent military station.

The 5 men charged had exemplary records. They had all been in the Army for years, one of them had a clear record, 3 of them had only 1 minor charge on their sheets, the 5th had 4 very minor charges. They all had been awaiting trial for 21 days. I had difficulty in persuading the junior members of the court that any substantial punishment should be awarded. They took the view that it is well known that men play crap in their bks without any action being taken, and that probably a heavy sentence would tend to make bad soldiers of these 4 men with good records. I pointed out that the sentence must at least be greater than a CO could award, as superior authority had directed they be tried by FGCM. I also pointed out that these games were run openly and flagrantly contrary to KR(Can) 440. I adjourned the consideration of sentence until next day when the 2 offrs agreed to the sentences above mentioned. These amount in 3 cases to a fine of approx $75 and in the 4th to a fine of approx $100, taking into consideration the days awaiting trial.

I again point out that gambling will not be stamped out in Bordon Camp until the men who are making the money are convicted.

Confidential

(D L BELMAN) Lt-col
President of the Court

/AHS

CHARGE SHEET

The accused D6032, Pte John DAVIES, 119 Light Aid Detachment, Royal Canadian Ordnance Corps, attached to Canadian Training School, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
AA Sec 41

WOAS COMMITTING A CIVIL OFFENCE THAT IS TO SAY BEING PRESENT AT AN UNLAWFUL GAMING PARTY FOR THE PURPOSE OF TAKING PART IN A GAME OF CHANCE FOR MONEY CONTRARY TO THE PROVISIONS OF REGULATION 42 C.A.(I) of DEFENCE (GEN) REGS 1939.

in that he

at Bordon, Hants, at or near the King George V Gardens, at or about 1900 hrs on the 31 Mar 44 was present at an unlawful gaming party, taking part in a game of chance for money.

SECOND CHARGE
AA Sec 40
ALTERNATIVE

WOAS CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Bordon Camp at or about 1900 hrs on the 31 Mar 44 did improperly gamble with dice for money with other soldiers of the Canadian Army Overseas.

In the Field
20 Apr 44

Havannah Barracks
Bordon, Hants

J. Harper.
~~(J.H. Chaput) Lt-col FMR~~
A/Comd, CTS
Canadian Army Overseas

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
20 Apr 44

J H Roberts
(J.H.Roberts) Maj-Gen
Comd
Cdn Rft Units

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D - 6032	Pte		John	DAVIS	119 LAD (Att CTS)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, (~~or by an officer under my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I hereby nominate, from the Offrs to form the Court, (a) a Fd Offr as President, for the reasons I have attached hereto,~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)
~~(b) a Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-col	D.L.Redman VD		HQ CMU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	from and to be detailed by OC of	1 CMRU
Lieut	from and to be detailed by OC of	1 CMRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	from and to be detailed by OC of	3 CMRU

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd
England
(Country.)

Date 20 Apr 44

Signed personally, RP 105 fn 2)
(~~J.H.Roberts (Maj Gen~~)
Commanding Cdn Rft Units
Convening Officer.

Maj-Gen
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(B)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (or, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 91.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 561.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 586. As to certified copies of registered books see AA 163 (1) (g) (A).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 739.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. D 6032 Havier J
(rank) (name)
of 119 FAD/RCOC and in my opinion he is fit to undergo
trial by Court Martial.

Station Havannah Bks, Bordon, Hants

Date 20 April 44

Sgd. [signature] Capt.
(Medical Officer)

EVIDENCE IN THE
CASE OF

D.6032 Pte DAVIS J 119 LAD (att CTS)

A-8 _ STATEMENT BY THE DEFENDING OFFR _

I would like to take an objection that the initials W.O.A.S. which are inserted in this charge are improperly inserted in both these charges. There are certain sections of the Army Act which show that it is not an ingredient of the charge and should not be inserted in the charge and the accused should not be asked to plead to a charge containing these initials. I raise the same objection to the second charge.

THE COURT IS CLOSED

THE COURT REOPENED AND THE PRESIDENT STATED THAT THE COURT DISALLOWED THE OBJECTION UNDER RP 32.

A-8 THE DEFENDING OFFICER STATED THAT UNDER SECTION 93 OF THE DEFENCE REGULATIONS A PROSECUTOR CAN ONLY BE INSTITUTED BY OR WITH THE CONSENT OF THE DIRECTION OF PUBLIC PROSECUTIONS, AND SAID THAT NO INTIMATION IN THE SUMMARY THAT SUCH CONSENT HAD BEEN GIVEN, AND ASKED THE PROSECUTOR IF HE HAD OBTAINED SUCH A DIRECTION.

THE PROSECUTOR'S REPLY WAS THAT NOT AS FAR AS HE KNEW.

THE COURT IS CLOSED

THE COURT REOPENED AND THE PRESIDENT ANNOUNCED THAT THE OBJECTION WAS DISALLOWED.

THE CASE OF

D6032 Pte Davis J, 119 LAD, (att CTS) proceeds on a Trial Within a Trial.

D-3

1st Witness for the Prosecution

R.97637 Cpl DEROW, MC, 9 Cdn Pro Coy, having been duly sworn, states:

On instructions from the OC No 9 Pro Coy I arrived at a sort of enclosed lot near King George V Gardens. It is a small place surrounded by trees and on one side there is a ditch. This place is in the Bordon area. On arriving there, there were two tables about 4 x 6 in operation, made of rough lumber, and apparently not government issue. The accused whom I now recognize was at the first table. There were men rolling dice from a rubber cup and it changed hands different times. I saw the accused with money in his hands and money in front of him on the table. I saw him pick money from the table and place it towards the centre of the table. I saw him take money from the centre of the table and put it back in front of him. I moved then from that position father around the table.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q. You mentioned two tables. Did Pte Davis have anything to do with more than one table? Was there a rakeoff?

A. No, Sir. I did not notice anyone taking a rake off. I am not familiar with a dice game other than they put the dice in a cup and roll them out on the table.

Q. Do you know a member of the Pro, a big red headed man?

A. Not that I know of, Sir. I did not take much notice as a matter of fact. The raiding party consisted of about 20 men, and 2 offr. Altogether about 25 pro were there, Sir. There were approx 15 men around one table. In some places they were maybe 2 deep.

NO RE-EXAMINATION BY THE PROSECUTOR

QUESTIONS BY THE COURT:

Q. Are you familiar with the game of crown and anchor?
A. No, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

WITNESS WITHDRAWS.

2nd Witness for the Prosecution

E.39203 Lcpl BRIAND P, 9 Cdn Pro Coy, having been duly sworn, states:

I recognize the accused. On the 31 Mar under instructions of our OC with Sjt GOULD in charge I proceeded towards King George V Gardens, and when we arrived there, there were 3 tables, 2 being used. We stood at the first one. We arrived there at approx 7 o'clock in the evening. We stood at this table from 5 to 10 mins. They were playing with dice and making bets on it. Some were saying "I put 2/6 on this one" and another one would say "I put 5 bob on this one" and so on, and that was what was going on at the table. About 7 o'clock a whistle blew, people started to scatter, so I got hold of Pte Davis. I held him away from the table with one hand, and took some money from him while he was trying to take it off the table. He was trying to take it from the table and I have the money here. This money consists of four 2s pieces and a 6d piece. I think this belongs to the accused because he was trying to get it off the table while I was holding him. After, some of our boys arrived in the stn wagon and they took the accused away with them.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q. How long have you been in the Provost Corps Cpl?
A. Since Dec 40. I saw nobody take any rake off from this game that I witnessed.

Q. As a member of the pro you are enforcing the regulations in routine orders I suppose?
A. Yes, Sir.

Q. Did you know of a regulation in routine orders that says that money shall not be taken away from a man who is arrested?
A. The money was taken while he was trying to get it, Sir. If he could have gotten the money it would have been his, Sir.

Q. Did you see him bet these same coins?
A. I don't know if they were the same coins, Sir.

Q. You thought it was his money?
A. Yes.

Q. You are aware of this routine order about taking money from a man then when he is arrested?
A. I did not take it from him, Sir, I took it from the table.

NO RE-EXAMINATION

QUESTIONS BY THE COURT:

Q. Will you produce the money referred to?
A. Yes, Sir.

MONEY MARKED EXHIBIT 1 BY THE COURT.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

WITNESS WITHDRAWS.

3rd Witness for the Prosecution

Lt RI LUKER, 9 Cdn Pro Corps, having been duly sworn, states:

I recognize the accused. On the 31 Mar I received instructions from the OC 9 Pro Coy to proceed to the Bordon area in charge of a detail of men. I arrived at Bordon Area in the vicinity of King George V Gardens. There were a number of soldiers running through the bushes and by the time I had got to the tables where they were set up, there was roughly about 25 soldiers grouped around them. I ordered them to fall in in 3 ranks, which they did, and I ordered that their regtl particulars be taken. This was carried out and 6 of the chaps who had fallen in were taken to 9 Pro HQ. I recd a quantity of various sums of money from these soldiers which I held in safe keeping until being instructed otherwise.

THE DEFENDING OFFR AT THIS POINT MADE A SUBMISSION THAT HE DID NOT THINK THERE SHOULD BE ANY MENTION OF MONIES TAKEN FROM THE ACCUSED CONTRARY TO RO 4066.

THE COURT WAS CLOSED TO CONSIDER THE SUBMISSION

THE COURT REOPENED AND THE PRESIDENT ANNOUNCED THAT NO EVIDENCE OF MONIES TAKEN FROM THE ACCUSED AFTER THE ACCUSED WAS BROUGHT TO PRO HQ WOULD BE ADMITTED.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q. There were about 30 pro men in this party?
A. No, Sir, not 30, I don't just remember but I would say there would be about 15.

Q. Before the raiding party arrived a number of your men in plain uniform circulated throughout the gathering at King George V Gardens?
A. Yes, Sir, about 6, Sir.

Q. Was there a tall red-headed Lcpl in your party?
A. I could not say about that, Sir, I don't know the chaps very well. That description though does not strike any familiar chord in my memory. I was not familiar with any of the personnel in particular though, Sir.

NO RE-EXAMINATION.

NO QUESTIONS BY THE COURT

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP93(B

THE WITNESS WITHDRAWN.

Fourth Witness for the Prosecution

U.1543 Sjt GOULD WR, 9 Cdn Pro Coy, having been duly sworn, states:

On the night of 31 Mar 44 as a result of instructions received from my OC I was IC of a party who made some arrests at King George V Gardens, Bordon Area. Among the arrests was Pte Davis the accused whom I now recognize. He was escorted to HQ 9 Pro Coy at Milford, where, after being duly cautioned he made a voluntary statement. The accused, Sir, was brought into a room where there was a typist, myself and an NCO, and I told him that I would like to have a statement and was about to administer a caution saying "I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence. To show that I understand the above warning I make this statement voluntarily and sign my name herewith". I actually read all these words to him. He then made his statement, a statement of his activities from the time he left barracks until the time of his arrest and what he was doing at the time of his arrest. He then commenced to tell me his story. As he said the words to me I repeated the words to the stenographer who typed them on a Can Pro official statement form on which the caution is typed. The form was removed from the typewriter and handed to the accused to read who said that it met with his approval and he then signed it twice. I signed the form as a witness. I tender this statement in evidence.

THE DEFENDING OFFR AT THIS POINT SAID HE WISHED TO CROSS-EXAMINE THE WITNESS ON THE ADMISSIBILITY OF THE STATEMENT.

CROSS-EXAMINED BY THE DEFENDING OFFR

Q. How far is Milford from where the accused was placed under arrest?
A. Ten or 12 miles, Sir.

Q. Have you a tall red headed heavily built fellow in your coy?
A. I don't know of his existence, Sir. I actually did not see the accused placed under arrest, and I did not talk to him before he went into the room to make this statement. I did not talk to him on the way over either. I don't know if any of the other pro talked to him. The typist was Pte Gerigs of No 4 VRD, 1 CCOD, also one of the arrested men. He was in the room when all of our conversation took place.

AT THIS POINT THE DEFENDING OFFR ASKED THAT THIS WITNESS WITHDRAW AS HE WISHED TO EXAMINE THE TYPIST, PTE GERIGS.

Witness

B.32078 Pte Thomas GERIGS, 4 VRD, CCOD, having been duly sworn, states: (EXAMINED BY THE DEFENDING OFFR)

Q. It has been given in evidence before the Court that you were doing some typing for Sjt Gould while Pte Davis was in the room?
A. Yes, Sir. I did not hear what was said between Gould and Davis as I was busy with my typewriter. I typed the dictation at the Sgt's dictation. The first word the Sjt said to me was that he had a statement that he wanted me to type. He requested Pte Davis to make out that statement by saying "will you make out a statement". I previously had made out a statement myself. I made the statement because the pro asked me to. I was told to make a statement. I did not think I could refuse. We were pushed around all night and they told us to empty our pockets, ordered us, and eventually told us to make a statement.

Q. Did he say anything else to you?
A. No, Sir, I was typing all night and was paying more attention to the typewriter than anything else.

NO CROSS-EXAMINATION BY THE PROSECUTOR

NO QUESTIONS BY THE COURT

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

WITNESS WITHDRAWS.

THE DEFENDING OFFR AT THIS POINT SUBMITTED TO THE COURT THAT THE STATEMENT WHICH WAS MADE UNDER THESE CIRCUMSTANCES WHICH HE HAD BROUGHT OUT IN HIS EXAMINATION OF PTE GERIGS SHOULD NOT BE ADMITTED. HE WENT ON TO SAY THAT IT IS ESSENTIAL THAT THE ACCUSED BE TOLD THAT HE HAS NOTHING TO FEAR, NOTHING TO HOPE FROM ANY STATEMENT (QUOTES P. 92 MML), AND THAT IT WAS QUITE OBVIOUS THAT THE ACCUSED WAS ORDERED TO MAKE A STATEMENT AND THAT HE WAS NOT GIVEN THE WORDS OF THE WARNING WHICH CONVEYED THE PROPER EFFECT. HE WAS ORDERED TO MAKE THIS STATEMENT. THAT IS CLEAR BOTH FROM THE SJT AND FROM THIS LAST WITNESS. THERE WAS NOTHING IN THE ALTERNATIVE IN SPITE OF THE WRITING THAT WAS SHOWN TO HIM AND I SUBMIT THAT ANY STATEMENT OBTAINED FROM A MAN WHO HAS BEEN TREATED AND HANDLED IN ARREST AS THE ACCUSED HAS BEEN, IS NOT ADMISSIBLE. WE HAVE THE EVIDENCE OF THE TYPIST WHO SAID THE MAN HAD TO MAKE A STATEMENT. HE CALLED THE ACCUSED.

Witness

The accused, D.6032 Pte DAVIS J, 119 LAD (att CTS), having been duly sworn, is examined by the Defending Offr:

Q. Will you tell the Court why you signed this statement?
A. Well, Sir, I had been struck by a tall red headed heavily built Lcpl of the pro. He had pro flashes up, that's how I know he was pro. I was clear 2 feet at the end of the table and there was one man on each side of me holding my arms. These two men were dressed in coveralls. One of them was one who gave evidence here this morning. This pro chap came through the bush, took a dive at me and hit me on the chin with his fist. We were then ordered into the trucks and taken to pro HQ and at the time of the statement which I gave Sjt Gould was in the room with the typist and I think it was one of the other men who asked me to go in this room and Sjt Gould's words were "I want you to make a statement from the time you left your billets until you were picked up and then he told me to look at the form and then I gave the form back, after looking at it although I was in an all confused state of mind, Sir.

Q. Had your been interviewed by anybody else prior to Sjt Gould?
A. Yes, Sir, I believe it was the OC of the 9 Pro, and questions were asked. They gave me no warning.

Q. Why did you sign it?
A. Naturally I was afraid after getting one smack, I did not want to take the chance of getting another.

Q. What gave you that idea?
A. After being hit and there being no reason for my being hit, Sir.

Q. In what manner were you being questioned by these officers?
A. It was not a friendly sort of tone, I would say it was more or less of an aggressive sort of tone, Sir.

PROSECUTOR DECLINED TO CROSS-EXAMINE THIS WITNESS.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE COURT WAS CLOSED TO CONSIDER THE ADMISSIBILITY OF THIS STATEMENT.

THE COURT REOPENED AND THE PRESIDENT ANNOUNCED THAT THE COURT HAD DECIDED NOT TO ADMIT THE STATEMENT.

Witness

U.1543 Sjt GOULD WR, 9 Cdn Pro Coy, being recalled, on his former oath, states: (Examined by the Prosecutor)

I saw three tables in the enclosure in King George V Gdns, 2 of which were being played on and the other was vacant. There was quite a sum of money on the table and dice were being thrown. The tables were seized by the raiding party. They are now outside the door, Sir.

AT THIS POINT THE DEFENDING OFFR OBJECTED TO THE PRODUCTION OF THE THREE TABLES STATING THAT THE ACCUSED IS ONLY CHARGED WITH PLAYING A GAME AND THE EVIDENCE IS THAT HE WAS PLAYING AT ONE TABLE.

THE COURT STATED THAT THEY WOULD AMIT THE TABLES AS EVIDENCE AS THEY WOULD BE EVIDENCE OF THE ACCUSED PLAYING AT ONE OF THE TABLES PRODUCED., AND ALL WERE EVIDENCE OF THE GAMES.

TABLES WERE PRODUCED AND MARKED EXHIBIT 2 BY THE COURT.

THE DEFENDING OFFICER DECLINED TO CROSS EXAMINE THIS WITNESS.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP83(B)

WITNESS WITHDRAWS.

Witness (1st WITNESS FOR THE PROSECUTION)

B.97637 Cpl DEROW, MC, 9 Cdn Pro Coy, being recalled, on his former oath is examined by the Prosecutor:

I produce herewith a rubber cup which came from the table that the accused was playing on. On the night of 31 Mar 44 at King George V Gardens I saw about 15 people playing.

RUBBER CUP MARKED EXHIBIT 3 BY THE COURT.

I produce herewith a pair of dice which came off the same table.

PAIR OF DICE MARKED EXHIBIT 4 BY THE COURT.

DEFENDING OFFICER DECLINED TO CROSS-EXAMINE THIS WITNESS.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

WITNESS WITHDRAWS.

Fifth Witness for the Prosecution

Capt JLG HAY, Royal Winnipeg Rifles, having been duly sworn, states:

I am S/Capt of "F" Gp CRU. I produce herewith a map being Ordnance Survey Map No 3906, also numbered No 50/16 SE 1/25000 and 50/14 NE designated Aldershot Command Trg Areas in Gt Britain. This War Dept land is stippled in red and shows that the area in which King George V Gdns is situated is approx below the words on the map "BORDON CAMP". The railroads within the area are operated by the War Dept. The military have a phone communication in this area. There are many barracks within the area. The date on this map is 1931 and is the last map that has been issued and I procured these maps from the DCRE and are the last maps that are issued at this date. I don't know if there is an Alershot Command at this time. It shows the area in which King George V Gdns are situated.

MAP MARKED EXHIBIT 5 BY THE COURT.

CROSS-EXAMINED BY THE DEFENDING OFFR

Q. Do you personally know where these gardens are?
A. I do, Sir. The map is the latest being used at the moment. I don't know if there is an Aldershot Command though any more, but the map is of this particular area.

NO RE-EXAMINATION.

NO QUESTIONS BY THE COURT.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE WITNESS WITHDRAWS.

THE PROSECUTION IS CLOSED

DEFENDING OFFICER ADDRESSES THE COURT

RP 40 NOTE 1

D-4 In dealing with the first charge under the Defence regulations the evidence that 10 or more persons were present shall be evidence that the party was one organized for game. The evidence is quite conclusive that there was game of some kind going on, but that nobody, but that noone was making any gain or rake off, that no individual was running this game for his own gain. I quite agree with the onus under this section thrown on the accused, but that the evidence of the Prosecution itself proves conclusively that there was no gain, nobody took anyt ing out of the pot as the only two witnesses who gave evidence of the gaming, stated. It is an essential element of the offence that somebody must be operating the table for gain. I think that the Court can draw upon their military and general knowledge that in a gaming house it is customary for the operator to take a percentage of the pot or throw, and the evidence is that this was not done here, so that the evidence is within Section 3(c). With regard to the alternative charge, in the absence of any order or rule I must assume that this charge under Sec 40 of the Army Act refers back to para 440 of KR(Can), which says that all gambling within garrisons, barracks, camps or contonments is forbidden and I submit that this is not a garrison, barracks or contonment, as a contonment is a quarter assigned for tps, a permanent military station, and there is no evidence before this Court that this is a quarter for tps. The map does not assist us and the officer who produced it was not able to assist the Court and any suggestion of the gardens definitely indicates that it is not within the area prohibited by the King's regulations.

THE PROSECUTION DECLINED TO REPLY TO THE SUBMISSION MADE BY THE DEFENDING OFFICER.

THE COURT WAS CLOSED TO CONSIDER THE SUBMISSION THAT NO PRIMA FACIE CASE HAS BEEN MADE ON EITHER CHARGE.

THE COURT REOPENED AND THE PRESIDENT ANNOUNCED THAT THE SUBMISSION MADE BY THE DEFENDING OFFICER IS DISALLOWED WITH RESPECT TO EITHER CHARGE.

D-5 --D E F E N C E--

The accused, D.6032 Pte Davis J, 119 LAD (att CTS), on his former oath is examined by the Defending Offr:

Q. On the night of 31 Mar it is in evidence that you were in King George V Gardens. Will you tell the Court how you came to be there?

A. Yes, Sir. I was passing there on my way to the pictures. I went in to see what the noise I heard was about that was going on. They were rolling dice, commonly called crap, the game as I know and saw it was just rolling dice out of a cup. Everybody was taking a turn at it. I have played this game before.

Q. Was there anyone person running it?

A. No, whoever had the dice put his money down and rolled out and if he rolled out certain numbers, for example a combinatio of two 1's, or a two and a 1, and two 6's, is called a crap, which the roller loses his money but retains the dice. He then puts up some more money and whoever wants to bet him wrong that he loses, covers that money again. If he rolls out a seven or an eleven on his first throw he wins, but if he rolls any other number than a seven or an eleven or a crap, he must roll and keep rolling until he gets that point he originally rolled, unless of course he rolls a 7 in the meantime, in which case he automatically gives up the dice to the next player in line. Each player takes his turn at the dice

in this manner. This game has no connection with crown and anchor - it is called crap, Sir. While I was playing no one was taking any rakeoff from the roller's winnings. I would have known if it had of been taken out of mine. I paid no one to sit in the game either. I saw no one else paying anybody else to sit in the game. Everyone was on an equal basis. This place is in an enclosure in St George's Gdns. There are no quarters for tps in these gardens.

THE PROSECUTOR DECLINED TO CROSS-EXAMINE.

QUESTIONS BY THE COURT

Q. Who owned this pair of dice?
A. I don't know, Sir.

Q. Who owned this cup?
A. That was also there, I don't know, Sir.

Q. Who owned the table?
A. That was also there, I don't know that either, Sir.

Q. Who was in charge of the game?
A. I could not say, Sir, I just stopped in.

Q. Who was the boss of the game?
A. I couldn't say, Sir, if there was a boss.

Q. Had you been there before?
A. Well, yes I had been there before, Sir.

Q. Who appeared to be the boss when you were there before?
A. I don't know, Sir.

Q. Who was making most of the money?
A. That is hard to say, Sir, as a person is more concerned with their own money rather than anyone else's, and with the amount of men there it is hard to say who is winning or losing.

Q. What is the biggest bet you saw made that night?
A. One or two pounds, Sir. I could not be sure, Sir, I did see a bill.

Q. What is the biggest winning you ever heard of anyone making at these tables, at the times you were there?
A. At the times I was there, Sir, mostly 5 or 6 pounds, I have heard but not seen what thousands of pounds were made.

RE-EXAMINED BY THE DEFENDING OFFICER

Q. Did you get any rakeoff yourself?
A. No, Sir.

Q. It has been suggested that you had a sum of money on you when you were arrested. Where did you get this money?
A. That was my pay, Sir, outside of a few shillings. I drew that pay on the 31st. I drew £4/10/0, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

2nd Witness for the Defence

C.15580 Bdr KELLY RP, 1 CARU, having been duly sworn, states:

On the nite of 31 Mar 44 I was in King George V Gardens engaged in a game at which Pte Davis was. I was there about 15 minutes. I was there when the pro arrived. Prior to that I had been playing myself. I could not tell you who was actually in charge of that game. Each player took his turn in order. No one took any rake off out of any bets that I know of. I took what I won. I was arrested when the pro came. My case has been dealt with and I received a severe reprimand.

PROSECUTOR DECLINED TO CROSS-EXAMINE THIS WITNESS.

QUESTIONS BY THE COURT:

Q. Who is the boss in this game?
A. I don't know, Sir.

Q. Who put those tables up?
A. It is beyond me, Sir.

Q. When did you first see those tables there?
A. About 3 nights before, Sir.

Q. How long have you been in Bordon?
A. Since 1st August, 40, Sir.

Q. Who made the biggest winning?
A. I could not tell you who made the biggest winnings while I was there that night because the money was being kept off the tables, Sir. The biggest bet I saw was about 10 shillings.

Q. How many different games were going on?
A. Just at the one table, Sir. All I could see that night was one, Sir.

DEFENDING OFFICER DECLINED TO RE-EXAMINE THIS WITNESS.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE WITNESS WITHDRAWS.

3rd Witness for the Defence

Mr. Louis MORRIS (Civilian), of Bordon, Hants, having been duly sworn, states:

I am the caretaker and gardner of King George Gardens. I have been there 17½ years. These gardens are open to the public and military alike but they are purely military gardens.

PROSECUTOR DECLINES TO CROSS-EXAMINE.

NO QUESTIONS BY THE COURT

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE WITNESS WITHDRAWS.

STATEMENT BY THE DEFENDING OFFICER

Mr President and Members of the Court. Last autumn there were eight or nince cases of a similar nature to this tried by a F.G.C.M. I defended one man and the charge in this case was gambling in a public place. I t was argued that it was not a public place by the Defence but it was held that it was a public place. I endeavoured to find a record of that case today, but it was not to be found. Would the Court be good enough to advise me if I may give evidence that it was a public place? I don't know how I can get it before this Court in any other way.

4th Witness for the Defence

Maj EM MILLER (Defending Offr for the accused), of 1 C.A.R.U., having been duly sworn, states:

In the autumn of 1943 I acted as Defending Officer for a soldier who was one of a number of soldiers charged with gambling in a public place, namely King George V Gardens which has been mentioned in evidence today. At that time for the Defence I raised

the point they were not a public place. The charge was proven and the accused was found guilty. I regret that I am unable to remember the name of the accused but the accused was found guilty and the place a public place.

PROSECUTOR DECLINES TO CROSS-EXAMINE.

NO QUESTIONS BY THE COURT

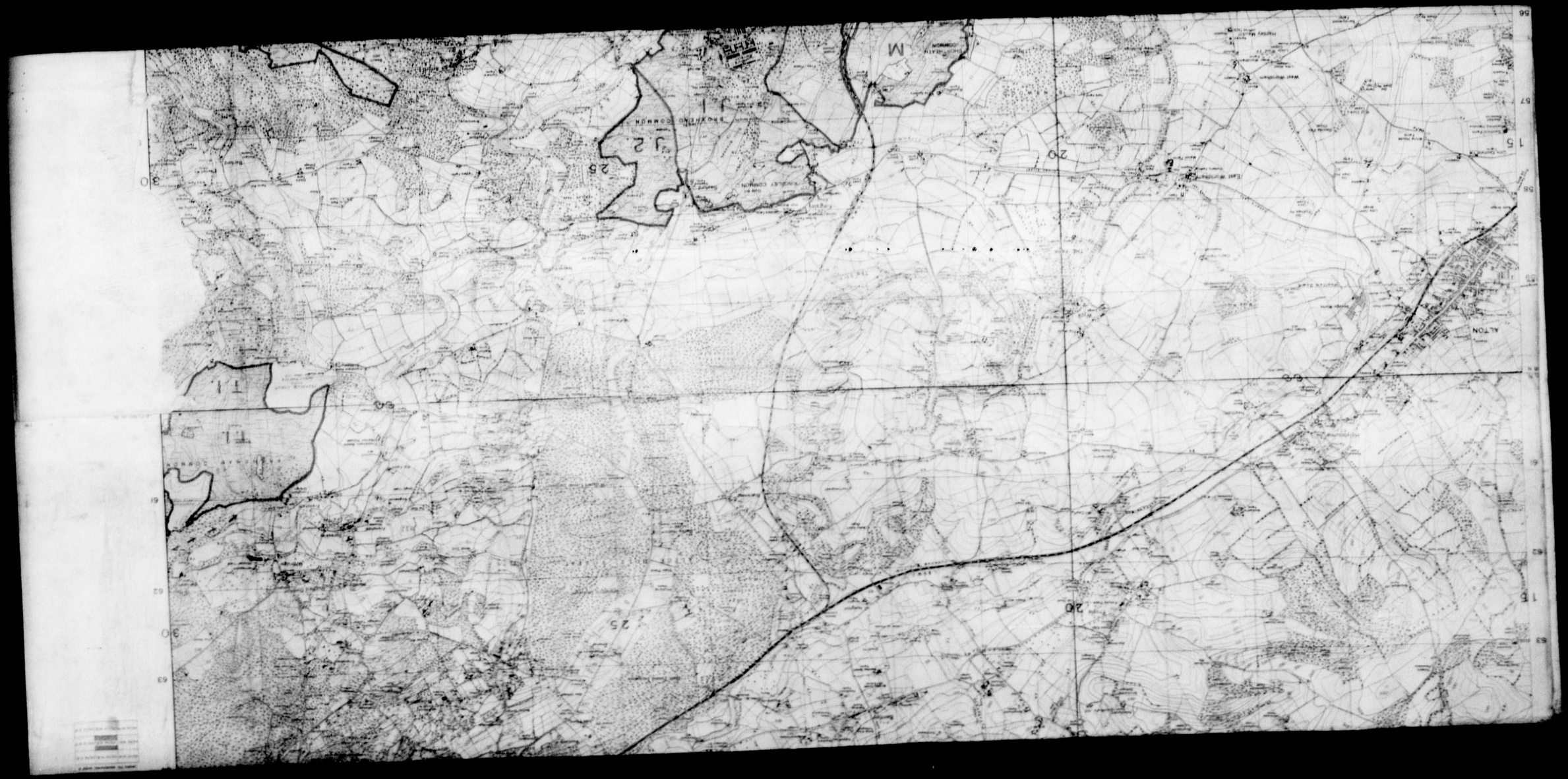
IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B).

XXXX

PLEA IN MITIGATION

I would drew the Court's attention to the fact that the accused has been in close arrest for 20 days now, and I suggest to the Court that if it had of been for the first charge this matter would have been dealt with in the same way as that of Bdr Kelly, who was reprimanded.


ALDERSHOT COMMAND TRAINING AREA
GREAT BRITAIN
NOT TO BE PUBLISHED.
SHEET 50/16 S.E.
1/25.000
BORDON CAMP
DAVIES CASE EX 6 MY
ODAN CASE EX 8 MY
Tenaro Case EX 3 MY
LESSAR, DCASE EX MY
C.2
D.1
D.2
D.3
70
65
20
25
30


ALTON
NORROD AYMOUNT
BROXHEAD COMMON
J 2
J 1
M
T 1
T 1
25
20
15
30
56
57
58
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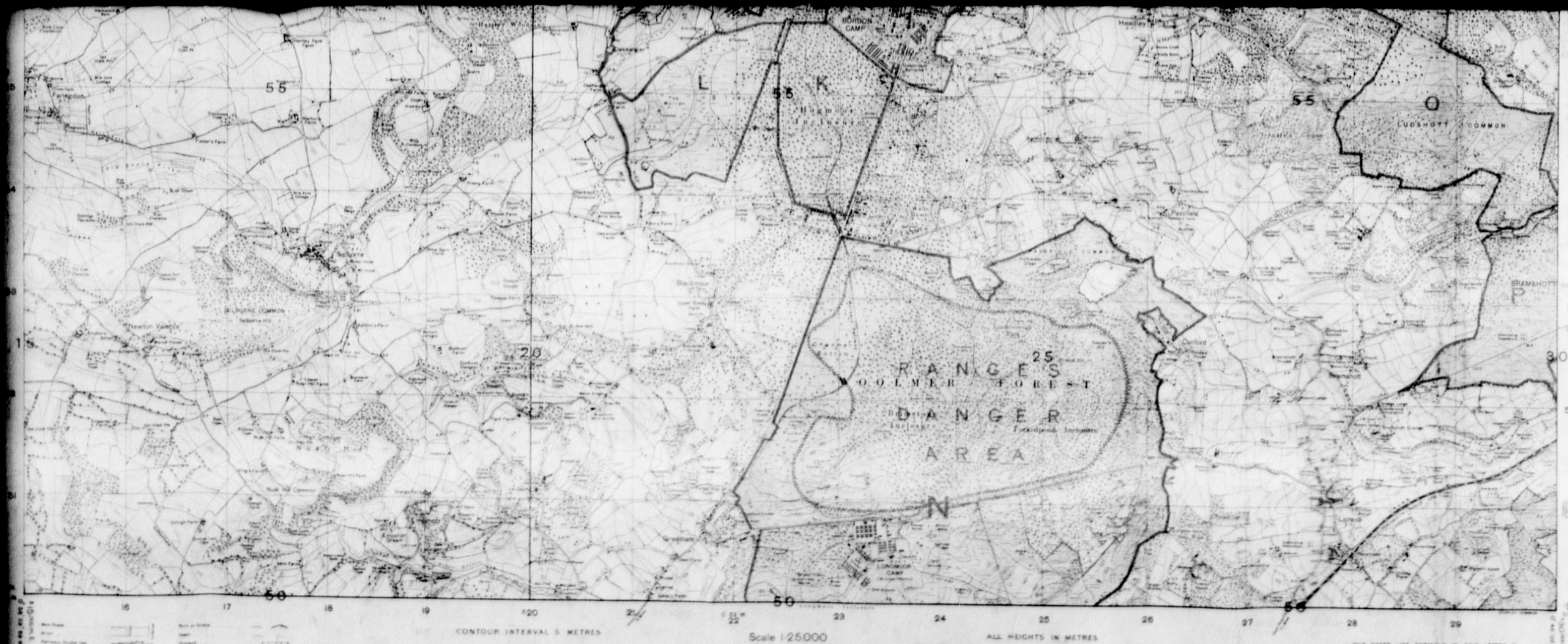
62
63



CONTOUR INTERVAL 5 METRES

Scale 1:25000

ALL HEIGHTS IN METRES

1 METRE = 10936 YARDS

THIS SHEET LIES ENTIRELY IN GRID LETTER Q

TO GIVE A GRID REFERENCE ON THIS SHEET

PAY ATTENTION TO LARGER MARGINAL FIGURES AND TO THOSE PRINTED ON THE FACE OF THE MAP

POINT WOOLMER LODGE

Grid		Ratio
	28	
East 28		North 536

REFERENCE 28 536

Geographical Section, General Staff No. 3906.
Published at the War Office, 1931.

SHEET 50/14 N.E.

(a) Aldershot Command Training Areas are lettered and verged in RED.
Within these Areas War Department Land is stippled RED, whilst privately owned land acquired for Training Areas is stippled BLUE. Therefore, within a Training Area, any land not stippled RED or BLUE, does not form a part of that "Area" and must not be entered.

W.D. Land

Privately owned land acquired for Training Area

(b) Special "Routes" to and from Training Areas are indicated by arrows lettered in the neighbourhood where special routes are shown. Training Areas are only to be entered, or departed from, by those Routes.

(c) The boundaries of the Danger Areas are shown thus

RECEIPT FOR SUMMARY OF EVIDENCE AND CHARGE SHEET

I, No. D-6032 , PTE. DAVIES JOHN R.C.

~~158 attached~~ to Canadian Training School, Hereby admit receipt of a copy of the Summary of Evidence in the forthcoming case against me, and state that my rights under Rules of Procedure 14(b) in the Manual of Military Law as to preparing my defence have been explained to me by

LIEUT. J. E. PARSONS

I also admit receipt of a copy of the Charge Sheet in the said case and state that said Charge Sheet has been explained to me in accordance with Rules of Procedure 15(b) by the above mentioned Officer. This Summary of Evidence and Charge Sheet have been handed to me and explained this

EIGHTEENTH day of Apr 1944

at 0900 hours.

J. Davies

D 6032 Pte. (DAVIES, J.) 119 LAD/RCOC

(To be signed in duplicate)

To/
Commandant,
Canadian Training School.

With reference to my pending trial by Field General Court-Martial.

(xxxx

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D-6032, Private DAVIES, John, on strength of No. 119 Light Aid Detachment, Royal Canadian Ordnance Corps, attached to the Canadian Training School, a soldier of the Canadian Army Overseas.

By direction of the Commandant, Canadian Training School, Canadian Army Overseas, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution.

No. B-97637 Cpl. Degrow, M.C., on strength of No.9 Canadian Provost Coy., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At approximately 1850 Hrs 31 March 1944, I arrived at the gambling lair in Bordon. There were two tables in operation, I stopped at the first table and saw that they were rolling dice. I watched this game in progress for say 5 minutes, while this game was in progress I saw D-6032 Pte. Davies, John making bets and covering bets. He had money in front of him on the table. At 1855 Hrs on the same date I moved from the position of watching D-6032 Pte. Davies, John to another position around the table. I was not in any further position to see what D-6032 Pte. Davies, John was doing. He have evidence such as dice and the cup which were used at this table.

The accused declines to cross-examine this witness

....W.C. Degrow....Witness
(B-97637 Cpl. Degrow, M.C.)
No.9 Cdn. Provost Coy.

SECOND WITNESS for the prosecution.

No. E-39203 L/Cpl. Briand, P. on strength of No.9 Canadian Provost Coy., as soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

I was under instruction of Capt. Love, O.C. No. 9 Canadian Provost Coy., On the 31st March 1944 I was ordered to proceed to Bordon with Sgt. Gould in charge, and from Bordon village accompanied by Cpl. Degrow, we proceeded to a Park used by soldiers as a gambling place. We arrived at the above mentioned place at 1850 Hrs., after studying

the game for about 10 minutes we found that the accused was covering all small bets on the table and at 1900 Hrs., we heard the blow of a whistle and I took hold of the accused and holding him away from the table, I reached on the table and took eight shillings and six pence that he was trying to dispose of, and he was taken away by a party of our men who arrived at that time.

The accused declines to cross-examine this witness.

P. Briand .....Witness
(E-39203 L/Cpl. Briand, P.)
No.9 Cdn Provost Coy.

THIRD WITNESS for the prosecution. of Lieutenant R.I.Luker of No.9 Provost Coy, an Officer the Canadian Army Overseas, having been duly sworn, states as follows:

On the 31st March 1944 at approximatley 1800 Hrs., on instructions received from Capt. F.A. Love, I proceeded to the Bordon Area in charge of a detail of No. 9 Provost personnel for the purpose of raiding gambling tables which were purported to be operating in that area. At exactly 1900 Hrs I arrived in the vicinity of King George V Gardens, Bordon Area, accompanied by Lieut.Edgar. I observed considerable number of soldiers running away from three gambling tables which were set up in a clump of trees. On orders from me to fall in, in three ranks they did so. The particulars of those present were taken and those who were seen actually participating in the gambling were placed under close arrest and escorted to H.Q., No.9 Provost Coy. The remainder who were not actually seen participating in the gambling were ordered to disperse. On arrival at No. 9 Provost Coy's H.Q. the accused soldiers were searched and I received from Pte. Davies, £5-0-4½ for which he was given a receipt.

The accused declines to cross-examine this witness.

R.I. Luker Lieut .....Witness
(Lieut.R.I.Luker)
No.9 Cdn. Provost Coy.

FOURTH WITNESS for the prosecution.

No. U-1543 Sgt. Gould , W.R., on strength of No. 9 Canadian Provost Coy., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On the 31st of March 1944, D-6032 Pte. Davies, John of No. 119 L.A.D., R.C.O.C., was cautioned by me and understood the said caution and made a voluntary statement, a copy of which is embodied herewith;

I left barracks approx. 1800 hrs. and intended to go to the pictures . I passed the place called Monte Carlo and heard some dice rattling and some men talking and went in the enclosure to see if I could be lucky enough to win the price of the show and a few beers. I played for a short time and won a small amount of money. All of a sudden there was a rush and I was grabbed by two poeple I beleived to be Provost. I was ordered to fall into three ranks and an order was given to pick out men. I was one of the men picked out who were subsequently escorted to No. 9 Provost Co'y.

I have read over this statement and certified a true copy of my activities, for the time I have been asked to account for.

(Signed) J.Davies.

It will be produced when required in its original form by me as Exhibit "A", Exhibits "B" the table, and Exhibits "C", the dice, and Exhibits "D", the dice cup, Exhibits "E", the money which was picked up off the table will be produced when required by me.

.....Witness
(U-1543 Sgt. Gould, W.R.)
No. 9 Provost Coy.

The accused having been cautioned in accordance with R.P. 4 (D) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), and (f) have been complied with.

Bordon, Hants.
14 April 1944.

.....Lieut.
(J.E.Parsons.)
O.C.No.119 L.A.D., R.C.O.C.

No. D-6032 Name DAVIES, JOHN | Sqn, Battery, or Company | Corps R.C.O.C. | Date of enlistment Sept. 8-39 | GC Badges 1 Sgt. | Service or Proficiency Pay | MFM 6

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature OC Company, etc. A.Mac.D. Keefer Major R.C.O.C. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Fld	4-11-42	Bdr.		A.W.L. from 2300 Hrs 4-11-42 to 2345 Hrs 4-11-42 (Absent 45 Mins) A.A.15(1)	Lieut MacLean Sgt.Leadbeater	REPRIMANDED	6-11-42	Lt/Col Nighswander	
"		Pte.		AWARDED ONE GOOD CONDUCT BADGE			8-Sept-41: Pt.II DO #4 d/6 Mar 44.		

CERTIFIED TRUE COPY OF ORIGINAL HELD BY ME ON 17/4/44

J.E. Parsons....Lieut.EME
(J.E.Parsons.)
O.C.No.119 L.A.D. RCOC

(FTO)

M.F.B. 388
22M—5-41 (572-2)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-6032	PTE	DAVIES, JOHN	No. 119 LAD R.C.O.C.

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	A.W.L. No times	Once times
For	times	times
For	times	times
For	times	times

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 18 days in military custody, making a total of 18 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 33 yrs.

6. The date of his attestation specified in his record of service is 8 Sept. 39

7. The service which the accused is allowed to reckon towards discharge is 4 7/12 yrs.

8. The accused is entitled to reckon 4 7/12 service for the purpose of determining his pension, etc.

9. The accused is in possession of The Canadian Volunteer Service Medal & Clasp

10.

11. [redacted] J.E.P.

unit

[redacted] J.E.P. [redacted] J.E.P.

[redacted] J.E.P.

12. [redacted] J.E.P.

[redacted] J.E.P.

[redacted] J.E.P. [redacted]

[redacted] J.E.P. [redacted] J.E.P.

[redacted] J.E.P. [redacted]

NOTE.—[redacted] matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

[redacted] J.E.P.

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D-6032 Rank Pte.

Name Davies, John of #119 L.A.D. R.C.O.C. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this TWENTIETH day of APRIL - 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked and signed by the president, and annexed to the proceedings.

EX B

J.E. Parsons Lieut. EME
(J.E.Parsons, O.C. #119 L.A.D.

FFT-44

te Davis, J.B.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 20897 Pte John Bruce DAVIS 13 Bn 2 CBRG

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

DNC

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

60 days detention

[illegible] Judge-Advocate, if any. 22 Jul 44 Date awarded. (Sgd) D.W.M. Cooper Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

Direct that the accused be not committed to prison or detention barracks until further order. (1. AA 57A. Delete if not used.)

(Sgd) P. Monckton Lt-Col
P. J. Monckton
i/c Administration

Date ..... Commanding ..... Canadian Military Headquarters
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
20897 Pte DAVIS J.B.	3 Jan 44	Registered Corps Base 1 CACRS
No. 18 M		
01304 44		

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

DNAG. Cdn. Sec. GHQ 1 Feb 44 AAG

Confirmation of these proceedings is not required (18 months) 1st

RECORDED AT CMHQ IN AB 160 TTT 44

CFAAO (in lieu of AFAO) 40 (F 56 d/1698)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col W.J. STEWART Comd 13 Bn 2 CBRG dated 21 Jul 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, (ns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 20897	Pte		John Bruce	DAVIS	13 Bn 2 CBRG

PROCEEDINGS REVIEWED 10 Aug 44

JAG W.C. Sedgewick

REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS REVIEWED Date 10 Aug 44 Cdn. Sec. GHQ 2 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 22 Jul 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 9/52

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for duties and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

DNC

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(4)

DNC

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At [illegible] hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused desires to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

DNC DNC

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to be tried by me as President or by any of the Members of the Court? Are you entirely unable to understand~~ or interpreter? Are ~~the Interpreter is sworn.~~(1) Do you object to 22291 Sgt Newbold, A.N. as shorthand writer? Ans No, Sir The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No, Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.W.M. COOPER RCA	12 Bn 2 CBRG
Member	Lieut.	G.L. GRANT RCCS	13 Bn 2 CBRG
Member	Lieut.	R.P. St Pierre RCCS	13 Bn 2 CBRG.
[illegible]			
Prosecutor	Lieut.	A.G. FERGUSON CIC	13 Bn 2 CBRG
Defending Offr	Lieut.	R.J. LECKEY CIC	13 Bn 2 CBRG.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See fn 2, p 23.)

A8. The accused C 20897 Pte John Bruce DAVIS before arraignment makes ~~(no)~~ Plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Ref cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~severally~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

DNC DNC

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No, sir (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

DML B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*).)

C2. The charge on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of Summary of Evidence are read as relate to the charges dealt with under C2. If any pleas is changed to Not Guilty, trial thereon proceeds by continuing with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS DML

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 36(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans..... Do you intend to call witnesses on your behalf ?

Ans..... Are they witnesses as to character only ? Ans.....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 12. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

DML. D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. Yes, sir. Two character witnesses.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP* 37(*C*) *fn* 4, 40 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, sir. (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 120, 182. *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 2313. *MML p* 60, 757-759. *As to sentences consequent for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 96. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

DME

CHARGE SHEET

FIRST CHARGE
AA SEC 15(1)

The accused C20897 Pte John Bruce DAVIS, C.H.of O., 13 Bn 2 CBRG, a soldier of the Canadian Army Overseas is charged with

WHEN ON ACTIVE SERVICE - ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from 2230 hrs 2 Jul 44 until 2215 hrs 13 Jul 44.

(Total time absent - 10 days 23 hrs 45 min.)

W.J. Stewart Lt Col

(W.J. Stewart) Lt.Col.
Commanding, 13 Bn 2 CBRG

In the field
18 Jul 44

To be tried by Field General Court-Martial.

W.J. Stewart Lt Col.

(W.J. Stewart) Lt.Col.
Commanding, 13 Bn 2 CBRG

In the field
21 Jul 44

FIELD GENERAL COURT-MARTIAL

2 MC

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 14, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B37662	Pte		Richard	PETTIPER	13 Bn 2 CBRG
D138423	Pte		Morris Edgar	DOOLEY	13 Bn 2 CBRG
C20897	Pte		John Bruce	DAVIS	13 Bn 2 CBRG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 21 Jul 44 endorsed by me, [redacted] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(*AA 49, RP 106(5), 107(A). Delete the whole or part, if not applicable.*)

5. [redacted]

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	D.W.M. Cooper		12 CBR Bn

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
A Lieutenant	To be detailed by OC		13 CBR Bn
A Lieutenant	To be detailed by OC		13 CBR Bn

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
A Lieutenant	To be detailed by OC		13 CBR Bn
[redacted]			

On Active Service in the Fd

in England (Country.)

Date 21 Jul 44

W. Stewart Lt-Col
(Signed personally. RP 105 (n 2.)) (Rank.)

(W.J. Stewart) Lt-Col
Commanding 13 Bn 2 CBR Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jun 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 80(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn, or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subjects of sentence except as provided by RP* 46(*E*), *KR Can* 965(*a*).)

(vii) Summing up by *JA, if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *JA, if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA, if any*, and then fastened by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 566. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 759.)

4. The President or *JA, if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

Dhe

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined C20597 (No.)

Pte (Rank) DAVIS J.B (Name) and in my opinion he is

fit ~~unfit~~ to undergo trial by Court-Martial.

Station Field

Date. 22 July 44

R. Laing Capt. (Sgd)
Medical Officer.
(unit) 13 Fd Amb RCA

E1

DMC.

Character witness in the case of C 20897 Pte. DAVIS, C.H.

FIRST CHARACTER WITNESS

Major W.S. MacKenzie, C.I.C., No. 1 C.G.R.U. att CMHQ ~~is questioned by the defending officer~~ having been duly sworn

Q. Do you recognize the accused?

A. Yes.

Q. During what time were you Company Commander of the accused?

A. From February 1940 to 1942.

Q. Will you tell the court of your knowledge of the character of the accused.

A. During that period in Iceland under tough conditions He was a well and willing worker with a happy disposition, and he was the same after coming to England. He was never in any trouble until I left the unit in February and to the best of my knowledge has been of no trouble to his new commander.

Q. Would you care to have Davis back?

A. Yes, I would like to have a bn of men like Davis.

SECOND CHARACTER WITNESS

Major J.P. Palmer, C.I.C. ~~is questioned by the defending officer.~~ having been duly sworn

Q. Tell the court what your first association with the accused was.

A. I was IC No. 5 Platoon, "A" Coy, C. H. of O. from 3 May 41 until March 1942. Davis was sick at the time I joined the platoon but he rejoined the platoon shortly after I came. In my opinion he was one of the three best Ptes in the platoon and was very efficient. He was in no serious trouble of any kind and was always pulling his weight. I have always had the greatest faith in him and expected him to become an N.C.O. He did have acting rank once but lost it through going to hospital. He is a very useful soldier and in my opinion should be made available for the army as soon as possible.

E3
Dmc.

Statement made by Defending Officer in the case of
C 20897 Pte. Davis, C.H.

The accused joined the army on the 10th of September 1939. He served in Iceland in 1940 and 1941 and in the field. He became an A/Cpl. but lost his stripes because he went to hospital. I do not know the date of his promotion. His crime sheet only shows one crime of nine hrs A.W.L. Since coming to C.E.R.G. in the Cameron Platoon he has been a very fine soldier. There are several things that explain his going A.W.L. The first is the mail situation which worried him considerably. Secondly he spent all his soldiering time with the Cameron Highlanders and he might be sent from here to another unit. Under the conditions here, living conditions, etc., his one desire was to go to the Camerons. The best place for this soldier is in the field and since he has only made one mistake a soldier like Davis should not be put in detention but used as a soldier.

Exhibit A

DHC.

SUMMARY OF EVIDENCE IN THE CASE OF

C.20897 Pte John Bruce DAVIS, C.H.of O., 13 Bn 2 CBRG, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, all evidence is given on oath.

FIRST WITNESS FOR PROSECUTION

Lt. G.M. Durgan, Records Officer, 13 Bn Residue 2 CBRG, having been duly sworn, states:

"I am Lt. G.M. Durgan, Records Officer, 13 Bn Residue 2 CBRG, and present the following document pertaining to the accused C.20897 Pte. Davis, J.B."

(1) Part II Order No. 16A dated 17 Jul 44 X List C.H.Of C., issued by Canadian Section G.H.Q., 2nd Echelon, 21 Army Group, showing C.20897 Pte Davis, J.B., A.W.L. from 2230 hrs 2 Jul 44.

G.M. Durgan

(G.M. Durgan) Lt.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

SECOND WITNESS FOR PROSECUTION

B.45961 Cpl. Stennett, A.H., A & S Highrs, 13 Bn 2 CBRG, having been duly sworn, states:

"I am B.45961 Cpl. Stennett, A.H., A & S Highrs, 13 Bn 2 CBRG. At 2215 hrs 13 Jul 44 I was Corporal of the Guard of Camp 49, 13 Bn Residue 2 CBRG, and C.20897 Pte Davis, J.B., reported in to me from being A.W.L."

A H Stennett Cpl.

B.45961 (A.H. Stennett) Cpl.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

The accused was cautioned in accordance with Rules of Procedure 4 (e) of the Army Act.

THE ACCUSED DECLINES TO MAKE A STATEMENT AT THIS TIME.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) and (e) have been complied with.

B S Shapiro, Lt

(B.S. Shapiro) Lt.
Officer Taking Summary of Evidence
13 Bn Residue 2 CBRG

In the Field

18 Jul 44

Exhibit (A

DNC

Level offr

X LIST
CAMERON HIGHLANDERS OF OTTAWA (MG)
PART II ORDERS
issued by
CANADIAN SECTION GHQ 2ND ECHELON - 21 ARMY GROUP

LAST ORDER
No. 15
17 JUL 44.

No. 16 A
17 JUL 44

"A" OFFICERS

NIL

"B" OTHER RANKS

1. ABSENT WITHOUT LEAVE:
(a) AWL from 2230 hrs 2 JUL 44. Still absent 2230 hrs 10 JUL 44. (8th day)

C 20897 Pte. DAVIS, J.B.
D138423 Pte. DOOLEY, M.E.

B.T. Saunders.
(B.T. Saunders) Capt.,
for Officer i/c.
CDN SECTION, G.H.Q., 2ND ECHELON - 21 ARMY GROUP.

/RLPC

Exhibit B

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
C20807	Pte	DAVIS, J.B.	13 Bn 2 CDBG

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For AA Sect 15(1)	1 times
For	times
For	times
For	times

Date of first entry in Field Conduct Sheet [illegible]

Date of last entry in Field Conduct Sheet 3 Nov 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for NA beginning on the NA day of NA

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 8 days in military custody, i.e., NIL days in open arrest, 8 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 24

6. The date of his attestation enlisting or being called up for military service is 10 Sep 39

7. The service which the accused is allowed to reckon is 4 YRS 10 MOS

8. The accused is in possession of†

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of	
In the war substantive rank of	NA
In the acting rank of	NA
	NA

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE: The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

†Strike out if not applicable.

‡State the military decorations (if any) held by accused.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental book in my custody, are correct to the best of my knowledge and belief.

Signed this 22nd day of July 44

B S Shapiro Lt

(B.S. Shapiro) Lt.
13 Bn Residue 2 CMBG

Exhibit C
M.F.M. 6 DMC
(A.F. B.122)
40/P & /8136 (2965)

No. C20897 Name DAVIS, John Bruce | Sqn., Battery, or Company | Corps C.H. of O. | Date of enlistment 12 Sep 39 | O.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		A/Cpl		AWL 9 hrs 6 mins		Reprimanded Forfs 1 days Pay	3 Nov43	OC 7 CIB Sp Gp CHofO	

Certified true copy of extracts from MFM 4
16 Jul 44

(Sgd)
(B.T. SAUNDERS) Captain
for Officer i/c
CDN SEC GHQ 2ND ECHELON 21 ARMY GP

CERTIFIED TRUE COPY
B S Shapers Lt. (S.D.&C)
18 Jul 44

(P.T.O.)

DJAC

LIST OF WITNESSES FOR THE PROSECUTION AND DEFENCE

FOR PROSECUTION: Lt. G.M. Durgan, 13 Bn 2 CBRG.

B.45961 Cpl. Stennett, A.H., A & S Highrs, 13 Bn 2 CBRG.

FOR DEFENCE: Nil.

LIST OF EXHIBITS

1. Part II Order No. 16A dated 17 Jul 44 X List C.H.of C. issued by Canadian Section G.H.Q., 2nd Echelon, 21 Army Group, showing C.20697 Pte Davis, J.B., A.W.L. from 2230 hrs 2 Jul 44.

DML

I, C20897 Pte Davis, J.B., wish the convening authorities to appoint a competent officer to defend me at my forthcoming trial by Court Martial.

J. B. Davis.

C20897 (J.B. Davis) Pte.

4P-40

Pte Davis J. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.20528 Pte John Hector Davis 2 Bn 1 CBRD.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	Charge	Plea	Finding
1st	NotGuilty	Guilty	7th	Not Guilty	guilty
2nd Alternative	Not Guilty	notGuilty	8th Alternative	NotGuilty	Not guilty
3rd	Not guilty	Guilty			
4th Alternative	Not Guilty	NotGuilty			
5th	Not Guilty	NotGuilty			
6th Alternative	NotGuilty	Not Guilty			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) "DWR" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one (1) year.

(Sgd) "DW Rose Capt" 12 Jan 45 (Sgd) "LW Carr Major"
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign them personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I do not confirm the findings of the court on the first and third charges. I confirm the finding onthe seventh charge and the sentence of the court.

~~If (a) is that the accused be not committed to prison or detention barracks, until further orders (1).~~ "DWR"
(1. AA 57A. Delete if not used.)

(Sgd) "Vincent McKenna" Lt Col
Date 13 Jan 45 A/ Commanding 1 Cdn Base Rpt Group.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C.20528 Pte John Hector Davis	15 Jan 45	"A.W. Lent Lt Col" 2 Bn- 1 CBRD

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Certified true copy
(DM Capt)
Cdn Sec GHQ
27 Jan 45

4P-40

FIELD GENERAL COURT-MARTIAL

CFA96 (To lieu of AFA3) 40/P & S/1608 (2864)

Convened by Order of Lt Col Vicent McKenna T/ Comd 1 CBRGp dated 10 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.20528	Pte		John Hector	Davis	2 Bn 1 CBRD.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 12 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed. "DWR"

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) ~~if~~ attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3) "DWR"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0945 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~says~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused objects to be tried by court-martial, instead of being dealt with summarily by about.~~(2) "DWR"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to as interpreter? Ans

The Interpreter is sworn.(1) Do you object to "DWR" as shorthand writer? Ans
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	L.W. Carr (CIC)	3 Bn 1 CBRD
Member	Lieut	F. Turgeon (CIC)	2Cdn Reall Centre
Member	Capt	W.A. Erb (CAC)	5 Bn 2 CBRD
Judge-Advocate	Capt	D.W. Rose (CIC)	HQ 1 CBRGp.
Prosecutor	Lieut	J.C. Bruce (CIC)	2 Bn 1 CBRD.
Defending Offr	Lieut	B.C. Greenhough (CIC)	2 Bn 1 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) ~~a~~ plea. "DWR" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ "DWR" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~continued and~~ considers the Instrs on Procedure after Arraignment at top of p 2 of ~~the~~ proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. RP 37(B). 2. RP 37(D) fn 4. 3. RP 33(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (B).)

C2. The charge(s) on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B4 to B5 of Record Form B above.(1)

(1. Under B5 sc: 4 parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st,3rd,5th,6th 7th charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st,3rd5th7th&8th charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(3) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Yes on oath Do you intend to call witnesses on your behalf ? Ans no Are they witnesses as to character only ? Ans No

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st,3rd, and 8th charge(s), being subject to confirmation, will be promulgated later.(1) "DWR" JA. The President announces that the accused is found Not Guilty on all charges other than 1st,3rd, and 8th, and that the proceedings are concluded. Part I is also finished and signed.(2)

(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex and Ex respectively.(3)

(1. AFB 255 or AFB 294. 2. MML 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes by Def Offr (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO X99, 2323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 44(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET "DWH"

The accused, C20528 Pte John Hector DAVIS (Saskatoon Light Infantry (MG.)), 2 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 18 (4)
Army ACt

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.

in that he

in the field in Italy on or about 24th December 1944 stole one pen and one pencil the property of G-5520 Pte Bernard, L., 2 Cdn Base Rft Bn, a person subject to military law.

SECOND CHARGE
(Alternative)
Sec 40
Army Act.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Italy on or about 1st January 1945 was improperly in possession of one pen and one pencil the property of G.5520 Pte Bernard, L., 2 Cdn Base Rft Bn.

THIRD CHARGE
Sec 18 (4)
Army Act.

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

in the field in Italy on or about 25th December 1944 stole one pen and one pencil the property of F.77602 Pte Pothier, D.A., 2 Cdn Base Rft Bn, a person subject to military law.

FOURTH CHARGE
(Alternative)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

In the field in Italy on or about 1st January 1945 was imporperly in possession of one pen and one pencil the property of F.77602 Pte Pothier, D.A., 2 Cdn Base Rft Bn.

FIFTH CHARGE
Sec 18 (4)
Army Act.

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

in the field in Italy on or about 1st January 1945 stole one pen the property of L.7442 Pte Salavich, J.W. 2 Cdn Base Rft Bn, a person subject to military law.

"RWL"

"DWH"

-2-

SIXTH CHARGE
(Alternative)
Sec 40
Army Act.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Italy on or about 1st January 1945 was improperly in possession of one pen the property of L-7442 Pte Salavich, J.W. 2 Cdn Base Rft Bn.

SEVENTH CHARGE
Sec 18(4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

in the field in Italy on or about 1st January 1945, stole one pen and one pencil the property of H.16523 Cpl Middlebaugh, M.

2 Cdn Base Rft Bn, a person subject to Military Law.

EIGHTH CHARGE (Alternative) Sec 40 WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Italy on or about 1st January 1945 was improperly in possession of one pen and one pencil the property of H.16523 Cpl Hidlebaugh, M.J., 2 Cdn Base Rft Bn.

"R.W. Lent"
(R.W. Lent) Lt.-Col
OC 2 Cdn Base Rft Bn
1 CBHQ., Cdn Army, CMF.

In the Field
6 January 1945.

• • • •

Approved for trial
under R.R. (Can) 540
"W.B.Bate Capt"
ADJA HQ 1 CBRGp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
10 Jan 45

"Vincent McKenna"
(Vincent McKenna) Lt-Col
T/Comd 1 Cdn Base Rft Group
Cdn Army - CMF.

The appointment of Capt D.W. ROSE, an offr having Legal qualifications, as Judge Advocate, is hereby approved by me on behalf of the JAG pursuant to Overseas R.O. 4756

"W.B. Bate"
W. B. Bate (Capt) ADJA
H.Q. 1 C.B.R.Gp.

"DWR"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

"DWR"

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C20528	Pte		John Hector	DAVIS	2Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet[X] attached and on (*date*) 10 Jan 45 endorsed by me, ~~(or by an offr of my staff for me)~~" To be tried by Field General Court-Martial ". "VMK"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) "VMK"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[X], and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "VMK"

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	L.N. Carr (CIC)	3 Bn 1 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	F. Turgeon (CIC)	2 Cdn Reallocation Centre
Capt or Lieut to be detailed by the OC 5 Bn 2 CBRD		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the O.C. 5 Bn 2 CBRD.		

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	D.W. Rose (CIC	HQ 1 CBRGp.

On Active Service in the Fd

in Italy (Country.)

"Vincent McKenna" (Signed personally. RP 105 fn 2.)
(Vicent McKenna)
LA Col. (Rank.)

Date 10 Jan 45

T/ Commanding 1 Cdn Base Rft Gp- CWF.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and duties for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 88(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (A).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 788.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

2 Canadian Base Reinforcement Battalion

I certify that I have this morning examined "DWA"
C.20528 Pte Davis JH... and he is fit to undergo trial by
Court Martial

1 Jan 1945 "Undecipherable" MO., 2 Cdn Base Rft Bn, 1 CBRD

1 D3 "DWR"

First Witness for Prosecution) H.37867 Pte Filion L 2 Bn 1 CBRD duly sworn is examined by the prosecutor.

Atabout 0130 hrs on 1 Jan 45 I was in bed in my quarters Valcartier Bldg Can Bks when I saw some person go past my bed to the wall at the head of the bed, take down a tunic that was hanging on the wall turn around and walk to the window at the foot of the bed. Although he had his back turned towards me I judged this person was going through the pockets of the tunic - I actually saw him doing this. This person was taking something out of the tunic pockets and placing it in his own trouser pockets. I knew it wasn't Cpl Hidlebaugh who sleeps over my bed so I hadn't heard him get out of bed so I reached up and put my hand between the slats of the upper bed & felt someone in bed there. I woke up the occupant Cpl Hidlebaugh up. I then turned to my large pack which was near the bed & obtained my torch from it. The man near the window turned around and as I did this I flashed my torch on his face. The man on whom I flashed the torch was the accused who is in court. The accused left the tunic on the foot of the bed and walked out of our quarters. Both Cpl Hidlebaugh & Myself got up and dressed and went down to the SLI quarters on the floor below ours and looked through those quarters for the accused but couldnt find him. On our way out of the SLI quarters we notified the Orderly Sgt. Afther this we went downstairs to the latrine and found the accused just inside the latrine. Cpl Hidlebaugh placed the accused under close arrest. The accused was searched in the hallway of the Valcartier Bldg. Before the search the accused said he had some 1600 lire on him. After the search it was found the accused had 2200 lire. In the guard room Cpl Hidlebaugh mentioned that he was missing a pen and pencil - the accused was present - Cpl Hidlebaugh, an R.P. and myself went to the latrine where we had first found the accused. I saw what look like a pen in the latrine pit. I then went to bed. The accused lived in the SLI billets as far as I know. The accused when I saw him in our quarters had trousers, running shoes and shirt on - he had notunic . The tunic which he took from the wall was hanging on the wall between my bed and the corner of the room.

Cross-exam.

The accused by his condition had been drinking.

I couldn't say the accused was drunk.

No Re-Exam

No Quest by Court.

R.P. 93 (b) complied with.

Second witness for prosecution

H. 16923 Cpl Hidlebaugh M.J. 2 Bn 1 CBRD duly sworn is exanined by the prosecutor.

At about 0125 hrs 1 Jan 45. I was in bed in my quarters in Valcartier Bldg. Can Bks. when I was awakened by Pte Filion who slept in the lower bunk of my bed. I saw a person standing by the window which is just to the right of my bed - I watched this person for about a minute then this person turned around and hung my tunic on the foot of my bed. I asked this person what he was doing with my tunic and why he was in the room. Just about then Pte Filion flashed his torch on this person's face. This person at that moment said "I am looking for my bed" and then turned and ran out of the room. The accused, who is in court was the man upon whom Pte Filion flashed his torch. Pte Filion and I got up, dressed and went over to the SLI quarters but was enable to locate the accused there. Filion & I went on downstairs and I saw the accused in the latrine. Filion flashed his light on him and we both recognized him as the man who we had seen upstairs with my tunic. I placed the accused under close arrest. The accused asked for permission to have aleak which I gave. The accused opened the lid and I saw him place his hand in the large front xx pocket of his trousers and it appeared to me that he dropped something down the latrine hole. I slammed down the seat and made him stand away. The accused was searched and there was found on his person money and some pencils. At the guardroom the accused was again searched. Where more pencils And some pens were found on his person. When I went to sign the body receipt for the accused I found my pen and pencil were missing. I went back to the latrine where I thought I'd seen the accused throw something down the latrine hole, there I saw one pen laying at the bottom of the latrine and one pen up near the top. The latrine seat was nailed down until the morning. In the morning at about 0900 I went to the latrine and recovered from it 2 pens and one pencil. The pen and pencil were my own. Waterman's pen & pencil set shown to me are my own which I recovered from the latrine. Marked Ex A. The other pen was a motley white one - The pen shown to me is the other pen- marked Ex B. The pens and pencils taken from accused in Guard Room consisted of a pen & pencil set in a black case- set produce and identified by witness marked Ex C. also a pen and pencil - pen identified and marked Exhibit D - pencil identified and marked Ex E. The last time I had the pen & pencil set Ex A was on the night of 31 Dec 44 at which time it was in the tunic which I later saw in the hands of the accused by the window on the 1 Jan 45.

Cross-exam

I dont remeber using the latrine previously that evening.
I didn't actually see the accused drop something down the latrine.
There are a number of seats in the latrine about 12 I think.
The only time I was in the latrine that night that I can remember was when I was there with the accused when he asked me if he could have a "leak"
I would say the accused had been drinking that night.
It was noticeable that the accused had been drinking except when he ran out of my quarters.

No. re-Exam.

No quest by Court.

By the J.A.

I did not give the pen or pencil Ex A to the accused at any time or to any other person prior to their being in the latrine hole.

R.P. 83 (B) complied with.

The court Adjourned at 1200 hrs. The Court reassembled at 1400 hrs, the same members being present.

Third Witness for prosecution.

L.86576 Sgt Basaraba E. 2 Bn 1 CBRD duly sworn is examined by Prosecutor.

I Was C.O.S. of the SLI Coy 2 Bn 1 CBRD on night 31 Dec 44/1Jan45 At about 0130 hours 1 Jan 45 As I came out of my quarters I met a PPCLI Cpl and Pte Filion. With them, I searched the SLI quarters for a man. Five minutes later I went downstairs and at the main entrance I saw the same PPCLI Cpl with the accused whom I recognize in court. I asked the accused how much money he had on him and he replied 1600 lire. The RPs in my presence searched him and found 2755 lire and two pen an a pencil sets One pen and pencil was in a black leather case without a flap - the pen and pencil were made by Watermans and were bluish green in colour. Ex C is that set. The other pen & pencil set were not matched. The pen was bluish green with black tips at either end with the name Eclipse on the nib. Ex D is that pen. The pencil was a Black Parker pencil. Ex E is that pencil. The accused was then taken to the Guard Room. After that the PPCLI Cpl and an R.P. and myself went to the latrine where I saw 2 pens in the latrine hole. I had the latrine seat nailed down. The accused's bed was in the SLI billets on that night.

Cross Exam

The accused was under the influence of liquor. I had no trouble getting the accused to the guard room.

No re-Exam

By Court

The accused appeared to know what was happening when He was in the hall of the billets.

When I first saw him come into the SLI Billets he had had a few drinks but he was not staggering.

He went to his own bed when he came in.

By J.A.

The accused came into his quarters at about 2215 hrs 31 Dec 44.

The accused was present in the SLI billets when I turned the lights out at 2230 hrs.

R.P. 83(B) complied with.

Fourth witness for prosecution.

G.5520 Pte Bernard L. 2 Bn 1 CBRD duly sworn is examined by prosecutor.

On 25 Dec 44 I discovered my pen and pencil set missing from my tunic. The pen was a bluish green fountain pen with the name Eclipse on the nib. a metal ring is missing from the open end of the cap. It has black tips at both ends of the pen. Ex D is my pen. The pencil was a black Parker pencil with a gold covered clip and tip at the writing end. It also has 3 spare leads in the spare lead compartment Ex E is my pencil. I didn't lend, give or sell either pen or pencil to anyone. On 25 Dec 44 my billets was in Valcatier Bldg. Can Bks.

No Cross Exam.

No Quest by Court.

R.P. 83 (b) complied with.

Fifth
Sixxx Witness for prosecution.

F.77602 Pte Pothier D.A. 2 Bn 1 CBRD duly sworn is examined by prosecutor.

I missed my pen and pencil set on 25 Dec 44. I had the set in my tunic on 24 Dec 44 but the next morning it was missing. The set was a matching watermans pen and pencil - bluish grey in colour and in a black leather case with an open top - the flap having been cut off. Ex C is my set. I have neither loaned, sold or given my set to anyone. I was in the PPCLI billets Valcartier Bldg Cdn Bks on 24-25 Dec 44.

No cross Exam

No Quest by Court

R.P. 83 (b) complied with.

Sixth Witness for Prosecution.

L.7442 Pte Salavich J.W. 2 Bn 1 CBRD duly sworn is examined by prosecutor.

My Coy billets are in Valcartier Bldg Can Bks. On night of 1 Jan 45 I was downtown in Avellino making a purchase and on going to pay for it, I found my money missing. At the same time I found my pen missing. I would be about 1800 hrs when this happened. I had been using my pen about two days before at which time I had placed it in my tunic pocket after using it and had not removed since that time. It was a mottled grey fountain pen of Italian make with two gold rings around the open end of the cap. The name "Durid" on the nib and the name Columbia on the Barrell.

5 "DWR"

Ex B is my pen. I didn't give loan or sell my pen to any person.

No Cross Exam

No Quest by Court.

R.P. 83 (b) Complied with.

The prosecution is closed.

6 D4 "DWR"

Submission by Defending Offr.

No evidence that the accused took the pen and pencil set as charged in the first charge. No evidence on the 3rd charge that the accused was anywhere near the pen and pencil when it was stolen. On 5th and 6th charges there is no evidence that the accused ever had possession of the pen. On the 7th and 8th charges there is no evidence either that the accused had the pen and pencil in his possession at any time.

Prosecutor made no reply.

7 D 6 "DWR"

The Defending Offr. makes no address.

First witness for Defence. The accused duly sworn is examined by Defending Offr.

I am on strength 2 Bn 1 CBRD. I recognise Ex C D & E. They were in my possession. On about the evening of 27 or 28 Dec 44, I went to Maple

Leaf Gardens to see a show. Before going into the show I went to the Tea room in the Gardens. There I met a fellow selling pens, so after some dickering I bought Ex C D & E then went into the show. I don't recognize Ex A or B, they have never been in my possession at any time. I did quite a bit of drinking on night of 31 Dec 44 returning to camp at roll call. I continued to drink after returning to camp - I had a bottle of vermouth with me. I was properly dressed when I came into camp. At about 1130 hours I changed my clothes but I am not sure where I went after that.

Cross- Exam.

I dont recall being in the PPCLI billets on 1 Jan 45.
I dont remember anything about being in the PPCLI billets - I dont remember much about that night. I remember my belongings being taken off me. at that time my bed had been in the SLI Billets for at least 2 weeks.- at 2Bn 1 CBRD.
I don't know who I bought the pens from.
I have never seen him before or since.
He was a soldier.

No re-Exam.

By Court.

I was in the tea room of the Maple Leaf Gardens when I bought the pens.

I paid 1250 lire for the pens.

I don't remember Cpl Hidlebaugh and Pte Filion meeting me in the latrine.

I changed my clothes in order to move around to see my friends and also to try and get something to eat.

By J.A.

I don't know what unit the soldier belonged to who sold me the pens.
I dickered with him for 3 or 4 minutes.
I bought the pens without trying them out.
I don't know when I last had a drink on 31 Dec 44
I stayed in the Clerk's quarters of the S.L.I. Coy Orderly Room drinking after reporting in on 31 Dec 44.
I can't describe the man who sold me the pens.

By Court.

The Clerk was in his room on 31 Dec 44.

R.P. 83 (B) complied with.

---

8 "DWR"

Prosecutor's address.

Prior to the day of the offences - alleged in the charge sheets certain soldiers lost property prior to the arrest of the accused on Jan 1 - 45. These articles were subsequently found in the possession of the accused. The articles have been satisfactorily identified and there ownership proven and it is now the duty of the accused, through defence witnesses, to give a satisfactory account of how he became to be in possession of these articles which he has not done.

-9- "DWR"

Pte Davis has been in the army since Sept 39, and so far has a very good record and fairly clean NFM t. He seems to be the victim of very unfortunate circumstances. He purchased two pens at the Maple Leaf Gardens not knowing they were stolen.
On New Years Eve he was celebrating and had quite a lot to drink, around midnight his mind became blank and he does not remember what he did. His friends he was drinking with have since left for their unit.

Cont'd Page 9.

Pte Davis was drunk and does not remember what he was doing. It is left to the Court to decide whether he was guilty or not.

"B.C.Greenligh Lt."

---

10 "D.W.R."

Summing up by J.A.

(a) It is a principle of English Law that the accused is presumed innocent until he is proved guilty and that the burden of proof rests upon the prosecution. Unless therefore the guilts of the accused is established beyond a reasonable doubt the accused must be acquited "Reasonable Doubt" explained.
(b) The Court is the sole judge of facts- the function of the Judge Advocate is to advise the court on the law.
(c) Any expression of opinion by J.A. on the facts is ~~strictly~~ purely his own and must not be considered by the court.
(d) Sections 18 (4) and 40 of the AA analysed reference being made also to Para 50 P.119 M.M.L.
(e) Doctrine of Recent Possession explained.
(f) General Rule is that a person is responsible for the natural consequences of his acts. The affect of drunkenness on this proposition pointed out by reference to MML P 100 Para 9.

DWR.

E 3 "DWR"

Pte Davis enlisted on the 3rd Sept 1939. He has had no previous service in the field. His AFW 6 shows that for the last five years he has kept out of trouble & has had three small chages against him. He has one dependant, his Mother. It is my opinion that Pte Davis has been the victim of very unfortunate circumstances & ask the court to judge accordingly.

" P.C. Greenhough Lt.".

No C20526 Name EX "G" "LNC" Davis JH

Sqn, Battery, or Company

Corps CIC

Date of enlistment 2 Sep 39

GC Badges one

Sanction-on-Proficiency Pay 20¢

MPM 6 (APB 135) 40/PAN/100 (0530)

Date of last entry in Company Conduct Sheet N/A

No and date of last drunk N/A

Period not reckoning towards freedom from extra fine N/A

Sheet No One

Signature OC Company, etc Sgd. "E.G. Essery, Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				"Sheet destroyed 2 Mar 42: Last Entry 15 Oct 41: Nil cases of drunkenness"				Sgt "E.A.R".	
Field	25Dec 42	Pte		AASec15(1)AWL fm 2359hrs 25 Dec 42 until 2200hrs 28Dec 42. 'Absent 2 Dys 22hrs 1 min)	Cpl Kennedy CQMS Johnson	Drunke Forf6dyspay FR&I 149(2)	29Dec42	LtCol Blaehn	PCForf 3dys pay FR&I 149(1)(a)
Field	31 Jan 43	Pte		AA Sec 15(1) AWL fm 2359 hrs 31 Jan43 until 0850 hrs 1 Feb 43 (Absent 8hrs 51 mins)	Documentary Sgt Bailey	7 days CB	1 Feb 43	Lieut GO Handley	Forf 1 dys pay FR&I 149 (1)(a)
Field	14 Mar 44	Pte		AA Sec 15(1) AWL 1 day 4 hrs	Cpl Campbell D.E.	Forf 5 dyspay FR&I 149(2)	15Mar 44	Major HT Coatigan	Forf 2 dsy pay FR&I 149 (1) (A)
				CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY		6 Jan 45	"D.A. 2Bn	Smith Capt 1 Cdn Base	A/Adjutant Reinforcement Depot.

(PTO)

Ex "F" "LNC"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.20528	Pte	Davis JH	2 Cdn Base Rft Bn.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1) 2 Times 3 times.

For ~~"DAS"~~ ~~—~~ times.

For ~~"DAS"~~ times.

For ~~"DAS"~~ times.

~~Date of first entry in Field Conduct Sheet~~ "DAS"

~~Date of last entry in Field Conduct Sheet~~ "DAS"

"DAS" 2. ~~Previous convictions of the accused by a court martial or a civil court are set out~~ "DAS" ~~in the Schedule overleaf.~~

*Strike out if not applicable.

*3. The accused at the present time is not under sentence for "DAS" ~~beginning on the~~ ~~day~~ of

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 11 days in military custody, *i.e.*, as of 12 Jan45 "DA Smith" days in open arrest, days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 23 yrs 10 mos

6. The date of his ~~attestation~~ calling up for military service is 2 Sep 1939

"DAS" 7. ~~The service which the accused is allowed to reckon is~~

8. The accused is in possession of† CVSM and Clasp.

†State the military decorations (if any) held by accused.

9. ~~(If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date~~ "DAS"

Date of Promotion.

~~In the substantive rank of~~

In ~~the war substantive rank of~~ "DAS"

~~In the acting rank of~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Wt [illegible] 30,000 3/44 51-4731. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		"DAS"		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 12 day of Jan 45

"R.A. Smith" Capt A/Adjutant
2 Bn 1 Cdn Base Reinforcement Depot

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C20528 Pte John Hector Davis 2 Bn 1 CBRD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	Charge (Space for use as required for further charges, accused charged jointly, special findings, etc.)	Plea	Finding.
1st	NOT GUILTY	Guilty	7th	NOT GUILTY	guilty
2nd ALTERNATIVE	NOT GUILTY	not guilty	8th ALTERNATIVE	NOT GUILTY	not guilty
3rd	NOT GUILTY	Guilty			
4th ALTERNATIVE	NOT GUILTY	Not Guilty			
5th	NOT GUILTY	not guilty			
6th ALTERNATIVE	NOT GUILTY	not guilty			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~AA prevent similar sentence &~~ it ~~beginning on (date)~~. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one (1) year

(Sgd) D.W. Rose Capt — Judge-Advocate, if any. 18 Jan 45 — Date awarded. (Sgd) L.N. Carr Major — President, (RP 45, 52.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 53-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I do not confirm the findings of the assault on the first and third charges. I confirm the finding on the seventh charge and the sentence of the Court.

~~I direct that the accused be still committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) Lieutenant L'Estrange RCN

Date 13 Jan 45 — Commanding A/ COMMANDER 1 CDN BASE Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C.20528 Pte. John Hector DAVIS.	15 Jan 45.	R.M. Smith Lieut 2 Bn - 1 CBRD.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 4P-43

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40/P & S/1608 (29664)

Convened by Order of Lieut Vincent Mckenna RCN dated 1 CBRGA dated 10 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C20528	Pte	John Hector	Davis	2 Bn 1 CBRD

PROCEEDINGS REVIEWED 10 Feb 45 Maj Reynolds Asst

REVIEWED OFFICER'S DIVISION

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 12 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2G-75

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1), attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0945 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~.....~~ as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ~~.....~~ as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	L.N. Carr (CIC)	3 Bn 1 CBRD
Member	Lieut	J. Turgeon (CIC)	2 Can Reallocation Centre
Member	Capt	W.A. Erb (RAC)	5 Bn 2 CBRD.
Judge-Advocate	Capt	D.W. Rose (CIC)	HQ 1 CBRGA.
Prosecutor	Lieut	J.G. Bruce (CIC)	2 Bn 1 CBRD
Defending Offr	Lieut	B.C. Greenhough (CIC)	2 Bn 1 CBRD.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ..... before arraignment make(s) (no) objn(s) (1) plea(s).

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (were) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is adjourned~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. (M142)

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans .....(4)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty [illegible] charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on [illegible] charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider this statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, see Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex [illegible], initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

...n here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have not had sufficient opportunity to prepare your defence? Ans NO.(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st, 2nd, 5th, 6th, 7th, & 8th charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st 2nd 5th 6th 7th & 8th charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Yes on oath. Do you intend to call witnesses on your behalf? Ans NO. Are they witnesses as to character only? Ans No.

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st, 3rd, and 7th charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released (variants).~~ and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (b), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans NO.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex F and Ex Gr respectively.(3)

(1. *MFB 255 or MFB 294.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes by Def. Offr.

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to refer on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments (and down in AA 41, 44 and its penalties, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2303, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 58(7), KR Can 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial use instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, C-20528 Pte John Hector DAVIS (Saskatoon Light Infantry (M.G.)), 2 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 18(4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

in the field in Italy on or about 24th December 1944 stole one pen and one pencil the property of G-5520 Pte Bernard, L., 2 Cdn Base Rft Bn, a person subject to military law.

SECOND CHARGE
(Alternative)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Italy on or about 1st January 1945 was improperly in possession of one pen and one pencil the property of G-5520 Pte Bernard, L., 2 Cdn Base Rft Bn.

THIRD CHARGE
Sec 18 (4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

in the field in Italy on or about 25th December 1944 stole one pen and one pencil the property of F-77602 Pte Pothier, D. A., 2 Cdn Base Rft Bn, a person subject to military law.

FOURTH CHARGE
(Alternative)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Italy on or about 1st January 1945 was improperly in possession of one pen and one pencil the property of F-77602 Pte Pothier, D. A., 2 Cdn Base Rft Bn.

FIFTH CHARGE
Sec 18 (4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

in the field in Italy on or about 1st January 1945 stole one pen the property of L-7442 Pte Salavich, J. W., 2 Cdn Base Rft Bn, a person subject to military law.

AMR

SIXTH CHARGE
(Alternative)
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Italy on or about 1st January 1945 was improperly in possession of one pen the property of L-7442 Pte Salavich, J. W., 2 Cdn Base Rft Bn.

SEVENTH CHARGE
Sec 18 (4)
Army Act

WHEN ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

in the field in Italy on or about 1st January 1945 stole one pen and one pencil the property of H-16523 Cpl Hidlebaugh, M. J., 2 Cdn Base Rft Bn, a person subject to military law.

EIGHTH CHARGE
(Alternative)
Sec 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Italy on or about 1st January 1945 was improperly in possession of one pen and one pencil the property of H-16523 Cpl Hidlebaugh, M. J., 2 Cdn Base Rft Bn.

R W Lent

(R. W. LENT) Lt.-Col.,
O.C., 2 Cdn Base Rft Bn,
1 C.B.R.D., Cdn Army, C.M.F.

In the Field,
6 January, 1945.

Approved for trial
under K.R (Can) 540
W. B. Bate Capt
ADJA HQ 1 CBRGp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
10 Jan 45

Vincent McKenna

(VINCENT McKENNA) Lt-col
T/Comd 1 Cdn Base Rft Group
Cdn Army-CMF

The appointment of Capt D W ROSE, an offr having Legal qualifications, as Judge Advocate, is hereby approved by me on behalf of the JAG, pursuant to Overseas R O 4756.

W. B. Bate

W B BATE (Capt) ADJA
HQ 1 C B R Gp

DME

see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.

DME

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C20528	Pte		John Hector	DAVIS	2 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Jan 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	L N CARR (Must be named. RP 106.)	(CIC)	3 Bn 1 CBRD (Unit.)

MEMBERS.

Lieut	F TURGEON	(CIC)	2 Cdn Reallocation Centre
Capt or Lieut to be detailed by the OC 5 Bn 2 CBRD (Rank.)	(Named or detailed. RP 106.)		(Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by the OC 5 Bn 2 CBRD (Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	D W ROSE (Must be named, if any. RP 106.)	(CIC)	HQ 1 C B R Gp (Unit.)

On Active Service in the Fd

in Italy (Country.)

Vincent McKenna (Signed personally. RP 105 fn 2.)

~~Lt-col~~ (Rank.)

(VINCENT McKENNA)

Date 10 Jan 45

T/ Commanding 1 Cdn Base Rft Gp-CMF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution:

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 63 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 46 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 9-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On rep.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to submitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 162 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 113(C), MML p 729.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

2 CANADIAN BASE REINFORCEMENT BATTALION

I certify that I have this morning examined

620528 Pte. Davis J.H.

and he is fit to undergo trial by Court Martial.

12 Jan 1945.

[illegible]
M.O., 2 Cdn Base Rft Bn, 1 CMD

First Witness for prosecution } H 37867 Pte Filion L. 2 Bn 1 CBRD duly sworn is examined by the prosecutor.

at about 0130 hrs on 1 Jan 45 I was in bed in my quarters Valcartier Bldg Can Bks when I saw some person go past my bed to the wall at the head of the bed, take down a tunic that was hanging on the wall turn around and walk to the window at the foot of the bed. Although he had his back turned towards me I judged this person was going through the pockets of the tunic - I actually saw him doing this. This person was taking something out of the tunic pockets and placing it in his own trouser pockets. I knew it was not Cpl Riddlebarger who sleeps over my bed as I had not heard him get out of bed so. I reached up and put my hand between the slats of the upper bed & felt someone in bed there. I woke up the occupant Cpl Riddlebarger R.P. I then turned to my large packsack which was near the bed & obtained my torch from it. The man near the window turned around and as he did this I flashed my torch in his face. The man on whom I flashed the torch was the accused who is in court. The accused left the tunics on the foot of the bed and walked out of our quarters. Both Cpl Riddlebarger & myself got up and dressed and went down to the SLI quarters in the floor below ours and looked through these quarters for the accused but couldn't find him. On our way out of the SLI quarters we notified the Orderly Sgt. After this we went down-stairs to the latrines and found the accused just inside the latrines. Cpl Riddlebarger placed the accused under close arrest. The accused was searched in the hallway of the Valcartier Bldg. Before the search the accused said he had some 1600 lire on him. After the search it was found the accused had 2200 lire. In the guard room Cpl Riddlebarger mentioned that he was missing a pen and pencil - the accused was present. Cpl Riddlebarger, an R.P. and myself went to the latrines where we had first found the accused. I saw what look like a pen in the latrines pit. I then went to bed. The accused lived at in the SLI billets as far as I know. The accused when I saw him in our quarters had trousers, running shoes, shirt on - he had no tunic. The tunics were hanging on the wall between my bed and the corner of the room.

Cross-exam

The accused by his condition had been drinking.

I could not say the accused was drunk.

No Re-exam

No Court by Court

R.P. 83 (B) Complied with.

DWR

Second Witness for prosecution } H 16523 Cpl Hidlebaugh M.S. 2 Bn 1 CBRD duly sworn is examined by the prosecutor

At about 0125 hrs 1 Jan 45 I was in bed in my quarters in Valcartier Bldg Can. Bks when I was awakened by Pte Filion who slept in the lower bunk of my bed. I saw a person standing by the window which is just to the right of my bed – I watched this person for about a minute then this person turned around and hung my tunic on the foot of my bed. I asked this person what he was doing with my tunic and why he was in the room. Just about then Pte Filion flashed his ~~the~~ torch on this person's face. This person at that moment said "I am looking for my bed" and then turned and ran out of the room. The accused, who is in court was, the man upon whom Pte Filion flashed his torch. Pte Filion and I got up, dressed and ~~when~~ went over to the Sh 1 quarters but was unable to locate the accused there. Filion & I went on downstairs and I saw the accused in the latrine. Filion flashed his light on him and we both recognized him as the man who we had seen upstairs with my tunic. I placed the accused under close arrest. The accused asked for permission to have a leak which I gave. The accused opened the lid and I saw him place his hand in the large front socket of his trousers and it appeared to me that he dropped something down the latrine hole. I slammed down the seat and made him stand away. The accused was searched and there ~~f~~ was found on his person money and some pencils. At the guardroom the accused was again searched where more pencils and some pens were found on his person. When I went to sign ~~for~~ the body receipt for the accused I found my pen and pencil were missing. I went back to the latrine where I thought I'd seen the accused throw something down the latrine hole, there I saw one pen laying at the bottom of the latrine and one pen up near the top. The latrine seat was nailed down until the morning. In the morning at about 0900 I went to the latrine and recovered from it 2 pens and one pencil. The pen and pencil were my own. Waterman's pen & pencil set shown to me are ~~the~~ my own which I recovered from the latrine. Marked Ex. A. The other pen was a mottled white one – The pen shown to me is the other pen – marked Ex B. The pens and pencils taken from accused in Guard Room consisted of a pen & pencil set in a black case – Set ~~marked Ex~~ produced & identified by ~~witness~~ marked Ex C. also a pen and pencil – pen identified and marked Exhibit D – pencil identified and marked Ex E. The last time I had the pen & pencil set Ex A was on the night of 31 Dec 44 at which time it was in the tunic which later saw in the hands of the accused by the window on the 1 Jan 45

RMR

Cross-exam

I dont remember using the latrine previously that evening.

I didnt actually see the accused drop something down the latrine.

There are a number of seats in the latrine about 12 I think.

The only time I was in the latrine that night that I can remember was when I was there with the accused when he asked me if he could have a leak.

I would say the accused had been drinking that night.

It was noticeable that the accused had been drinking except when he ran out of my cigarettes.

No Re-exam

No Quest by Court

By D.A.

I did not give the pen or pencil Ex A to the accused at any time or to any other person prior to their being in the latrine hole.

RP 83 (B) Complied with.

The Court adjourned at 1200 hrs. The court reassembled at 1400 hrs, the same members being present.

Third Witness for prosecution } L86576 Sgt Basarabia, E 2 Bn 1 CBRD duly sworn is examined by Prosecutor.

I was C.O.S. of the SLI Coy 2 Bn 1 CBRD on night 31 Dec 44/1 Jan 45. At about 0130 hrs 1 Jan 45 as I came out of my quarters I met a PPCLI Cpl and Pte Wilson. With them. I searched the SLI quarters for a man. Five minutes later I went downstairs and at the main entrance I saw the same PPCLI Cpl with the accused whom I recognize in court. I asked the accused how much money he had on him and he replied 1600 lire. The MPs in my presence searched him and found 2755 lire and two pen and pencil sets. One pen and pencil set was in a black leather case without a flap - the pen and pencil were made by Waterman and were blueish green in colour. Ex C is that set. The other pen pencil set were not matched. The pen was blueish green with black tops at either end with the name Eclipse on the nib. Ex D is that pen. The pencil was a black Parker pencil. Ex E is that pencil. The accused was then taken to the Guard Room. After that the PPCLI Cpl and an MP and myself went to the latrine where I saw 2 pairs in the latrine hole. I had the latrine seat nailed down. The accused's bed was in the SLI billets on that night.

Cross-exam

The accused was under the influence of liquor. I had no trouble getting the accused to the Guard Room.

DMR.

No Re exam

By Court

The accused appeared to know what was happenning when he was in the hall of the billets.

When I first saw him come into the SL1 Billets he had had a few drinks but he was not staggering.

He went to his own bed when he came in.

By J.A.

The accused came into his quarters at about 2215 hrs 31 Dec 44.

The accused was present in the SL1 billets when I turned the lights out at 2230 hrs.

R.P. 83(B) complied with.

Fourth Witness for prosecution | G5520 Pte Bernard, L 2 Bn 1CBRD duly sworn is examined by prosecutor.

On 25 Dec 44 I discovered my pen and pencil set missing from my tunic. The pen was a bluish green fountain pen with the name Eclipse on the nib. a metal ring is missing from the open end of the cap. It has black tips at both ends of the pen. Ex D is my pen. The pencil was a black Parker pencil with a gold covered clip and tip at the writing end. It also has 3 spare leads in the spare lead compartment. Ex E is my pencil. I didn't lend, give or sell either pen or pencil to anyone. On 25 Dec 44 my billets was in Valcartier Bldg. Can. Bks.

No Cross exam

no Quest by court

R.P. 83(B) Complied with.

Fifth Witness for prosecution | F77602 Pte Pothier, D.A. 2 Bn 1CBRD duly sworn is examined by prosecutor.

I missed my pen and pencil set on 25 Dec 44. I had the set in my tunic on 24 Dec 44 but the next morning it was missing. The set was a matching Watermans pen and pencil - bluish grey in codoses and in a black leather case with an open top - the flap having been cut off. Ex C is my set. I have neither loaned, sold or given my set to anyone. I was in the PPCL1 billets Valcartier Bldg Can Bks on 24-25 Dec 44.

No Cross exam

no Quest by Court

R.P. 83(B) complied with.

Sixth Witness for prosecution | L7442 Pte Salanick, J.W. 2 Bn 1CBRD duly sworn is examined by prosecutor.

My Coy billets are in Valcartier Bldg Can Bks. On night of 1 Jan 45 I was downtown in Avellino making a purchase and on going to pay for it I found my money missing. At the same time I found my pen missing. It would be about 1800 hrs when this happenned. I had been using my pen about two days before at which time I had placed it in my tunic pocket after using it and had not removed since that time. It was a mottled grey fountain pen of Italian make with two gold rings around the open end of the cap. The name "Durid" on the nib and the name Columbia on the barrell.

BMR

Ex B is my pen. I didn't give loan or sell my pen to any person.

No Cross Exam

No Quest by Court

R. P. 83 (B) Complied with.

The prosecution is closed.

D 4.

Submission by Defending Offr.

No evidence that the accused took the pen and pencil set as charged in the first charge. No evidence on the 3rd charge that the accused was any where near the pen and pencil when it was stolen. On 5th and 6th charges there is no evidence that the accused ever had possession of the pen. On the 7th and 8th charges there is no evidence either that the accused had the pen and pencil in his possession at any time.

Prosecutor made no reply

The Defending Offr. makes no address.

First Witness for Defence | The Accused duly sworn is examined by Defending Offr.

I am on strength 2 Bn 1 C BRD. I recognize Ex C D & E. They were in my possession. On about the evening of 27 or 28 Dec 44 I went to Maple Leaf Gardens to see a show. Before going into the show I went to the tea room in the Gardens. There I met a fellow selling pens, so after some dickering I bought Ex C D & E then went into the show. I dont recognize Ex A or B, they have never been in my possession at any time. I did quite a bit of drinking on night of 31 Dec 44 returning to camp at roll call. I continued to drink after returning to camp - I had a bottle of vermouth with me. I was properly dressed when I came into camp. At about 1130 hrs I changed my clothes but I am not sure where I went after that.

Cross-exam

I dont recall being in the PPCLI billets on 1 Jan 45
I dont remember anything about being in the PPCLI Billets - I dont remember much about that night
I remember my belongings being taken off me.
At that time my bed had been in the SLI Billets for at least 2 weeks. - at 2 Bn 1 C BRD.
I dont know who I bought the pens from.
I have never seen him before or since.
He was a soldier.

No Re-exam

By Court

I was in the tea room of the Maple Leaf Gardens when I bought the pens.
I paid 1250 lire for the pens.
I dont remember Cpl Hillebaugh and Pte Filion meeting me in the latrine.
I changed my clothes in order to move around to see my friends and also to try and get something to eat.

By J.A.

I dont know what unit the soldier belonged to who sold me the pens.
I dickered with him for 3 or 4 minutes.
I bought the pens without trying them out.
I dont know when I last had a drink on 31 Dec 44.
I stayed in the clerk's quarters of the SLI Coy Orderly Room drinking after reporting in on 31 Dec 44.
I cant describe the man who sold me the pens.

By Court

The clerk was in his room on 31 Dec 44.

R.P. 83(B) Complied with.

Prosecutor's Address.

Prior to the day of the offences - alleged in the charge sheets certain soldiers lost property prior to the arrest of the accused on Jan 1-45. These articles were subsequently found in the possession of the accused. The articles have been satisfactorily identified and there ownership proven and it is now the duty of the accused, through defence witnesses, to give a satisfactory account of how he became to be in possession of these articles, which he has not done.

Pte Davis has been in the army since 2 Sept 39. and so far has a very good record and fairly clean MFM 6. He seems to be the victim of very unfortunate circumstances. He purchased two pens at the Maple Leaf Gardens ~~and~~ not knowing they were stolen.

On New Years Eve he was celebrating and had quite a lot to drink, around midnight his mind became blank and he does not remember what he did. His friends he was drinking with have since left for their unit.

Pte Davis was drunk ~~to~~ and does not remember what he was doing. It is left to the court to decide whether he was guilty or not.

B.C. Greenbrg Lt.

DMR

Summing up by J A

(a) It is a principle of English law that the accused is presumed innocent until he is proved guilty and that the burden of proof rests upon the prosecution. Unless therefore the guilt of the accused is established beyond a reasonable doubt the accused must be acquitted. "Reasonable Doubt" explained

(B) The court is the sole judge of facts - The function of the Judge Advocate is to advise the court on the law.

(C) Any expression of opinion by J.A. on the facts is purely his own and must not be considered by the court

(D) Sections 18 (4) and 40 of the A.A. analysed reference being made also to Para 50 P 118 M.M.L.

(E) Doctrine of Recent Possession explained

(F) General Rule is that a person is responsible for the natural consequences of his acts. The effect of drunkenness on this proposition pointed out by reference to M.M.L P 106 para 9.

DMR

E3 DMR

Pte Davis enlisted on the 3rd Sept 1939.
He has had no previous service in the field.
His M.F.M. 6 shows that for the last five years he has kept out of trouble & has had three small charges against him. ~~It is~~ He has one dependant, his Mother. It is my opinion that Pte Davis has been the victim of very unfortunate circumstances & ask the court to judge accordingly.

P.C. Greenhaugh Lt.

Ex 2.
L.A.C.

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
C 20528	Pte	Davis, J. H.	2 Cdn Base Rft Bn

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	• Within last 12 months.	• Since Enlistment.
For A.A. Sec 15 (1)	2 times	3 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Nil~~ Number of instances of gallantry or distinguished conduct.

or

~~Nil~~ There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

~~Nil~~ Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 79 of the Army Act, are stated on the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~Nil~~ The accused at the present time is under sentence for ~~Nil~~ beginning on the ~~Nil~~ day of ~~Nil~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 11 days in military custody, making a total of 11 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 23 yrs, 10 mos.

6. The date of ~~his enlistment~~ his attestation specified in his ~~attestation paper~~ record of service is 2 Sep 1939.

~~Nil~~ The accused is not entitled to reckon any service for the purpose of determining his period of

~~Nil~~ The accused is entitled to reckon ~~Nil~~ service for the purpose of determining his period of

10. The accused is in possession of ~~Nil~~ the following military decorations and has been recommended for the ~~Nil~~ (state any military decoration or reward) : C. V. S. M. and Clasp

~~Nil~~ (In the case of an officer.) The accused before he was made a warrant officer had held the substantive

~~Nil~~ rank of ~~Nil~~

~~Nil~~ (In the case of an officer.) The accused holds in the army the rank of ~~Nil~~ dated ~~Nil~~

~~Nil~~ and in his regiment (or corps or department) the rank of ~~Nil~~ dated ~~Nil~~

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 477, K.R., 1940.

• The entries herein stated should correspond with the number of entries in the conduct sheets, provided these entries being given to the most serious offence in each entry, reference to any recognized special acts of gallantry or during wished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C20528 Rank Pte Name Davis, J.H. of 2 CBR Bn. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Ntd		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12 day of Jan 45

D. A. Smith Capt. A/. Adjutant
2 Bn 1 Cdn Base Reinforcement Depot

Sh.—The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of Ntd years.

In the rank of years.

In the rank of years.

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

Ex G.
Ex C.

No C-20528 Name DAVIS, J. H. Sqn. Battery or Company Corps C.I.C. Date of enlistment 2 Sep 39 GO Badges One [redacted] Proficiency Pay 20¢ MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No One Signature OC Company, etc Sgd. "E. G. Essery, Capt." Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
				"Sheet destroyed 2 Mar 42: Last Entry 15 Oct 41:	Nil cases of	Drunkenness"	Sgd "E.G.E."		
Field	25 Dec 42	Pte		A.A.Sec 15 (1) AWL fm 2359 hrs 25 Dec 42 until 2200 hrs 28 Dec 42. (Absent 2 Dys 22 hrs 1 min)	Cpl.Kennedy C.Q.M.S. Johnson	Forf 6 Dys pay FR&I 149 (2)	29 Dec 42	Lt-Col.P.C. Klaehn	Forf 3 dys pay FR&I 149(1)(a)
Field	31 Jan 43	Pte		A.A.Sec 15 (1) AWL fm 2359 hrs 31 Jan 43 until 0850 hrs 1 Feb 43 (Absent 8 hrs 51 mins)	Documentary Sgt.Bedley	7 days C.B.	1 Feb 43	Lieut G.O. Handley	Forf 1 dys pay FR&I 149(1)(a)
Field	14 Mar 44	Pte		A.A.Sec 15 (1) AWL 1 day 4 hr	CplCampbell, D.E.	Forf 5 dys pay FR&I 149 (2)	15 Mar 44	Major H. T. Costigan	Forf2 dys pay FR&I 149(1)(a)

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY.

6 Jan 45

D. A. Smith Capt. Adjutant
1 Cdn Base Reinforcement Depot

SUMMARY of EVIDENCE

Summary of Evidence in the case of C-20527 Pte DAVIS, J. H. (Saskatoon Light Infantry (M.G.)), 2 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS for the PROSECUTION

H-37867 Pte Filion, L., 2 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states:

"At approximately 0145 hours 1st January 1945 I was in bed in Valcartier Building, Canada Barracks. I saw someone come in, take a tunic from the wall and go over to the window with it. From his motions I would say that he was taking something from the tunic and putting it in his own pocket. I awakened Cpl Hidlebaugh and got my torch from my large pack. I flashed my torch on the man. It was the accused, whom I now recognize. He left just after I flashed the torch. Cpl Hidlebaugh and myself dressed and went to search for him. When we went outside of the building we saw the accused by the latrines. I went to get a regimental policeman. When I came back with one I saw the accused's money counted. The accused sais he had about sixteen (16) dollars. I am not sure but I think there was about twenty-two (22) dollars. The accused was then taken to 2 Bn Detention Room. On the way back to the billets I stopped at the latrine with Cpl Hidlebaugh and looked in it. I saw a fountain pen down at the bottom. I then went to bed."

L. F. Filion.....
(H-37867 Pte Filion, L.)

The accused declines to cross examine this witness.

SECOND WITNESS for the PROSECUTION

H-16523 Cpl Hidlebaugh, M. J., 2 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states:

"At approximately 0125 hours 1st January 1945 I was in bed in "6" Coy billets in the Valcartier Building, Canada Barracks. I was awakened by Pte Filion. I saw someone standing by the window with his back towards me. I watched him for about a minute. He turned around and hung my tunic up on my bed. The accused, whom I now recognize, was that man. I asked him what he was doing there and what he was doing with my tunic. He said he was looking for his bed. Pte Filion flashed his torch on him and the accused made a hurried exit. Pte Filion and myself got out of bed, dressed, got the 2 Bn Orderly Sgt, Sgt Basarabe and went through "LO" Coy billets but did not find the accused. We went downstairs and outside where we found the accused. I placed him under close arrest. The accused said he wanted to have a leak. Before I could prevent him he took something out of his pocket and dropped it down the toilet. I then sent for the Regimental Police. An R.P. from 3 Bn came and the accused's money was counted by C.S.M. Stock. The accused was taken to his billets to have his kit checked.

(P.T.O.)

After this the accused was taken to 2 Bn Detention Room. Here he was searched. A number of pens and pencils were taken from his person. There was a service set of a pen and pencil in a black case without a top, also a black pencil gold trimmed, and a greenish pen. (One set of a Waterman's pen and pencil produced and marked Exhibit "A"). I recognize Exhibit "A" as a pen and pencil set taken from the person of the accused at 2 Bn Detention Room. (One black Parker pencil produced and marked Exhibit "B"). I recognize Exhibit "B". It was taken from the accused at 2 Bn Detention Room. (A green fountain pen produced and marked Exhibit "C"). I recognize Exhibit "C". It was taken from the person of the accused at 2 Bn Detention Room. I missed my pen and pencil when I started to sign a form at the Detention Room. Sgt Basaraba, an R.P. and myself went immediately to the latrine where the accused stopped before. Down at the bottom I saw a pen, and near the top another pen. The toilet seats were nailed down and the next morning I took out of the latrine my pen, pencil, and another white pen. (A brown Waterman's pen and pencil set produced and marked Exhibit "D"). I recognize Exhibit "D" as my property and two of the three articles I took from the latrine. (A white fountain pen produced and marked Exhibit "E"). I recognize Exhibit "E" as the third article I took from the latrine."

M.J. Hidlebaugh.....
(H-16523 Cpl Hidlebaugh, M. J.)

The accused declines to cross examine the witness.

THIRD WITNESS for the PROSECUTION

L-86576 Sgt Basaraba, E., 2 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states:

"At approximately 0130 hours, 1st January 1945 I was coming out of "10" Coy billets in Valcartier Building, Canada Barracks, when I met Cpl Hidlebaugh and Pte Filion. As a result of what they said we went to "10" Coy billets to find Pte Davis, the accused, whom I now recognize. He was not there. Cpl Hidlebaugh and Pte Filion went down stairs. About five minutes later I went down and saw them with the accused. When the regimental police came the accused was asked how much money he had. He said about 16 dollars. C.S.M. Stock counted his money and there was 2755 lire. There was a pen and pencil set in a leather case with the top open, a black pencil and a bluish green pen also taken from him. I recognize Exhibits "A", "B" and "C". They were taken from the person of the accused on the morning of 1st January 1945. The accused was taken to 2 Bn Detention Room. On the way back from the Detention Room I stopped at the latrine with Cpl Hidlebaugh. We looked in the latrine and I saw two pens. One was whitish grey, the other was brown. I recognize Exhibits "D" and "E". They were the pens I saw in the latrine. The seats were nailed down when we discovered this. There was a regimental policeman with us. I then went to bed."

E. Basaraba.....
(L-86576 Sgt Basaraba, E.)

The accused declines to cross examine this witness.

(P.T.O.)

FOURTH WITNESS for the PROSECUTION

G-5520 Pte Bernard, L., 2 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states:

"On Christmas Eve I missed my pen and pencil. The pen is a greenish one with a metal ring missing from the top. The pencil was a black Parker pencil. I recognize Exhibits "B" and "C" as my property and the pen and pencil I missed on Christmas Eve."

L. Bernard
(G-5520 Pte Bernard, L.)

The accused declines to cross examine this witness.

FIFTH WITNESS for the PROSECUTION

F-77602 Pte Pothier, D. A., 2 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states:

"On Christmas morning I missed my writing set. On the 1st January 1945 I was called to 2 Bn Detention Room, where I gave a description of my set. My set is a Waterman's pen and pencil, a kind of bluish grey in color in a black leather service case with the top cut off. I recognize Exhibit "A" as my property.

D. A. Pothier
(F-77602 Pte Pothier, D. A.)

The accused declines to cross examine this witness.

SIXTH WITNESS for the PROSECUTION

L-7442 Pte Salavich, J. W., 2 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states:

"At about 1900 hours 1st January 1945 when I went to pay for a purchase made in Avellino I discovered that my money, a 1000 lire note, two 500 lire notes and two 100 lire notes, was missing. I also checked and found my pen missing. I went to 2 Bn Detention Room about 0900 hours 2nd January 1945, gave a description of my pen and identified it there. My pen is white, awkward looking, of an Italian make, with two gold rings at the top. I recognize Exhibit "E" as my property which I missed from my tunic pocket along with my money."

J. W. Salavich
(L-7442 Pte Salavich, J. W.)

The accused declines to cross examine this witness.

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given as evidence."

The accused declines to make any statement or give evidence on oath.

(P.T.O.)

Certified that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

I certify that the foregoing Summary of Evidence, consisting of four pages, was taken down by me in the presence and hearing of the accused this 3rd day of January 1945.

J. Murphy, Lt
.....
(Officer detailed to take Summary)

In the Field,
3rd January 1945.

LIST of WITNESSES
in the case of
C-20527 Pte Davis, J. H.

For the Prosecution:

(1)	H-37867	Pte Filion, L.	2 Cdn Base Rft Bn, 1 C.B.R.D.
(2)	H-16523	Cpl Hidlebaugh, M.J.	2 Cdn Base Rft Bn, 1 C.B.R.D.
(3)	L-86576	Sgt Basaraba, E.	2 Cdn Base Rft Bn, 1 C.B.R.D.
(4)	G-5520	Pte Bernard, L.	2 Cdn Base Rft Bn, 1 C.B.R.D.
(5)	F-77602	Pte Pothier, D. A.	2 Cdn Base Rft Bn, 1 C.B.R.D.
(6)	L-7442	Pte Salavich, J. W.	2 Cdn Base Rft Bn, 1 C.B.R.D.

For the Defence:

(1) N i l.

LIST of EXHIBITS
in the case of
C-20527 Pte Davis, J. H.

EXHIBIT "A" - One Waterman's pen and pencil set.
EXHIBIT "B" - One black Parker pencil.
EXHIBIT "C" - One green pen.
EXHIBIT "D" - One brown Waterman's pen and pencil set.
EXHIBIT "E" - One white pen.

I, C-20527 Pte Davis, J. H., Saskatoon Light Infantry (M.G.), 2 Cdn Base Rft Bn, 1 C.B.R.D., request that Lt. J. Mitchell ~~(or)~~ an officer be appointed to represent me at my trial by Court Martial.

Date 5th January 1945

John H Davis
(C-20527 Pte Davis, J. H.)

I certify that I have been given gratis, a copy of the Charge Sheet, a copy of the Summary of Evidence, a copy of the List of Witnesses, and a copy of the List of Exhibits pertaining to my trial by Court Martial.

Date 5th January 1945

John H Davis
(C-20527 Pte Davis, J. H.)

FLASH NUMBER ONE

FLASH NUMBER ONE

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6 F - Phe Davis Jto.

O. H. M. S.

M. F. B. 270

B-62873 Pte. Davie, J.W. 46-F
No. 1 M.T.V.R.D.

Correspondence to be PINNED here.

Army Form A.3.

RECEIVED 13 MAR 1942 M.T.V.R.D.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 2nd day of March, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*[redacted] —

*(1. [redacted])

*(2. [redacted])

*(3. [redacted])

[redacted]

President.

Rank.	Name.	Regiment.
Major	W.M. Carlyle	No.3 Cdn Arty Reinf Unit

Members.

Rank.	Name.	Regiment.
Captain	R.H. Robillard	2 Cdn Div Inf Reinf Unit
Lieutenant	H.A. Green	No.3 Cdn Arty Reinf Unit
Lieutenant	L.G. Burton	1 Cdn Div Inf Reinf Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Reinforcement Units

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-82873 PTE. DAVIS, J.W. No.1 M.T.V.R.D.	First Charge A.A. sec 9(2) Second Charge A.A. sec 15(1)	Not Guilty Not Guilty	Guilty Guilty	Confirmed H.H. Mclaren Brig.
	See charge sheet attached.		TO UNDERGO DETENTION FOR ONE HUNDRED AND SIXTY-EIGHT (168) DAYS.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) H.H. Mclaren Brigadier (Signed) Lt W Carlyle Major RCA

Commanding Cdn Reinforcement Units, *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of March 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) shorthand writer
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 5th day of March 19 42.

Lt W Carlyle Major RCA
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 14th day of March 19 42

H.H. Mclaren Brigadier
Confirming Officer

Promulgated and extracts taken in the case of

(*a*) (Dated) 16-3-42 (Signed) [illegible]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

C H A R G E S H E E T

The Accused, B-82873 Pte Davis, J.W. , No.1. M.T.V.R.D., R.C.A.S.C., C.A. (Overseas) is charged with:-

WHILE ON ACTIVE SERVICE

1st CHARGE
A.A. SEC 9 (2)

Disobeying a lawful command given by his Superior Officer,

in that he, at Bordon, Hants on 16 Feb.42, did fail to report to K-77219 Sgt Collins, C.A., as ordered to do so by K-77219 Sgt. Collins, C.A.

NG

2nd CHARGE
A.A. SEC 15 (1)

Absenting Himself Without Leave,

in that he, at Bordon, Hants, at 12.00 hrs. 16 Feb. 42 absented himself without leave from No.1. M.T.V.R.D., R.C.A.S.C., C.A. (Overseas) until 1600 hrs. 18 Feb.42.

NG

.....Lieut-Col.
(C.H. Barrett)
Officer Commanding, No.1. M.T.V.R.D.
C.A. (Overseas)
R.C.A.S.C.

Bordon, Hants.

21 Feb. 42

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Reinforcement Units.

Farnborough, Hants
This 2nd day of March 42.

No. B-82873, Pte. DAVIS J.W., No 1 MTVRD, tried by Field General Court Martial at BORDON, Hants. on the 5th day of March, 1942.

The order convening the court, the charge sheet, summary of evidence, and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:-	Lt. G.C. McDougall,	No 1 MTVRD.
Defending Officer:-	Capt A.W. Sanders,	No 1 RCOC RU.

At 0930 hrs the trial commences.

The order convening the court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read?
A1. No, sir.

The President and members are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to No B-66944, Sgt. T. Pyburn, HQ, C.R.U., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?
A3. Not Guilty.
Q4. Are you guilty or not guilty of the second charge against you, which you have heard read?
A4. Not Guilty.

Q5. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A5. No, sir.

Not witness for prosecution } No K-77219, Sgt COLLINS C.A., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q6. Are you aware that Pte Davis is charged with disobeying a lawful command given him by his superior officer?
A6. Yes, sir.
Q7. What do you know of the first charge laid against Pte Davis?
A7. On the morning of 16 Feb 42 Pte Davis approached me with regard to obtaining a pass. He claimed a lady friend had come to visit him and he wanted to find accommodation for her. I passed the request on the Adjt and he rejected it, and I informed Davis of the decision, but allowed him the rest of the morning off to escort the lady out of the bk area.
Q8. Did you tell Pte Davis to report back to you at any particular time or before any particular time?
A8. No sir, I just said "that morning."

Wrb

Q10. Did you at any time after you allowed him to go that morning, endeavour to locate him?
A10. Yes sir, on the lunch parade at 12 o'clock.
Q11. Pte Davis said he had a lady friend in the bk area?
A11. Yes, sir.
Q12. Where abouts?
A12. In front of our depot orderly room: I spoke to her myself, personally.
Q13. Did Pte Davis say why this lady friend was there?
A13. She was just visiting him.
Q14. The Adjt refused to grant Davis a pass, did he?
A14. Yes sir, and I told him he could take the rest of the morning off for the purpose of finding quarters for this friend of his in the town of Bordon.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q15. Will you state to the court the exact order you gave Pte Davis?
A15. "You may have the remainder of the morning off to escort this lady out of the bk area, and report back to me this morning." I gave a definite order.
Q16. Was any specific time stated?
A16. No sir, just the order to escort her out of the bk area and then report back to me.
Q17. He didn't report back to you?
A17. No, sir.
Q18. When did you miss him or look for him?
A18. At the lunch parade at 1200 hrs.
Q19. Were you looking for him then?
A19. Yes, sir.
Q20. He should have reported to you by that time?
A20. Yes sir, the morning was over by 12 o'clock.
Q21. And you consider that was a definite order, that he could find quarters for his lady friend and report back to you in the morning?
A21. Yes, sir.

RE-EXAMINED BY THE PROSECUTOR

Q22. You gave Pte Davis permission to be absent from the bk area and to report back to you during the morning of 16 Feb 42?
A22. That is right.
Q23. At any time after 1200 hrs of that same date, did you see Pte Davis?
A23. No, sir.
Q24. Can you state from your own knowledge whether he was in his quarters at tatoo roll call on 16 Feb?
A24. No, sir.
Q25. Who took the roll call that night?
A25. The senior man of his room.
Q26. When you gave permission to the accused to escort his lady friend out of the bk area, did you make it clear he was to report back to you that same morning?
A26. Yes sir, I did.
Q27. What information have you concerning the time the accused was absent from duty that day?
A27. The same morning I drew up a guard roster and posted it, and his name was on the list. Due to him not showing up the remainder of that day I exchanged his name with another for guard mounting about 1600 hrs, and he still had not shown up.
Q. Is that your usual way of detailing men for guard duty?
A. Yes, sir.
Q. How long has that system been in force?
A. Since we have been in these quarters.
Q. Pte Davis, as a member of your sub-park, would have been on guard quite frequently: can you tell the court how often Pte Davis would be on guard, on an average?
A. About every third week, that is for the sub-park.
Q. How many men are there in the sub-park?
A. 65 O.Rs.
Q. Therefore, would it be in order to say Pte Davis had at least one guard per month?
A. Yes, sir.
Q. How long has Pte Davis been with the sub-park? 4/6

A33. Ever since its formation.
Q34. Therefore Pte Davis at least once per month has seen his name on that order board and has been posted for guard duty in this manner?
A34. Yes, sir.
Q35. Did you see him anywhere in the bk area between 1200 hrs 16 Feb 42 and 1600 hrs 16 Feb 42?
A35. No, sir.
Q36. Did you make any inquiries about him?
A36. On the morning of the 17th I took the reveille roll call and he was absent, and his bed had not been made down and he was absent for the remainder of that day.
Q37. What time did Davis approach you the morning of the 16th to get permission to escort his lady friend out of the bk area?
A37. At approx 0800 hrs or 0815 hrs.
Q38. Therefore it would appear that Davis requested a pass before this lady friend arri ved?
A38. No, I believe she was already there; about 0830 hrs I noticed her there and she was there until about 1015 hrs.
Q39. What time did you give Davis permission to leave the camp?
A39. About 0830.
Q40. And you posted this guard roster at what time?
A40. Approx 0900 hrs the morning of 16 Feb 42.
Q41. Therefore to the best of your knowledge the accused was absent from 1200 hrs 16 Feb 42 until 1600 hrs 16 Feb 42?
A41. Yes, sir.

2nd witness) for prosecution) No A-9687, PTE BARNHARDT C.D., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q42. Will you please state what you know, of your own knowledge, concerning this charge?
A42. At approx 1500 hrs on 16 Feb 42 Pte Davis returned to No 1 sub-park seen and stated he was on guard that night.
Q43. Did you make any reply to that remark?
A43. No, sir.
Q44. Where did this conversation take place?
A44. At the door of No 1 Hut at the sub-park.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q45. You have heard the charges against the accused of AWL from 1200 hrs the 16 Feb 42 until 1600 hrs 16 Feb 42?
A45. Yes, sir.
Q46. Yet at 1500 hrs on 16 Feb you were talking to him, is that right?
A46. Yes, sir.

3rd witness) for prosecution) No A-9733, Pte MONTEITH W.H., No 1 MTVRD, RCASC, being duly sworn, states:-

The witness identifies himself.

Q47. Kindly state what you know of your own knowledge concerning this case?
A47. As I know Pte Davis had a week-end pass from Sat afternoon until 2359 hrs Sun night, the 15th. In the morning Sgt Collins took the roll call and Pte Davis was present. I saw him again at 1400 hrs on 16 Feb 42.
Q48. When you took the tatoo roll call on 16 Feb 42 was Pte Davis present?
A48. No, sir.
Q49. Was he present at reveille roll call 17 Feb?
A49. No sir, Sgt Collins took the roll call then.
Q50. Between the time Davis was posted for guard duty and his return, did you at any time see him say on 16 Feb 42?
A50. Yes sir, about 1400 hrs.
Q51. Did you have any conversation with him at that time?
A51. No, sir.

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Q52. Why did you make the tatoo roll call?
A52. All the NCOs were out that evening and Sgt Collins told me to check up and I took the tatoo roll call.
Q53. Who took the reveille roll call on the 17th?
A53. Sgt Collins.
Q54. In your sub-park what is the system concerning men for guard duty?
A54. Their names are posted up on the order board in the bk room.
Q55. Was this list posted on 16 Feb 42?
A55. Yes, sir.
Q56. Did you see Pte Davis' name on that order board?
A56. Yes, sir.
Q57. When did you first see the duty roster on the board?
A57. About 1200 hrs.
Q58. And you can state definitely the name of the accused was definitely on that duty roster?
A58. Yes, sir.
Q59. Did you see the accused any time after 1615 hrs on the 16th?
A59. No, sir.
Q60. When did you see him next?
A60. Not until a day or two after, after he was placed in detention.

CROSS EXAMINED BY DEFENDING OFFICER

Q61. You were speaking to Davis on 16 Feb 42 at 1615 hrs?
A61. No sir, but I saw him.
Q62. Therefore he must have been in the bk area somewhere?
A62. Yes, sir.

(3rd witness for prosecution) No A-9051, Sgt MARTIN E.B., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q63. What do you know concerning these charges?
A63. At 1330 hrs I was acting in the capacity of orderly Sgt that week, and at that time on 16 Feb 42 anabsentee report was handed to me showing Pte Davis was absent.
Q64. Where did that absentee report come from?
A64. Sgt Collins of No 1 Sub-Park.
Q65. Have you any knowledge concerning the fact Davis did not appear when the guard was mounted that afternoon?
A65. Yes, sir.
Q66. What do you know about that?
A66. At approx 0900 hrs at No 1 Sub-Park orderly board a guard list was put up and Pte Davis' name was on it for guard that night. At 1615 hrs that night he was not present.
Q67. Have you any further evidence concerning the charge of AWL?
A67. Pte Davis reported to me at approx 1600 hrs the 16 Feb and demanded to see the orderly officer, and I took him into close arrest to the guard room.
Q68. On the morning of 17 Feb 42, the day after Pte Davis was posted as being AWL, did you check his bk quarters?
A68. Yes, approx 0800 hrs and he was not there.
Q69. Did you make a check the morning of the 16th?
A69. Yes sir, and he was still absent.
Q70. To the best of your knowledge, what time did he report back to your unit?
A70. Approx 1600 hrs on the 16th.
Q71. How did he come to report to you?
A71. I was acting as Orderly Sgt.
Q72. What happened? Can you give us a brief summary?
A72. Pte Davis reported to me and demanded to see the orderly officer, and I took him to the guard room, and he wanted to be relieved from close arrest.

Q73. What was the condition of the accused when he returned?
A73. Sober and properly dressed.
Q74. To clear up one point - you signed an absentee report on Davis at 1330 hrs on the 16 Feb 42?
A74. Correct.
Q75. And you established he was AWL from guard mounting at 1645 hrs?
A75. That is correct, yes sir.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q76. It is stated the accused was absent from 1200 hrs 16 Feb 42 until 1600 hrs 16 Feb 42. At 1645 hrs you mounted the guard and Pte Davis was not on the guard?
A76. Right.
Q77. At 1330 hrs you signed the absentee report that he was not there; is that right?
A77. That is right.
Q78. On the 16 Feb 42?
A78. Right, sir.
Q79. Yet he was seen in the bk area at 1500 hrs and the absentee report was signed at 1330 hrs?
A79. Well, sir, I know nothing of that.
Q80. But you do know the absentee report was made out and you signed it?
A80. Yes sir, that is right.

The prosecution is closed.

Q81. THE COURT: Do you apply to give evidence yourself as a witness?
A81. Yes, sir.
Q82. Do you intend to call any other witness in your defence?
A82. No, sir.

R.P. 40 & 41 duly complied with.

The Accused, No B-82873, Pte DAVIS J.W., No 1 MTVRD, RCASC, being duly sworn, is examined by the defending officer:-

The Accused identifies himself.

Q83. Pte Davis, you were around the bk area on 16 Feb 42 at 0800 hrs and approached Sgt Collins about getting a pass to leave the bk area, is that right?
A83. I went and asked Sgt Collins - I went first to Sgt Dixon and he turned me over to Sgt Collins, and he went to see the Adt about it and they refused me a pass, and Sgt Collins came out and said, "Nothing doing," but he said I could go away but he did not state any specific time for me to come back. He said there was nothing to do and I could go and find a room for the girl friend. All he said was I could go away long enough to find a room for the girl friend.
Q84. And you went with her to find a room for her?
A84. Yes, sir.
Q85. You did come back to bks some time in the afternoon, did you?
A85. About 1600 hrs.
Q86. Had your name been removed from the duty roster?
A86. I believe it was still on, it was taken off about four o'clock.
Q87. After getting accomodn for your lady friend and coming back to bks, then you did go AWL?
A87. I went into the bk room and they told me I had been pegged for going away that morning, that Sgt Collins had pegged me, and I believed that because I have been on the peg so often there, and I figured I might as well take a little time off.

CROSS EXAMINED BY THE PROSECUTOR

Q88. You stated Sgt Collins did not say you were to report back at any specific time?
A88. No, sir.
Q89. What did Sgt Collins say to you?
A89. That there was nothing doing and I could go away and find a place for the girl friend.
Q90. Did Sgt Collins take the trouble of parading you to the depot HQ before that?

A90. He went up to see the Adjt and said I could not get a pass.
Q91. Then he said, "Well, you can go off, there is nothing doing?"
A91. I asked for a pass from 1000 to 1900 hrs and I was refused it, and Sgt Collins came out and said, "Nothing doing," but he told me I could go away and find a place for the girl friend.
Q92. When did he say to report back to him?
A92. He never said at all.
Q93. Then you went out, and what time did you return to bks?
A93. About three o'clock.
Q94. You went into No 1 Sub-Park bk room?
A94. Yes, sir.
Q95. Saw the roster with your name on it?
A95. Yes.
Q96. How long did you remain in camp?
A96. Just a few mins.
Q97. Did you report to a NCO?
A97. No, I was not told to report to anyone.
Q98. You were out without permission?
A98. No, but there was no reason to report to anyone.
Q99. You were in the bk rm for a few mins, then you admit you went AWL after returning at approx 1530 hrs, is that right? You left the bks then purposely after being in there a few mins?
A99. Shortly afterwards, yes sir.
Q100. We may take it then you were on duty because you were not on pass and did not have a pass; you were on duty until 1500 hrs the afternoon of 15 Feb 42, is that the general idea?
A100. Yes, sir.

Upon completion of closing addresses by the prosecutor and the defending officer, the Court is closed for the consideration of the finding.

The Court being re-opened, the accused is again brought before it.

The Prosecutor, LIEUT. G.C. McDOUGALL, No 1 MTVRD, RCASC, being duly sworn, is examined by the Court:-

The prosecutor identifies himself.

Q101. Have you any evidence to produce as to the character and particulars of service of the accused?
A101. Yes sir, I produce AF B296 and copy of MFM-6.

The above statement is read, signed by the President, and annexed to the proceedings.

Q102. Is the accused the person named in the statement which you have read?
A102. Yes, sir.
Q103. Have you compared the contents of the above statement with the regimental books?
A103. Yes, sir.
Q104. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A104. Yes, sir.

No cross-examination.

THE COURT: Do you wish to address the court?

DEFENDING OFFICER: No, sir.

MEDICAL OFFICERS' CERTIFICATE

I HAVE THIS MORNING EXAMINED B#2873 PTE. DAVIS, J.W. OF NO. 1 M.T.V.R.D., R.C.A.S.C., C.A. (OVERSEAS) AND FOUND HIM FREE OF INFECTIOUS AND CONTAGIOUS DISEASES AND FIT TO STAND TRIAL BY ~~UNFIT~~ COURT MARTIAL.

A Cherry Capt. RCAMC
(A. Cherry)
MEDICAL OFFICER

Bordon, Hants,
5 MAR 42

Wm Barclay Major RCAMC

MEDICAL OFFICERS' CERTIFICATE

I HAVE THIS MORNING EXAMINED B62873 PTE. DAVIS,J.W. OF NO. 1 M.T.V.R.D.,R.C.A.S.C., C.A. (OVERSEAS) AND FOUND HIM FREE OF INFECTIOUS AND CONTAGIOUS DISEASES AND FIT TO STAND TRIAL BY ~~UNFIT~~ COURT MARTIAL.

A Cherry Capt. RCAMC
(A.Cherry)
MEDICAL OFFICER

Bordon, Hants,
5 MAR 42

Wm Carlyle Major
RCA

SUMMARY OF EVIDENCE

By direction of the Officer Commanding, the evidence of all witnesses is taken under oath.

1st WITNESS

R-77215 Sgt. Collins, C.A., No. 1 M.P.P.U.R.D., R.C.A.S.C., C.A. (C), having been duly sworn, gives evidence as follows:

Q.1 Sgt. Collins, you have heard the charges against Private Davis read out to him. Kindly state what you know concerning these charges.

A. Sir, on the morning of 16 FEB 42 I was approached by the accused, Pte. Davis, at approximately 0815 hrs in regards to him securing a pass. He stated he had a lady friend here in the barrack area that he wished to find quarters for that day. I approached the Adjutant, as my own Section Officer wasn't here, and stated the question. The Adjutant refused permission. I returned to Davis and told him the answer, then gave him permission to escort the lady out of the barrack area, and then to report back to me.

Q.2 When you told him to report back to you, did you state specifically the latest time at which he was to report?

A. No Sir, there wasn't any specific time, I just said in the morning. That was the last I saw of him until I was brought up as a witness in a charge laid against him before the Commanding Officer.

Q.3 Did you, at any time after he left you on the morning of 16 FEB 42, endeavour to locate the accused?

A. Yes Sir, at 1800 hrs of the same day at the dinner parade. He was absent then.

Q.4 Can you state of your own knowledge whether or not he was in his quarters at Tattoo Roll Call, 16 FEB 42?

A. No Sir.

Q.5 Who took the Tattoo Roll Call?

A. One of the senior privates sir. I just forget his name. I choose a different one every night in the absence of the Corporal, but I believe it was Private Monteith.

Q.6 Did you make it quite clear to the accused that he had permission only to escort the lady from the barrack area, and was to report back to you on the morning of the 16th?

A. Yes Sir, I attempted my best to explain that.

Q.7 What information have you, of your own knowledge, concerning the charge of the accused failing to appear for Guard Duty?

A. None Sir.

Wm Langley Myers
RCA

Summary of Evidence (Cont'd)

Q.8 What information can you give concerning the warning of the accused that he was detailed for Guard Duty?

A. I personally, on the morning of 16 FEB 42, drew up a Guard Roster and posted it on the Sub Park order board on the morning of the 16th, in which his name appeared.

Q.9 What is the usual manner of warning soldiers for Guard Duty?

A. By their names being posted on the Sub Park order board.

Q.10 Was it the same board on which you did post the accused's name on the morning of the 16th?

A. Yes Sir.

Q.11 Was his name deleted from the Duty Roster at any time during the 16th of Febryary?

A. Yes Sir, after 1200 hrs.

Q.12 You say after 1200 hrs. Can you give an approximate time?

A. Between 1500 and 1600 hrs his name was deleted from the Roster and another name submitted.

Q.13 Did you make such deletion?

A. Yes Sir.

Q.14 Does the accused come directly under your command?

A. Yes Sir.

Q.15 Did you see him at his usual place of duty or anywhere in the barrack area between 1200 hrs, 16 FEB 42, until 1600 hrs, 18 FEB 42?

A. No Sir.

Q.16 During that time did you make any inquiries about him?

A. Yes Sir.

Q.17 How?

A. I made inquiries to his room-mates.

Q.18 Did you check the barrack room at Tattoo Roll Call or Reveille Roll Call between 16th and 18th February?

A. Yes Sir, at Reveille of the 17th.

Q.19 Was the accused present at that time?

A. No Sir.

Q.20 What time did you give Davis permission to leave the camp?

A. At approximately 1000 hrs on the morning of the 19th.

Q.21 What time was the Guard Duty Roster posted to the notice board?

A. Approximately 0845 hrs of that morning, Sir.

THE ACCUSED DECLINES TO CROSS EXAMINE

Wm Carlyle Major
RCA

C H Collins
(H-77219 Sgt. Collins, C.A.)

Summary of Evidence (Cont'd)

2nd WITNESS

A-9687 Pte. Barnhardt, C.D., No. 1 M.T.V.R.D., R.C.A.S.C., C.A.(O), having been duly sworn, gives evidence as follows:-

Q.1 You have heard the charges read out to the accused. Kindly state what you know, of your own knowledge, concerning these charges?

A. All I know is that Pte. Davis, whom I now recognize, came to the barrack room at approximately 1500 hrs on the 16th of February and stated, "So I'm on guard tonight", or words to that effect.

Q.2 Did you make any reply to the accused?

A. No Sir.

Q.3 Where did this conversation take place?

A. In the door of our room in No. 1 Sub Park, Headquarters Section.

ACCUSED DECLINES TO CROSS EXAMINE

.....C.D. Barnhardt...
(A-9687 Pte. Barnhardt, C.D.)

3rd WITNESS

A-9783 Pte. Monteith, W.H., No. 1 M.T.V.R.D., R.C.A.S.C., C.A.(O), having been duly sworn, gives evidence as follows:-

Q.1 Pte. Monteith, you have heard the charges read out to Private Davis. Kindly state what you know, of your own knowledge, concerning these charges.

A. Pte. Davis was on a pass on Sunday. On the morning of the 16th he was around the barrack room. Monday night I took the Tattoo Roll Call and Pte. Davis, whom I now recognize, was not present, nor was he present at Reveille of the 17th. Davis came into the barrack room at about 1500 hrs on 16 Feb 42.

Q.2 Did you have any conversation with Davis?

A. No Sir.

Q.3 Why did you take Tattoo and Reveille Roll Call?

A. I didn't take Reveille Roll Call - Sergeant Collins took it.

Q.4 Tattoo Roll Call?

A. I was ordered to do so by Sgt. Collins, as senior Private.

Q.5 What was the custom of warning personnel for guard duties?

A. There was a list up on the board in the hall beside our barracks when we were warned for guard.

Q.6 Do you know if the list was posted for that day, 16 Feb 42?

A. Yes Sir.

W.H. Monteith Major
RCA

Summary of Evidence (Cont'd)

Q.7 At what time did you first see the Duty Roster on the board?

A. At approximately 1400 hrs.

Q.8 Can you state definitely whether the accused's name was on the Roster?

A. Yes Sir, it was on it.

Q.9 Did you see the accused at any time after 1500 hrs on 16 FEB 42?

A. No Sir, not until the morning of the 20th February.

ACCUSED DECLINES TO CROSS EXAMINE

.....W. H. Monteith.....
(A-9763 Pte. Monteith, W. H.)

4th WITNESS

A-9081 Sgt. Martin, E.B., No. 1 M.T.V.H.D., R.C.A.S.C., C.A.(C), having been duly sworn, gives evidence as follows:-

Q.1 Sgt. Martin you have heard read out the charges against Private Davis. Kindly state what you know, of your own personal knowledge, concerning such charges?

A. Sir, at approximately 1530 hrs, 16 FEB 42, I reported back to "A" Park and it came to my knowledge that Pte. Davis was absent from barracks. I signed the Absentee Report and turned it in to the Orderly Room for disposal.

Q.2 Have you any knowledge concerning the charge of failing to appear for guard duty?

A. Sir, I mounted the guard at 1645 hrs of the 16th FEB 42. Davis was not on guard duty but he had been duly warned.

Q.3 Have you any knowledge as to how the accused was warned for Guard Duty?

A. The Orders were posted on No. 1 Sub Park order board.

Q.4 Did you see these orders?

A. Yes Sir, at approximately 0830 hrs on the 16th.

Q.5 Can you definitely state whether or not the accused's name was on such Duty Roster?

A. It was Sir.

Q.6 What further evidence can you give concerning the charge of A.W.L?

A. On the morning of the 17th, at approximately 0800 hrs, I checked the quarters where Pte. Davis sleeps and he was still absent. On the morning of the 18th I did the same.

Q.7 At what time?

A. Around 0800 hrs.

W. W. Carlyle Major RCA

Summary of Evidence (Cont'd)

Q.5 Any knowledge as to what time he came back?

A. At 1600 hrs, 18 FEB 42, he reported to me at "A" Park. He demanded to see the Orderly Officer in regard to being placed in Open Arrest rather than Close Arrest.

Q.6 What was the condition of the accused when you saw him at 1600 hrs, 18 FEB 42?

A. Sober and properly dressed.

EXAMINATION BY ACCUSED

Q.1 Sergeant Martin, what time did you know I was absent from the Guard?

A. At 1645 hrs, 16 FEB 42.

Q.2 What time did you sign the Absentee Report?

A. At 1330 hrs, 16 FEB 42

E.B. Martin Sgt.
(A-9061 Sgt. Martin, E.B.)

W.M. Carlyle Major RCA

Summary of Evidence

The Accused, having been duly cautioned in accordance with Rule of Procedure 4 (E), declines to make a statement.

CERTIFIED that rules of Procedure 4 (C), (D), (E) and (G) have been complied with.

Taken down by me in the presence and hearing of the Accused on the Twentieth day of February, 1942, at Louisburg Barracks West, Borden, Hants.

R. Erskine ..... Lieut.,
(R. Erskine)
Officer Taking Summary of Evidence.

W. W. Carlyle Major
RCA

M.F.M. 6
(A.F.B. 122)
[illegible]
H.Q. 1772-45-75

No. B52873 Name Davis, J.W. Sqn., Battery, or Company 1 M.T.V.R.L. R.C.A. S.C. Corps Date of enlistment 15.5.40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				THE FOLLOWING ENTRIES BROUGHT FORWARD ON COMPLETION OF SIX MONTHS SERVICE 15.5.40					
Borden, England.	1.6.40	Pte.		A.A.Sec 15 (1) A.W.L. 0845 hrs 1.6.40 till 2359 hrs. 6.6.40. (5 days, 15 hrs & 14 mins)	Sgt. Wishart " Annear	7 days C.B. extra fatigues, 6 days pay, F.R. & I. Art. 149 (1) (a)	8.6.40	Major G.C. McArthur	"G.C.Mc"
Borden, England.	19.6.40	Pte.		A.A.Sec 15 (1) A.W.L. 1600 hrs. 19.6.40 till 0130 hrs. 24.6.40. 5 days, 9 hrs 30 mins).	Sgt. Skeats " Graham " Steele	7 days Det'n, 6 days pay, F.R. & I. Art 149 (1) (a)	25.6.40	Major G.C. McArthur	"G.C.Mc"
Borden, England	3.8.40	Pte.		A.A.Sec 15 (1) A.W.L. 2359 hrs. 3.8.40 till 0830 hrs 5.8.40. (1 day, 8½ hrs)	Sgt. Steele	25 days Det'n 2 days pay FR & I. Art 149 (1)(a)	5.8.40	Major H.F. Hendick	"H.F.S."

(P.T.O.)

Dr Carlyle Major RCA

Description of Court by which tried, or status of Officer dispensing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~[illegible]~~ 5th day of ~~[illegible]~~ March, 1942

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-82873 Pte. Davis, J.W. of the No. 1 M.T.V.R.D. RCASC C.A.(O)

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

Use Para. 664, K.R., 1935.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.A. SEC 15 (1) A.W.L.	2	times	7	times.
For A.A. SEC 11 Breaking out of Barracks	0	times	1	times.
For A.A. SEC 15 (2) Absent from place of parade	1	times	1	times.
For A.A. SEC 40 Breaking ranks and failed to carry out order	1	times	1	times.

~~Number of instances of gallantry or distinguished conduct.~~

~~or,~~

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

~~or,~~

~~Previous convictions~~† of the accused by a court martial ~~or a civil~~ court, summary awards under Section ~~47 of the Army Act~~, and dispensations with trial under Section ~~73 of the~~ Army Act, are set out in the ~~Schedule annexed to~~ this statement.

[illegible]

W M Carlyle Major
RCB

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~

~~beginning on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges

for 0 days in Civil Custody,

and 15 days in Military Custody.

Total 15 days.

Of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 8/12 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 15 MARCH 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year 11 months

8. The accused is entitled to deferred pay or gratuity in respect of 1 11/12 years' service.

9. The accused is entitled to reckon 1 11/12 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~[or is in possession of or entitled to~~

11. ~~If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of~~

~~, dated~~ ~~, and in his regiment (or corps or department) the rank of~~ dated

13. ~~The accused has served as a non commissioned officer continuously without reduction, to the present date,~~

~~In the rank of~~ ~~Date of Promotion.~~

~~In the rank of~~ ~~years.~~

~~In the rank of~~ ~~years.~~

~~In the rank of~~ ~~years.~~

(INSTRUCTION.—*If any matter on any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name B-82873 Private Davis, J.W. of the No. 1 M.T.V.R.D., R.C.A.S.C., J.A.(O).

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf.

33I (2nd case)
See 46F for 1st case

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Pte DAVIS J W ..... REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

6/Davis,J.W.40 B-82873 Pte. Davis, J.W.

331

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this twenty-fourth day of April, 1942.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[redacted]

JUDGE ADVOCATE:

LIEUT. G.M. MORRISON,
H.Q., CDN. REINF. UNITS.

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
MAJOR	W.G.BURY,	Edmonton Regt., 1 C.D.I.R.U.

Members.

Rank.	Name.	Regiment.
A CAPTAIN	from	1,C.D.I.R.U.
A CAPTAIN	from	1,C.D.I.R.U.
A LIEUTENANT	from	1,C.D.I.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier,
Commanding CDN. REINF. UNITS.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-82873 PTE. DAVIS, J.W. 1?M.T.V.R.D. R.C.A.S.C.	FIRST CHARGE SHEET			Findings and sentence confirmed but sentence to be commuted to six months detention J.H. Whelan Brig
	A.A. Sec, 15 (1)	Guilty	Guilty	
	A.A. Sec. 22	Guilty	Guilty.	
	SECOND CHARGE SHEET			
	A.A. Sec. 24 (4)	Not Guilty	Guilty of committing the offence alleged in the first charge on 18th March 1942 and causing damage to the value of £1-2-7 (One Pound, Two Shillings and Sevenpence)	
	A.A. Sec. 22	Not Guilty		
	See Charge Sheets attached.		Guilty of second charge	
			To undergo imprisonment with hard labour for six (6) months and to be put under stoppages of pay until he has made good the sum of One Pound Two Shillings and Sevenpence (£1-2-7) damages W.G. Bury Major President 6-5-42	

* Question to be asked of accused, if he pleads not guilty (R. of P. 30 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) J.H. Whelan Brigadier (Signed) W.G. Bury Major

Commanding Cdn. Reinf. Units, Convening Officer (c) G. Williamson Lieut President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of April 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court and Judge Advocate
2. The witnesses and shorthand writer
~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~

were duly sworn.

* Omit if not applicable.

Signed this 6th day of May 1942

W.G. Bury Major
President of the Court Martial.
G. Williamson Lieut J.A.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 9th day of May 1942

J.H. Whelan Brig
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) DO 119. 22 MAY 1942 (Signed) [signature] Capt
OFFICER I.C. RECORDS
1 CDN. A.S.C. REIN. UNIT.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

DECLARATION FOR SUSPENSION OF RULES
UNDER RULE OF PROCEDURE, 104.

In my opinion military exigencies namely, military duties of the witnesses, expense and probable delay render it inexpedient to observe the provisions of rule 4 (E) on the trial of B-82873 Davis, J.W., by Field General Court Martial assembled pursuant to the order of the Convening Officer of Canadian Reinforcement Units.

SIGNED, at Farnborough, Hants, this 24th day of April 42.

Brigadier,
Commanding, Canadian Reinforcement Unit
Convening Officer.

C.S.G. Bury. Maj's
President

FIRST

CHARGE SHEET

The Accused, B-82873 Pte. Davis, J. W., No.1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas) is charged with:

WHILE ON ACTIVE SERVICE:

1st CHARGE
A.A.Sec.15(1)

Absenting Himself Without Leave,

in that he, at Bordon, Hants., at 0630 hours, 6 Mar 42, absented himself without leave from No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas) until 0905 hours, 8 Mar 42.

2nd CHARGE
A.A.Sec.22

When in Confinement Escaping,

in that he, at Bordon, Hants, on 6 Mar 42, whilst in Unit Detention Room of No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas), escaped.

E. H. Dean ..... Lieut.Col.
(E. H. Dean)
O.C., No.1, M.T.V.R.D., R.C.A.S.C.,
C. A. (Overseas)

BORDON, Hants.

10 MAR 42

To be tried by Field General Court Martial

J. M. Whelan Brigadier.
Commanding, Cdn. Reinforcement Units,
Convening Officer

Farnborough, Hants,
this 24th day of April 42

W.G. Bury. Major
President

SECOND

CHARGE SHEET

The Accused, B-82873 Pte. Davis, J. W., of No. 1, M.T.V.R.D., R.C.A.S.C., C.A. (Overseas) is charged with:

WHILE ON ACTIVE SERVICE

1st CHARGE
Army Act
Sec.24 (4)

WILFULLY DAMAGING PUBLIC PROPERTY,

in that he, at Louisburg Barracks West, Bordon, Hants., on 19 Mar 42, at approximately 1900 hours, did wilfully break twelve (12) panes of glass and a panel of the detention cell door in the Unit Guard Room, such damaged Public Property being of a value of £1:15:7.

2nd CHARGE
Army Act
Sec. 22

WHEN IN ARREST ATTEMPTING TO ESCAPE,

in that he, at Louisburg Barracks West, Bordon, Hants., on 19 Mar 42, at approximately 2000 hours, when proceeding under escort to the latrine, broke [illegible] and attempted to escape.

K K Thomson
.....Major,
(K. K. Thomson)
a/O.C., No. 1, M.T.V.R.D., R.C.A.S.C.,
C. A. (Overseas)

Bordon, Hants.
18 Apr 42

To be tried by Field General Court Martial

[signature] Brigadier
Commanding, Cdn. Reinforcement Units,
Convening Officer.

Farnborough, Hants,
this 24th day of April 42

W. G. Bury. Maj's
President

SECOND

CHARGE SHEET

The Accused, B-82873 Pte. Davis, J. W., of No. 1, M.T.V.R.D., R.C.A.S.C., C.A. (Overseas) is charged with:

WHILE ON ACTIVE SERVICE

1st CHARGE
Army Act
Sec.24 (4)

WILFULLY DAMAGING PUBLIC PROPERTY,

in that he, at Louisburg Barracks West, Bordon, Hants., on 19 Mar 42, at approximately 1900 hours, did wilfully break twelve (12) panes of glass and a panel of the detention cell door in the Unit Guard Room, such damaged Public Property being of a value of £1:15:7.

2nd CHARGE
Army Act
Sec. 22

WHEN IN ARREST ATTEMPTING TO ESCAPE,

in that he, at Louisburg Barracks West, Bordon, Hants., on 19 Mar 42, at approximately 2000 hours, when proceeding under escort to the latrine, broke away from his escort and attempted to escape.

K. K. Thomson .....Major,
(K. K. Thomson)
a/O.C., No. 1, M.T.V.R.D., R.C.A.S.C.,
C. A. (Overseas)

Bordon, Hants.
18 Apr 42

To be tried by Field General Court Martial

[signature] Brigadier
Commanding, Cdn. Reinforcement Units,
Convening Officer.

Farnborough, Hants,
this 24th day of April 42

MEDICAL OFFICER'S CERTIFICATE

(PARA.557, K.R.(Can))

I have this morning examined B-82873 Pte. Davis, J. W., of No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(O), and found him free of contagious and infectious diseases and fit/~~unfit~~ to stand trial by Court Martial.

A. Cherry .....Capt., R.C.A.M.C.
(A. Cherry)
MEDICAL OFFICER

Bordon, Hants.
29 APR 42

MEDICAL OFFICER'S CERTIFICATE
(Para.557, K.R.(Can))

I have this morning examined B-82873 Pte. Davis, J. W., of No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas), and found him free of contagious and infectious diseases and fit/~~unfit~~ to stand trial by Court Martial.

A Cherry .....Capt.,
(A. Cherry) R.C.A.M.C.
MEDICAL OFFICER

Bordon, Hants

1 May 42

W.J. Bury.
Major President.

W. G. Bury
Major President

Medical Officers' Certificate
K. R. (Cah.) Para 557

I certify that I have this morning examined RC B-82872
of DAVIS, J. W. and in my opinion he is fit to undergo
trial by court martial.

Station. Blenheim Oaks.

Date, 6/5/43

Sgd. [illegible] Capt.
(Medical Officer)

No. B-62873, PTE. DAVIS J.W., 1 M.T.V.R.D., R.C.A.S.C., tried by Field General Court Martial at BORDON, Hants. on 29 Apr 42, 1 May 42 and 6 May 42.

PRESIDENT:	Major W.G. Bury,	1 CDIRU.
MEMBERS:	Capt. E.M. Crouse,	1 CDIRU.
	Capt. T.M. Powers,	1 CDIRU.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor: Lieut. R. Erskine, 1 MTVRD, RCASC.
Accused declined services of Defending Officer.

At 1040 hrs the trial commences.

The order convening the Court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. No, sir.

The President, members and judge advocate are duly sworn.

Q2. Do you object to No. B-66944, A/Sgt. T. Pyburn, H.Q., C.R.U., acting as shorthand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned first charge sheet.

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?
A3. Not Guilty.
Q4. Are you guilty or not guilty of the second charge against you, which you have heard read?
A4. Not Guilty.

Q5. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A5. Yes sir, for two reasons I would like an adjournment. First, I have not had my charge sheet yet at all nor any papers; and secondly, I want to plead in my case that I am not responsible for my actions. I have never seen the charge sheet yet.
Q6. Have you had a copy of the summary of evidence?
A6. No sir, I have had nothing like that at all.
Q7. Have you had an opportunity of getting a defending officer?
A7. I had the opportunity, yes sir, but I refused a defending officer.
Q8. And you would like more time to prepare your case?
A8. Yes, sir.
Q9. How long would it take you?
A9. I would like to see a specialist for my second reason for not wanting to be tried now, and there are some witnesses I want to get in this case, sir.

Q10. Are there here, are they in this camp?
A10. No sir, they are at Farnborough.

PROSECUTOR: I have no objection to an adjournment on the grounds the accused has given. I did not personally give him a copy of the summary of evidence, but I was informed by Capt German, the former Adjt at MTVRD, that he had given a copy of the summary to the accused, but I did not give it to him myself. Capt German left here on 15 Apr.

Q11. JUDGE ADVOCATE: Did you receive a copy of the summary of evidence?
A11. ACCUSED: No sir, I didn't. I had it offered me about 10 mins ago.

PROSECUTOR: I have always carried out the practice, when the accused arrives, to give him a fresh copy, because they get pretty dirty and soiled.

THE COURT: How long has the accused been in custody?

PROSECUTOR: About 54 days awaiting trial on these charges, sir.

THE COURT: He has had the opportunity of getting witnesses if he required them, though?

PROSECUTOR: As a matter of fact I was informed he did not require any witnesses, sir.

THE COURT: I would like to ask the prosecutor the reason for the 54 days delay in bringing this case to trial.

PROSECUTOR: I don't think I should say at the present time, sir; it might prejudice the trial.

Court closed to consider submission of accused for adjournment.

The Court being re-opened, the accused is again brought before it.

THE COURT: The court will adjourn until 0930 hrs 1 May 42 ti give you an opportunity to get your witnesses and a copy of the summary of evidence. Before you leave the court let the prosecutor know the names and locations of the witnesses you wish to call. I would strongly advise you to take advantage of the services of a defending officer.

ACCUSED: But I don't have to tell the prosecuting officer who my witnesses are, do I?

JUDGE ADVOCATE: It is only for the purpose of helping you to get them here, but if you don't want to do that, if you feel sure you can get hold of them yourself, you may handle it that way. However, if you wish, it is your privilege to submit the names to the prosecuting officer here to get your witnesses for you, but if you want to get them yourself, very well.

ACCUSED: What about the second plea, the medical examination?

JUDGE ADVOCATE: You will have to arrange that through your unit. Ask to be paraded before your C.O. and make your request.

PROSECUTOR: This soldier is at the present time in detn rm No 1, CASCRU; for reasons which will come out later on he was removed from the guard room of this unit to that detn rm. I believe he is struck off our strength, so possibly he will have to apply to the C.O. of the Reinf Unit where he is at present located. (To Accused):- Of course, if you wish to call medical evidence you should give the name of the M.O. also to the C.O. and ask him to have the M.O. here to give evidence on your behalf, but I would strongly emphasise what the President has already said, that you should, as you have pleaded Not Guilty to these charges, take advantage of your opportunity to get an officer to defend you at your trial.

Q12. THE COURT: Have you now got a copy of the summary of evidence?
A12. No, sir.

PROSECUTOR: I have a spare copy, sir, which I will hand to the accused before the Court with your permission, also the charge sheets which are attached, and a list of witnesses.

At 1100 hrs the Court adjourn until 0930 hrs on 1 May 42.

On 1 May 42, at 0930 hrs, the Court reassemble, pursuant to adjournment; present the same members as on the 29 Apr 42.

The Court being re-opened, the accused is again brought before it.

Q13. THE COURT: Pte Davis, are you now prepared to proceed with your case?
A13. ACCUSED: No sir, they put me in a cell and would not let me see anybody, and they would not even let me look at my papers.
Q14. You had your summary when you left here?
A14. They took it off me when I went down there, though.

Q15. JUDGE ADVOCATE: Do you mean to say somebody took your summary of evidence away from you?
A15. Yes sir, they said I didn't have any right to have any reading material in my cell at all.
Q16. Who was he who took it away from you? What was his name?
A16. I don't know; I was reading it on my bed and they took it away from me.
Q17. What time did they take it away from you?
A17. Just after dinner on Wed. I got back there about quarter to 12, had my dinner, and they took it off me. They didn't even send it with my escort today and I have not got a copy of it.
Q18. Did you ask for an opportunity to get witnesses?
A18. Yes sir, I was paraded to the orderly room to be remanded and I asked for my witnesses, I wanted the MP's off duty, and they wouldn't co-operate. I asked the Major there.
Q19. Who was the Major?
A19. Major Lucas.
Q20. Who is he?
A20. The Major in the Administrative Wing at the unit. I went up before him and I asked him to let me have the witnesses and he said he would send the courts martial officer over, but he didn't come.

JUDGE ADVOCATE: Mr Prosecutor, do you know anything at all about these circumstances?

PROSECUTOR: The Adjt of the Reinf Unit phoned me yesterday, and I explained that the Court had instructed the accused, and I was told later on by another phone call by an officer whom I understood was the courts martial officer, that he had had a long conversation with the accused and that the accused had been medically examined at the F.A.P. of the Reinf Unit. I would submit, if I may, that the accused was given very clear instructions when he left here at the previous adjournment.

JUDGE ADVOCATE: If it is true that a M.P. took the summary of evidence away from the accused, it is serious.

Q21. THE COURT: Did you complain about that to the orderly officer?
A21. ACCUSED: I didn't say anything to him at all; I just asked them to give it back to me and they refused. They said there was no kind of writing material allowed in there, and that was supposed to be writing material.

PROSECUTOR: May I make a suggestion? Obviously the accused is not conducting his case in a very good manner, and it is my duty to bring out anything helpful to him, and I suggest very strongly that an officer be appointed to defend him, if that can be done.

JUDGE ADVOCATE: You cannot force a def officer on an accused person.
Q22. Do you want a def officer?
A22. ACCUSED: I want a real lawyer; I don't want an ordinary officer.
Q23. Who is the courts martial officer?
A23. Lieut. Pearce.
Q24. Would he be satisfactory to you?
A24. If I can get him, sir.

Court closed to consider application of accused.

The Court being re-opened, the accused is again brought before it.

LIEUT. V. PEARCE, No 1 CASCRU appeared before the Court, and announced he was acting as Defending Officer for the accused.

Upon instructions of the President, the shorthand writer read a verbatim report of the proceedings to date.

Q25. THE COURT: Are you satisfied that is a fair transcript of your evidence?
A25. Yes, sir.

THE COURT: Have you anything to say, Mr. Pearce?

DEFENDING OFFICER: Having been brought into the case at the eleventh hour I have not had much opportunity of studying the case. I have seen Davis on one or two occasions previously and the question of a defending officer was discussed. I will not take up your valuable time by talking of what was done, but I did advise Davis to have a def officer, and I was somewhat surprised to find he had not requested one. This morning was the first intimation I had that he was attending a court martial without a def officer. I am prepared to accept the case, now that he has asked for me, and I would respectfully ask for an adjournment to study the case and put myself in a position to adequately defend him, and if the court would see their way clear to grant an adjournment to a date satisfactory to all concerned it would be very much appreciated.

THE COURT: Shall we say next Wed morning at 0930 hrs?

DEF OFFICER: That would be sufficient time, sir, if that meets with the approval of the court. That would give us plenty of time to prepare a defence.

At 1115 hrs the Court adjourn until 0930 hrs on 6 May 42.

On 6 May 42, at 0930 hrs, the Court reassemble, pursuant to adjournment; present the same members as on the 1 May 42.

LIEUT. V. PEARCE, No 1 CASCRU, formerly defending officer, did not appear before the Court.

LIEUT. M.I. FRIEDMAN, No 1 CASCRU, took his place before the Court as defending officer.

The Court being re-opened, the accused is again brought before it.

THE ACCUSED: May I change the plea I made the other day, sir.

DEFENCE (To Accused): Just a minute. Sit here by me.
I take it, sir, the preliminary proceedings have already taken place and the accused has already pleaded. I have a preliminary application to make on the charges, and whether that is open to me now, when the accused has already pleaded, I don't know, but if the court will hear me I would appreciate it. The accused wishes to withdraw the plea already made. Perhaps that will put us back in a position as though he had not pleaded at all.

THE COURT: Very well; we will proceed on that basis.

JUDGE ADVOCATE: Now, there are two charge sheets, and the accused has pleaded Not Guilty to the charges on the first charge sheet. Does he wish to withdraw that plea and substitute another plea?

DEFENCE: He has not pleaded to the second charge sheet?

JUDGE ADVOCATE: No.

DEFENCE: It is the first charge with which I am concerned at the moment, the AWL one. I wish to withdraw that plea for the accused.

Defending Officer submitted first and second charges on first charge sheet arise out of same set of facts, and requested Court and/or prosecutor to withdraw one charge.

The Court is closed to consider their decision.

The Court being re-opened, the accused is again brought before it.

THE COURT: The Court has not granted the application of the defence.

JUDGE ADVOCATE: The Court not having granted the application, I will read the first charge sheet again.

The accused is again arraigned upon each charge in the first charge sheet

Q26. Are you guilty or not guilty of the first charge in the above mentioned charge sheet?
A26. Guilty.
Q27. Are you guilty or not guilty of the second charge in the above mentioned charge sheet?
A27. Guilty.

The accused having pleaded Guilty to the two charges on the first charge sheet, the provisions of R.P. 35(B) are here complied with.

The accused is arraigned upon each charge in the second charge sheet.

Q26. Are you guilty or not guilty of the first charge in the above mentioned charge sheet?

PROSECUTOR: Before the accused pleads, may I draw the attention of the court to the fact that the date as shown in the charge sheet and summary of evidence is a typographical error; the correct date is 18 Mar 42, not 19 Mar 42.

DEFENCE: My friend may be right, but the date throughout the evidence is shown as 19 Mar 42.

JUDGE ADVOCATE: I do not know what the accused intended to do, but possibly a plea of Not Guilty should be entered in view of these discrepancies.

DEFENCE: I will not advise the accused to plead Guilty to the offence occurring on the 19th if it did not occur on the 19th.

JUDGE ADVOCATE: It is the duty of the court to enter a plea of Not Guilty under the circumstances, and put the accused on his defence.

DEFENCE: I have no desire to give the court any unnecessary trouble. However, the accused has to plead to the charge as laid.

Q29. JUDGE ADVOCATE: Are you guilty or not guilty of the first charge in the second charge sheet?
A29. Guilty.
Q30. Are you guilty or not guilty of the second charge in the second charge sheet?
A30. Guilty.

JUDGE ADVOCATE: In view of the fact the prosecuting officer has called the attention of the court to the fact that the date in the charge sheet is incorrect and should be 18 Mar 42 instead of 19 Mar 42, I must advise the court there is no alternative but to proceed with the evidence since it has come to their knowledge the date is incorrect, and if they find the offence charged was committed on a different date, to make a special finding that the accused is guilty of committing the offence on that date instead of the 19th. I think that is the only thing we can do, unless the prosecuting officer can produce some authority to the contrary.

PROSECUTOR: No sir, I think that is the safest procedure, and also the fairest. I wish to call witnesses who will, I believe, prove that the accused did damage public property, and the approx time mentioned will be proven by the various witnesses. The date which I submit to the court will be proven as 18 Mar rather than 19 Mar, is to all intents and purposes an immaterial fact, in that the accused is being tried on a

charge of an act of wilful damage, not necessarily at any specified time. Those are the only remarks I have to make, sir.

1st witness for prosecution) No. M-21115, PTE WALTON W.J., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q31. Pte Davis, the accused, has been charged with causing certain damage to public property; this damage occurred at a certain time on a certain date. Just tell the court in your own words the date that this damage occurred, the approx time, your duties, and what you saw?
A31. On 18 Mar 42 at approx 1700 hrs I was on sentry duty at the In gate by the guard room. At approx 1700 hrs I heard the noise of breaking glass. I went through the In gate to the window, where I could see Pte Davis breaking the windows with his hand. I stood there for a few mins and the Sgt of the Guard came along. I could see no-one else in the guard room at the time.
Q32. When you went around to where you heard this breaking of glass, did you look in the window?
A32. When I went around, yes sir.
Q33. You say you saw the accused actually breaking glass, is that correct?
A33. Yes, sir.
Q34. Did you peer inside the guard room at all?
A34. I looked inside and could not see anybody else.
Q35. Did you have a fairly wide view of the guard room?
A35. Not all of it, sir.
Q36. But you did see Pte Davis breaking the glass?
A36. Yes, sir.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q37. Do you recall giving your evidence on the summary, when the summary was taken?
A37. Yes, sir.
Q38. Did you state, in giving your evidence at that time, that the offence occurred on 19 Mar 42?
A38. Yes, sir.
Q39. What makes you so certain that the offence occurred on 18 Mar 42 instead?
A39. That was a mistake, sir, in the guard reports.
Q40. How did that mistake arise?
A40. It was just a mistake in the date.
Q41. What have you to do with the guard house?
A41. I was a sentry at the time, I was on the In gate.
Q42. Have you any other way of remembering the date? Just how do you remember the date?
A42. I was on three nights in that week. I was off Tues night, on Wed night; on every other night, you see.
Q43. How does that help us now in establishing the date?
A43. It works out that I was on the night of the 18th.
Q44. What night of the week was that?
A44. I think a Wed.
Q45. The fact is, you are not certain now whether it was the 18th or 19th?
A45. Yes sir, I am certain it was the 18th.
Q46. Because you have checked with the calendar, have you?
A46. Yes, sir.
Q47. Was it dark that night?
A47. No, sir.
Q48. Could you see quite clearly?
A48. Yes, sir.
Q49. Were lights on inside the bldgs?
A49. No, sir.
Q50. Any light in this cell which you though: Davis was occupying?
A50. No, sir.
Q51. How far were you from the window?
A51. I was right up, close to it.

Q52. What first attracted your attention?
A52. The noise.
Q53. How far were you away from the place where the noise was being made?
A53. Approx 10 ft.
Q54. All right; what did you do?
A54. I went around and went up to the window.
Q55. At your post at the In gate you were only 10 ft from the window you say was being broken?
A55. Yes, sir.
Q56. Did you look towards the window then?
A56. I couldn't see the window; it was around the corner.
Q57. You went to see what the noise was, is that it?
A57. Yes, sir.
Q58. What did you see when you got there?
A58. I could see breaking glass, and when there were enough windows broke I could see Pte Davis quite well.
Q59. Did you know Pte Davis?
A59. Yes, sir.
Q60. How many panes of glass were broken?
A60. Thirteen.
Q61. You are quite certain of that, are you?
A61. Yes, sir.

Q62. JUDGE ADVOCATE: 13 panes in one window, or was there more than one window?
A62. There is a double window.

2nd witness for prosecution) No. B-81562, L/CPL HENDERSON, R.M., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q63. The accused, Pte Davis, has been charged with causing certain damage to public property at a certain place at a certain time on a certain date. He has also been accused at approx the same time and place and date of attempting to escape. Would you tell the court in your own words the duties you were performing on that particular date, tell them the date and anything else you know concerning these charges?
A63. On 18 Mar 42 I was in my own bk room and I heard Pte Davis wanted salt for his meal at approx 1700 hrs. I got the salt and took it into him. When I entered his cell the Orderly Sgt accompanied me. After giving Pte Davis the salt I turned to go out of the cell. The Orderly Sgt walked up to Pte Davis and as I was just going to go out of the door I saw the tea fly on the floor, and also a cup, in our direction, but it did not splash either one of us.
Q64. Whose cup was it?
A64. Pte Davis'.
Q65. Did you see how it got on the floor?
A65. No sir, I just seen it fly by; I didn't see him throw it or anything else.
Q66. How do you know it was the 19th, and not the 17th or 20th of March?
A66. All I can remember is it was on 18 March that it happened.
Q67. When you got the salt did you enter into the cell in which Pte Davis was?

JUDGE ADVOCATE: Don't lead the witness too much.

PROSECUTOR: I am sorry; I had no intention of doing so.

Q68. What did you do with the salt?
A68. Gave it to Pte Davis.
Q69. Where was he then?
A69. Sitting on his bed.
Q70. Was anybody else in that particular room with the accused?
A70. No, sir.
Q71. Are you quite certain of that?
A71. Absolutely certain.
Q72. What did you do when you left the room?
A72. After I went in there, the Orderly Sgt was right behind me and I waited until he came out, and then locked the door again.
Q73. Who locked the door?
A73. I did.

Q74. Then what happened?
A74. The accused asked through the door for a drink of water, and I refused to give it to him on account of throwing the tea on the floor until the orderly officer made an appearance. While the orderly officer was making his appearance there the door was broken with something from the inside. Pte Davis asked me again for a drink of water and I said I would not give it to him until the orderly officer appeared. I went outside and heard some windows being broken and I saw them being broken at the north end of the bldg; I could not see who was breaking them, but they were broken from the inside.
Q75. Do you know anything else?
A75. That is all I know about that charge.
Q76. All right. Now, the second charge, that of attempting to escape?
A76. At 2050 hrs on the evening of 16 Mar 42 I accompanied Pte McMillen with Davis to go to the latrine. When we were approx 100 yds from the guard room Pte Davis said, "I am sorry, boys, I have a date, I will have to leave you." He had his rain cape over his head, he threw it off and ran away from us, ahead of us. He made a bolt for it.
Q77. Then what happened?
A77. We finally caught him.
Q78. What did you do?
A78. Pte McMillen caught him.
Q79. What did you do?
A79. I threw my torch at him to try and stop him.
Q80. What else did you do?
A80. I helped Pte McMillen look for him, and accompanied him back to the guard room at approx 2105 hrs.
Q81. Where did you next see Pte Davis after he made a bolt for it?
A81. I never saw him after we took him back to the guard room at 2105 hrs.
Q82. The accused ran away. Was it dark that night?
A82. Yes, sir.
Q83. Where did you next see him?
A83. When Pte McMillen was bringing him back to the road.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q84. Where did this alleged attempt to escape occur in relation to your bk block?
A84. On the road up to the latrine, about 100 yds from the guard room.
Q85. Were there other bldgs around there?
A85. Just outside toilets.
Q86. How far were you from the bk blocks?
A86. I would say about 50 ft.
Q87. How far from the nearest office bldg?
A87. About 100 yds.
Q88. It was not very late, 2050 hrs; were there people about?
A88. Some people coming from the show at the time.
Q89. Were there not a considerable number of people around, with the show having just come out?
A89. Not a considerable number, but I remember four or five people passing at the time.
Q90. And there were two guards with the accused?
A90. Yes, two of us there.
Q91. Before he made this alleged bolt, Davis said something, didn't he?
A91. Yes, he said, "Excuse me, boys, I have got a date, I will have to leave you."
Q92. It sounded as though Davis was trying to have a little fun with you?
A92. I wouldn't say that.
Q93. How far did he get?
A93. About 25 ft.
Q94. And that is about as far as you would expect a man to get under those circumstances?
A94. When he has got a pretty fast runner after him, yes sir.
Q95. You said you helped Pte McMillen to look for him, is that right?
A95. Yes, sir.
Q96. You didn't need to do much looking?
A96. I couldn't myself because my flashlight was out of commission; Pte McMillen really found him.

Q97. Are you suggesting you could not see 25 ft away without your flashlight at that hour?
A97. Not on 16 Mar.
Q98. Yet you saw other people walking around?
A98. Yes, people with flashlights.
Q99. Are you suggesting you could not see the figures of persons walking across the road?
A99. When they got close to me, yes sir.
Q100. How close?
A100. When walking right by me.
Q101. But you could not see them 25 ft away?
A101. No, sir.
Q102. How far is 25 ft?
A102. About the length of this room, sir, that is my idea.
Q103. You have not a very clear conception of when this alleged offence occurred, have you?
A103. We enter it in the book when anything happens.
Q104. You made an entry in the book when?
A104. I didn't make the entry, but the Cpl of the MP did.
Q105. You go by what he says then?
A105. I also make a note of it on a calendar for my own convenience in my own case.
Q106. Did you mark this particular occurrence on your calendar?
A106. No sir, I didn't.
Q107. So you are going by what the other guard says about the date?
A107. No, I am sure of the date it happened myself, because it was on a Wed.
Q108. There are lots of Wednesdays, though.
A108. This particular Wed fell on the 16th ofthe month.
Q109. You have always known it was on a Wed then?
A109. Yes, sir.
Q110. You have since found out what dates in Mar Wednesdays fell on?
A110. Yes, sir.
Q111. And did you find this particular Wed fell on 16 Mar?
A111. Yes, sir.
Q112. When did you find that out?
A112. I actually found it out just about four weeks ago.
Q113. So you have not been certain of the date until four days ago?
A113. That is right.
Q114. You now come in here and take your oath it was the 16th?
A114. Absolutely.
Q115. Previously to that, did you swear it was the 19th?
A115. I did. yes, sir.
Q116. In your summary of evidence?
A116. Yes, sir.
Q117. Now this evening in the detn room, how long had Davis been in detn there
A117. From the 6th of the month.
Q118. Approx 10 or 11 days?
A118. Yes, sir.
Q119. That evening he made a request for salt for his food?
A119. Yes, sir.
Q120. Is it customary to give the prisoners salt?
A120. If they want it, yes sir.
Q121. Is it customary to take it in with their food?
A121. It is generally handed in with the food, but in this case we took it in.
Q122. Why was it not handed in to Davis?
A122. We had to keep him locked up pretty solid.
Q123. You did not let him unless it was absolutely necessary; is that what you are trying to say?
A123. Yes, sir.
Q124. He ate apart from the other prisoners, did he?
A124. Yes, sir.
Q125. Did you look after his wants?
A125. Pretty well, as well as I could.
Q126. It was your duty to see the prisoners were properly looked after?
A126. There is a guard there, a Sgt of the Guard who is i/c.
Q127. How did he happen to ask you for the salt?
A127. He did not particularly ask me; I heard him ask for it and I went and got it.
Q128. Do you recall giving evidence on the summary of evidence ---

PROSECUTOR: I object to reference to the summary of evidence.

JUDGE ADVOCATE: I think it is proper on cross-examination, but not on direct examination. You should read and ask the witness if he said it.

Q129. DEFENCE: Do you recall saying this, "He asked me for some salt for his supper?" Do you recall that?
A129. Yes, I remember that. The Sgt of the Guard asked for salt, I heard the accused ask for salt and I went and got it for him. He repeated it, and asked me for it.
Q130. You told us a moment ago he did not ask you personally for salt, and now you say he repeated his request direct to you?
A130. He asked the Sgt of the Guard for it at first, and I heard him repeat it again to me.
Q131. He made more than one request for salt?
A131. He did.
Q132. And finally asked you?
A132. Yes, sir.
Q133. Is that because the other guard would not bring it to him?
A133. I don't suppose he knew where it was.
Q134. But he had to ask someone else?
A134. Yes.
Q135. Then finally the salt was brought?
A135. Yes, sir.
Q136. How long after he first asked for it?
A136. Three to five mins.
Q137. There was some time elapsed, at any rate. Now then, when you came in with the salt, after giving it to him he threw his tea cup on the ground, is that right?
A137. Yes, with the tea in it.
Q138. Why did he do that?
A138. I have no idea, I was facing the door at the time.
Q139. Quite obviously he did not throw it at you?
A139. Oh no, not at me.
Q140. There must have been some reason?
A140 Yes, but he was talking to the Orderly Sgt - not to me.
Q141. That was not a magnificent, big room you were in?
A141. I didn't hear him say anything at all.
Q142. Did you hear him ask for some warm tea?
A142. I swear I didn't.
Q143. How close were you to the Orderly Sgt when he was talking to this prisoner?
A143. About from here to that chair (approx 18 ft).
Q144. You are not in a position to tell the exact size of the room?
A144. No, sir.
Q145. Or why Davis threw this cup of tea on the floor?
A145. No, sir.
Q146. After that, he asked for some water?
A146. Yes, sir.
Q147. Was any water brought to him?
A147. As a rule we are not in the habit of giving anybody water after throwing their cup of tea away.
Q148. Are people in the habit of throwing cups of tea away?
A148. As a matter of fact, that is the first time I ever refused anybody water.
Q149. You wanted to punish Davis, was that it, by making him wait for his water?
A149. Absolutely.
Q150. Did you try to find out why he threw his tea on the floor?
A150. No sir, I had other duties to perform and I came out and made the Orderly Sgt come out and locked the door.
Q151. When did you hear the breaking glass? How long after this happened?
A151. About 15 mins after; it all happened between 5 and 10 mins afterwards. The whole thing was over in about 15 mins.
Q152. What did you hear first?
A152. The door being broken.
Q153. What did you do?
A153. Nothing. I just stood on the outside.
Q154. You did not open the door to see what was happening?
A154. No, sir.

Q155. Was it not part of your duty to protect the property there?
A155. Yes, but there is a Sgt of the Guard i/c.
Q156. Did you notify the Sgt of the Guard?
A156. He was right there, alongside of me.
Q157. What were you doing there?
A157. I am the R.P.
Q158. Is it your duty to control prisoners?
A158. Yes, sir.
Q159. Even when in detn?
A159. Yes, sir.
Q160. You heard this prisoner breaking a door, and you did nothing about it?
A160. Quite correct.
Q161. Later on you heard him smashing windows?
A161. Yes, sir.
Q162. What did you do then?
A162. Just let him break them.

Q163. JUDGE ADVOCATE: Who was the Sgt of the Guard?
A163. I can't just name him now, but he is here.
Q164. The Orderly Sgt - do you remember him?
A164. Sgt Slade.
Q165. These windows in the guard room, are there any iron bars on them?
A165. Yes sir, on the outside.
Q166. Could a man get through, provided the panes of glass were broken, could he get through and escape through those windows?
A166. Not without bending the bars.

3rd witness for prosecution) No M-61504, PTE. McMILLEN H.N., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q167. Pte Davis has been accused of causing certain damage to public property on a certain date at a certain time and at a certain place. He is also charged with attempting to escape at or about the same time. Please tell the court your duties on the date on which these instances are alleged to have occurred?
A167. My duties were R.P. on the evening of 16 Mar 42.
Q168. You know of this charge laid against Pte Davis. When was it he was alleged to have attempted to escape - what date?
A168. The 16 Mar 42.
Q169. How are you so sure it was 16 Mar, and not 17th or 20th; why are you sure it was the 16th?
A169. Because there is a guard report.
Q170. Have you seen the guard report?
A170. Yes, sir.
Q171. What do you know of these charges?
A171. I don't know anything about the damage; I only accompanied the Orderly Officer into the cell, and I also accompanied the First Aid Cpl to help him apply first aid to Pte Davis; he had a bruised hand.
Q172. What did you see when you went into this cell?
A172. I saw Pte Davis sitting on his bed, and his hand was badly cut and bruised.
Q173. What else do you know about the other charge against Pte Davis?
A173. That is all I know in regard to the damage.
Q174. What do you know about the attempt to escape?
A174. At 2050 hrs the same evening I accompanied L/Cpl Henderson for the purpose of taking Pte Davis to the lavatory, and on the way he did attempt to escape.
Q175. What did he do?
A175. He threw down his ground sheet; he said, "I am sorry, boys, I have got a date," and he ran down the road a short distance and swung in at some bushes.
Q176. Then what happened?
A176. I went around the other bldg to head him off, and when I came back I found him in a small hollow not far away, near the bushes, laying on the ground with his face down.

Q177. What was your impression at the time?

DEFENCE: I object to that question.

Q178. PROSECUTOR: How far from the bushes was he?
A178. Approx six ft or so.
Q179. Was this hollow out in the open?
A179. There is an air raid shelter right near by.
Q180. Did you bring the accused's supper down to the guard rm on this night in question?
A180. Yes, sir.
Q181. About what time?
A181. Approx quarter to five or so.

JUDGE ADVOCATE: Is there any point in going into all this in detail? Does it really enter into the charge, do you think?

PROSECUTOR: No sir, but I am trying to anticipate possible cross-examination and probably head it off a bit.

JUDGE ADVOCATE: Well, I don't know that you can do that. It is purely extemporaneous matter.

PROSECUTOR: That is what I thought of the last cross-examination. No more questions, sir.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q182. I think you told the court that at the time of this alleged offence it was the 18 Mar 42, is that right?
A182. Yes, sir.
Q183. Do you recall when giving your summary of evidence you stated the date at that time?
A183. Yes, sir.
Q184. Did you then say the date of it was 19 Mar?
A184. That was a mistake.
Q185. But you did say that, didn't you?
A185. Yes, but it was a mistake.
Q186. How do you know it was a mistake then and that you are not mistaken now?
A186. I have gone over the guard sheets, sir, and I find it was a mistake.
Q187. Who makes up the guard sheets?
A187. The Guard Comdrs.
Q188. You have nothing to do with that?
A188. No, sir.
Q189. You are now taking their word that it was the 18th and not the 19th?
A189. The 18th is right.
Q190. But you are not giving us yourown memory at all as to the date?
A190. The 18th is right.
Q191. Because the Guard Comdrs say so?
A191. No, sir.
Q192. How do you know then?
A192. We have a list to keep track of it.
Q193. Have you your own record?
A193. One made by the Cpl i/c, but not one I make myself.
Q194. It is the result of your conversations with these NCOs that leads you to say the 18th now and not the 19th?
A194. It was a slight mistake on my part.
Q195. They have convinced you now that you made a mistake before, when you gave your other evidence, is that right?
A195. Yes, sir.
Q196. That night you were on duty at the detn bks, the 18th or 19th?
A196. Yes, sir.
Q197. Did you have anything to do with the prisoner Davis, the accused, in this case that night?
A197. Yes, sir.
Q198. What did you have to do with him?
A198. I took him his supper.
Q199. At what time?
A199. Something just before five o'clock, between 4.30 and 5.00.

Q200. And it was your responsibility to see he was fed?
A200. Yes.
Q201. Did he ask for anything?
A201. No.
Q202. At the time you took his supper in, did he ask for anything then?
A202. No, sir.
Q203. Did you later hear him ask for anything at any time?
A203. No, sir.
Q204. Did you remain in the detn bks?
A204. No, I went to my own quarters.
Q205. Is that part of the detn bks or another bldg?
A205. In another bldg, attached to it.
Q206. How soon after you took him his supper did you leave for your own quarters?
A206. Right away.
Q207. And you didn't go back again until the time you describe to the court, with the First Aid Cpl, is that correct?
A207. I went back, sir, I was back with the Orderly Officer.
Q208. What time was that?
A208. After five o'clock, but I don't know what the time was.
Q209. The orderly officer or the orderly Sgt?
A209. No, the orderly officer.
Q210. Was the orderly Sgt there?
A210. Yes, sir.
Q211. Was L/Cpl Henderson there?
A211. Yes.
Q212. Were you all in the cell together?
A212. We were in the guard room, but I don't know who went in the cell.
Q213. Did you go into the cell?
A213. I did.
Q214. What happened?
A214. The Orderly Officer spoke to Davis and asked somebody to go for the First Aid Cpl.
Q215. Was this after the episode of the glass breaking and that sort of thing?
A215. Yes, sir.
Q216. You were not in before that?
A216. No, sir.
Q217. Later on you saw Davis again; later on you were back with Davis again?
A217. Yes, sir.
Q218. What time was that?
A218. It was before six o'clock, but I don't know the exact time.
Q219. What happened then?
A219. I helped the First Aid Cpl with his treatment of Davis.
Q220. Were you back again after that?
A220. Yes.
Q221. When?
A221. About 2050 hrs.- yes, 2050 hrs.
Q222. How are you so sure?
A222. Because I had signed the book, and that is the time I put down.
Q223. That is the only time you do remember clearly, is it?
A223. Yes.
Q224. What happened on that occasion; was that when Davis wanted to go to the latrine?
A224. Yes.
Q225. Were there more than two of you escorting Davis?
A225. Just the two of us.
Q226. Who was the other man?
A226. L/Cpl Henderson.
Q227. How far did you have to take him?
A227. Approx 125 yds or so.
Q228. Between the detn bks and that latrine, and in that vicinity, are there other bldgs?
A228. Yes, but all fenced off, sir.
Q229. There are other bldgs, are there?
A229. Yes.
Q230. Are they brick bldgs?
A230. No, sir.
Q231. Are there any brick bldgs there?
A231. Not along there.

Q232. L/Cpl Henderson, I am certain, said there were brick bldgs 50 ft away; would you agree with that?
A232. They are a short distance away from where the trouble started.
Q233. There are people living there?
A233. Yes.
Q234. And various bldgs around there?
A234. I don't just remember any.
Q235. This latrine to which you were taking Davis, was that a latrine other men frequented?
A235. Yes.
Q236. You were walking along a road, were you?
A236. Yes.
Q237. Were there other people on the road?
A237. I saw no-one else at the time.
Q238. Was there a show on that night?
A238. At the Garrison, yes.
Q239. Was that show quite close by?
A239. It was quite a little distance away.
Q240. Men returning from that show would walk along that road?
A240. Some of them do.
Q241. Do you recall seeing any such people at the time?
A241. There was a fellow and his wife, yes.
Q242. Will you swear there was no-one else on the road at that time?
A242. Well, it was dark and raining pretty hard to be able to distinguish anyone, to see very much.
Q243. How far was the man and woman you saw away?
A243. Not very far, about 15 ft, I guess.
Q244. How far from you were they when you first saw them? Were they walking towards you?
A244. They were standing on the road.
Q245. Were you walking in their direction?
A245. The time I saw them was when I was bringing Pte Davis from where I found him.
Q246. Do you recall seeing any people on the road before he bolted?
A246. I don't.
Q247. Would it refresh your memory if I told you that L/Cpl Henderson said---

PROSECUTOR: I object to that.

Q248. DEFENCE: You have described to the court how Davis bolted that night; were you walking one on either side of him?
A248. Yes, sir.
Q249. And he said as he left, "I am sorry, boys, I have a date?"
A249. Yes.
Q250. Did he laugh?
A250. I don't know whether he did or not.
Q251. And he started to run?
A251. Yes, sir.
Q252. What did you do?
A252. I followed him.
Q253. How close behind him were you?
A253. 15 or 20 ft.
Q254. How far did he manage to run?
A254. Oh, I don't know.
Q255. Just off the road?
A255. No, 30 or 40 yds or so.
Q256. And you were always 15 or 20 ft behind him?
A256. Well, you know yourself it is pretty hard to see in the dark when it is raining.
Q257. But you kept him in sight?
A257. Until he swung into the bushes.
Q258. How far into the bushes did he go?
A258. Just a few ft. I left there then and swung around the bldg to cut him off.
Q259. Was this after he went into the bushes?
A259. Yes, sir.
Q260. How far into the bushes did he go?
A260. There is not much bush there; he kind of went through the bushes, as far as I could make out, and there was not much else for me to do but go around. When he swung into the bushes, by the time I caught up,

being a little distance behind, it was better for me to go around than through them.
Q261. How big a bldg is this?
A261. Not very big.
Q262. Were the bushes right alongside the road?
A262. Yes.
Q263. How far off the road was he when you found him?
A263. 10 to 12 ft.
Q264. And he was not in the bushes, was he?
A264. No, sir. Q.265. Where was he?
A265. He was in the open, in this little hollow.
Q266. You had no trouble seeing him when you got there?
A266. No, sir.
Q267. Did he struggle at all?
A267. No, sir.

JUDGE ADVOCATE: Do you think there is any necessity of calling witness after witness to prove the same facts?

PROSECUTOR: No, sir. Of course, the chief officer may insist on having them called. The only other witnesses I wish to call are the Sgt of the Guard and evidence as to the cost of the damage, that is all.

4th witness for prosecution) No. B-63901, SGT. SMITH A.G., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q268. Pte Davis has been accused of causing certain damage to public property and also of attempting to escape. Tell the court what your duties were and the date of these occurrences and also what dates they occurred and why you know it to be that particular date. Then I want you to tell the court anything you know concerning these charges?
A268. At 1700 hrs on 16 Mar 42 I mounted a guard. Immly after the change over of the guard I dismissed the remainder of my guard to the guard room and went to the cells. At that time L/Cpl Henderson was in the guard room. Pte Davis called L/Cpl Henderson.
Q269. You are sure it was 16 Mar?
A269. Yes, sir.
Q270. Did you see anything of the alleged damage to the guard room?
A270. Yes sir, I heard the pounding on the door of the guard room and went down to the guard room door and saw the splinters fly out of the panel of the door, and I then saw through a hole in the door Pte Davis swinging at the door with what I would say was the leg of the bed.
Q271. Do you know if anyone else was in the guard room with Davis?
A271. There was evidently no-one else in the cell because I checked immly afterwards.
Q272. Do you know of any other damage to the guard room (sic)?
A272. 13 panes of glass were broken, one of which was broken previously. I heard the glass being broken, walked around the outside of the guard room, and saw Pte Davis smashing the windows with his fist.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q273. Were you the Sgt of the Guard at the detn bks that night?
A273. I was.
Q274. Was L/Cpl Henderson serving under you?
A274. The R.P. don't serve under the Guard Comdr, they operate on their own, and when prisoners need to be taken out or anything, they handle it themselves.
Q275. Whose duty was it that night to control the prisoners?
A275. While there are no policemen around it comes under the charge of the Guard Comdr.
Q276. Who else was there besides you when you saw this door being smashed?
A276. There were others, but I couldn't say who.
Q277. Did anyone enter the cell to attempt to control this prisoner?

A277. No, sir.

Q276. You just let him go merrily on his way, did you?
A276. Yes, sir.
Q279. Did you hear Davis ask for anything prior to this occurrence?
A279. He asked for a drink of water.
Q280. Was that brought to him?
A280. No, sir.
Q281. Did you hear anything else that night?
A281. I heard he had complained.
Q282. Do you know anything of that to your own knowledge?
A282. Not of the first complaint, sir.
Q283. Do you know which cell the accused was occupying that night?
A283. Yes, I did.

Q284. JUDGE ADVOCATE: In what guard room did these occurrences you have related in your direct examination take place?
A284. In the unit guard room, the No 1 MTVRD guard room, Louisburg Barracks, Bordon.

5th witness for prosecution) C.Q.M.S. JONES T.O., No 1 MTVRD, RCASC, being duly sworn, is examined by the prosecutor:-

The witness identifies himself.

Q285. The accused, Pte Davis, has been charged with causing certain damage to public property, namely, the detn cell in the MTVRD guard room. In your capacity as Q.M. Sgt will you give the court the estimate of the damage which was caused?

JUDGE ADVOCATE: You might ask the witness if he examined the damage at a certain time and perhaps lead up to it in that way.

Q286. PROSECUTOR: Would you tell the court what connection you had with the charges which were laid against Pte Davis?
A286. On the morning of 19 Mar 42 I was instructed to ascertain the cost of damages to the unit detn room, which was the S.E. detn room. This I did with Mr. Stevens, R.E. Clerk of Works, as follows:-

Repairs to detn room door	6/7
Cost of replacing 12 panes of glass @ 1/2 per pane	14/-
Total cost of damages	£1. 2. 7

This was later confirmed by R.E. damage voucher.

Q287. Have you any knowledge whether there were any broken panes of glass there in the late afternoon of 18 Mar, the day before your inspection?
A287. Sgt Smith, who was Sgt of the Guard, advised me one had been broken previously to that, but to my own knowledge, no sir.

No cross-examination.

JUDGE ADVOCATE: I notice in the charge sheet the damages are £1.15.7. £1.2.7 I take it is the correct amount. However, it is favourable to the accused.

Q288. This examination was made by you at what time on the 19th?
A288. At 10 o'clock in the morning.

The prosecution is closed.

Q289. Do you apply to give evidence yourself as a witness?
A289. No, sir. (R.P. 40 & 41 duly complied with).
Q290. Do you intend to call any other witness in your defence?
A290. No, sir.

Upon completion of closing addresses by the prosecutor and defending officer, the Judge Advocate made the following summing up:-

JUDGE ADVOCATE:-

I merely want to suggest to the
their minds the fact that the accused at first
charges appearing on the second charge sheet, and
one of Not Guilty entered by direction of the Cour
plead Guilty before the Court directed a plea of Not
into their consideration. With regard to the first
the panes of glass, if the court is satisfied that that
out took place on 19 Mar 42 instead of 19 Mar 42, then
special finding, finding the accused guilty of committing
Mar 42. It seems clear from the evidence of the witnesses
offence committed. I think the court can come to the conclus
difficulty that the offence mentioned in the first charge was
it is up to them to decide from the evidence produced before the
on which date the occurrence took place. The amount of damage in
terms, of course, will have to be accepted from the evidence and
the charge sheet, namely, the amount given by the Q.M.S. of £1.2.7.
very little to say on the second charge; it is a matter for the court.
the def officer says, the prosecution must prove the guilt of the accused
beyond a reasonable doubt - not a fanciful doubt, but a doubt of some
substance. They will consider the evidence given, consider also the remar
made by the accused at the time of his breaking away from his escort, and a
from that evidence and from his actions and words, whether or not he is guil
of the charge of attempting to escape.

The Court is closed for the consideration of the finding.

The Court being re-opened, the accused is again brought before it.

The Prosecutor, LIEUT. R. ERSKINE, No 1 MTVRD, RCASC,
being duly sworn, is examined by the Judge Advocate:-

The witness identifies himself.

Q291. Have you any evidence to produce as to the character and particulars of service of the accused?

A291. Yes sir, I produce AF B296 and copy of MFK-5.

The above statement is read, signed by the President, and annexed to the proceedings.

Q292. Is the accused the person named in the statement which you have read?
A292. Yes, sir.
Q293. Have you compared the contents of the above statement with the regimental books?
A293. Yes, sir.
Q294. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A294. Yes, sir.

No cross-examination.

THE COURT: Do you wish to address the Court?

DEFENCE: There is only the question of age. Perhaps the court will allow me to pass on to them what I have been told by the accused. I speak towards the sentence that might be imposed on the accused. He has pleaded Guilty to two charges, and has been tried on two others. The character evidence submitted establishes the accused's age as being 21 yrs 9 mos. I am told by the accused, and have no reason to doubt it, that when he joined the army over two years ago he was then only 15 yrs of age. His present age is 17. Now, that is very, very young; he is only a boy. The record he has in the army is not a very commendable one, I admit. I suggest, sir, that a long period of detention will not have the corrective influence over the accused which would be desirable if such a sentence were going to be imposed. In my experience with the accused, and through talking to other, in

JUDGE ADVOCATE:-

I merely want to suggest to the Court they should put out of their minds the fact that the accused at first pleaded Guilty to these two charges appearing on the second charge sheet, and to consider his plea as one of Not Guilty entered by direction of the Court. The fact that he did plead Guilty before the Court directed a plea of Not Guilty should not enter into their consideration. With regard to the first charge, wilfully breaking the panes of glass, if the court is satisfied that that offence was committed but took place on 18 Mar 42 instead of 19 Mar 42, then they may bring in a special finding, finding the accused guilty of committing the offence on 18 Mar 42. It seems clear from the evidence of the witnesses that there was an offence committed. I think the court can come to the conclusion without much difficulty that the offence mentioned in the first charge was committed, and it is up to them to decide from the evidence produced before the court today, on which date the occurrence took place. The amount of damage in monetary terms, of course, will have to be accepted from the evidence and not from the charge sheet, namely, the amount given by the Q.M.S. of £1.2.7. I have very little to say on the second charge; it is a matter for the court. As the def officer says, the prosecution must prove the guilt of the accused beyond a reasonable doubt - not a fanciful doubt, but a doubt of some substance. They will consider the evidence given, consider also the remarks made by the accused at the time of his breaking away from his escort, and say from that evidence and from his actions and words, whether or not he is guilty of the charge of attempting to escape.

The Court is closed for the consideration of the finding.

The Court being re-opened, the accused is again brought before it.

The Prosecutor, LIEUT. R. ERSKINE, No 1 MTVRD, RCASC, being duly sworn, is examined by the Judge Advocate:-

The witness identifies himself.

Q291. Have you any evidence to produce as to the character and particulars of service of the accused?
A291. Yes sir, I produce AF B296 and copy of MFK-6.

The above statement is read, signed by the President, and annexed to the proceedings.

Q292. Is the accused the person named in the statement which you have read?
A292. Yes, sir.
Q293. Have you compared the contents of the above statement with the regimental books?
A293. Yes, sir.
Q294. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A294. Yes, sir.

No cross-examination.

THE COURT: Do you wish to address the Court?

DEFENCE: There is only the question of age. Perhaps the court will allow me to pass on to them what I have been told by the accused. I speak towards the sentence that might be imposed on the accused. He has pleaded Guilty to two charges, and has been tried on two others. The character evidence submitted establishes the accused's age as being 21 yrs 9 mos. I am told by the accused, and have no reason to doubt it, that when he joined the army over two years ago he was then only 16 yrs of age. His present age is 17. Now, that is very, very young: he is only a boy. The record he has in the army is not a very commendable one, I admit. I suggest, sir, that a long period of detention will not have the corrective influence over the accused which would be desirable if such a sentence were going to be imposed. From my experience with the accused, and through talking to other, in

particular Lieut. Pearce, who interested himself in the case, we have come to the conclusion he is a very high strung individual, a lad with a strong temper, who does not take kindly to orders. I was informed by both Lieut Pearce and the guards who have had him in detention at our own unit, that he has given no trouble; any time he was disinclined to obey a command, all that was required was a little reasonable handling. A lot of this boy's trouble has occurred, I think, because he has not been handled in that way. Psychologically I say the boy is mentally wrong. I am not a medical expert, but from my contact with him that is the opinion I offer to the court, for what it is worth. A long period of detention, I think, will make him bitter, will make him feel more misunderstood and perhaps make him feel a martyr. Certainly I don't think he will come out of detention a better soldier. If this court had the power, my own suggestion would be that mental observation would be the only thing for a boy of this kind with his mentality; actually I think he is in need of treatment rather than punishment. Everything he does is quixotic. I think a severe punishment would have the opposite effect to that which this court would want it to have.

The Court was cleared for the consideration of the sentence.

CERTIFIED a true and correct
transcript of my shorthand notes:-

A/Sgt.

Shorthand Writer.

C.S. Burt, Maj.
President

SUMMARY OF EVIDENCE

By direction of the Officer Commanding, the evidence of all witnesses is taken under oath.

1st WITNESS P-28079 Sgt. Smith, J. C., No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas) having been duly sworn, testifies as follows:

Q. 1 There are two charges preferred against B-82873 Pte.Davis, J.W., one of being A.W.L. from 0630 hours, 6 Mar 42 until 0905 hours, 8 Mar 42; and one of escaping while in confinement -- will you tell the Court what you know of these charges?

A. I am P.28079 Sgt. Smith, J.C., of No.1, M.T.V.R.D.,RC.A.S.C. On 5 Mar 42, as Sergeant of the Guard, I found Pte. Davis confined in the Unit Detention Room when I took over. At 0100 hours, 6 Mar 42, I saw Pte. Davis in the Detention Room, asleep. I closed the door on my way out of the Detention Room and locked it and went and sat down at the bench at the table in the Guard Room. That was the last time I saw Pte. Davis,

At 0300 hours I again went to the Detention Room door and saw that the door was locked; I did not look in. At 0630 hours it was reported to me by Pte.McMillen, H. M., of the Regimental Police, that Pte. Davis was missing and I reported the same to the Orderly Officer.

Q. 2 Did you verify the report of Pte. McMillen, that Pte.Davis was missing?

A. I saw that his bed was made up as if someone had been sleeping in it all night, with the pillow under the blankets.

Q. 3 How do you know, definitely, that at 0100 hours, 6 Mar 42, Pte. Davis was in the Detention Room?

A. I could see his head and shoulders above the blankets of his bed.

Q. 4 Do you know why Pte. Davis was confined to the Detention Room?

A. I do not know the exact charge. I believe he had been A.W.L., and was awaiting his sentence following trial by Court Martial on 5 Mar 42.

Q. 5 Have you any further knowledge of his going A.W.L., his return to the Unit or of his escape?

A. I have no other evidence.

.....J.C.Smith.....
P-28079 Sgt. Smith, J. C.

ACCUSED DECLINES TO CROSS-EXAMINE

2nd WITNESS M-61504 Pte. McMillen, H. M., No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas) having been duly sworn, testifies as follows:

Q. 1. There are two charges preferred against B-82873 Pte.Davis, J.W., one of being A.W.L. from 0630 hours, 6 Mar 42 until 0905 hours, 8 Mar 42; and one of escaping while in confinement -- will you tell the Court what you know of these charges?

A. I am M-61504 Pte. McMillen, H. M., of No. 1 M.T.V.R.D., R.C.A.S.C.. On 6 Mar 42 I was on duty as a member of the Regimental Police and as such I made the morning calls. When I went into the Guard Room at 0630 hours, 6 Mar 42, to awake the prisoners in detention, I discovered that Pte. Davis, J. W., was absent from the Detention Room, on which I reported to the Acting Corporal of the Guard, Pte. Graham, N., and to Sgt. Smith, J. C., Sergeant of the Guard. I then reported it to Cpl. Isbister, W. L., of the Regimental Police and to L/Cpl. Henderson, R. M., of the Regimental Police.

Q. 2 Were you present when Pte. Davis was returned to the Detention Room?

A. I did not see him come in.

Q. 3 Do you recognize the Accused, Pte. Davis, as the Pte.Davis who was in detention on 5/6 Mar 42?

A. Yes, sir.

Q. 4 Have you any further evidence to give concerning these charges?

A. No more, sir, other than that the door to the Detention Room in which the Accused and other prisoners were confined was unlocked when I came in to wake up the prisoners at 0630 hours, 6 Mar 42.

H. M. McMillen
M-61504 Pte. McMillen, H. M.

ACCUSED DECLINES TO CROSS-EXAMINE

3rd.WITNESS A-9221 Sgt. Barsata, M. P., No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas) having been duly sworn, testifies as follows:

Q. 1 There are two charges preferred against B-82873 Pte.Davis, J.W., one of being A.W.L. from 0630 hours, 6 Mar 42 until 0905 hours, 8 Mar 42; and one of escaping while in confinement -- will you tell the Court what you know of these charges?

A. I am A-9221 Sgt. Barsata, M.P., No. 1, M.T.V.R.D., R.C.A.S.C., and on 6 Mar 42 at 1315 hours, L/Cpl. Henderson, R.M. of the Regimental Police turned Pte. Davis, J.W. over to me as Sergeant of the Guard, in the Guard Room. Pte. Davis was sober and properly dressed.

Q. 2 Do you recognize the Accused?

A. Yes, sir, he is the Pte. Davis who was turned over to me.

Q. 3 Have you any further evidence concerning this matter?

A. No, sir.

M. P. Baratta Sgt.
A-9221 Sgt. Baratta, M. P.

ACCUSED DECLINES TO CROSS-EXAMINE

STATEMENT OF THE OFFICER TAKING SUMMARY OF EVIDENCE, TO THE ACCUSED --

You were taken in custody in London; a certificate of the fact being given by an officer on behalf of the D.A.P.M. Owing to the exigencies of the Service and having regard to the distance and time and expense incurred in having witnesses attend from London, and having regard to the Provisions of C.A.(O), R.O. #1389, I propose to dispense with the personal appearance of these London witnesses and to read into this evidence the Certificate of the officer on behalf of the D.A.P.M., which is as follows:

"Certificate in accordance with the Army Act Section 163 (1) (jj).

"I certify that Reg't No. B-82873; Rank: Pte; Name: Davis, J. W.; Unit: 1st M.T.V.R.D., R.C.A.S.C., was arrested at Place: London; at hour: 0905; on date 8 Mar 42; and that at the time of his arrest he was wearing military uniform."

"Signature of Provost Marshall, A.P.M., or other officer into whose custody the above named person was taken in arrest."

"M. E. Byers, Lt".

4th WITNESS B-81623 Pte. Graham, N., No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas), having been duly sworn, testifies as follows:

I am B-81623 Pte. Graham, N., of No.1 M.T.V.R.D., R.C.A.S.C., C.A.(Overseas).

Q.1 Will you tell in your own words what knowledge or information you have concerning the charges of A.W.L. and escaping from the Unit detention room, by the Accused?

A. I don't know much about it until the police informed me at 0630 hours, 6 Mar 42, that the Accused was missing from the Unit detention room.

Q.2 To what duties were you detailed on 5/6 Mar 42?

A. Guard duties, sir.

Q.3 On what hours were you on post?

A. From 1700 - 1900 hours on March 5th; from 2300 - 0100 hours; and from 0500 - 0700 hours on March 6th.

Q.4 Did you see Pte. Davis, J.W., in the detention room that night?

A. I did not seem him at all.

Q.5 Were you in the guard room between 0500 - 0700 hrs, 6 Mar 42?

A. Yes, sir, just after 0500 hours, when I came from my post at the "In" gate at the south end of the unit guard and detention building. I went back into the Guard Room and asked Sgt. Smith, J. C. if I could get warmed, as I had had an innoculation the day before and my arm was stiff and sore. He said that it would be all right for a few minutes. Pte. McMillen of the Regimental Police, was in and standing around and he left afterwards, saying he should be called about 0550 hours. I stayed in the Guard Room a little while and heard a knock on the detention room door. I went to see who was knocking, as Sgt. Smith had told me so see who it was. It was Pte. Milne and he wanted to be taken to t he toilet. Pte. Hill escorted him to the toilet and I stood at the guard room door. When he came back, I locked the detention room door again and went back to my post.

Q.6 The knock which you heard was made on the door leading from the detention room to the guard room?

A. Yes, sir.

Q.7 Was Pte. Milne confined to detention?

A. Yes, sir.

Q.8 Did you investigate knock, and was the detention room door bolted?

A. Yes, sir.

8th Witness, Cont'd

Q. 9 Did you pull the bolt to let Pte. Milne out?

A. Yes, sir.

Q.10 Did you remain at the door?

A. Yes, sir, at the door of the guard room which leads to the outside.

Q.11 Did anyone come out at that time?

A. Just Pte. Milne.

Q.12 Did you lock the detention room door after Pte. Milne came back?

A. Yes, sir, by putting the bolt back in place.

Q.13 Could anyone have come out of the detention room without you knowing it?

A. I could not say for sure. It was dark. Someone could have come out of the detention room and into the other detention room which was empty and the door of which was not closed.

Q.14 It might have been possible for someone to have slipped out of one detention room into the other?

A. Yes, sir, it was possible.

CROSS-EXAMINATION by the Accused:

Q. 1 When you opened the door of the detention room for Pte. Milne, where did you stand?

A. At the entrance of the guard room door which leads outside.

Q. 2 Was the guard room door closed?

A. Yes.

Q. 3 Did you stand outside or inside the guard room door?

A. Inside.

Q. 4 If you were inside the guard room door, how would it be possible for anyone to sneak out into the next cell?

A. The detention room door was unlocked while Pte.Milne was out.

Q. 5 Do you think it would be possible for anyone, fully dressed, to walk out and walk into the next cell without making any noise?

A. Yes, it could be done in stocking feet.

END OF CROSS EXAMINATION

.....
B-81623 Pte. Graham, M.

WITNESS B-81582 L/Cpl. Henderson, R. M., No.1 M.T.V.R.D.,R.C.A.S.C., C.A.(Overseas),having been duly sworn,testifies as follows:

I am B-81582 L/Cpl. Henderson, R. M., of No. 1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas), employed as a member of the Unit's Regimental Police.

Q. 1 Will you tell in your own words what information you have concerning the charges preferred against Pte. Davis, J.W. in respect of A.W.L. and escaping from confinement?

A. I know nothing about the escape from confinedment. At approximately 1515 hours, 8 Mar 42, Pte. Davis, J. W., was turned over to me from the Military Police. Immediately after receiving him, I placed him in detention and took his clothing from him and searched him. That is all I know about it.

ACCUSED DECLINES TO CROSS-EXAMINE

H.M. Henderson
B-81582 L/Cpl.Henderson,R.M.

The Accused, having been duly cautioned in accordance with Rule of Procedure 4 (e), elects to make a statement under oath.

B-82875 Pte. Davis, J.W., No.1, M.T.V.R.D.,R.C.A.S.C., C.A.(Overseas),having been duly sworn, states as follows:

"I am B-82875 Pte. Davis, J.W., of No.1, M.T.V.R.D., R.C.A.S.C., C.A.(Overseas). On 8 Mar 42, I have no idea of the time, I got up during the night and picked the bolt of the door with a nail file in my possession and sneaked out into the guard room and out of the first window on the left."

J.W. Davis B82875
B-82875 Pte. Davis, J. W.

CERTIFIED that Rules of Procedure #4 (c), (d), (e) and (g) have been complied with.

Taken down by me in the presence and hearing of the Accused on the Eleventh and Eighteenth days of March, 1942, at Louisburg Barracks Sept, Bordon, Hants.

H.A. German Capt.,
(S. A. German)
Officer Taking Summary of Evidence

W.G. Burg. Maj.
President

SUMMARY OF EVIDENCE

((By direction of the Officer Commanding, the evi-))
((dence of all the witnesses is taken under oath.))

1st WITNESS M-21115 Pte Walton, W. J., of No.1 M.T.V.R.D., R.C.A.S.C., C.A.(Overseas), having been duly sworns testifies as follows:

I am M-21115 Pte Walton, W. J., of No.1 M.T.V.R.D., R.C.A.S.C., and at approximately 1700 hours, 19 Mar 42, I was on sentry duty at the "In" gate of the M.T.V.R.D. vehicle park. At about 1700 hours, 19 Mar 42, I heard the breaking of glass near my post. On going towards the sound I saw Pte. Davis, whom I now recognize, breaking the windows of the detention room.

Q. 1 Describe fully your movements from the time you first heard the breaking of glass until the time you saw just who was creating such disturbance.

A. I was standing just outside the "In" gate near the sentry box when I first heard the noise. I then walked through the gate and could see Pte Davis breaking window panes with his hand. I could not see anyone else in the detention room at the time. I stood there a few moments when the Sergeant of the Guard came to my side.

Q. 2 Are you positive that you saw Pte Davis in the act of breaking the windows in his cell?

A. Yes, sir, I did actually see him break some of the windows. I know Pte Davis quite well, by sight.

.....
M-21115 Pte. Walton, W. J.

THE ACCUSED DECLINES TO CROSS-EXAMINE

2nd WITNESS B-81582 L/Cpl. Henderson, R.M., of No.1 M.T.V.R.D., R.C.A.S.C., C.A.(Overseas), having been duly sworn, testifies as follows:

I am L/Cpl Henderson, R.M., B-81582, of No.1 M.T.V.R.D., R.C.A.S.C., and on 19 Mar 42 I was one of the Regimental Police on duty. At approximately 1700 hours, 19 Mar 42, I visited Pte. Davis in his detention room. He asked me for some salt for his supper. I obtained the salt for him and at that time was accompanied by the Orderly Sergeant, Sgt. Slade. After giving him the salt I turned to leave and then Pte. Davis threw his tea and his teacup on the floor of the room. I left the room with the Orderly Sergeant and I locked the door after me. After the door was locked, Pte. Davis called out that he wanted some water. I told him he would not get any water until the Orderly Officer arrived, because he had thrown his tea on the floor. The Orderly Officer was then sent for, and while waiting for him the panel in the room door, in which only Pte. Davis was located, was broken. Then I heard the smashing of glass.

2nd WITNESS, Continued:

Q. 1 Are you positive that there was only Pte Davis in the cell at the time the door was broken and you heard the breaking of glass?

A. Yes, sir. Pte. Davis was kept in a cell by himself apart from the other soldiers in detention. I then went outside the guard room and around to the windows to Pte Davis' room facing the Unit vehicle park or parade square. I saw some windows being broken from the inside of the room and knew that Pte. Davis must be breaking them because he was the only person in the room.

Q.2 What more do you know concerning the charges against Pte. Davis?

A. At 2050 hours on the same night I was in the Guard Room and Pte. Davis asked to be taken to the latrine. Pte. McMillen and I then escorted Pte.Davis towards the latrines located in "D" Block of the barracks. When about 100 yards from the Guard Room, near the crossroads, Pte. Davis suddenly flung off his rain cape and said, "Excuse me, fellows, I have a date up the road." At the same time he started to run forward. I gave chase and threw my torch at him but missed. Pte. McMillen ran around a small building and I next saw that he had caught Pte. Davis. Pte. Davis was then escorted back to his cell, this was at 2105 hours.

CROSS-EXAMINATION of the Witness by Pte. Davis:

Q. 1 Who brought my supper to the Guard Room?
A. I don't know. I was not in the Guard Room at the time.

Q. 2 Did you hear me ask for salt and at what time was it?
A. Yes, I heard you ask for salt at approximately 1700 hours, it might have been a few minutes before.

Q. 3 How long was it after I had asked for salt in your presence before I got it?
A. Not more than a few minutes. The salt was in my room, next to the Guard Room.

Q. 4 Where was the usual place to keep salt for the prisoners?
A. I am not sure of that.

Q. 5 Where were the other prisoners between 1645 and 1700 hours?
A. Sir, should I answer that? (Officer taking Summary then advised the witness to answer) The other soldiers in detention were in the Regimental Police office, having supper.

Q. 6 When you gave me the salt, were you accompanied by the Orderly Sergeant?
A. Yes.

Q. 7 Did you hear me ask the Orderly Sergeant for a fresh cup of tea, as mine was cold?
A. No, I didn't. I heard something said by either you or the Orderly Sergeant just before you threw your tea and teacup on the floor, but I don't know what was said or by whom.

Q. 8 When I asked for water, did you personnally send for the Orderly Officer immediately?
A. I did not do so personally but someone in the Guard Room did then phone.

2nd WITNESS, Continued:

Q. 9 Immediately?
A. Yes.

Q.10 On what date was this?
A. 19 Mar 42.

END OF CROSS-EXAMINATION .....
B-81582 L/Cpl. Henderson,R.M.

3rd WITNESS M-81504 Pte. McMillen, H. N.,No.1,M.T.V.R.D.,R.C.A.S.C., C.A.(Overseas) having been duly sworn, testifies as follows:

I am Pte. McMillen, H.N., M-81504, of No.1 M.T.V.R.D.,RCASC, and on 19 Mar 42 I was one of the Regimental Police on duty. Sometime before dark on 19 Mar 42, possibly between 1700 and 1800 hours - I am not sure of the time -- I accompanied the Orderly Officer into one of the detention rooms and again a little later I accompanied the First Aid Corporal into the same cells to help dress Pte.Davis' hand, which was cut and bruised. I did not see Pte. Davis receive the injuries. At approximately 2050 hours on the same night, I, with L/Cpl. Henderson, was escorting Pte. Davis to the latrine in "D" Block. When near the crossroads about 100 yards from the Guard Room, Pte. Davis, who was marching between L/Cpl. Henderson and myself, suddenly threw his ground sheet on the ground behind him and said, "Sorry, boys, I have a date". At the same time he started to run away up the road. He swung towards some bushes. I ran around a small building to head him off and as I came around, Pte Davis was lying on the ground, in a little hollow near the bushes. L/Cpl. Henderson was then a short distance away and on the roadway. Pte. Davis was then returned to his cell.

CROSS EXAMINATION of the Witness by Pte. Davis:

Q. 1 Did you bring the prisoners' supper to the guard room on that night, and at what time?
A. Yes, at about 1630 hours. It might have been a little later.

Q. 2 Did you hear me ask the Guard Commander for sniff?
A. No.

END OF CROSS EXAMINATION .....
M-81504 Pte. McMillen, H.N.

4th WITNESS B-81980 C.Q.M.S.Jones,T.O., No.1 M.T.V.R.D., R.C.A.S.C., C.A.(Overseas) having been duly sworn,testifies as follows:

I am B-81980 C.Q.M.S. Jones of No.1 M.T.V.R.D., R.C.A.S.C., and in my capacity of C.Q.M.S. I was ordered on the morning of 20 Mar 42 to Ascertain the cost of repairing damage to a door to one of the detention rooms and also the cost of replacing 12 planes of broken glass in the windows of the same cell. The cell in question was that one nearest to the "In" gate of the unit parade square. The cost of repairing the

4th WITNESS, Continued

the door was £0:8:7. The cost of replacing the broken windows was 12 panes at 1/2 each -- £0-14-0, a total of £1-2-7 in all. These figures were obtained in my capacity of C.Q.M.S. from the proper authorities.

.....
D-91080 C.Q.M.S. Jones, T.O.

ACCUSED DECLINES TO CROSS EXAMINE

5th WITNESS B-83901 Sgt.Smith,A.G., No.1 M.T.V.R.D., R.C.A.S.C., C.A. (Overseas) having been duly sworn, testifies as follows:

I am B-83901 Sgt.Smith,A.G., of No.1 M.T.V.R.D., R.C.A.S.C., and on 19 Mar 42, at approximately 1700 hours, I took over the duties of Guard Commander and learned that Pte.Davis, J.W., had a complaint. A few moments after I took over I saw the Orderly Sergeant and one of the Regimental Police, L/Cpl. Henderson, enter the detention room in which Pte.Davis was held. I did not follow them into the cell. Almost immediately I saw the Orderly Sergeant and L/Cpl. Henderson leave the cell and I supervised the locking of the door. At approximately 1705 Pte Davis called through the door to L/Cpl. Henderson, asking for a drink of water. I told Pte. Davis that he would receive the water when the Orderly Officer arrived, it being my understanding that the Orderly Officer had already been sent for. A few moments later a panel of the door was broken from the inside and through the hole I saw Pte. Davis with something in his hand, I think it was part of a bed, with which he was smashing at the door. I then sent a runner for the Orderly Officer and as I did so I heard the breaking of glass in the detention room holding Pte. Davis. I went outside the Guard Room and saw Pte. Davis breaking window panes with his bare fists. I actually saw a few of the panes being broken.

Q. 1 Was there anyone else in the cell with Pte. Davis at the time these occurrances took place?
A. No, sir. He was kept alone in that cell. I checked the cell over when locking it after the Orderly Sergeant and the R.P. left the cell. At approximately1715, I am not sure of the exact time, the Orderly Officer arrived and I entered the cell with him. Pte. Davis was then lying on his bed. Since Pte. Davis' hand was bleeding the Medical Orderly was sent for to render first aid. Pte. Davis was given a drink of water on the orders of the Orderly Officer. At approximately 2200 hours Pte. Davis asked to go to the latrine. I obtained two of the R.P. as escorts and they took him out of the Guard Room. About 15 minutes later they returned Pte.Davis to his cell.

CROSS EXAMINATION OF THE WITNESS by Pte. Davis:

Q. 1 Had the Orderly Officer actually been called for when I first asked for water?
A. It was my understanding that he had then been sent for.

Q. 2 But had he really been called for?
A. I don't know for certain but it was my understanding that he had been called for.

END OF CROSS EXAMINATION

.....
B-83901 Sgt. Smith, A. G.

6th WITNESS B-88736 Sgt. Slade, A., No.1, M.T.V.R.D., R.C.A.S.C., C.A. (Overseas), having been duly sworn, testifies as follows:

I am B-88736 Sgt. Slade, A., No., 1 M.T.V.R.D., R.C.A.S.C., and on 19 Mar 42 I was Orderly Sergeant. At approximately 1700 hours, Pte. Davis made a complaint to me that his meal was cold and I asked him how long he had had the meal. He stated he had had it for about 10 minutes. He also complained that he had no salt -- he said he had asked the R.P. for salt but had not received it. On investigation I found that salt was then being obtained for Pte. Davis. I returned to the cell and Pte Davis asked for some hot tea. I told him that he had his one ration of tea and could not have more. I moved to the door to leave and as I reached the door Pte. Davis threw his tea and mug to one side on the floor. None of the tea struck me.

CROSS EXAMINATION of the Witness by Pte Davis:

Q. 1 What is the prisoners' tea brought to the guard room in and how much does the container hold?

A. It is brought to the guard room in a container holding about one gallon if full.

Q. 2 How much tea was in the container when I asked for more tea?

A. I don't know of my own knowledge. I had told Pte. Davis a second time that he couldn't have more tea since he threw his first supply on the floor.

Q. 3 Did you check with the Sergeant of the Guard that there was no more tea, and did you check it yourself?

A. I checked with the Guard Sergeant but did not check myself.

END OF CROSS EXAMINATION

.....
B-88736 Sgt. Slade, A.

The Accused, having been duly cautioned in accordance with Rule of Procedure 4(e), declines to make a statement.

CERTIFIED that Rules of Procedure 4 (c), (d), (e) and (g) have been complied with.

Taken down by me in the presence and hearing of the Accused on the 31st day of March, 1942, at the Guard Room of No.1 C.A.S.C. Reinforcement Unit, Farnborough, Hants.

.....:.....Lieut.,
(R. Erskine)
Officer Taking Summary of Evidence

LIST OF WITNESSES FOR THE
PROSECUTION

1. M-21115 Pte. Walton, W. J.
2. B-81582 L/Cpl. Henderson, R. M.
3. M-61504 Pte. McMillen, H. M.
4. D-91980 C.Q.M.S. Jones, T. O.
5. B-83901 Sgt. Smith, A. G.
6. B-88736 Sgt. Slade, A.

LIST OF WITNESSES FOR THE
DEFENCE

-- N I L --

W.G. Burgh Maj President

M.F.M. 6
(A.F.M. 172)
[illegible]

No. B82873 Name Davis, J.W. Sqn., Battery, or Company Corps Date of enlistment 15.3.40 O.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				THE FOLLOWING ENTRIES BROUGHT FORWARD ON COMPLETION OF SIX MONTHS SERVICE 15.9.40					
Bordon, England.	1.6.40	Pte.		A.A. Sec 15 (1) AWL 0845 hrs. 1.6.40 till 2359 hrs.6.6.40 (5 days 15 hrs 14 min)	Sgt.Wishart Sgt.Annear	7 days C.B. extra fatigues 6 days pay. F.R. & I. Art. 149 (1) (a)	8.6.40	Major G.C. McArthur	"G.C.Mc"
Bordon, England	19.6.40	"		A.A. Sec 15 (1) AWL 1600 hrs. 19.6.40 till 0130 hrs.24.6.40 (5 days,9hrs,30 mins).	Sgt.Sheats Sgt.Graham Sgt.Steele	7 days Det'n, 6 days pay, FR & I.Art 149 (1)(a)	25.6.40	Major G.C. McArthur	"G.C.Mc"
Bordon, England	3.8.40	"		A.A. Sec 15 (1) AWL 2359 hrs. 3.8.40 till 0530 hrs.5.8.40. 1 day 5½ hrs.	Sgt.Steele	28 days Detn. 2 days pay. FR & I.Art 149 (1)(a)	5.8.40	Major H.P. Bonnick	"H.P.B."

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Oxney Camp England.	13.9.40	Pte.		A.A . Sec 15 (1) A.W.L. 2130 hrs 13.9.40 till 1330 hrs.25.9.40 (11 days,17 hrs).	Sgt.Humphreys No.1 C.H.U.	28days Detn 12 days pay. Art.149(1)(a) F.R.& I.	27.9.40	Major R.W. Frost	"R.W.F."
Bordon, England.	31.12. 40	Pte.		(1) A.A. Sec 15 (1) AWL 2200 hrs 31.12.40 till 1530 hrs.3.1.41 (2 days, 17½ hrs). (2) A.A. Sec 11. Breaking Barracks	Sgt.McJunkin Sgt.McDonald Cpl.Fowler	28 days Detn 3 days pay, F.R. & I. Art. 149 (1) (a)	4.1.41	Lt.Col. O.H. Barrett	"O.H.B."
Bordon, England.	3.8.41	Pte.		A.A.Sec 15 (1) AWL 2359 hrs. 3.8.41 till 1700 hrs.5.8.41 (1 day,17 hrs & 1 min)	Sgt.McJunkin L/C.Percival	168 hrs.Detn 2 days pay. Art.149 (1) (a)F.R. & I.	5.8.41	Lt.Col. O.H.Barrett	"O.H.B."
Bordon, Hants.	7.9.41	Pte.		(1) AWL from 1000 7 SEP 41 till 1000 hrs.20 SEP 41 (13 days.A.A. Sec 15 (1). (2) Was absent from place of parade appointed by his C.O. failed to report for Church Parade as ordered in part I Orders #249,para 7(a)d/6.9.41.A.A.Sec 15 (2).	Sgt.Smith,A Sgt.Sloan,E. Cpl.Cade,T.	27 days Detn Forfeits 27 days payArt. 149 (1) (B) F.R.& I. and forfeits 13 days pay Art 149 (1)(a) F.R. & I.Total	22 SEP 41	Lt.Col. O.H.Barrett	"O.H.B."

M.F.M. 6
(A.F.B. 122)
[illegible]
H.Q. 1772-43-18

No. B82873 Name Davis, J.W. Sqn., Battery, or Company Corps Date of enlistment 15.3.40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
						forfeiture 40 days pay.			
Bordon, Hants, England.	12.1.42	Pte.		Conduct to the prejudice, etc., did break ranks during inspection and failed to carry out an order in a proper manner. A.A.Sec 40.	Sgt.Collins,C.A.	7 days C.B.	13 JAN42	Major K.K. Thomson	"K.K.T"
Louisburg Barracks, Bordon, Hants,Eng.	16.2.42	Pte.		(1) A.A. Sec 9 (2) WOAS, disobeying a lawful command given by his Superior Officer. (2) A.A. Sec 15 (1) AWL 1200hrs.16.3.42 till 1600 hrs.18.2.42 (2 days, 4 hrs).	Sgt.Collins,C.A. Sgt.Martin,E.B. Pte.Monteith,W.H. Pte.Barnhardt,C.D.	168 days Detn	5.3.42	F.O.C.M.	

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified to be a true and exact copy of the M.F.M. 6 of B-82873 Pte. Davis, J.W.					

.....Capt.,
(S.A. German)
Adjutant for O.C., No. 1 M.T.W.R.D.
R.C.A.S.C. C.A.(Overseas).

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B-[illegible]873	Pte.	Davis, J.W'	No.1 M.T.V.R.D. RCAEC C.A.(C)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not attached to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, premonitions being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Insert—"drunk."—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.		*Since Enlistment.	
For A.A.Sec 15 (1) A.W.L.	3	times	8	times.
For A.A.Sec 9 (2) Disobeying a lawful command	1	times	1	times.
For A.A. Sec 11, Breaking out of barracks	0	times	1	times.
For A.A. Sec 15 (2) Absent from place of parade	1	times	1	times.
For A.A. Sec 40, Breaking ranks & failing to carry out an order	1	times	1	times.

[illegible]

or

There are no entries in the conduct sheets of the accused.

2. [illegible]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for 168 days Detention beginning on the Fifth day of March, 1942

4. The accused has been in confinement awaiting trial on the present charges, for N I L days in civil custody, and [illegible] days in military custody, making a total of [illegible] days, of which N I L days were spent in hospital.

5. The present age of the accused according to his [illegible] attestation paper is 21 yrs, 9 mos.

6. The date of his [illegible] attestation specified in his [illegible] attestation paper is 11 MAR 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2yrs, 1 month

8. The accused is entitled to deferred pay or gratuity in respect of 2 1/12th years service.

9. The accused is entitled to reckon 2 1/12th years service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award[illegible]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated , and in his regiment (*or corps or department*) the rank of N/A dated

(P.A.2250) W. 11402/144 150,000 8/42 A.A.F.W.3.116 Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-82873 Rank Private Name Davis, J.W. of No. 1 M.T.V.R.D. R.C.A.S.C. C.A. (Overseas) Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	5th MARCH 42	1. A.A. Sec 9 (2) Disobeying a lawful command. 2. A.A. Sec 15 (1) Absent without leave	168 days detention	None

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~Twentieth~~ 6th May 29th Sept. day of ~~April~~, 1942.

R. Erskine
(R. Erskine) Adjutant
No. 1 M.T.V.R.D. R.C.A.S.C. C.A. (Overseas)

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of N I L years.

In the rank of N I L years.

In the rank of N I L years.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

W-110

Rfn. Davis. K.W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B138521 Rfn KENNETH WILLIAM DAVIS QOR of C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (2)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO BE IMPRISONED WITH HARD LABOUR FOR ONE (1) YEAR.

(Sgd) ..... Judge-Advocate, if any. 5 Feb 45 Date awarded. (Sgd) W.P. Weir Major. President. (RP 45, 53)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 127, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison on detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) Jack Roberts Brig
Date 5 Feb 45 Commanding 8 Can Inf Bde Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B138521 RFN KENNETH WILLIAM DAVIS	6 FEB 45	W.P. Swannick Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 26 MAR 1945 JAG BRANCH C.M.H.Q.

RECORDED AT OTTAWA IN AB 160. 4W-110

CPA96 (In lieu of AFA3) 40/P & S/1898 (4070)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Brig J.A. Roberts Comd 8 Cdn Inf Bde dated 2 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 18, 68, 69, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-138521	Rfn	Kenneth William	DAVIS	QOR of C

PROCEEDINGS REVIEWED 26 Mar 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 5 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AFS, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1710 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 90 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused. Do you object to~~ as interpreter? Ans .....
~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans .....
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	W J WEIR	QOR of C
Member	CAPT	R M LAVIGNE	R de CHAUD
Member	CAPT	J A WOODCOCK	N SHORE R
Judge-Advocate			
Prosecutor	LIEUT	W.H. CADE	QOR of C
Defending Offr	LIEUT	L.C. McKAY	QOR of C

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B138521 Rfn Kenneth William Davis before arraignment make(s) (no) ~~no~~ plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 40(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 13-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex C respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B138521 Rfn Kenneth William DAVIS, 1st Bn The Queen's Own Rifles of Canada, a soldier of the Canadian Army Overseas, (AF), is charged with:

FIRST CHARGE SEC 15 (1) ARMY ACT

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, did absent himself with leave from from 1730 hrs 27 Dec '44 until 2230 hrs 18 Jan '45 when apprehended by Military Police. (Total time absent - 22 days 5 hrs)

In the Field
2 Feb '45

(S M LETT) Lt-col
Comd 1st Bn The Q O R of C.

To be tried by Field General Court Martial.

2 Feb 45

(J.A. ROBERTS) Brig
Comds Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see NWML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-138521	Rfn	Kenneth William	DAVIS	QOR of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(x) named above as the accused, being subject to military law, has (~~xxx~~ committed the offence(x) set forth in the Charge Sheet(x) attached and on (date) 2 Feb 45 endorsed by me, (~~xxxxxxxxxxxxxxxxxxxxxx~~)." To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~xxxxxxxxxxxxxxxxxxxx

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 82(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to addresse Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then joined by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

1ST BN THE QUEEN'S OWN RIFLES OF CANADA

In the Field 5 Feb 45

MEDICAL INSPECTION FOR FITNESS TO UNDERGO TRIAL BY COURT MARTIAL

This is to certify that I have this day examined B130521 Rfn Davis, K ~ of the 1st Bn The Q O R of C, and have found fit to undergo trial by Court Martial.

D F Edmonds Capt RCAMC

Medical Offr

Page 1

Character Witness in the case of Rfn. # 138521 Davis, K.W.

Cpl B 74657 Bettridge, W.G. Queens Own Rifles of Canada having been duly sworn states:

In the latter part of July a Scout platoon was formed in the Unit. Rfn. Davis was one of the volunteers from the rifle coys to help build up the platoon. He was put in the sniper section of which I was in charge. He was with the regt through France, through Belgium, and all through the Schelt. All through these countries he did his job very well. I never had to complain with his work as a sniper at any time. At the end of the Schelt our div. went to Ghent for a short rest. From Ghent he went A.W.L.

5 Feb 1945
J.W. Woodwell
capt

RP 83(c) complied with.

Plea for Mitigation in The Case of Rfn. Davis K.W.

Mr. President and members of the court.
I wish to bring to your attention some facts in the case of Rfn. Davis K.W.

Davis is a volunteer who joined the army at the early age of eighteen on January twelth 1943. He landed in France on June nineth 1944.

Since June the nineth Davis has served in the frontline Continuously with the exception of eighteen days. On unfortunate mistake on his part.

Davis did not go absent with the intent of missing action. He was is a reserve company position.

You cannot compare him to those who shirk their job becuase they are afraid to fight. Davis is a fighting man and has been in all the major battles of the batalion doing his part. He has been in battles such as Carpiquet Gibberville and the Schelt.

I submit this plea and bring these points to your attention in the hope that this man can soon return to his unit and serve his country in any future battles.

Lt.
Defending Officer

L

EXHIBIT "A"

SUMMARY OF EVIDENCE IN THE CASE OF

B136812 Rfn. DAVIS K.W.

Lst. Witness :- Having been duly sworn, states:-

I, Cpl. Smith J.R. (B63[illegible]), was acting as Plt. Sgt. for No. 3 Plt. A. Coy. [illegible]OOR of 0 on the 27 Dec.44., to which the accused, whom I recognize, belonged.

I wanted Rfn. Davis K. W. for guard duty at 1730 hrs but could not locate him in the company area. I asked his section commander as to his whereabouts, but he did not know. I made a further check of the area with the same results. I then reported Rfn. CDavis K.W. as absent. This report was made to the C. S. M.

QUESTION TO THE WITNESS:

Did you, at any time during the period of alleged absence, see Rfn. Davis K.W. in the coy. area, or near or his presence in the vicinity.

ANSWER:

No.

J.R. Smith Sgt.

The accused declines to cross-examine the witness.

K.W. Davis. Accused

Second witness :- B.52730 7 L/CPL ROWLANDS, O, 120 PROVOST COY, C.M.P.

~~Lieut. [illegible] Cade [illegible] The Queen's Own Rifles~~

I certify that in my opinion the attendance of this witness is, owing to the absence of this N.C.O. on duty, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused and is att'd hereto as exhibit "A"

~~[illegible]~~

(O. Rawlands L/Cpl.
(C.M. Police)

I do not require the attendance of L/Cpl. Rawlands, O. for the purpose of cross-examination

x [illegible] Accused.

Third Witness :- Having been duly sworn states:-

I, B 66010, Sgt. Gritten, H., am A/CSM at "A" Echelon G.O.R. of C.

At 1700 hrs. 30 Jan. 1945 Rfn. Davis, K.W. was handed over to me, by representatives of our "B" Echelon, in at state of Close Arrest. I immediately turned him over to Regimental Provost who placed him in the Detention Room in our area, where he is being held for investigation.

...H. H. Gritten.....Witness

The accused declines ot crosw-examine the witness.

x...Rfn. K. W. Davis.....Accused

Question to Accused:-

"Do you wish to make any statement or give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence?"

Answer:- The accused declines to make any statement or give any evidence.

I certify that the requirements included in R. of P. have been complied with.

W. Meade Lt.

CHARGE

Army Form B 252
(See King's Regulations)

QUEEN'S OWN REGIMENT — Regiment

"A" — Squadron / Troop or Company

CHARGE against No. B 138512 Rank PTE

Name DAVIS K.W.

Place ..... Date of Offence .....

OFFENCE W.O.A.S.

Exhibit "F"

See over

Names of Witnesses:—

1527307 L.Cpl ROWLANDS O.120 Provost Cpy,C.M.P

H.19018 CPL BENNETT H. 2 Can L of C Provost Cy

(Statement attached)

Signature of O.C. Battery, Squadron, Troop or Company .....

Punishment Awarded .....

By whom Awarded .....

Adjutant.

P.T.O.

9 Dec 46

B138521 [illegible]

Statement of EVIDENCE in the case of
B138512 PRIVATE DAVIS K.W.
"A" COY,
QUEEN'S OWN REGIMENT,
3RD CANADIAN DIVISION.

Sir, At BRUSSELS on the 18th JAN 1945, at about 22.30 hours, I was on duty in CHEZ SPILLEMACKERS, 24 RUE ZEREZO, where I saw the above named soldier. I approached him and asked him if he was in possession of a pass authorising him to be in BRUSSELS, but this he was unable to produce.

I arrested and conducted him to the 2ND CANADIAN L of C PROVOST COMPANY, obtained his particulars, verified same from his M.B.M.1, and handed him over to the N.C.O. i.e Guard to be detained.

Receipt for prisoner attached.

Field
18th JAN 45

[signature] L.cpl
C.M.POLICE

REMARKS

B.

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT, SECTION 163 (1) (JJ)

I certify that No. B (38512) 13821 Rank PTE Name DAVIS K.W.

of (Unit) QUEENS OWN REGIMENT (CANADIAN) was arrested at [redacted]

at 22.30 hrs on 18TH JAN 45 (date). He was dressed in Uniform [redacted]

Date 18TH JANUARY 1945

Signature of Provost Marshal APM or other officer into whose custody the above named person was taken on arrest. M. Lewis Lt.

(Rank)

(Unit or Appointment)

COMMANDING OFFICER PROVOST COY. G.H.Q.

CORPS OF MILITARY POLICE

NOTES

1. This certificate MUST be signed personally by the Officer concerned.
2. In no circumstances may it be signed by one officer 'for' another, or by anyone who does not hold commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

186 B.

Exh B

ARMY FORM B 196.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B138521	Rfn	Kenneth William DAVIS	1st Bn The Q O R of C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of *entries* in the conduct sheets, provision being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AA 15 (1) AWL	One times.	One times.
For	times.	times.
For	times.	times.
For	times.	times.
For	times.	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~The accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence to~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 15 days in military custody, making a total of 15 days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 20

6. The date of his ~~commission~~ attestation specified in his ~~attestation paper~~ record of service is 14 Jan '43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). CVSM & Clasp

~~11. (*If the accused is a warrant officer.*) The accused below in was under or over age at date of his regimental number~~

~~12. (*In the case of an officer.*) The accused holds in the army the rank of dated~~ ~~and in the regiment (or corps or department) the rank of dated~~

(21363) W1344/1750 30,000 10/43 A & E W Ltd Gp 648
(24004) W13004/1400 12,000 4/44

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B138521 Rank Rfn Name DAVIS, K W of QOR of C Regiment (*or as the case may be*)

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted.
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd day of February '45

Lt-col

Comd 1st Bn The Q O R of C

No. B13852 Name DAVIS, K W | Sqn, Battery, or Company: A | Corps: CIC | Date of enlistment: 14-Jan 43 | Sheet No. 1 | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | GC Badges | Signature OC Company, etc: W.L. Beatty

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Officer	Punishment awarded	Date of award or release (leave)	By whom awarded	Remarks
				Previous sheet destroyed on completion of six months service			14 Jun 44	W.M. Bennett, Capt	
Stratford	3Jan44	Pte	NIL	AWL from 1100 hrs 3 Jan 44 until 1115 hrs 4 Jan 44. Total absence 24 hrs 15 mins 2 dys AA 15 (1)	L cpl Mayol F Cpl Stratton O	3 days C.B.	4Jan44	Capt G W Hewitt	2 days pay FR&I 149(1 a)
In the Fd	11Nov 44	Rfn		AA15(1) in that he absented himself without leave from 1600 hrs 11 Nov 44 until 1830 hrs 27 Nov44. Absent 16 dys 2 hrs & 30 minutes	L cpl Morton L cpl Rhyan	28 dys pay	1 Dec44	S M Lett Lt-col	Forfeits 17 days pay under FR&I 149(1)(a) Total forfeits 45 dys pay

CERTIFIED A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

(J P SECORD) CAPT
Adjt, 1st Bn The QOR of C

(PTO)

UUU-9.

Inv. Davis N.L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.9760. Gnr. NORMAN LUTHER DAVIS.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA. 15 (1)	Guilty	Guilty	
2nd AA 24 (2)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~Nil~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of ninety (90) days, and is placed under stoppages to pay to the amount of Eleven dollars thirteen cents. W.E. 11.13 With respect to loss of kit

(Sgd) ~~Judge Advocate, if any.~~ July 11 1944 (Sgd) K.E. Smith Major President. (RP 45, 50)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(2) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) E.W. Haldenby Brig

Date 17 Jul 44 Commanding COMMANDER 1 CDN BASE SUB AREA

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-9760, Gnr. Norman Luther Davis,	14.Jul.44.	Capt., Commanding, No. 2 Canadian Kit Disposal & Stor.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 21 AUG 1944 C.M.H.Q.

RECORDED AT CMHQ IN AB 160. 4424-9

FIELD GENERAL COURT-MARTIAL

CFA86 (To Req of AFA3) 40/P & S/1698 (4058) 4/38B

Convened by Order of Brig. E.W. HALDENBY Comd 1 C.B.R.Gar. dated 8 July 1944

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.9760	Gnr. Pte	NORMAN LUTHER	DAVIS	2 Can. Kit Disposal and Storage Unit.

PROCEEDINGS REVIEWED 22 Aug 44 H.C. Trudel Capt. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 11 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~Judge Advocate, if any, and Court Officer invited, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ... as interpreter? Ans ...~~

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No, Sir (1)

(1. RP 110. 2. If no objection, waiting member ~~(if any)~~ ~~Judge Advocate, if any~~ ~~Court Officer~~ RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge Advocate, if any~~, ~~Court Officer invited, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs composing the Court, etc:

President	MAJOR	K.E. SMITH	8 Bn. 2 C.B.R.D.
Member	CAPT.	O.W. CREELMAN	3 Bn. 1 C.B.R.D.
Member	LT.	A.J. MAC RAE	2 Can Reinf Centre
~~Judge Advocate~~			
Prosecutor	LIEUT	J.A. MILBRATH	5 Bn 2 C.B.R.D.
Defending Offr	LIEUT.	W.K. BIGGS	5 Bn. 2 C.B.R.D.

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ... before arraignment make(s) (no) ... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 6.2(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~duly~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *rights and privileges of accused and Defending Offr see RP* 60(*C*), 87(*A*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Nil .(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement and The Court decides (not) to advise accused to change ~~his (their) plea(s) of Guilty to Not Guilty on~~ charge(s). The accused is (are) so informed, and ~~he (they) changes his (their) plea(s) on~~ charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (c).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. B64(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
(2) The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Nil
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement[illegible] as to Character and Particulars of Service(1), and certified true [illegible] of Conduct Sheets(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(*1. MFB 355 or AFB 296. 2. MFM 6. 2. RP 46, KR Can 258. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement[illegible] and Conduct Sheets and in mitigation of punishment ?(1) Ans Yes .(2)
(*1. RP 37(C), 46(D). 2. Accused, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him [illegible].(2)
(*1. When several accused tried separately see RP 71(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its' proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 66, 752-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-9760, Cnr. Norman Luther Davis, a soldier of the Canadian Army Overseas attached to No. 2 Cdn. Kit Disp. & Storage Unit, is charged with:

FIRST CHARGE
A SEC. 15 (1)

When on active service, absenting himself without leave, in that he;

In the field, in Italy, absented himself without leave from 2145 hrs. 6. Jun. 44 until surrendering himself at 2030 hrs. 25. Jun. 44.

(Absent 18 days, 22 hours, 45 minutes)

SECOND CHARGE
AA SEC 24 (2)

When on Active Service, losing by neglect his equipment, clothing and regimental necessaries in that he,

In the Field, in Italy, on 30. Jun. 44, was deficient the following articles:-

ARTICLE		CANADIAN PRICES 100%	75%
Anklets Web Prs.	1	.99	.74
Boots Ankle Prs.	1	5.46	4.09
Jersey Pullover	1	1.79	1.34
Shirts Bush	1	1.68	1.26
Socks Woollen Prs.	2	.74	.55
Brushes Hair	1	.34	.25
Brushes Tooth	1	.12	.09
Comb Hair	1	.04	.03
Towels Hand	2	.64	.48
Blanket G.S.	1	3.07	2.30
	Totals	$ 14.87	$ 11.13.

6 JULY 1944

(J. Braden) Capt.,
Commanding,
No. 2 Canadian Kit Disposal & Storage Unit.

To be tried by Field General Court Martial

In the Field
6 Jul 44

(E.W. Haldenby) Brigadier
Commander
1 Cdn Base Kit Group

K E Smith Major

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B9760	Gnr		Norman Luther	DAVIS	2 Cdn Kit Disp & Storage Unit

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached ~~and~~ on (*date*) 8 Jul 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". CWH

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ CWH

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ CWH

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ CWH

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	K.E. Smith	8 Bn 2 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D.W. Creelman (CIC)	3 Bn 1 CBRD
Lt	C. Gagnon (CIC)	1 Bn 1 CBRD

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	Capt or Lt to be detailed by OC 2 Cdn Reallocation Centre	

~~JUDGE-ADVOCATE.~~ CWH

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.) — CWHaldenby (Signed personally. RP 105 fn 2.) (E.W. Haldenby) — Brigadier (Rank.)

Date 8 Jul 44 — Commanding 1 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A UFAS (In lieu of AFA2) 40/P & S/1697 (4931)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of proceedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 263(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pasted by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 507.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(v) Exhibits numbered Ex A, Ex B, etc.

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 739.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", unless otherwise directed.

K.E. Smith Major

MEDICAL CERTIFICATE

11 Jul 44.

To whom it may concern:

Ref B-9760 Gnr. N.R. Davis.

I have today examined the m/n, and hereby certify that he is fit to stand trial by Court Martial.

I.R. MacRae Capt.

M.O. 5 Bn. 2 C.B.H.D.

Ex. "A"

K E Smith Dwyer

SUMMARY OF EVIDENCE IN THE CASE OF CHARGES AGAINST B-9760, GNR. DAVIS, N.L.

1st Witness, D-51005, A/Cpl. Parr, J.R.

Having been duly sworn states:- I am D-51005, A/Cpl. Parr, J.R. On 6. Jun. 44, I was Orderly Corporal of 2 Cdn. Kit Disp & Storage Unit. On taking tatoo roll call at 2145 hrs., 6. Jun. 44, B-9760, Gnr. Davis, N.L., the accused, whom I recognize, was absent. I searched the camp for him and he was not present. I therefore marked him absent from 2145 hrs. 6. Jun. 44. On 29. Jun. 44, the accused was handed over by the Military Police to me, along with Certificate of Surrender which I submit as exhibit "A"

The accused declined to question the witness. J R Parr

2nd Witness K-37381, SQMS. Millar, D.

Having been duly sworn states:- I am K-37381, SQMS Millar, D., SQMS of No. 2 Canadian Kit Disposal & Storage Unit. On 30. Jun. 44, the day after return of the accused, I made an inventory of the kit belonging to B-9760, Gnr. Davis, N.L. and found deficiencies as listed on Appendix "B" which I now submit. I have knowledge of the current vocabulary prices of articles set out in Exhibit "B"

D Millar.

The accused declined to question the witness.

3rd Witness, H-16596, Cpl. Giles, G.W.

Having been duly sworn states:- On 30. Jun. 44, I was present when inventory was made of kit belonging to B-9760, Gnr. Davis, N.L. and certify that the articles shown on list known as Appendix "B" were deficient from his kit.

G W Giles

The accused declined to question the witness.

DOCUMENTARY EVIDENCE BEING EXHIBIT "A" AND EXHIBIT "B" WAS READ TO THE ACCUSED.

QUESTION TO THE ACCUSED:- Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make a statement.

Certified rules of procedure 4C to E have been complied with.

[signature]
OFFICER TAKING SUMMARY

In the Field
In Italy
1. Jul. 44.

APPENDIX "A"

K E Smithmayer

CERTIFICATE OF SURRENDER

Army Act Section 163 (i) (j).

I, CAPT. F.A.W. KOHLER certify that :-

No B 9760 Rank GUNNER Name DAVIS N L

Unit THE ROYAL CANADIAN ARTILLERY surrendered himself to

No 2693077 Rank CPL Name DUFFY H

at 2030 hours on the 25th JUNE 1944 as a deserter (or absentee without leave).

Commanding Officer of the person or portion of His Majesty's Forces to whom the surrender was made.

[signature]

Commanding,

5.10 INI) MOB PROCOY C M POLICE

138/173. ALDS/ZM-4/44

APPENDIX "B"

DEFICIENCIES OF KIT BELONGING TO B-9760, GNR. DAVIS, N.L.

Herewith, list of deficiencies of kit belonging to B-9760, Gnr. Davis, N.L., showing corresponding 100% and 75% vocabulary prices thereof:-

		CANADIAN PRICES 100%	CANADIAN PRICES 75%	BRITISH PRICES 100%	BRITISH PRICES 75%
Anklets Web Prs.	1	.99	.74	4s 5d	3s 3½d
Boots Ankle Prs.	1	5.46	4.09	£1. 4s 5d	18s 3d
Jersey Pullover	1	1.79	1.34	8s 0d	6s 0d
Shirts Bush	1	1.68	1.26	7s 7d	5s 8d
Socks Woollen Prs.	2	.74	.55	3s 4d	2s 6d
Brushes Hair	1	.34	.25	1s 6d	1s ½d
Brushes Tooth	1	.12	.09	6d	4½d
Comb Hair	1	.04	.03	2d	½d
Towels Hand	2	.64	.48	2s 10d	2s 1½d
Blanket G.S.	1	3.07	2.30	13s 7d	10s 2d
TOTALS	-	$ 14.87	$ 11.13	£3 6s 4d	£2 9s 5½d

D Miller

K-37381, SQMS MILLER, D.

Ex "B" K.E. Smithmajor

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B-9760	Gnr.	Davis, N.L.	No. 2 Cdn. Kit Disp & Storage

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial the summary duly to be inserted from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 627, K.R., 1940.

* The summary herein should agree in all respects with the entries set out in the conduct sheets, but wherever space allows in the sheet entries of offences in each entry and to any recognised special acts or qualities (e.g. as "distinguished shooting").

Instructions.—If the charge is for misconduct arising the reader Act drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	From 4. Oct. 48. times	times.
For	A.W.L. 7 times. times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct N/A

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N/A beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for 15 days in civil custody, and days in military custody, making a total of 15 days, of which N.L days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 36

6. The date of his commission / attestation as shown in his record of service / attestation paper is 22. Oct. 41.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or corps or department*) the rank of dated

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-9760 Rank Gnr. Name Davis, N.L. of 2nd Cdn. Kit Disp & Stor. Unit Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11th day of July 1944.

Jack Dradon Capt

15. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of . . . years.

In the rank of . . . years.

In the rank of . . . years.

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No. B9760 Name DAVIS, N.L. Sqn., Battery, or Company Corps RCA Date of enlistment 22Oct41 G.C. Badges Service or Proficiency Pay $1 50

M.F.M. 6 (A.F. B.122) 40/P & /3136 (2068)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	4 Oct 43	Gnr		AWL 6 days, 13 hrs, 15 mins		28 days FP 28 days pay		OC 3 Bn	Forf 2 days pay
				(earned 4 days remission of sentence)			27 Oct 43		
	1 Nov 43	Gnr		AWL from 0815 hrs 1 Nov 43 to 1900 hrs 12 Nov 43 Absent 12 days 10 hrs 45 mins		24 days FP 24 days pay	17 Nov 43	OC 3 Bn	Forf 13 days pay
	18 Dec 43	Gnr		AWL 5 days, 6 hrs, 15 mins		28 days FP 28 days pay	23 Dec 43	OC 3 Bn	Forf 6 days pay
	2 Mar 44	Gnr		AWL 3 days, 14 hrs		4 days pay (KR&I 149(2)	6 Mar 44	OC 1 Cdn Con Depot	Forf 4 days pay
	18 Mar 44	Gnr		AWL 3 days		14 days CB	21 Mar 44	OC 1 CCD	Forf 3 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	30 Mar	44 Gnr		AWL from 1330 hrs 30 Mar 44 to 2200 hrs 9 Apr 44 Absent 10 days 8 hrs,30 mins		28 days pay (FR&I 149(2)	11 Apr 44	OC 1 CCD	Forf 11 days pay
	3 Jun	44 Gnr	(1)	AWL 6 hrs 30 mins		3 days pay (FR&I 149(2)	3 Jun 44	OC 1 Kit Disp Unit	Forf 1 days pay
			(2)	AA 40					

Certified true extract from MFM 4

J. E. Campbell Lieut

(J. E. Campbell) Lieut
for Officer i/c
Cdn Section GHQ, 2nd Echelon, AAI

K E Smith Major

Plea for the Mitigation of Punishment - B.9760 Gnr Norman Luther Davies.

Gentlemen:

This soldier is 36 years of age, married and has two small children in Canada.

He was wounded in action in Sicily and although dischargedfrom the hospital claimes he has been in poor health ever since. A medical reboard on 19 May 44 gave his a lower category.

He has in his possession letters which reveal that his wife has for several months past been suffering from ill health alsothat his family have been compelled to move serveral times from their places of residence. The welfare of his wife and children has been a source of constant worry to him.

He was given a job at the No 2 Kit disposal unti which he was physically incapable of doing to the satisfaction of his superiors. He was then put on fatigue duty cleaning latrines etc and over a period of time became cery disatisfied with this job.

This soldier, gentlemen, is most unhappy in the serivee. I believe that the factors mentioned above have contributed in large measure to the crimes withwhich he has been charged and should therefore be given due consideration when you come to award punishment.

W K Biggs Lieut
Counsel for Defense

Lieut C. Gagnon, a detailed member of this COURT was not available.

∴ Waiting member Lieut. A.J. MacRae 2nd edn Re-Alt. Center; Was detailed to act in his place.

K B Smallwood Major
Pres.

LIST OF EXHIBITS

Exhibit "A" - Certificate of Surrender.

Exhibit "B" - Deficiencies of kit.

X-Ex

LIST OF WITNESSES

FOR THE PROSECUTION

D-51005,	A/Cpl.	Parr,	J.R.	- No. 2 Cdn. Kit Disp. & Storage Unit.
K-37381,	SQMS.	Millar,	D.	"
H-16596,	Cpl.	Giles,	G.W.	" " "

5Q-13

Pt. Davis L. D.

RECORDED AT CMHQ IN AD 100, 59713

FIELD GENERAL COURT-MARTIAL

CFA66 (To lieu of AFA8) 40/P & S/1608 (4930) 4/38B

RECEIVED 30 JUN 1945 JAG BRANCH C.M.H.Q.

Convened by Order of Brig G S N GOSTLING, ED Comd 2 CBRG dated 17 APR 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-88312	Pte		Lorne Dewey	DAVIS,	Tor Scots, 10 CBR Bn

PROCEEDINGS REVIEWED 30 Jul 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the (Country) BELGIUM on (date(s)) 17, 18, 19 [illegible] 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 35/121-

A1. The President, Members, ~~waiting Member~~, JA, ~~if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns RQs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1415 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to M-60043 L/Cpl RADSTAAK J as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to K-70650 S/Sgt DAVIE JW as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J P TAYLOR,	RHC, 10 CBR Bn
Member	Captain	G R ROBERTSON,	X-4 List CIC, 10 CBR Bn
Member	Captain	G ROBICHAUD,	X-4 List CIC, 10 CBR Bn
Judge-Advocate	Lieut	A M ECCLESTONE,	A & SH of C, att HQ 2 CBRG
Prosecutor	Major	R F WILLSON,	Linc & Welld, att 1 Cdn Disciplinary Centre.
Defending Offr	Major	P S OSLER,	RCA, X-9 att 3 Cdn NETD.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused B-88312 Pte DAVIS L D before arraignment make(s) (no) objection(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

3 C BRG. Vol 2 p 28.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making the appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Medical Officer's Certificate

I certify that I have this day examined 088312 Pte Davis LD

10 CBRB and in my opinion he is fit/~~unfit~~ to undergo trial by

RHC

Court Martial.

Station Field ~~10 CBRB~~

Date 17 Apr 45

RH Chalmers Capt

Medical Officer

10 CBRB

Unit

Medical Officers Certificate

I certify that I have this day examined B 88312 Pt Davis LD

10 CBRBm and in my opinion he is fit/~~not~~ to undergo trial by

Court Martial.

Station Field

Date 18 Apr 45

[illegible signature]

Medical Officer

10 CBRBm

Unit

Medical Officers Certificate

I certify that I have this day examined B 88312 Pte Davis L.D

_____ and in my opinion he is fit/~~unfit~~ to undergo trial by

Court Martial.

Station Field

Date 19 Apr 45

R H Chalmers Capt

Medical Officer

10 Bn 2 CBRC

Unit

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 763, RP 82, 111.*)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2693.*)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so *far as* practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) Opening address of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 9-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*) *Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 562(a).*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting as evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 162 (1) (g) (A).*)
(v) Exhibits numbered Ex A, Ex B, etc.
(vi) Summary of Evidence, if not already an exhibit.
(vii) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 93(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(5), RP 118(C), MML p 759.*)

3. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", as *as* otherwise directed.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-88312	Pte		Lorne Dewey	DAVIS	Tor Scots, 10 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (date) 17 Apr 45 endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) J P TAYLOR, RHC, (Must be named. RP 106.) 10 CBR Bn (Unit.)

MEMBERS.

Captain (Rank.) G R ROBERTSON, X-4 List CIC, 10 CBR Bn (Unit.)

Captain (Rank.) G ROBICHAUD, X-4 List CIC, 10 CBR Bn (Unit.)
(Named or detailed. RP 106.)

WAITING MEMBER.

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Lieut (Rank.) A M ECCLESTONE, A & SH of C, Legal Offr, att HQ 2 CBRG (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 17 Apr 45

(Signed personally. RP 105 par 2.)

(G S N Gosling) Brigadier (Rank.)
Commanding 2 CDN BASE RFT GP Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for costs and notes for use on trial.)

4/38A C/FA 50 (1) (Dft Dept of AFA 2) 40/F & S/1697 (6143)

On behalf of the JAG, Cdn Army Overseas, I approve the appointment of Lt A M ECCLESTONE as Judge-Advocate, this [illegible] Lt ECCLESTONE having legal qualifications.

(H H Griffin) Capt, ADJA HQ 2 CBRG

CHARGE SHEET

The accused, B-88312 Pte Lorne Dewey DAVIS, (Tor Scots) on the strength of 42 Coy, 10 CER Bn, a soldier of the Canadian Army Overseas

is Charged with

FIRST CHARGE
A.A. Sec 41

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MANSLAUGHTER

in that he

In the Field, at Ghent, Belgium on 30 Jan 45, unlawfully killed Cpl Rataj Jan, of 10 Polish Mounted Rifles, Polish Army.

(D.Y. PATRICK) Capt.,
A/O.C., 10 C.E.R. Bn.

In the Field
31 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G S N Gostling) Brig
Commander
2 Cdn Base Rft Gp

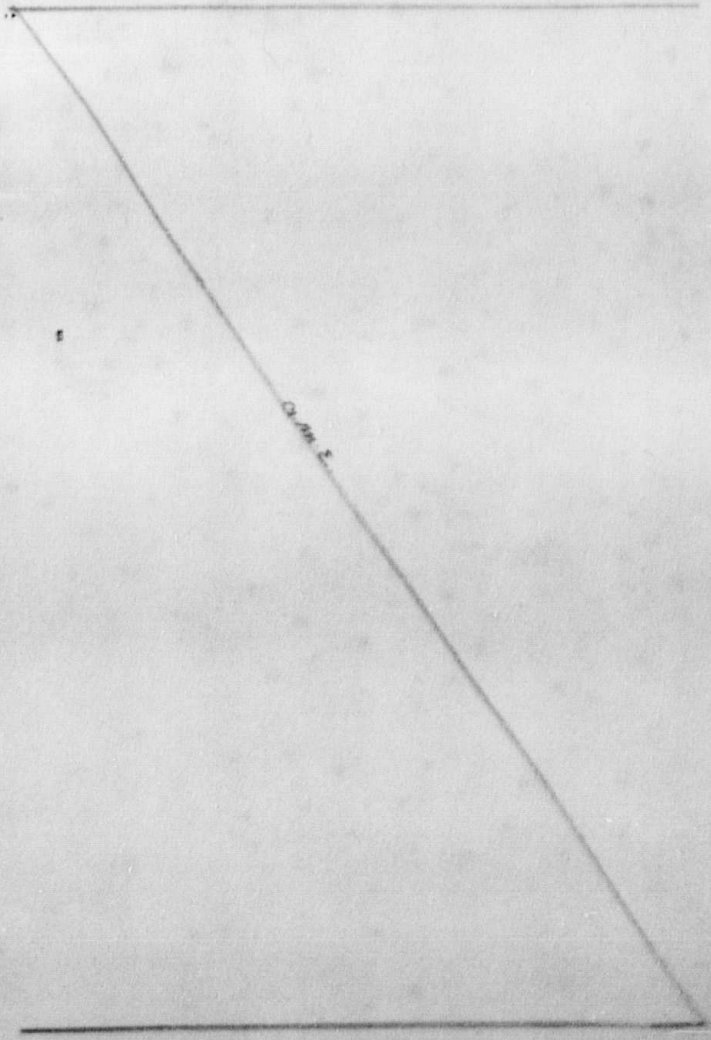
In the Field
17 Apr 45

PROSECUTOR MAKES AN OPENING ADDRESS

The facts in this case will be fairly well placed before the Court by any one of the first witnesses called by the Prosecution so that I believe it is sufficient for me to say at this time that the Prosecutón will establish that on the night of 30th Jan 45 a sort of a cafe brawl took place in a spot known as Maxie's Cafe here in the city of GHENT.

This affair was immediately in front of the doorway or exit leading to the street. By reason of what went on there a Polish Soldier was struck and was knocked to the pavement and he subsequently died.

I have had a sketch made for the benefit of the Court. I will have that sketch produced in order that direction and location will be established and I trust that this will be satisfactory.



FIRST WITNESS - For the Prosecution - duly sworn
Seconde MARIE, Binnenweg 7?, Ledeburg, GHENT.

(Evidence through Flemish Interpreter)

Q.1 You are Seconde MARIE?

A.1 Yes Sir.

Q.2 Do you know the Cafe known as Maxie's here in the city of GHENT?

A.2 Yes sir.

Q.3 Were you at Maxie's Cafe on an evening late in Jan 45?

A.3 Yes sir.

Q.4 Do you know the date?

A.4 I can not remember the date.

Q.5 Can you give us the date?

A.5 All I can say is that it was in January.

Q.6 Do you know the accused soldier, DAVIS over here?

A.6 Yes I saw him there.

Q.7 Was he at Maxie's Cafe on the night late in Jan that you are talking about?

A.7 Yes I saw him.

Q.8 Were there other soldiers in Maxie's Cafe that night?

A.8 Yes there were lots of soldiers.

Q.9 Do you know from what regiment the accused seaman is?

A.9 No I do not.

Q.10 Do you know the regiment of any of the soldiers that were there?

A.10 I have forgotten what was on their shoulders, there were English soldiers there as well.

Q.11 You say English soldiers, do you mean English soldiers as compared to Scottish soldiers?

A.11 There were English soldiers, Scottish soldiers and Belgian soldiers.

Q.12 Now what did you see happen in front of the doorway leading out of Maxie's Cafe that night?

A.12 I saw that they were fighting.

Q.13 Did you see any Polish soldiers there in front of the doorway that night?

A.13 I saw Polish soldiers going to come in.

Q.14 How many Polish soldiers?

A.14 One or two.

Q.15 And did they come in Maxie's Cafe?

A.15 I saw them open the door.

Q.16 And then what happened?

A.16 There was a Scottish soldier sitting inside who was "Zig-Zag". He went to the door and he fought. I then went outside and I saw on the ground outside a Polish soldier lying down. I saw two other soldiers outside. I saw that he was bleeding.

Q.17 Where was he bleeding?

A.17 On his nose and his ears.

Q.18 And were there any more Polish soldiers other than this one there then?

A.18 No there was just one lying on the ground.

Q.19 Now you have told the Court that there was a Scottish soldier in Maxie's Cafe who was "Zig-Zag" and who went to the door and was fighting there with this Polish soldier?

A.19 You have the door and there is a corner.

Q.20 Yes, now who was fighting with the Polish soldier?

A.20 I saw the Scottish soldier who is sitting here fight with the Polish soldier.

Q.21 Is it the accused soldier that you have identified here?

A.21 I saw him fighting.

Q.22 With the Polish soldier?

A.22 Yes in the corner.

Q.23 In the corner, is that in front of the doorway in that building?

A.23 There is the door and there is a little place behind that where there is one table.

Q.24 Did you see him, did you see this Canadian soldier or the Scottish soldier as you have called him, fighting with the Polish soldier at the doorway?

A.24 I saw that he had been fighting.

Q.25 I ask you again did you see the Scottish soldier that you have identified here fighting with the Polish soldier in front of the doorway?

A.25 I saw them fighting in this corner.

Q.26 Can you answer that yes or no?

A.26 All I can answer is that I saw them fighting in the corner

Prosecutor - May I ask the permission of the Court to cross-examine this witness and put leading questions to her. This is very material and I would like to know therefore if I may treat this witness as hostile?

Defence - From what the evidence has been so far it is too early to decide this question. She has merely stated one thing three times reframing it and I do not think that constitutes a hostile witness.

Prosecutor - I am prepared to argue that with my friend. It is not a question as to whether the evidence is favourable or not. I do not produce this witness for that.

I can go on and establish this fact. This witness is a very material witness or I would let that matter drop and establish it through somebody else but I am not in that position. I do need the permission of the Court as this is my witness and I can not cross-examine her and I can not put leading questions to her. It is more than the duty of the Prosecution to produce some one just because they are favourable or unfavourable. I am prepared or ready to cross-examine this witness if the Court will give me such permission.

Judge-Advocate - I think the witness should withdraw.

Witness withdraws.

Prosecutor - The question here is one of the statements made by the witness, Seconde MARIE, whom we have just had in the witness box and on behalf of the Prosecution. I have of course statements that the witness has made and I have tried to bring out from her in direct examination the facts that she has already stated. That direct examination of mine fails to bring out here those facts. Now without the permission of the Court I can not go on and put leading questions to this witness and I can not cross-examine her but it is a matter solely within the discretion of the Court as to whether or not I can be permitted to do that.

I can illustrate that by saying that I have a Flemish statement made by this witness. I can not as the Prosecution present it to this witness and say "is that what you said"? By so doing I impeach the credit of my own witness.

The Court being cognisant of the facts at this time decide whether I am permitted to act on that new or whether you feel something more can be done by way of direct examination. Now that goes even farther, if that does not establish the facts that she has already stated, with your permission I can call other evidence of the circumstances surrounding this statement which I propose to do with your permission. I can appreciate that there is some law there which you may like to consider but I feel that it is important and material and I do not want to leave it unless you so desire.

Defence - This witness has not shown herself to be hostile. It is for the discretion of the Court whether or not the Prosecution may ask leading questions and so on but the basis of the thing is that the witness is hostile, that I do not think has been shown.

The Court is closed to consider the request of the Prosecution.

The Court is reopened. The Court has disallowed the submission at this time of the Prosecuting Officer. The Court feels that there is not sufficient evidence before it to say that this witness is acting in a hostile manner. If after further evidence it is considered that she is acting in a hostile manner the matter will be considered again.

Prosecutor - Will the Court permit me to carry on further examination or put to her leading questions. That is the question that should be decided here not as to the hostility of this witness at this point?

JA - The Court feels, Maj WILLSON, that questions should be asked in either a yes or no answer.

FIRST WITNESS - For the Prosecution
Seconde MARIE - is recalled.

JA - will you warn this witness that she will answer these questions with a yes or no answer. That is if she is asked for a yes or no answer she will give a yes or no answer.

Q.27 I want to ask you another question about what you saw at the doorway when the Polish soldier entered Maxie's Cafe. Did you see, didyou not see the accused person, DAVIS, fighting with the Polish soldier in front of the doorway of Maxie's Cafe?

A.27 I saw the soldier fighting in the corner of Maxie's Cafe with the Polish soldier.

Prosecutor - I am going to ask the Court that it is important that they go down and see the interior of Maxie's Cafe and the area where this incident occured but that still is not helpful at this moment.

Perhaps we need not go further there. I do not oppose the fact that there is a little nook around a table there that she is talking about. I submit that we do not need to go into the question.

Q.28 Did you see Polish soldiers in the Cafe on more than one occasion that night?

A.28 No I only saw them enter once.

Q.29 And how many Polish soldiers did you see enter at that time?

A.29 First one came in and then two came in.

Q.30 Now, where was the accused person, DAVIS, standing when the one Polish soldier entered Maxie's Cafe?

A.30 (No answer)

Q.31 Where was DAVIS standing when you saw the one Polish soldier enter the Cafe?

A.31 He was a prisoner then.

Q.32 What do you mean "he was a prisoner then"?

A.32 The police had already taken him away.

Q.33 Where was DAVIS standing when two Polish soldiers entered the door?

A.33 That was a week later.

Q.34 You have told the Court that on this night two Polish soldiers and then one Polish soldier entered. Now is that all on the same night?

A.34 No it is not on the same night.

Prosecution - May I have permission of the Court to have the statement made by this witness and ask her if she recalls making this statement. I have an additional Flemish witness and will put it to her through the interpreter who took it .

JA - Is he present?

Prosecution - Yes.

Defending Officer - On that point may I make a submission. I think it is in the interest of all that her mind should be directed to the evening in question using the statement for that purpose only and so much of the statement that will make that clear only. I feel that we are getting nowhere but to use the statement to bring out what occurred on that evening is quite improper until the Court agrees that she may be treated as a hostile witness.

Prosecution - The difficulty is that the Court have no way of knowing these facts unless I am permitted to produce this statement.

For instance the Court still do not know what my examination is directed to and can not unless I am permitted in some way to establish that. That is all I should say on it.

JA - the statement you are referring to is the one made on 8 Feb 45?

Prosecution - That is right.

JA - this witness has already told us she saw fighting at the door, she saw Polish soldiers come in - one or two.

Witness is withdrawn.

Prosecution - the statement which I would like to have permission to use contains these words, "I have seen the same Scottish soldier who is now present in the bureau fight with two Polish soldiers as soon as they entered. I tried to separate them but it was not possible. I saw then that two soldiers of the 'Argyll and Sutherland Canada' regiment separated the fighters. One of these two soldiers was a tall man, the other a small one."

Then the middle part. "I saw the same Scottish soldier giving a blow at another Polish soldier, who just entered the bar. As this Polish soldier did not have the time in order to what the street door, he fell backwards, his head struck the pavement."

These are the facts that I would like to question this witness on and you can see I am in difficulty unless some latitude is granted.

Defending Officer - I would merely like to draw to the attention of the Court that this witness is intentionally or not failing to give straight answers to the questions. In other words there has been so much confusion. While this statement has been read I think the Court not to know at the same time that a further statement taken on the Summary of Evidence, a sworn statement, in which she states referring to the Scottish soldier giving a blow, was the "same uniform but another soldier". I think these two statements should be read together when you decide whether or not this witness may be treated differently. I believe you have the Summary there.

JA - It seems to me, Maj WILLSON, that this is one of the most essential points of the whole case. So far the evidence of this witness stated that she saw fighting at the door, she saw Poles going to come in, one or two, she saw him open the door, the Scottish soldier was "Zig-Zag" went to the door and fought and that she saw the Polish soldier lying on the ground. It seems that this witness is not hostile sufficient to allow the producing of this statement.

Prosecutor - As Prosecutor you know I am bound to be fair. I do not want to have included here anything that is prejudicial to the accused person and should not be properly admitted. I suggest that this is not a question of anyone refreshing their memory. The statement that I read to you is to the effect that "I saw the same Scottish soldier giving a blow to a Polish soldier." As I have told you I can establish the circumstances under which this statement was taken and who was in the bureau at the time and who was seated and what was done to make the witness familiar with the fact that the accused person was DAVIS and that he was the only person sitting in the room.

The Court is closed to consider this question.

The Court is reopened.

FIRST WITNESS - For the Prosecution is recalled.
Seconde MARIE

Q.35 On the night of the 30th of Jan 45 at Mazie's [illegible] you know whether or not if any soldier there lost his cost or his badge or other equipment?

A.35 Yes I do.

Q.36 Who lost some equipment there that night?

A.26 The soldier that is sitting there, the Scottish soldier.

Q.37 That is the accused?

A.37 Yes sir.

Q.38 What did he lose?

A.38 He had lost his badge that he had on his cap.

Q.39 Anything else that you know of?

A.39 No.

Q.40 And what was he doing because of that?

A.40 He locked the door.

Q.41 And what did he do at the doorway?

A.41 He asked and felt to see if any soldier had his badge.

Q.42 Who did he feel and see if any soldier had his badge?

A.42 The Scottish soldiers.

Q.43 Do you know whether or not the door was open or closed leading to and from Mazie's Cafe?

A.43 He closed the door and stood in front of it.

Q.44 And what did he do then when the Polish soldiers entered?

A.44 How do you mean, "when the Polish soldiers entered"?

Q.45 When the Polish soldiers came into the cafe what did the accused do?

A.45 He offered to fight with the Polish soldiers at the door, there is a door and there is a corner.

Q.46 And what did you see him do at the doorway?

A.46 I saw that he was fighting.

Q.47 Do you know who he was fighting with?

A.47 He fought with the Polish soldiers.

Q.48 And then what happened to the Polish soldier?

A.48 When he was fighting with the Polish?

Q.49 Yes.

A.49 I went there and went in between them.

Q.50 And then what happened?

A.50 And then another two soldiers came over and took them apart.

Q.51 And what happened from then on?

A.51 I then went out on to the street and I saw a Polish soldier lying on the ground.

Q.52 Do you know how the Polish soldier came to be lying on the ground?

A.52 I could not exactly say how the Polish soldier came to be lying on the ground.

Q.53 Did you see anyone strike the Polish soldier?

A.53 No I never saw that.

Q.54 Are you sure of that? Are you sure that you did not see anyone strike the Polish soldier?

A.54 When they took him away?

Q.55 Did you see anyone strike the Polish soldier in when you have called the corner of the cafe?

A.55 I saw that Scottish soldier fight there.

Q.56 And did you see that Scottish soldier strike the Polish soldier there?

A.56 I just saw them fight.

Q.57 What did the Polish soldier do then after this fight?

A.57 Was that the Polish soldier that fought?

Q.58 Yes.

A.58 There is soldiers that took him outside so that he would go away.

Q.59 Was he able to walk out?

A.59 I did not see that.

Q.60 Did you see the Polish soldier back out of the doorway?

A.60 No I never saw that.

Q.61 You did not see a Polish soldier back out of the doorway and close the door behind him at any time that night?

A.61 No I never saw that.

Q.62 Did you see a Polish soldier fall backwards through that doorway at any time that night?

- Hostile witness:

"A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. To be inconsistent within the meaning of the section the statement need not be directly or absolutely at variance. The word 'adverse' in this section means 'hostile', and not merely 'unfavourable'. The discretion of the Judge to give or refuse leave to cross-examine the party's own witness, however hostile he may be, is absolute. If the witness appears evidently to be hostile to the party who has called him, counsel may put leading questions to him, having first obtained permission of the Court to do so."

Prosecutor - May I say that you can not determine whether this witness is hostile or not at this time. How can the Court determine whether this witness is hostile until I bring the facts before the Court. I have asked you for permission to use this statement and you say that there is no grounds for using this statement as yet. I asked for permission to call a witness to state that what this witness is saying is not the truth, that she has stated otherwise.

JA - my advice to the Court is that this can not be done unless the Court is satisfied that this witness is adverse. You are now asking permission to prove that she is hostile.

Prosecutor - I am asking you to open the door a little bit and I will show you.

The Court is closed.

The Court is reopened - President announces Court will adjourn until 1000 hrs 18 Apr 45.

Court re-assembles 1000 hrs 18 Apr 45 - is re-opened.

The First Witness, Seconde MARIE, being not available the Prosecution on the direction of the Court proceeds to call other witnesses.

SECOND WITNESS - For the Prosecution. - duly sworn.
Marie WESTERLINK, Binnenweg 55, Ledeburg, GHENT.

(Evidence through Flemish interpreter)

Q.67 You are Marie WESTERLINK?

A.67 Yes sir.

Q.68 Do you recognise the accused soldier here in Court today?

A.68 Yes, witness indicates the accused.

Q.69 Were you in Maria's Cafe in the City of GHENT on an occasion when he was there?

A.69 Yes sir.

Q.70 What day was that?

A.70 30th of Jan 45.

Q.71 At about what time?

A.71 Between 9:15 and 9:30 PM.

Q.72 And were there many Canadian soldiers in Maria's Cafe that night?

A.72 Approx 20 Cdn soldiers.

Q.73 Did you see some Polish soldiers in that Cafe that night?

A.73 Yes two Polish soldiers.

Q.74 What did you see happen so far as these Polish soldiers are concerned?

A.74 Before the two Polish soldiers came in Davis was fighting with two Belgian civilians. He then fought

with the Polish soldiers at the door of the Cafe.

Q.75 And what happened to the Polish soldiers?

A.75 Two of the A & SH of C took them apart.

Q.76 And then?

A.76 Then one Polish soldier came back in again and DAVIS started in to fight with him again. If DAVIS put him outside or hit him outside I could not say. DAVIS came back into the Cafe and said that he had lost his coat and his badge and that he wanted it back. That is all I saw.

Q.77 Did you see the Polish soldier outside afterwards?

A.77 No sir.

Q.78 Do you know anything about DAVIS' coat or hat badge?

A.78 I do not know if DAVIS got his coat or his badge back, everyone was asked if they knew anything about it?

Q.79 Who asked everyone?

A.79 DAVIS himself.

Q.80 Where was DAVIS standing?

A.80 At the door.

Q.81 How do you know the Argyle and Sutherland Highlanders hat badge, cap badge?

A.81 Witness produces A & SH of C hat badge from purse.

Q.82 How do you know what kind of a hat badge DAVIS wore.

A.82 Witness crosses an i.e. (indicates with her fingers)

Q.83 Is there any doubt in your mind as to the identity of this man DAVIS?

A.83 I did not know his name exactly, I know he was the man with the Polish soldiers.

Q.84 Now I want to review with you a moment the facts about these Polish soldiers. Is it true that Polish soldiers came into the Cafe more than once that night?

A.84 Twice, only twice.

Q.85 And the first time how many Polish soldiers came in?

A.85 Two.

Q.86 And then the second time how many Polish soldiers came in?

A.86 There came two in the second time and one of them was one of the first ones that came in.

Q.87 Did anything happen at the doorway that night?

A.87 In the cafe or outside?

Q.88 Either?

A.88 I saw nothing else except that the accused fought with the Polish soldier.

Q.89 And what did you see the Polish soldier do?

A.89 The Polish soldier fought back.

Q.90 And then what happened?

A.90 The accused also fought.

Q.91 What did you see the accused do?

A.91 The accused fought with the Polish soldier when they came in.

Q.92 What happened after the fight?

A.92 The accused wanted his badge and his coat back.

Q.93 Did the accused person fight with the Polish soldier on more than one occasion there that night?

A.93 I just saw his fight twice with the Polish soldiers.

Q.94 And where about did he fight twice with the Polish soldiers?

A.94 At the door of Naxie's Cafe on the left hand side, that is where they fought.

Q.95 You did not go outside of Naxie's Cafe after you saw this fight then?

A.95 No I could not go outside the Cafe as he was standing in front of the door.

Prosecutor - I am in the same position with this witness as I was with the other witness and I do not know whether I can proceed further. I believe I have gone as far as I should unless the Court wishes to give me permission to use the statement or to do anything further with this witness.

I would like permission, depending on what your instruction was on this matter this morning, I would like permission either by way of introducing a statement made by this witness establishing her signature or calling another witness to produce her statement.

Defence - I would like to oppose that notion. I submit that the witness has apparently told a straightforward story this morning. There is no indication that she is in any way adverse or is doing anything else other than answering the questions put to her as well as she can. If the Prosecutor produces the statement, however, the evidence which she has given this morning is substantially the same as is written in her statement taken some time ago.

JA - A motion has been made by the Prosecutor for leave to introduce or to produce a statement purporting to be made by the witness and asks the Court for permission to cross-examine his own witness.

In establishing whether the witness is adverse my advice is that the Prosecutor should be allowed to introduce the statement and prove if he can if this is a statement made by the witness. The decision being left with the Court to determine whether that statement if proven shows that the witness is adverse. The Court must be careful that any evidence which is brought forward at this stage - to remember that it is not evidence against the accused but it is merely evidence in issue as to whether the witness is adverse to the Prosecution and the Prosecutor must not introduce in evidence in chief any

evidence made in that statement.

Defence - May I just make one point on that. In this statement before it is introduced as evidence it should also be shown that the evidence given verbally in Court is different from her statement.

JA - that is a matter for the Court to determine.

Defence - Oh yes but I would like that point to be very definately established by the Court.

Q.96 Do you read Flemish as well?

A.96 Yes.

Q.97 Is that your signature at the bottom of that page?

A.97 Yes sir.

Q.98 Will you read that statement, not out load, to yourself. Is that statement a statement made and signed by you on the 2nd of Feb?

A.98 Yes sir.

Q.99 And is that a true statement?

A.99 Yes sir.

Q.100 Now do you recall being interviewed by an officer once again regarding this DAVIS trial?

A.100 No I do not remember.

Q.101 Do you remember that on the 2nd of Feb you made that statement?

A.101 Yes.

Q.102 And then about 17th Mar?

A.102 Yes by the Gdn Police.

Q.103 And an officer?

A.103 Yes sir.

Q.104 Now do you remember that at that time this statement was shown to you?

A.104 Yes.

Q.105 And the question was asked of you, "Is this the statement you gave to the Police on the 2nd Feb 45" and you answered "Yes"?

A.105 Yes.

Q.106 And do you remember that the next question that was asked was, "Is that a correct statement" and your answer was, "No, it was wrong"?

A.106 There was a wrong word in it.

Q.107 Now what is the wrong word that is in it?

A.107 The Gdn Police asked me if this was the Scottish soldier that killed the Polish soldier.

Q.108 Yes and did you answer this?

JA - Just a moment Maj WILLSON. I do not want anything read out of that statement in open Court. I do not want any evidence read out that is prejudicial to the accused.

Prosecutor - I just want to get from this witness a yes or no and if she says she made this statement I will read it to you

Q.109 The next question. The question here that was put to you was, "What changes do you wish to make with reference to that statement" and your answer was, "It was not the accused whom I meant was the one who fought with the Pole entering the Cafe, it was another Scottish soldier." Is that what you said?

A.109 Yes.

Q.110 Now you were questioned by the accused, "Where was I when this Pole was hit at the doorway?" and you answered "I think you were at the counter." "I saw you fighting once in the corner with one Polish soldier."

And, "What did I do after fighting in the corner?" and you answered, "I didn't see you do anything more."

Is that the statement that you made at that time? Is that the questions and is that the answers you gave?

A.110 That is correct.

Q.111 Is that your signature?

A.111 Yes that is my signature.

Court is closed.

Court is re-opened - Court has found that the submission of the Prosecution has been allowed and the Prosecution may treat the witness as adverse.

Second Witness for the Prosecution is recalled.
Maria [illegible],

Prosecutor - I take it that I may proceed to cross-examine her in any way regarding the facts in this matter.

Q.112 I show you a copy of the statement signed by you on the 2nd of Feb. And that is your signature there?

A.112 Yes sir.

Q.113 Now did you say on the 2nd of Feb, "Some minutes after, another Polish soldier came in and immediately the Scottish soldier fought with him. I saw that the Polish soldier went backwards as he was obliged by the fighters. I saw that the Scottish soldier gave a violent blow at the Polish soldier. The Scottish soldier shut then the door and said that he must have his badge and his overcoat."

Is that true?

A.113 Yes that is true.

Q.114 That is the Scottish soldier that you refer to here, that Scottish soldier there (pointing to accused)?

A.114 No that is not him.

Q.115 Is that the Scottish soldier who lost his badge and his overcoat?

A.115 Yes sir.

Q.116 Then what did you mean when you said, "The Scottish soldier shut then the door and said he must have his badge and his overcoat"?

A.116 He did lock the door, he had lost his coat and his badge.

President - Would you remind the witness that this is a serious case, someone has been killed, and that she is under oath.

Original Flemish statement produced by Prosecution is entered as Exhibit "A".

Prosecutor - I have examined this witness before I raised the question of her being a hostile witness and I went over the evidence with this witness up to the time of the incident in the Cafe. Now I have put before you the position of this witness in so far as this incident is concerned. Now I think that all the evidence is in material form.

Once my friend is through cross-examining this witness if he wishes to go further I would like if you permit me to call the witness or the interpreter who was there at the time that statement was made and give the circumstances surrounding the making of that statement.

JA - That is a witness that is not in the Summary of Evidence. If the Defending Officer will waive RB 76?

Defence - I will not object to that.

Prosecutor - I think that once the Court have become aimed of these facts of the case that they will want to hear what evidence this further witness can give.
I do not know whether your ruling that you have discussed covers the question of my calling any witnesses to deal with that but I would like made that if you can fit.

Cross-examination by Defence.

Q.117 You say that you saw DAVIS fighting with the first two Poles who came into the cafe?

A.117 Yes sir.

Q.118 Did they fight in the corner near the door, or in the mouth of the door, in the door itself?

A.118 In the corner of the door.

Q.119 You said that when some Poles came back the second time there was another fight. Where did this fight take place in the Cafe?

A.119 The same place as they fought the first time.

Q.120 That is in the corner to the side of the door?

A.120 Yes in the corner at the side of the door.

Q.121 Were there any other Cdn soldiers near the door while the fights were going on?

A.121 No sir.

Q.122 While either fight was going on?

A.122 Just the one time when the two soldiers pulled them apart.

Q.123 Where were you standing in the Cafe when the first fight took place?

A.123 At the stove.

Q.125 Where is this stove in the cafe?

A.125 The centre of the cafe.

Q.126 Is there a bar in the cafe?

A.126 Yes.

Q.127 How far is the stove from the bar?

A.127 Approximately one metre.

Q.128 As you face the bar at which end of the bar is the stove?

A.128 On the right hand side of the bar.

Questioned by Judge-Advocate

Q.129 What time did the Polish soldiers come into the cafe on the first time?

A.129 Approx 9 o'clock.

Q.130 Was there a fight at that time with the Polish soldiers?

A.130 No, the first time at 9:15.

Q.131 Who was fighting at 9:15?

A.131 The accused with the two Polish soldiers.

Q.132 Where were they fighting?

A.132 On the side of the door inthe corner of the cafe.

Q.133 Where any blows struck?

A.133 Who?

Q.134 Did the Poles strike any blows at the accused or did the accused strike any blows at the Poles?

A.134 The accused hit the Polish soldiers.

Q.135 What did the Polish soldiers do?

A.135 Nothing.

Q.136 Did they leave the cafe?

A.136 After they had been fighting they left the cafe.

Q.137 Did the A & SHof C soldiers stop that fight?

A.137 Yes.

Q.138 Did you see the Poles come back again that night?

A.138 I saw one Polish soldier come back.

Q.139 Did this one Polish soldier come in the door?

A.139 Yes sir.

Q.140 Did the accused fight with this one Polish soldier?

A.140 Yes.

Q.141 Where did they fight?

A.141 In the corner of the cafe by the door.

Q.142 How far from the door?

A.142 The door just as you come in at the left hand side.

Q.143 Was the door open or closed?

A.143 The door was open.

Q.144 Who was fighting there?

A.144 First it was a scottish soldier, he went back near to the counter, then there was another scottish soldier who put the Polish soldier outside.

Q.145 Was it the accused who put the Polish soldier outside?

A.145 No sir.

Q.146 When did you see the accused looking for his badge and coat?

A.146 The Pole was outside and then he closed the door.

Q.147 Who closed the door.

A.147 The accused closed the door.

Q.148 Was the accused there when the Pole was put outside?

A.148 I could not exactly say.

Q.149 How soon after you saw the Pole put outside did you see the accused close the door?

A.149 5 minutes after that he closed the door.

Q.150 When did you see the accused looking for his overcoat and his badge?

A.150 He did not look for his badge or his coat he stood at the door and said that he had lost his coat and his badge.

Q.151 Did he examine any soldiers to see if they had his ba dge and coat?

A.151 No he just looked through us.

Q.152 Who do you mean by us?

A.152 As we were going to go outside the accused asked us for his badge.

Q.153 When you made this statement on the 2nd of Feb did you make it under oath?

A.153 No sir.

Q.154 Is this statement where you say you saw the scottish soldier, meaning the accused, strike a violent blow at the Polish soldier - is that not correct?

A.154 Yes he hit him.

Q.155 Who hit him?

A.155 The accused hit the Polish soldier.

Q.156 Is this on the first fight or the 2nd fight?

A.156 The first time.

Q.157 Who hit the Polish soldier on the 2nd fight?

A.157 The second scottish soldier I do not know.

Questioned by the Court.

Q.158 How long was the second fight after the first fight?

A.158 I think, which I am not very sure, about 8 or 10 minutes.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

The Court is adjourned 1210 hrs - will reassemble 1400 hrs.

The Court reassembles 1400 hrs 18 Apr 45 - is re-opened.

THIRD WITNESS - For the Prosecution - duly sworn
Gaston Van den abeele, Interpreter, attached No.2 Cdn L of C Provost, Ghent Detachment, SIS.

This witness not appearing in the Summary is called by the Prosecution, the Defence having waived notice under RP 76.

Q.159 I show you the statement which is known to this Court as Exhibit "A" and it is signed by Maria WESTERLINK. Whose hand writing is that?

A.159 My own.

Q.160 When was this statement taken?

A.160 2 Feb 45.

Q.161 Where was it taken?

A.161 At the SIS Detachment Station.

Q.162 Do you recognise this accused soldier here?

A.162 Yes sir.

Q.163 Who is that?

A.163 He is the soldier who was in the office when I was taking the statements from the girls.

Q.164 Where was he in the office when you were taking the statement?

A.164 The soldier was in the office in a big chair when I took the statement from the girls in a room adjoining the office.

Q.165 Who else was in the office?

A.165 CSM TAIT was also in the office.

Q.166 Where did you take this statement?

A.166 In a room adjoining the office.

Q.167 And is this room the room you have spoken of that DAVIS was sitting in? Do you know whether Maria WESTERLINK saw DAVIS there that day?

A.167 We passed forward into the room, she saw the soldier sitting in a big chair.

Q.168 Maria WESTERLINK has made a statement here about the accused soldier DAVIS. Did Maria in your presence do anything which indicated to you that she was talking of DAVIS?

A.168 I do not understand the question.

Q.169 The witness, Maria WESTERLINK, has referred to a Canadian Scottish soldier?

A.169 Yes.

Q.170 Do you know who she was referring to?

A.170 She was referring to a soldier who sat down in the office.

Q.171 Was there any other Scottish soldier in the room where CSM TAIT and the accused person sat?

A.171 No.

Cross-examination by Defence.

Q.172 At any time when you were speaking to this witness was the accused in that room?

A.172 He was in the office room.

Q.173 In the outer room?

A.173 Yes in the first room, the room where we would enter coming from the street.

Q.174 At any time were you, the witness, and the accused all in the same room?

A.174 No sir.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

FOURTH WITNESS - For the Prosecution - duly sworn.
Denies MALSCHAERT

This witness not appearing in the Summary is called by the Prosecution, the Defence having waived notice under RP 76.

Q.175 You speak fairly good English?

A.175 Yes.

Q.176 Do you know MAXIE's Cafe?

A.176 Yes.

Q.177 Are you employed there?

A.177 Yes.

Q.178 And do you recognise this read haired soldier, or brown haired soldier?

A.178 Yes.

Q.179 Did you see him at MAXIE's Cafe on a night late in January?

A.179 Yes.

Q.180 Do you know the date?

A.180 I forget.

Q.181 Well can you tell me what went on there the night that you saw the accused soldier there? What happened there?

Q.182 Dis you see any Polish soldiers there that night?

A.182 No sir.

Q.183 When you saw the accused person standing near the door was he alone?

A.183 Yes.

Q.184 What was he doing there?

A.184 He was standing alone in front of the door.

Cross-examination by Defence.

Q.185 Approx how many people were in the Cafe?

A.185 Approx 50.

Q.186 Were they mostly sitting down or standing up?

A.186 Most of them were sitting.

Q.187 You say that DAVIS was standing alone near the door - how close would the other soldiers be to him?

A.187 Approx 4 metres.

Q.188 Would it be as much as 4 metres from the door to the bar?

A.188 Yes it would approx be 4 metres from the bar to the door.

Q.189 Were there any soldiers standing or sitting at tables between the bar and the door?

A.189 Yes.

Q.190 Then the nearest soldiers to DAVIS must have been less than 4 metres. Would you think again and see if you can come to a better estimate as to how close the nearest soldiers were to DAVIS?

A.190 That was on the side of the stove.

Q.191 Which was on the side of the stove?

A.191 That is where the soldiers were standing.

Q.192 Were there any soldiers between the stove and the door?

A.192 I could not exactly say.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The Witness withdraws.

FIFTH WITNESS - For the Prosecution - duly sworn

FIFTH WITNESS - For the Prosecution - duly sworn Gabrielle DEWULF, Moriaanstraat, 92 Gendbrugge.

Q.193 Do you recognise this accused soldier here?

A.193 Yes.

Q.194 Did you see him at MAXIE's Cafe at some time in the month of January?

A.194 Yes.

Q.195 Do you know the date?

A.195 No I do not.

Q.196 About what time of night was it when you saw him?

A.196 Between 9 and 10 o'clock.

Q.197 And what did you see happen at MAXIE's Cafe which involved this particular soldier?

A.197 He stood at the bar, he hit a Polish soldier and that is all I know.

Q.198 Were there any other Scottish soldiers there aside from this one?

A.198 I think so.

Q.199 Did you see or do you know whether or not this Scottish soldier lost anything that night?

A.199 He lost his coat, that is all I know.

Q.200 What was he doing because of that, do you know?

A.200 He went to the door, he stood there, then he said, "there was no one allowed to go out of the cafe until I find my coat back."

Q.201 And what happened then?

A.201 The Canadians all started to fight amongst themselves.

Q.202 And where was this fight taking place?

A.202 In the Cafe.

Q.203 Where abouts in the cafe?

A.203 Close to the door.

Q.204 Did you see any Polish soldiers there that night?

A.204 No I did not see them.

Q.205 You do not know then who was involved in the fight near the door?

A.205 No I can not say that.

Prosecutor - I find myself in the same position with this witness but I do not think there is any point in proceeding with this witness.

Cross-examination by the Defence.

Q.206 How many people were in the cafe?

A.206 I can not exactly say - between 50 or 60.

Q.207 In what part of the cafe were they? Where in the cafe were they?

A.207 They were sitting through the whole of the cafe.

Q.208 Were there any sitting near the door?

A.208 Yes sir.

Q.209 How far away would the nearest one be from the door?

A.209 2 metres at the most.

Questioned by the Judge-Advocate.

Q.210 Where were you when you saw soldiers were fighting?

A.210 I was in the cafe serving.

Q.211 Did you see them fighting?

A.211 I know that soldiers were fighting amongst themselves but I do not know whom.

Q.212 Did you go out of the cafe at any time that night?

A.212 No sir.

Q.213 Do you know whether anybody was injured in the fight or not?

A.213 I do not know that either.

Q.214 Did you see the accused soldier in the fight?

A.214 No I did not see that.

Q.215 Where was the accused soldier when the fight was going on?

A.215 In the cafe at the door.

Q.216 Was that near the door on the street?

A.216 Yes sir.

Q.217 Did anybody come in that door while he was standing there?

A.217 I could not say.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

Prosecutor - While I did indicate that I intended to call another one of these civilian witnesses, Georgetta EVERAERT, her evidence is similar to that given by these two civilians and unless my friend wishes me to call them in order that he may cross-examine them I do not think it necessary to produce this witness.

Defence replies - I do not require this witness for the purpose of cross-examination.

SIXTH WITNESS - For the Prosecution - duly sworn
M-3623 L/Cpl THOMLINSON W N, HQ 2 Cdn L of C Pro Coy.

Q.218 Cpl THOMLINSON, do you recall the night of 30th Jan 45?

A.218 Yes sir.

Q.219 And did you that night by reason of a call that you had received attend at the Victory Cafe, GHENT?

A.219 Yes sir.

Q.220 At what time?

A.220 At 2145 hrs.

Q.221 Did you at my request make a rough sketch of the area showing the Victory Cafe and Maxie's Cafe in the city of GHENT?

A.221 Yes sir.

Q.222 Is that it?

A.222 Yes sir.

Q.223 Does this sketch show roughly the location around the Victory Cafe and Maxie's Cafe?

A.223 Yes.

Q.224 I know it is not to scale but so far as direction and location is concerned is it fairly well set up?

A.224 Yes.

Sketch is tendered to the Court, admitted in evidence, signed by the President and marked Exhibit "B".

Q.225 Would you indicate on this sketch where you did go that night and what you found there? Could you mark on there the cafe that you attended and what you found there and where?

A.225 I came down the street to the Victory Cafe and went through this front door and was taken through the bar to the back room. When I went into the back room there was a Polish soldier sitting on a chair.

Q.226 Do you know the particulars of that soldier?

A.226 Yes sir, I took his pay book from his tunic pocket. I took the soldier's pay book from his pocket, took his particulars from it and put them in my own book.

Q.227 What was that soldier's name and number?

A.227 5088 Cpl Rataj Jan.

Q.228 Do you know what unit he belonged to?

A.228 10th Polish Rifles.

Q.229 What happened from there on as far as this man is concerned?

A.229 As soon as I saw him I phoned for an ambulance and then waited approx ½ hr for the ambulance and because it did not come I took him in my own jeep to 2 Cdn Gen Hosp.

Q.230 What did you see about the condition of this Polish soldier?

A.230 Bleeding from the mouth, the nose and the ears.

Q.231 Now on the sketch that you have there can you for purpose of record - can you say where the Polish soldier was in the Victory Cafe when you saw him? Mark with an "X" there.

A.231 Witness marks sketch with "X" position of Polish soldier.

Q.232 Yes and you have shown Maxie's Cafe on there as well?

A.232 Yes.

Q.233 Is it fair to say that Maxie's Cafe is almost directly opposite the Victory Cafe?

A.233 Yes sir.

Q.234 Now who was with the Polish soldier when you found him in the Victory Cafe?

A.234 Another Polish Cpl.

Q.235 Any Cdn soldiers with him?

A.235 No sir.

Q.236 What did you do when you took him to the hospital?

A.236 I took him to the hospital reception room and turned him over to the MO.

Q.237 That is the last that you saw of him?

A.237 Yes sir.

Cross-examination by Defence.

Q.238 When you got to the hospital you say you turned the Pole over to the MO. Would you be able to describe the scene at the hospital more fully?

A.238 I took the Polish Cpl and two orderlies laid him down on the stretcher and the MO Capt examined him.

Q.239 Did you see anything else happen after that or besides that?

A.239 No sir, they removed him and then I left the hospital.

Questioned by the JA

Q.240 Did you look to see if he had any identity discs at all?

A.240 No sir I did not.

Q.241 You just looked at his pay book?

A.241 Yes sir.

Q.242 Was there any other insignia that would identify him as belonging to the 10th Mounted Rifles?

A.242 Not that I know sir.

Q.243 Where did you find his pay book?

A.243 In his breast pocket sir.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

Prosecutor - Unless the witness Seconde MARIE is available the only other witness I have to call at the present is the Doctor from 2 Cdn Gen Hosp.

Due to the fact that his evidence may be rather lengthy if the other witness is not out here and if it is in keeping with what the Court might wish I suggest that we may adjourn and see the scene of this night and leave the other until the morning.

1500 hrs - the Court adjourns for a view of the scene of the incident. Those present, the Court, JA, Prosecuting, Defending Officers, accused, escort, court reporter and officers under instruction.

Judge-Advocate warns the accused that he is not obliged to say anything or point out anything to the Court. He is just there to see that no evidence is taken that he has no knowledge of.

The Court attended at Maxie's Cafe and viewed the surroundings from inside and out. It was noted by the Court that inside of the cafe was a small vestibule to the right of which was a small recess in one corner. The bar is on the opposite wall to the door. The stove is approx in the center of the room. There is another room which seems to be a type of dance hall. The enterance is at the left hand room in which the bar is. The enterance from the street to the cafe is reached by one step 2" and another step approx 8". The sidewalk and road-way are stone.

~~SEVENTH WITNESS---For the Prosecution--~~

The Court reassembles - is re-opened at 1000 hrs 19 Apr 45.

SEVENTH WITNESS - For the Prosecution - duly sworn.
Major J D DUFFIN, RCAMC, Pathologist, 2 Cdn Gen Hosp.

Q.244 Are you the Pathologist at 2 Cdn Gen Hosp?

A.244 Yes sir.

Q.245 And in the course of your duties there did you have occasion to perform an autopsy on Jan HATAJ?

A.245 Yes I did.

Q.246 When did you do this?

A.246 This was done on the afternoon of Jan 31 of this year at 1600 hrs.

Q.247 Now can you tell us what your examination of that body revealed in the sense of what injuries there were to it and if you do know what may or may not have caused it?

A.247 The cause of death was quite apparent. It was due to haemorrhage inside the scull together with fractures of the scull and in addition to that haemorrhage in the brain tissue itself. The haemorrhage was of such a type that it was quite evident it was some violence that we call termatic. That is some type of blow to the head. That is somebody either struck the deceased or he had fallen and hit his head very forcibly. Perhaps somebody had knocked him and he had fallen over backwards and he sustained injuries of that nature.

Q.248 Now can you show us with your own head at what part of the head the injuries were?

A.248 The violence had been applied to the back part of the head on the left side. (indicates to the Court).

It was quite clear that violence had been indicated to that part.

Q.249 Could any more immediate medical treatment have saved this man's life if he had received this type of injury?

A.249 That is rather difficult to answer. Almost all cases that have this type of injury do die within a short period of time. I suppose it is theoretically possible, perhaps it is possible. I understand he had the routine treatment for injuries of this nature and rapidly died within a few hours after having been admitted.

Cross-examination by Defence.

Q.250 Were there any bruises on the front of the face?

A.250 No there were not.

Q.251 If a blow had been struck sufficient to knock him backwards on the sidewalk, on the face, would you expect to find a bruise there?

A.251 You may or you may not. As a matter of fact in this case there was no mark on the place where he had been struck externally. As a matter of fact I had to retract the skin to find this and as far as the front of the face is concerned we did not find any and it had no significance.

Q.252 Did you yourself know that the person you examined was Cpl RATAJ?

A.252 Yes it is a routine that we go through to identify everybody.

Q.253 Are you able to say of your own knowledge that the person you examined was Cpl RATAJ Jan?

A.253 It just depends on what you want for identification. The patient died and the Wardmaster who looks after this case came up to my office and got a book in which he wrote the name of the patient and he issued me with the keys to the morgue in which he put the patient. The body was wrapped in a sheet and was marked with the name of the patient. More over he was the only patient or body in the morgue at this time.

Q.254 Did you notice that his identity discs were still on?

A.254 No they were not. They are not usually on, sometimes they are on and sometimes they are not.

Q.255 You did not see him until dead?

A.255 No I did not.

Questioned by the Judge-Advocate.

Q.256 Did you notice any marks on the chest or stomach that would indicate the place where he was struck?

A.256 No there were no marks on the body externally at all.

Q.257 Is it fair to say that as far as identification is concerned it was just through the routine?

A.257 There were no special steps taken just the usual routine.

Q.258 The body that you presumed the deceased, that you understood was the person referred to, merely because it was tagged?

A.258 It was reported to me that he was deceased and I was in charge of the morgue. Unless they substituted another body for this body and I think that is impossible. Provided that the identification through life was conducted which I presume had been.

Q.259 In your opinion this Polish soldier had been adequately medically attended to and did not die as a result of neglect?

A.259 I am quite sure that he did not die of neglect. I am not a specialist but as I pointed out to Major WILLSON he had every attention possible. He had a very extensive fracture of the scull and such cases almost never recover and in addition to this he had these fractures which I described which no medical surgery could have done anything for.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

President announces - When the Court adjourned on the 17th a motion had been made by the Prosecution opposed by the Defending Officer that the witness Seconde MARIE be declared adverse. The Court allows the submission of the Prosecuting Officer and permits the cross-examination of the witness Seconde MARIE and the witness Seconde MARIE may be treated by the Prosecution in all respects as if adverse.

FIRST WITNESS - For the Prosecution - reminded of the fact that she is already sworn
Seconde MARIE, Binnenweg 78, Ledeburg, GHENT.

Statement entered as Exhibit "C".

Witness is shown statement of evidence.

Q.260 Is that your signature?

A.261 Yes.

Q.262 On the 2nd of Feb did you say these words and sign this statement?

A.262 Yes I told the Belgian Interpreter and I signed it. (referring to Exhibit "C")

Prosecutor - For the benefit of the Court I will read the statement:

"The undersigned SECONDE Marie, declares that she as barmaid, was present in the bar 'MAXIE's' Kleine statiestraat, 13, Ghent, on the 30th January 1945, at about 9½ o'clock P.M.

About 40 soldiers were in the bar. Also two civilians who stood near the counter.

I have seen that the scottish soldier who is now present in the bureau, fought with two polish soldiers, as soon as these men entered. I tried to separate them, but it was no possible. I saw then that two soldiers of the 'Argyll and Sutherland Canada' regiment separated the fighters. One of these two soldiers was a tall man, the other a small one. They said me they come back the following day, but I didn't see them.

I saw the same scottish soldier giving a blow at another polish soldier, who just entered the bar. As this polish soldier didn't have the time in order to shut the streetdoor, he fell backwards, his head struck the pavement.

As I was also standing at the open streetdoor, and that the scottish soldier shut this door violently, I steped into the street and saw the polish soldier lying upon the ground. I saw that he was bleeding from mouth, nose and ears."

Q.263 Do you remember another Cdn Officer coming to see you and taking a statement from you about the 12th of March?

A.263 I have forgotten now.

Q.264 Well is that your signature there? (pointing to original Summary)

A.264 Yes.

Q.265 Do you remember that officer having with him that statement and he was showing it to you and then you said this: (Prosecutor presents Exhibit "C")

"I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd Feb 45."

And when questioned by the accused as follows:

"I was fighting with two Poles in the corner of the cafe, was I not?"

You said, "Yes".

And when further questioned:

"When you mention 'Same Scottish soldier' do you mean me or a soldier with the same Scottish uniform?"

You said, "Same uniform, it was another soldier."

Do you remember at the time that officer visited you with the accused present, the accused asked you this question. "I was fighting with two Poles in the corner of the Cafe, was I not?" and you answered, "Yes"?

A.265 That is right.

Q.266 And do you remember being asked, "When you mention same Scottish soldier do you mean me or a soldier with the same Scottish uniform." And you answered, "Same uniform but another soldier"? Is that what you said?

A.266 Yes.

Q.267 Is that your signature?

A.267 Yes.

Q.268 Did the accused person ask you that and did you answer that at the time, "the same uniform but another soldier?

A.268 There were two in the cafe.

Judge-Advocate - I rule that you must introduce proof of the statement made not just some material part of it.

Prosecutor - I wish to ask the witness whether or not the question in the original Summary of Evidence which reads thus was asked of you:

"When you mention same Scottish soldier do you mean me or a soldier with the same Scottish uniform?"

Q.269 Was that question asked of you by the accused?

A.269 That is what I had to answer.

Q.270 What do you mean by that when you say, "That is what I had to answer"?

A.270 That is the question that was asked.

Q.271 Yes and did you answer, as is listed in answer 2, "Same uniform, it was another soldier"?

A.271 Yes I answered that.

Q.272 But were you not standing at the door of the cafe when that happened?

A.272 When what happened?

Q.273 When the Polish soldier was struck?

A.273 No I was not standing at the door there.

Prosecutor - Referring to Exhibit "C" I wish you to read to the witness in Flemish this paragraph which I read in English:

"I saw the same scottish soldier giving a blow at anotherpolish soldier, who just entered the bar. As this Polish soldier didn't have the time in order to shut the street door, he fell backwards, his head struck the pavement."

Will you read that paragraph (referring to the 4th paragraph side-lined in read on Exhibit "C").

Interpreter reads paragraph in Flemish to witness.

Q.274 Do you remember saying that?

A.274 I can not remember what I said.

Prosecutor - That is all I have for this witness. I will produce the interpreter to ask what she said and leave the rest to the Court.

Cross-examination by Defence.

Q.275 Do you remember how many people were in the cafe that night?

A.275 Probably 30 or 40 soldiers.

Questioned by the Judge-Advocate.

Q.276 Where were you standing when the two Polish soldiers came in?

A.276 I was standing at the counter.

Q.277 Did you see a fight between these two Polish soldiers and some Canadians or a Canadian?

A.277 I saw that they were fighting between the door and the corner.

Q.278 Who was fighting between the door and the corner?

A.278 A Canadian soldier with 2 Poles.

Q.279 Is the Canadian soldier that you saw fighting the accused?

A.279 There was also a soldier in the cafe who also fought.

Q.280 Was the Canadian soldier in Court, the accused, one of the soldiers that was fighting?

A.280 The soldier sitting here fought. There was still another soldier who also fought.

Q.281 What happened to the two Polish soldiers?

A.281 There is two other soldiers that came that took them apart.

Q.282 Where did the Polish soldiers go after they had been taken apart?

A.282 I did not see them.

Q.283 Did you see another Polish soldier come in later?

A.283 No sir.

Q.284 Did you see a Polish soldier lying on the ground outside the cafe?

A.284 Yes I saw that.

Q.285 How did you see that?

A.285 I was going to go to the door to tell them that they should not fight any more the door went shut and I was out on the street and I saw the Polish soldier lying there.

Q.286 Was anyone else out there besides the Polish soldier lying there?

A.286 No sir.

Q.287 Did anybody come while you were there with the Polish soldier?

A.287 I saw two soldiers and I asked them if they were Poles.

Q.288 Were these soldiers that came Polish?

A.288 Were they the ones that went in?

Q.289 No the ones that came when you were standing beside the Polish soldier on the ground.

A.289 They came around the corner.

Q.290 And did you see the soldier on the ground fall down?

A.290 No sir.

Q.291 Did you see anybody strike the soldier that was lying on the ground?

A.291 No sir.

Q.292 Did you make a statement (referring to Exhibit "C") at police HQ on the 2nd of Feb?

A.292 I said this in the bureau at police HQ.

Q.293 Did you say that under oath?

A.293 No sir I did not have to swear anything.

Q.294 Is that statement true?

A.294 I said that.

Q.295 Is everything that you said in that statement true?

A.295 I think so.

Q.296 In this statement (referring to Exhibit "C") you said that you saw the Polish soldier fall backwards and his head struck the pavement, is that true?

A.296 I saw one soldier fall.

Q.297 Was that the soldier you saw on the ground outside of the cafe?

A.297 I do not know I did not look to see what soldier it was.

Q.298 How long after you saw the soldier fall did you see the soldier lying on the ground outside the cafe?

A.298 About 15 minutes later.

Q.299 The soldier that you saw fall - was there anybody near him when he fell?

A.299 I did not see that.

Q.300 Did you see anybody strike the soldier that fell?

A.300 Yes I saw that.

Q.301 Who struck him?

A.301 It was a Canadian.

Q.302 Is the Canadian that struck him the Canadian in Court, the accused?

A.302 No sir.

Q.303 Was it a Scottish Canadian that struck him?

A.303 Yes sir.

Questioned by the President.

Q.304 Why are you sure the Scottish Cdn that struck him is not the same one that is sitting here?

A.304 The one soldier that hit the other soldier I saw him last week.

Q.305 Are you sure it is not the same one that is sitting here now?

A.305 Yes sir.

Q.306 Do you know the name of the man who struck the Polish soldier?

A.306 No sir.

Q.307 Do you know what regiment he belongs to?

A.307 I have forgotten but I remember he had a green thing on his cap.

Q.308 Did he have a metal badge over the green thing?

A.308 On his cap he also had a large badge.

Q.309 Would you recognise him again if you saw him? If you saw that man now would you recognise him?

A.309 Yes but he is not in GHENT any more, he is at ZELLE.

Q.310 Why did you say that?

A.310 He told me that he was not going to be in GHENT any more.

Q.311 Was this man with the Scottish soldier who is sitting here when the fight took place?

A.311 No sir.

Q.312 Can you describe what he looks like?

A.312 He has dark hair, he is a tall person, he is broad.

Q.313 Did this Scottish soldier come to MAXIE's Cafe often?

A.313 Yes; before it was closed he came there every day.

Q.314 Can you remember the exact day he left to go to ZELLE?

A.314 No I do not remember that.

Q.315 About when was it?

A.315 It was last week.

Questioned by the Court.

Q.316 Was that other soldier that you mention about - was he in the office when you made that statement here?

A.316 No sir.

Q.317 Why in this statement do you say that you saw the soldier strike the Polish soldier and now you say that you did not see it?

A.317 They never asked me if there was any more.

Q.318 I am asking why did you say in this statement that you saw the soldier, Scottish soldier who is present in the office, who is the accused here now - you saw him strike the Polish soldier, you saw the Polish soldier fall out and now you say you did not see that?

A.318 I can not answer the question.

Q.319 Were you forced or threatened by somebody to make this declaration that you saw the accused hit the Polish soldier?

A.319 No no one said that to me.

Q.320 If you were not threatened why did you make that statement?

A.320 I did not know what I was saying.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

In the opinion of the Court and the Judge-Advocate it is not necessary for the Prosecution to call a witness to establish the statement referred to in the evidence of this witness.

Prosecutor - Mr President, I have now produced on behalf of the Prosecution all of the available witnesses with the exception of two Polish soldiers who are named in the Summary of Evidence. Yesterday the Defending Officer and the Court I believe decided they wanted to hear the evidence of the two Polish soldiers and they have been sent for and they should be here at any time but in view of the courts of this trial and what has happened here during yesterday afternoon and this morning I would like to ask the Court if they feel that they would still like to have these two witnesses produced. May I say at this time the two Polish soldiers do not help in any respect in so far as the question of identification is concerned and who actually struck the blow which resulted in the death of the Polish Cpl. I raise this now because I feel that unless the Court do wish these witnesses produced or the Defence do then I feel that on behalf of the Prosecution they can add nothing to the actual facts of this assault. So perhaps if the Court would indicate to my friend the Defending Officer as to what their wishes are perhaps we could be guided by that in the future course of this trial.

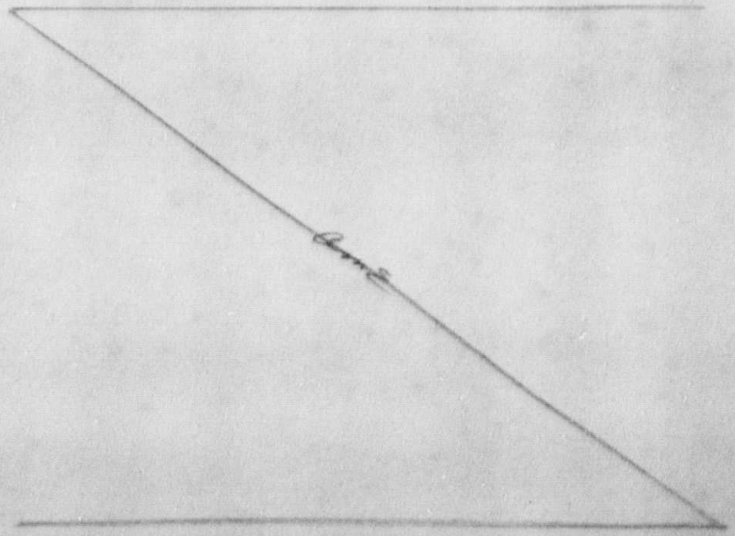
Judge-Advocate - You appreciate that the Defending Officer has the right to demand the attendance of these two witnesses due to the fact that the two Polish soldiers are witnesses to the Summary of Evidence and that you may be required to make them available to the Defending Officer for cross-examination.

Defence - I do not require the two Polish soldiers for my case.

President - In view of the statement of the Prosecuting Officer and the Defending Officer the Court feels that we do not require the two Polish soldiers to be required.

Prosecution - Then may I say, Mr President, that aside from the two Polish soldiers that is the case for the Prosecution and those are all the witnesses that we are able to call.

The Prosecution is closed.



THE DEFENDING OFFICER SUBMITS THAT THE EVIDENCE FOR THE PROSECUTION DOES NOT ESTABLISH A PRIMA FACIE CASE AGAINST THE ACCUSED.

I submit that no prima facie case bas been made out.

In a manslaughter case it must be shown among other things that there was a blow or some other unlawful act - that a blow was struck or some other unlawful act had been done and that the person who did this unlawful act is the accused.

I do not propose to examine the evidence of the witnesses in detail I shall merely say that the witness WESTERLINK and SECONDE have both stated that it was not DAVIS who hit the Pole who fell outside the door and one of them has stated that she did not see any blow struck at all against this particular Pole. It seems there was a fight in the corner of the Cafe and from the view which the Court had yesterday I think it is physically impossible for anybody in that corner to strike a blow so that a man would fall backwards outside the door. He would have to fall at 180° from where he was hit.

From that cursory examination of the evidence I submit that there is no evidence whatsoever that DAVIS is guilty of the charge of Manslaughter.

PROSECUTOR ANSWERS SUBMISSION BY DEFENCE OF NO PRIMA FACIE CASE

Mr President and gentlemen, this is a very serious case in the sense that a life has been taken and also from the point of view that a Canadian soldier is on trial here today on a very serious charge.

The evidence for the Prosecution in this case must necessarily depend upon the story of two civilian witnesses who as you know have been declared by the Court at my request to be hostile or adverse witnesses. You know the difficulty we have had in dealing with these witnesses, you have seen their manner and demeanor here and it is very much a question of what you can believe from what they said and what you believe they actually know. I must leave that entirely to you I know it is in a very unsatisfactory state. I think that the Prosecution has produced every available person, every civilian or soldier who could give any helpful facts on this incident. In so far as the identity of the deceased person is concerned I can not help but feel that you have been satisfied that the person who had been killed was Cpl RATAJ Jan.

It is purely for the Court to determine whether there has been sufficient here to satisfy that the accused person here, that DAVIS, was the man who struck the blow which resulted in the death of the Polish soldier.

It is purely a matter of fact and I must leave it to you.

JUDGE-ADVOCATE ADDRESSES THE COURT ADVISING ON SUBMISSION OF NO PRIMA FACIE CASE

Mr President, the Prosecution has presented its case and at this time the Defending Officer has made a motion that the Prosecution has not established a prima facie case and therefore the accused should be found not guilty at this time.

The definition of manslaughter is as follows:

"Manslaughter is the unlawful and felonious killing of another without any malice either express or implied."

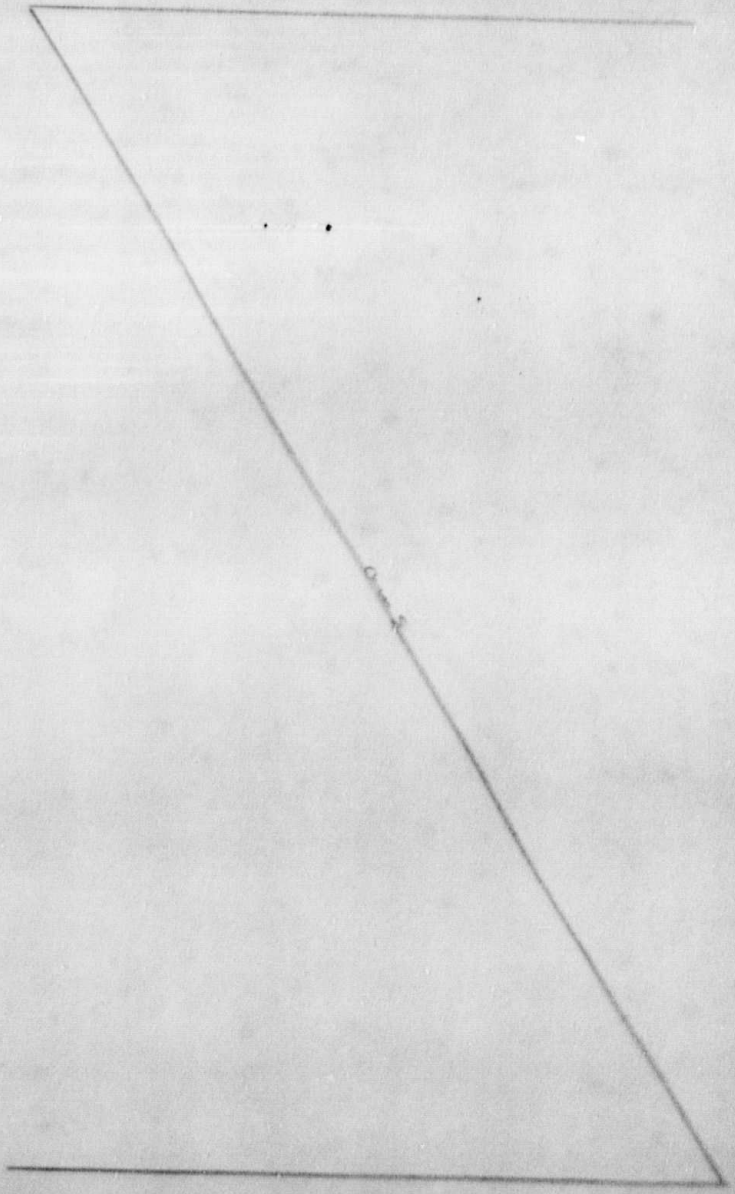
"The killing must be unlawful and not excusable or justifiable. It may be by poisoning, striking, starving, drowning, and a thousand other forms of death by which human nature may be overcome."

"It may be taken generally that in all cases where a killing, though not with malice, is nevertheless incapable of justification or excuse, it is manslaughter."

To establish whether or not a prima facie case has been made by the Prosecution it is not necessary for the Court at this stage to decide on credibility of witnesses. Nor need the Court decide whether the Prosecution has proved the accused guilty beyond a reasonable doubt. It is only necessary for the Court to determine that there is some evidence to support the charge laid and upon which if uncontradicted the Court could convict, that is more than a scintilla of evidence which supports the charge. The Court as I have said may believe everything they have heard to date the sole question before the Court now is is there or is there not a prima facie case of manslaughter.

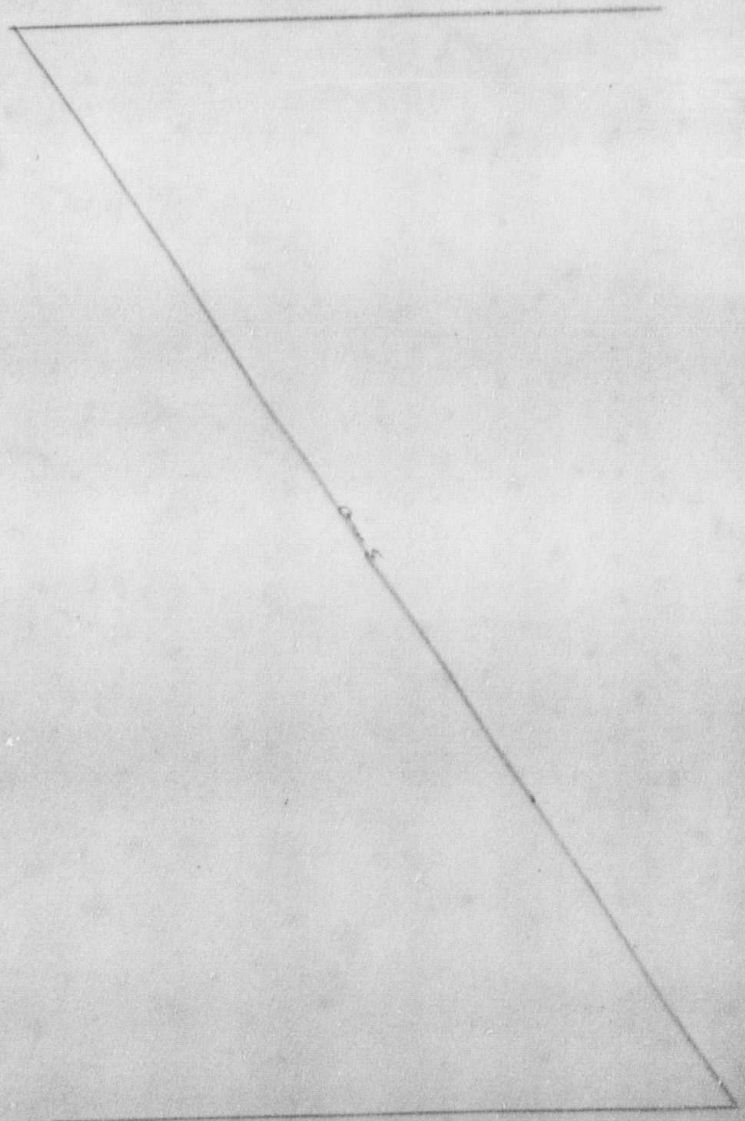
The Court is re-opened, and the President announces that the submission is allowed on the First Charge.

Private DAVIS the submission by the Defending Officer has been allowed. You are therefore not guilty of the First charge of Manslaughter.



OFFICERS UNDER INSTRUCTION

Lieut G PREVOST, R de Mais, 10 CBR Bn
Lieut B DUFOUR, Fus MR, 10 CBR Bn
Lieut F W CUTHBERTSON, RHC, 10 CBR Bn
Lieut A G DECELLES, CIC, 10 CBR Bn
Lieut P E DEFOY, CIC, 10 CBR Bn
Lieut J E CHAISSON, CIC, 10 CBR Bn
Lieut C O'DOWD, CIC, 10 CBR Bn
Lieut P R TREMBLAY, CIC, 10 CBR Bn



WESTERLINCK Maria
dienster.
Geboren te Ledeberg, op 9.8.1927
Binnenweg, 55
Ledeberg.

Gent, den 2 februari 1945.

De ondergeteekende Westerlinck Maria verklaart dat zij als dienster, op 30 Januari 1945 omstreeks 9¼ uur 's avonds, in het café MAXIE'S aanwezig was.

Er waren ongeveer 20 soldaten in het café, als ook twee burgers en een ~~sold~~ belgisch soldaat.

Onder de soldaten heb ik 4 à 5 Amerikanen bemerkt, alsook 6 soldaten van het ARGYLL AND SUNTHERLAND-CANADA regiment.

Ik zat aan de kachel en hoorde de canadeesche schot die ik heden op het bureel zag, aan de belgische soldaat vragen of hij van de politie was.

Ik hoorde de belgische soldaat van "neen" antwoorden en hij zegde dat de twee burgers geheime agenten waren.

Daarop heb ik de schot een handslag op het gezicht van een der 2 burgers zien geven. Die burgers hebben niets geantwoord en de belgische soldaat is buitengegaan.

Ik hoorde de schot reggen "I am sorry".

Daarna heb ik dezelfde schot coquoe uit een flesch zien drinken, maar ik weet niet of het zijne flesch was of van een kameraad.

Ik heb 2 poolsche soldaten zien binnenkomen en dezelfde schot ging met deze personen aan het vechten.

Twee andere soldaten van de ARGYLL AND Sunterland regiment hebben de vechtenden gescheiden, waarop de 2 polen weggegaan zijn.

Na eenige minuten zag ik een ander poolsch soldaat binnenkomen, en dezelfden schot viel die man aan.

Aan de buitendeur binnen in het café is een schuitsel aangebracht. Ik zag dat de schot de poolschen soldaat er achter drumde en tegen vocht.

Een canadeesch soldaat heeft ze willen scheiden maar de schot had nog de tijd om de poolschen soldaat een hevigen vuist slag in het gezicht toe te brengen.

Daarop heeft de schot de deur dicht gedaan en dat hij zijn spelt en wintermantel moest terug hebben.

Iedereen die wilde buitengaan werd door den schot afgetast.

Wij hebben het café verlaten en hebben niets meer gezien

Maria Westerlinck

COPY

TRANSLATION OF FLEMISH STATEMENT.

WESTERLINCK Maria,
barma id,
Binnenweg, 55,
Ledeberg,
born in Ledeberg, on 9th. August 1927.

Ghent, 2nd. February 1945.

The undersigned WESTERLINCK Maria declares that she as barmaid, was present in the bar "MAXIE'S" Kleine Statiestreet, 13, Ghent, on 30th. January 1945, at 9½ o'clock in the evening.

About 20 Canadians soldiers were in the bar, six of them appertained to the "ARGYLL AND SUNTHERLAND CANADA" regiment. I saw also 4 à 5 American soldiers, one belgian soldier and two civilians.

I sat down near the fire and heard that the canadian scottish soldier, who at this moment is present in the bureau, asked at the belgian soldier if he was of the police. I heard the belgian soldier answering "NO" and he said th at the two civilians were of the secret police.

I saw that the above scottish soldier gave a slap on the face of one of the two civilians. The civilians didn't answer and the belgian soldier went out. I heard the scottish soldier saying: " I AM SORRY ".

Thereafter I saw this scottish soldier drinking cognac of a bottle, but I don't know if it was his own bottle of well one of his friend.

I saw two polish soldiers entering the bar, and the scottish soldier fighted with them. Two soldiers of the "ARGYLL AND SUNTHERLAND CANADA" regiment separated the fighters, and the polish soldiers went out.

Some minutes after, another Polish soldier came in and immediatly the scottish soldier fought with him. A [illegible] went backwards, as he was obliged by the fighters, I saw that the scottish soldier gave a violent blow at the polish soldier. The scottish soldier shut then the door and said that he must have his badge and his overcoat. Everyone who wanted to leave the bar, was examined by the scottish soldier.

Thereafter we left the bar and saw nothing more.

(Sign.) Maria WESTERLINCK.

I hereby certify that the above is the true translation of the flemish statement, which I obtained from WESTERLINCK Maria on the 2nd. February 1945.

Gaston Van den steene.
Interpreter.

KLEIN STATIESTRAAT
MANIES.
CAFE
VICTORIA
CAFE
VLAANDEREN STRAAT.
N.
E

SECONDE Marie.
born in Wetteren, 8-7-1927.
dienster:
Binnenweg, 78, Ledeberg.

Gent, 2 februari 1945

De ondergeteekende Seconde Marie, verklaart dat zij ~~op~~ als dienster, op 30 Januari 1945, omstreeks 9½ uur 's avonds, in het café MAXIE'S aanwezig was.

Er waren ongeveer 40 soldaten in het café alsook 2 burgers. Deze laatsten stonden aan den toog.

Ik heb gezien dat de schotschen soldaat aanwezig op het bureau, tegen 2 poolsche soldaten gevochten heeft die binnenkwamen. Ik heb tusschenbeide willen komen, maar zonder resultaat.

Dan zag ik twee soldaten van het ~~Res~~ ARGYLL AND SUTHERLAND CANADA regiment, tusschenkomen die de vechtenden gescheiden hebben. De eene soldaat was groot en den ander kleiner. Zij zegden van 's anderendaags terug te komen, hetgeen zij niet gedaan hebben.

Ik stond aan ~~de~~ dezelfde buitendeur ~~die openstond~~ en de bovenvermelden schot, deze deur toeverpende stond ik op straat en zag den poolschen soldaat ten gronde liggen. Ik zag dat hij uit zijn mond, neus en ooren bloedde.

Ik zag twee andere soldaten en vroeg hun op zij Polen waren. Zij antwoordden van "ja.

Ik zegde hun: dat den canadees die den poolschen soldaat geslagen had in het café was, waarop ~~de twee~~ een van de twee polen zijn revolver nam, hem laadde, en mij vroeg waar dien "BOCHE" was. Ik ben terug binnen gegaan in het café, mij onangekleed en maar kins gegaan.

Ik heb gezien dat bovengenoemden schot een vuistslag aan ~~den~~ eenen binnenkomenden poolschen soldaat gaf. Gezien de buitendeur openstond viel de man achterover op ~~de~~ straatsteenen.

Seconde Marie Louise

TRANSLATION OF FLEMISH STATEMENT.

SECONDE Marie,
Barmaid,
Binnenweg,78,
Ledeberg.
born in Watteren, on 8th. July 1927.

Ghent, 2nd. February 1945.

The undersigned SECONDE Marie, declares that she as barmaid, was present in the bar " MAXIE'S " kleine Watiestraat, 18, Ghent, on the 30th. January 1945, at about 9½ o'clock P.M.

About 40 soldiers were in the bar. Also two civilians who stood near the counter.

I have seen that the scottish soldier who is now present in the bureau, fought with two polish soldiers, as soon as these men entered. I tried to separate them, but it was no possible. I saw then that two soldiers of the " ARGYLL AND SUNTHERLAND CANADA "regiment separated the fighters. One of these two soldiers was a tall man, the other a small one. They said me they came back the following day, but I didn't see them.

I saw the same scottish soldier giving a blow at another polish soldier, who just entered the bar. As this polish soldier didn't have the time in order to shut the streetdoor, he fell backwards, his head struck the pavement.

As I was also standing at the open streetdoor, and that the scottish soldier shut this door violently, I steped into the street and saw the polish soldier lying upon the ground. I saw that he was bleeding from mouth, nose and ears.

I saw two other polish soldiers and asked them if they were polish. They answered " YES ". I said them that the canadian soldier who gave the blow at the polish soldier, was in the bar. At this answer, one of the two polish soldiers took his pistol, loaded it and asked me where this " BOCHE " was.

I returned into the bar, took my overcoat and went home.

(Sign) SECONDE Marie.

I hereby certify that the above is the true translation of the flemish statement, which I obtained from SECONDE Marie on the 2nd February 1945.

.....

Pastor Van den abeele.
Interpreter.

SUMMARY OF EVIDENCE

In the case of D-88312 Pte Lorne Dewey DAVIS, (Tor Scots) on the strength 42 Coy, 10 CBR Bn, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this evidence is taken on oath.

FIRST WITNESS PROSECUTION

Major J.D. Duffin, RCAMC, 2 Cdn Gen Hosp, Pathologist.

I certify that in my opinion the attendance of this witness is, owing to the absence of this officer on duty, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused, and is attached hereto and marked Exhibit "A".

.....
(G.E. Collins) Lieut.,
Officer detailed to take
Summary of Evidence.

I do not require the attendance of Major J.D. Duffin for the purpose of cross examination.

.....
(L.D. Davis) Pte D-88312

R.P. 4 (G) complied with.

SECOND WITNESS PROSECUTION

Seconde MARIE, Binnenweg 78, Ledeburg, Ghent, having been duly sworn states:

M-60043 Pte Radstaak J. att 2 Cdn L of C Provost, Ghent Det., having been duly sworn as interpreter.

I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd February 1945. (Statement produced with accompanying English translation duly certified by G. Van den Abeele, interpreter, and is attached hereto and marked Exhibit "B".)

Cross examined by the accused.

Q.1: I was fighting with two Poles in the corner of the cafe, was I not?

A.1: Yes.

Q.2: When you mention "Same Scottish soldier" do you mean me or a soldier with t he same Scottish uniform?

A.2: Same uniform, it was another soldier.

.....
(Seconde Marie)

R.P. 23 (b) complied with.

THIRD WITNESS PROSECUTION

Maria Westerlinck, Binnenweg 55, Ledebrug, Ghent, having been duly sworn states:

M-60043 Pte Radstaak J. att Ghent Det, 2 Cdn L of C Provost, having been duly sworn as interpreter.

Witness is shown statement purporting to be signed by her on 2nd February 1945 and interpreted by G. Van den Abeele and is asked by the officer detailed to take the Summary of Evidence. (Statement marked exhibit "C" and attached hereto.)

THIRD WITNESS CONT'D PROSECUTION

Cross examination of the witness by t he officer detailed to take Summary of Evidence.

Q.1: Is this the statement you gave to the Police on 2 Feb 45?
A.1: Yes.

Q.2: Is it a correct statement?
A.2: No, it is wrong.

Q.3: Why did you sign it at the time?
A.3: Because I did not have time to read it over, I had to leave right away.

Q.4: What changes do you wish to make with reference to the statement?
A.4: It was not the accused whom I meant was the one who fought with the Pole entering the cafe. It was anoth er Scottish soldier.

Cross examined by the accused.

Q.1: Where was I when this Pole was hit at the doorway?
A.1: I think you were at the counter. I saw you fighting once in the corner with one Polish soldier.

Q.2: What did I do after fighting in the corner?
A.2: I didn't see you do anything more.

.....
(Maria Westerlink)

R.P. 83 (b) complied with.

FOURTH WITNESS PROSECUTION

M-3823 L/Cpl Thomlinson W.N., 2 Cdn I of C Provost Coy.

I certify that in my opinion the attendance of this witnessis, owing to the exigencies of the service, not readily procurable, and a written statement signed by him has been read to the accused and is attached hereto and marked Exhibit "D".

.....
(G.E. Collins) Lieut.,
Officer detailed to take
Summary of Evidence.

I do not require th e attendance of L/Cpl Thomlinson for the purpose of cross examination.

.....
(I.D. Davis) Pte. B-88312

R.P. 4 (G) complied with.

The accused was cautioned as follows; "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but what-so-ever you may say or any evi dence you may give, will be taken down in writing and may be used as evidence", declines to give evidence and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of t hree (3) pages was taken down by me in the presence and hearing of the accused.

R.P. 4 (c)(d)(e)(f) and (g) have been complied with.

(G.E. Collins) Lieut.,
Officer detailed to take
Summary of Evidence.

This is Exhibit "A"
referred to in the
summary of evidence
in the case of
B-88312 Pte Davis L.D.

H Collins
offr detailed to
take the summary
of evidence.

A U T O P S Y R E P O R T

5088 Cpl ROTAJ Jon 10 Polish Rifle Regiment.

admitted	at	2130 hrs	30 Jan 45.
died at		0710 hrs	31 Jan 45.
autopsy	at	1600 hrs	31 Jan 45.

This Polish N.C.O. sustained an injury to the back of the head on the evening of 30 Jan. He was unconscious for 20 minutes. On admission to hospital he had signs of a fractured skull, and lumbar puncture showed bloody C.S.F. Death occurred, after the development of convulsions, on the morning of 31 Jan 45.

At autopsy the positive findings were confined to the head. On external examination there was no laceration or marking of any nature of the scalp. There was a large diffuse haematoma of the subcutaneous tissues and muscle of the scalp, discovered only after the latter was reflected. This measured 12 cm. in diameter and overlay the left parietal bone, being centred 6 cm. below the left parietal eminence. The calvarium was normal. There was a recent, diffuse, large, left sub-dural haematoma overlying the whole of the antero-lateral aspect of the left cerebral hemisphere and of its basal aspect in the middle fossa. The haematoma was made up of clotted blood having a total volume of approximately 120 C.C. There was a thin layer of blood overlying the antero-lateral aspect of the right hemisphere also. The tips of both frontal and both temporal lobes, as well as their under surfaces, exhibited severe contre-coup pulping and moderate contre-coup sub-arachnoid haemorrhage. A few small collections of blood were encountered elsewhere in the sub-arachnoid space. There was an area of recent haemorrhage in the left globus pallidus extending into the adjacent anterior limb of the left internal capsule, and measuring 2 cm. in greatest diameter. No other lesions were found in the brain, the structures beneath the tentorium being normal.

There was an "open-ring" type fracture of the base of the skull involving the bones of the middle and posterior fossae. It extended from the left parietal bone through the squamous plate and petrous portion of the left temporal bone, through the basic sphenoid and greater wings and body of the sphenoid bone, involving the sphenoid sinus. It reduplicated itself on the other side i. e. extended through the right petrous and squamous temporal, and the parietal bones as far as the occipital bone. The whole of the occipital bone at the level of the internal occipital protuberance formed the "open" or non-fractured part of the ring. There was haemorrhage into the mastoid air cells and middle ears on both sides with bilateral perforation of the ear-drums. No other significant lesions were encountered.

Anatomical Diagnosis.

1. (Violence to back of head)
2. Haematoma of scalp (left parietal)
3. Fractures of base of skull
4. Acute sub-dural haemorrhage (left)
5. Contre-coup sub-arachnoid haemorrhage and pulping of brain (tips of both temporal and frontal lobes)
6. Haemorrhage into globus pallidus and internal capsule (left)
7. Haemorrhage into middle ear cavities (bilateral)
8. Perforation of ear-drums (bilateral)

Summary.

Death was due to intra-cranial haemorrhage, brain damage and fractures of the skull resulting from a violent force applied to the left parietal region. This force was either a powerful blow from a moderately heavy blunt instrument or a fall with impact of the head against a solid object

(SGD) [illegible] Major RCAMC
Pathologist
2 Cdn General Hospital.

Statement of

M-3823 L/Cpl Thomlinson W. H.

At approximately 2145 hours on 30 January 1945 I was informed that a soldier had been hurt and was in the Victory Cafe, Klaine Straatstraat, Ghent. I went to this cafe and found an injured Polish soldier in the back of the cafe. He was bleeding from the mouth, ears and nose. I sent for an ambulance at once. On checking his pay book I discovered that he was 5080 Cpl. Ratay Jan, 10 Pol Mtd Rifles. The ambulance was slow in coming so I took the man to 2 Cdn General Hosp in my own jeep. When I asked the Victory Cafe proprietor how the Polish soldier came to be in the cafe, I was informed that he had been carried in from the street. ~~[illegible]~~. Maxie's Cafe is directly opposite the rear door of Victory Cafe.

W. H. Thomlinson L/Cpl.

Statement of: M-3823 L/Cpl THOMLINSON, W.H.

At approximately 2145 hours on 30 January 1945 I was informed that a soldier had been hurt and was in the Victory Cafe, Kleine Steentjestraat, Ghent. I went to this cafe and found an injured Polish soldier in the back of the cafe. He was bleeding from the mouth, ears and nose. I sent for an ambulance at once. On checking his paybook I discovered that he was 5080 Cpl. Rataj Jan, 10 Pol Mtd Rifles. The ambulance was slow in coming so I took the man to 2 Cdn General Hosp in my own jeep, when I asked the Victory Cafe proprietor how the Polish soldier came to be in the cafe, I was informed that he had been carried in from the street. Maxie's Cafe is directly opposite the rear door of Victory Cafe.

.....
W.H. THOMLINSON L/Cpl.

LIST OF WITNESSES

FOR THE PROSECUTION Seconde Marie, Binnenweg 78, Ledeburg, Ghent.
Westerlinck Maria, Binnenweg 55, Ledeburg, Ghent.
Major J.D. Duffin, RCAMC, Pathologist, 2 Cdn Gen Hosp.
M-3823 L/Cpl Thomlinson W.N., HQ, 2 Cdn L of C Provost Coy, Brussels.

FOR THE DEFENCE Nil.

LIST OF EXHIBITS

Exhibit "A" - Statement of Evidence, signed by Major J.D. DUFFIN, RCAMC, 2 Cdn Gen Hosp, Pathologist.

Exhibit "B" - Statement of Evidence, signed by Seconde Marie, Binnenweg78, Ledeburg, Ghent and translated by M-60043 Pte Radstaak J., 2 Cdn L of C Provost, Ghent Det.

Exhibit "C" - Statement of Evidence, signed by Maria Westerlink, Binnenweg 55, Ledeburg, Ghent, and translated by M-60043 Pte Radstaak J., 2 Cdn L of C Provost, Ghent Det.

Exhibit "D" - St atement of Evidence, signed by M-3823 L/Cpl Thomlinson W.N., 2 Cdn L of C Provost Coy.

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE, A COPY OF THE CHARGE SHEET, THE SUMMARY OF EVIDENCE, THE LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

L.D. Davis
(L.D. DAVIS) Pte B-88312

Summary of Evidence in the case of B-88312 Pte. Davis, [redacted] Toronto Scottish Regiment, on strength 10 Bn 2 CBA, a soldier of the Canadian Army overseas, charged with manslaughter.

By direction of the Commanding officer, the evidence is taken on oath.

First Witness. Major J. D. Duffin, RCAMC, 2 Cdn General Hospital, pathologist.

I certify that in my opinion the attendance of this witness is, owing to the absence of [redacted] officer on duty, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused, and is attached hereto and marked Exhibit "A"

George E. Coleman Lt

I do not require the attendance of Major J D Duffin for the purpose of cross examination

W. A. H. Davis

2nd Witness: Seconde Marie, Binnenweg 78, Ledeburg Ghent, having been duly sworn states through an interpreter, M-60043 Pte Radstaak J. att 2 Cdn L of C Prov (Ghent det), also sworn to interpret accurately:

I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd February 1945. (Statement produced with accompanying English translation duly certified by G. Van den Abeele, interpreter, and is attached hereto and marked Exhibit B)

Cross examined by the accused.

Q1 I was fighting with two Poles in the corner of the cafe, was I not?

A1 yes

Q2 when you mention "Same Scottish soldier" do you mean me or a soldier with the same Scottish uniform?

A2 Same uniform, it was another soldier.

Seconde Marie Louise

3rd Witness:

Maria Westerlink, Binnenweg 55, Hedeburg, having been duly sworn states through an interpreter, M-60034 Pte Radstaak J. att Fhmt Det 2 Cdn L of C Prov, also sworn:

Witness is shown statement purporting to be signed by her on 2nd February 1945 and interpreted by G. Van den Abeele and is asked by the officer detailed to take the summary of evidence - (Statement Marked Exhibit "C") attached hereto

Q1 Is this the statement you gave to the Police on 2 Feb 1945?

A1 yes.

Q2 Is it a correct statement?

A2 No it is wrong

Q3 Why did you sign it at the time?

A3 Because I did not have time to read it over, I had to leave right away.

Q4 What changes do you wish to make with reference to the statement?

A4 It was not the accused whom I meant was the one who fought with the Pole entering the cafe. It was another Scottish soldier.

Cross examined by the accused

Q1 Where was I when this Pole was hit at the doorway?

A1 I think you were at the counter. I saw you fighting once in the corner with one Polish soldier.

Q2 What did I do after fighting in the corner?

A2 I didn't see you do anything more

Westerlink Maria

Fifth Witness. M-3823 L/CPL Thomlinson W.N., 2 Cdn L of C Provost Coy, a

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable, and a written statement signed by him has been read to the accused and is attached hereto and marked. Exhibit "D".

George E. Collins Lt

I do not require the attendance of L/CPL Thomlinson for the purpose of cross examination.

[illegible]

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? you are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing, and may be given in evidence."

The accused declines to make a statement and reserves his defense.

I certify that the foregoing summary of evidence consisting of 6 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

G.E. Collins Lt
Off detailed to take summary

Field.
12 Mar 45

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is (allowed) as to the ~~charge(s), and~~ allowed on the FIRST charge(s), and that, accordingly, ~~the trial will proceed on the former, but~~ the accused is (not) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

~~D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence~~ yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans.....

you intend to call witnesses on your behalf?

Ans..... Are they witnesses as to character only? Ans.....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) ~~The Court is reopening.~~

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST charge(s) in respect of which the accused has been found Guilty, being subject to confirmation, will be promulgated later.~~(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

~~D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans.....

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 536. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which dated and signed by him and the JA, if any.(2)

(1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 363-366, Overseas RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Con 564. 2. RP 50. As to release from arrest by Convening Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B-88312 Pte Lorne Dewey DAVIS, Tor Scots, 10 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.B. 41	Not Guilty	Not Guilty	NOTED [signature] J.G. SHAGGE 7 BRIG COMD 2 CBRG.
2nd			
3rd			23 JUL 45
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 76 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Not Guilty

(Sgd) A M Eulestone Jr 19 Apr. 45 (Sgd) [signature] Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-88312 Pte Lorne Dewey DAVIS, Tor Scots, 10 CHR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 41	Not Guilty	Not Guilty	NOTED
2nd				
3rd				Sgd 'J G Spragge"
4th				(J G SPRAGGE)Brig Comd 2 C.B.H.G.
5th				
6th				23 Jul 45

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence of~~ ---------- ~~(beginning on date)~~ ---------- (1) "AKE"

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 76 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Not Guilty

(Sgd) "A M Ecclestone Lt," 19 Apr 45 (Sgd) "J F Taylor" Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd)

Date

Commanding

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ I. AB 160 52-13

COPY

FIELD GENERAL COURT-MARTIAL

CF A96 (In lieu of AF A4) 40/P & R/1944 (E44)

4.38B

Convened by Order of Brig G S N GOSTLING, ED Comd 2 CBRG dated 17 APR 45

RECEIVED 30 Jul 1945 JAG BRANCH CMHQ

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-88312	Pte	Lorne Dewey	DAVIS,	Tor Scots, 10 CHR Bn

Proceedings Reviewed "WMWS"
30 Jul 45
(Sgd)H.M.Gunter,Capt
Reviewing Officer JAG Branch CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 17, 18, 19 April 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/-

A1. The President, Members, ~~waiting Member~~, JA, ~~if any~~, and Offrs under instr, if any, assemble, and the "AKE" Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 43-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1415 hours trial commences. "AKE"

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused wanted to be tried by Canadian personnel because of being~~ "AKE" ~~presently by the CASF.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~M-600643 L/Cpl RADFORD~~ as Interpreter? Ans No

The Interpreter is sworn.(1) Do you object to K-70650 J/Sgt DAVIS as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 106. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 16, MML p 740.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J F TAYLOR, RHC,	10 CHR Bn
Member	Captain	G R ROBERTSON, K-4 List CIC,	10 CHR Bn
Member	Captain	G ROBICHAUD, K-4 List CIC,	10 CHR Bn
Judge-Advocate	Lieut	A M ECCLESTONE, A & SH of C,	Att HQ 2 CBRG
Prosecutor	Major	R F WILSON, Linc & Welld,	att 1 Cdn Disciplinary Centre.
Defending Offr	Major	P J OSLER, HCA, K-9	att 3 Cdn ROD.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dft p 2.)

A8. The accused B-88312 Pte DAVIS L D before arraignment makes(s) ~~(no)~~ (a) plea "AKE" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 106(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 162, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposite, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ "AKE" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*h*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First charge(s).(2) The Court "AME"
is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission "AME"
~~is disallowed on the .....~~ charge(s) and allowed on the First "AME"
charge(s), and that, accordingly, ~~the trial will proceed on the former~~, but the accused is (~~are~~) found Not Guilty on
~~the other~~ charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. ~~President to accused : Your trial will now proceed with your defence (1). You may, if you wish, give evidence on~~ "AME"
yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2)
You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3)
But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4)
You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. .....
Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AR5. Evidence for accused as to his character should, if in any interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I "AME"
~~of the Schedule on "The Charge to Which Pleaded"~~. "AME"
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if guilty of Not Guilty, and states to the accused that the findings~~ "AME"
~~of the Court are the .....~~ First ~~charge or (in) subject to confirmation, will be promulgated later (1).~~ "AME"
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using~~ "AME"
~~Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. "AME" (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 68. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 157-159. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. As to release from arrest on Convening Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Medical Officers Certificate

I certify that I have this day examined B88312 Pte Davis L D

10 CBR Bn and in my opinion he is fit/~~unfit~~ to undergo trial by
"RHC"

Court Martial.

Station Field

Date 17 Apr 45

"R H Chalmers, Capt."
Medical Officer

10 CBR Bn
Unit

Medical Officers Certificate

I certify that I have this day examined B88312 Pte Davis L D "WS" 10 CBR Bn and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station Field

Date 18 Apr 45

"W Smith Capt"
Medical Officer

10 CBR Bn
Unit

Medical Officers Certificate

I certify that I have this day examined B 88312 Pte Davis, L D

and in my opinion he is fit/~~unfit~~ to undergo trial by
"RHC"

Court Martial.

Station Field

Date 19 Apr 45

" R H Chalmers Capt."
Medical Officer

10 Bn 2 CBRG
Unit

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2893.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 3(b)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy or item of original see KR Can 560. As to certified copies of regimental books see AA 152 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 93(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 709.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-88312	Pte		Lorne Dewey	DAVIS	Tor Scots, 10 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Apr 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable that the trial be held within the period specified~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~The undermentioned officers (the Judge-Advocate being first duly sworn or affirmed) are detached for the said Court and are attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)			(Unit.)
Major	J J TAYLOR,	RHC,	10 CBR Bn

(Must be named. RP 106.)

MEMBERS.

(Rank.)			(Unit.)
Captain	G R ROBERTSON,	X-4 List CIC,	10 CBR Bn
Captain	G ROBICHAUD,	X-4 List CIC,	10 CBR Bn

(Named or detailed. RP 106.)

WAITING MEMBER.

(Rank.)		(Unit.)

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

(Rank.)		(Unit.)
Lieut	A M ECCLESTONE, A & SH of C, Legal Offr, att HQ 2 CBRG	

(Must be named, if any. RP 106.)

On Active Service in the Fd

in BELGIUM
(Country.)

Dat 17 Apr 45

"G S N Gostling"
(Signed personally. RP 105 fn 2.)
(G S N Gostling) Brigadier
(Rank.)
Commanding 2 CDN BASE RPT GP
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 98 (In lieu of AFA B) 40-P-A-S/1607 (H&S) (See overleaf for notes and notes for use on trial.)

On behalf of the JAG, Cdn Army Overseas, I approve the appointment of Lt A M ECCLESTONE as Judge-Advocate, the said Lt ECCLESTONE having legal qualifications.

"H H Griffin, Capt"
(H H Griffin) Capt, ADJA HQ 2 CBRG

C H A R G E S H E E T

The accused, B-88312 Pte Lorne Dewey DAVIS, (Tor Scots) on the strength of 42 Coy, 10 CHR Bn, a soldier of the Canadian Army Overseas

is Charged with

FIRST CHARGE
A.A. Sec 41

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MANSLAUGHTER

in that he

In the Field, at Ghent, Belgium on 30 Jan 45, unlawfully killed Cpl Rataj Jan, of 10 Polish Mounted Rifles, Polish Army.

"D Y Patrick"
(D.Y. PATRICK) Capt.,
A/O.C., 10 C.H.R. Bn.

In the Field
31 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"G S N Gostling"
(G S N Gostling) Brig
Commander
2 Cdn Base Rft Gp

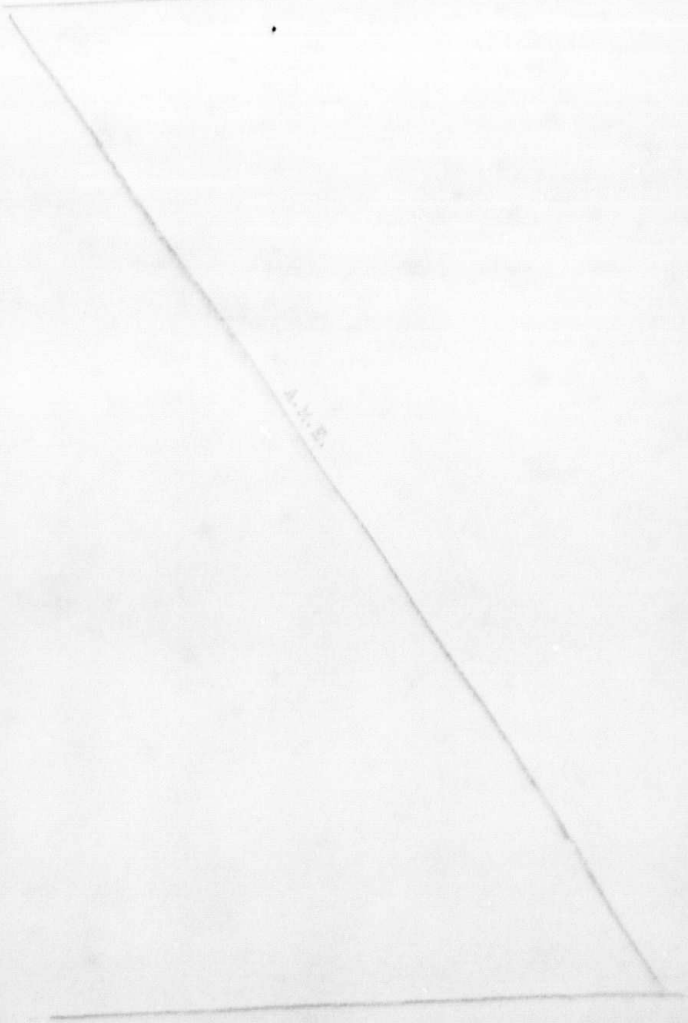
In the Field
17 Apr 45

PROSECUTOR MAKES AN OPENING ADDRESS

The facts in this case will be fairly well placed before the Court by any one of the first witnesses called by the Prosecution so that I believe it is sufficient for me to say at this time that the Prosecution will establish that on the night of 30th Jan 45 a sort of a cafe brawl took place in a spot known as Maxie's Cafe here in the city of GHENT.

This affair was immediately in front of the doorway or exit leading to the street. By reason of what went on there a Polish Soldier was struck and was knocked to the pavement and he subsequently died.

I have had a sketch made for the benefit of the Court. I will have that sketch produced in order that direction and location will be established and I trust that this will be satisfactory.



FIRST WITNESS - For the Prosecution - duly sworn
Seconde MARIE, Binnenweg 78, Ledeburg, GHENT.

(Evidence through Flemish Interpreter)

Q.1 You are Seconde MARIE?

A.1 Yes Sir,

Q.2 Do you know the Cafe known as Maxie's here in the city of GHENT?

A.2 Yes sir,

Q.3 Were you at Maxie's Cafe on an evening late in Jan 45?

A.3 Yes sir.

Q.4 Do you know the date?

A.4 I cannot remember the date.

Q.5 Can you give us the date?

A.5 All I can say is that it was in January.

Q.6 Do you know the accused soldier DAVIS over here?

A.6 Yes I saw him there.

Q.7 Was he at Maxie's Cafe on the night late in Jan that you are talking about?

A.7 Yes I saw him.

Q.8 Were there other soldiers in Maxie's Cafe that night?

A.8 Yes there were lots of soldiers.

Q.9 Do you know from what regiment the accused person is?

A.9 No I do not.

Q.10 Do you know the regiment of any of the soldiers that were there?

A.10 I have forgotten what was on their shoulders, there were English soldiers there as well.

Q.11 You say English soldiers, do you mean English soldiers as compared to Scottish soldiers?

A.11 There were English soldiers, Scottish soldiers and Belgian soldiers.

Q.12 Now what did you see happen in front of the doorway leading out of Marie's Cafe that night?

A.12 I saw that they were fighting.

Q.13 Did you see any Polish soldiers there in front of the doorway that night?

A.13 I saw Polish soldiers going to come in.

Q.14 How many Polish soldiers.

A.14 One or two.

Q.15 And did they come in Maxie's Cafe?

A.15 I saw them open the door.

Q.16 And then what happened?

A.16 There was a Scottish soldier sitting inside who was "Zig-Zag". He went to the door and he fought. I then went outside and I saw on the ground outside a Polish soldier lying down. I saw two other soldiers outside, I saw that he was bleeding.

Q.17 Where was he bleeding?

A.17. On his nose and his ears.

Q.18 And were there any more Polish soldiers other than this one there then?

A.18 No there was just one lying on the ground.

Q.19 Now you have told the Court that there was a Scottish soldier in Maxie's Cafe who was "Zig-Zag" and who went to the door and was fighting there with this Polish soldier?

A.19 You have the door and there is a corner.

Q.20 Yes, now who was fighting with the Polish soldier?

A.20 I saw the Scottish soldier who is sitting here fight with the Polish soldier.

Q.21 Is it the accused soldier that you have identified here?

A.21 I saw him fighting.

Q.22 With the Polish soldier?

A.22 Yes in the corner.

Q.23 In the corner, is that in front of the doorway in that building?

A.23 There is the door and there is a little place behind that where there is one table.

Q.24 Did you see him, did you see this Canadian soldier or the Scottish soldier as you have called him, fighting with the Polish soldier at the doorway?

A.24 I saw that he had been fighting.

Q.25 I ask you again did you see the Scottish soldier that you have identified here fighting with the Polish soldier in front of the doorway?

A.25 I saw them fighting in this corner

Q.26 Can you answer that yes or no?

A.26 All I can answer is that I saw them fighting in the corner

Prosecutor - May I ask the permission of the Court to cross-examine this witness and put leading questions to her. This is very material and I would like to know therefore if I may treat this witness as hostile?

Defence - From what the evidence has been so far it is too early to decide this question. She has merely stated one thing three times reframing it and I do not think that constitutes a hostile witness.

Prosecutor - I am prepared to argue that with my friend. It is not a question as to whether the evidence is favourable or not. I do not produce this witness for that.

I can go on and establish this fact. This witness is a very material witness or I would let that matter drop and establish it through somebody else but I am not in that position. I do need the permission of the Court as this is my witness and I can not cross-examine her and I can not put leading questions to her. It is more than the duty of the Prosecution to produce some one just because they are favourable or unfavourable. I am prepared or ready to cross-examine this witness if the Court will give me such permission.

Judge-Advocate - I think the witness should withdraw.

Witness withdraws.

Prosecutor - The question here is one of the statements made by the witness, Seconde MARIE, whom we have just had in the witness box and on behalf of the Prosecution. I have of course statements that the witness has made and I have tried to bring out from her in direct examination the facts that she has already stated. That direct examination of mine fails to bring out here those facts. Now without the permission of the Court I can not go on and put leading questions to this witness and I can not cross-examine her but it is a matter solely within the descretion of the Court as to whether or not I can be permitted to do that.

I can illustrate that by saying that I have a Flemish statement made by this witness. I can not as the Prosecution present it to this witness and say "is that what you said"? By so doing I impeach the credit of my own witness.

The Court being cognisant of the facts at this time decide whether I am permitted to act on that now or whether you feel something more can be done by way of direct examination. Now that goes even farther, if that does not establish the facts that she has already stated, with your permission I can call other evidence of the circumstances surrounding this statement which I propose to do with your permission. I can appreciate that there is some law there which you may like to consider but I feel that it is important and material and I do not want to leave it unless you so desire.

Defence - This witness has not shown herself to be hostile. It is for the descretion of the Court whether or not the Prosecution may ask leading questions and so on but the basis of the thing is that the witness is hostile, that I do not think has been shown.

The Court is closed to consider the request of the Prosecution.

The Court is reopened. The Court has disallowed the submission at this time of the Prosecuting Officer. The Court feels that there is not sufficient evidence before it to say that this witness is acting in a hostile manner. If after further evidence it is considered that she is acting in a hostile manner the matter will be considered again.

Prosecutor - Will the Court permit me to carry on further examination or put to her leading questions. That is the question that should be decided here not as to the hostility of this witness at this point?

JA - The Court feels, Maj WILLSON, that questions should be asked in either a yes or no answer.

FIRST WITNESS - For the Prosecution
Seconde MARIE - is recalled.

JA - will you warn this witness that she will answer these questions with a yes or no answer. That is if she is asked for a yes or no answer she will give a yes or no answer.

Q.27 I want to ask you another question about what you saw at the doorway when the Polish soldier entered Maxie's Cafe. Did you see, did you not see the accused person, DAVIS, fighting with the Polish soldier in front of the doorway of Maxie's Cafe?

A.27 I saw the soldier fighting in the corner of Maxie's Cafe with the Polish soldier.

Prosecutor - I am going to ask the Court that it is important that they go down and see the interior of Maxie's Cafe and the area where this incident occured but that still is not helpful at this moment.

Perhaps we need not go further there. I do not oppose the fact that there is a little nook around a table there that she is talking about. I submit that we do not need to go into the question.

Q.28 Did you see Polish soldiers in the Cafe on more than one occasion that night?

A.28 No I only saw them enter once.

Q.29 And how many Polish soldiers did you see enter at that time?

A.29 First one came in and then two come in.

Q.30 Now, where was the accused person, DAVIS, standing when the one Polish soldier entered Maxie's Cafe?

A.30 (No answer)

Q.31 Where was DAVIS standing when you saw the one Polish soldier enter the Cafe?

A.31 He was a prisoner then.

Q.32 What do you mean "he was a prisoner then"?

A.32 The police had already taken him away.

Q.33 Where was DAVIS standing when two Polish soldiers entered the door?

A.33 That was a week later.

Q.34 You have told the Court that on this night two Polish soldiers and then one Polish soldier entered. Now is that all on the same night?

A.34 No it is not on the same night.

Prosecution - May I have permission of the Court to have the statement made by this witness and ask her if she recalls making this statement. I have an additional Flemish witness and will put it to her through the interpreter who took it.

JA - Is he present?

Prosecution - Yes.

Defending Officer - On that point may I make a submission. I think it is in the interest of all that her mind should be directed to the evening in question using the statement for that purpose only and so much of the statement that will make that clear only. I feel that we are getting nowhere but to use the statement to bring out what occured on that evening is quite improper until the Court agrees that she may be treated as a hostile witness.

Prosecution - The difficulty is that the Court have no way of knowing these facts unless I am permitted to produce this statement.

For instance the Court still do not know what my examination is directed to and can not unless I am permitted in some way to establish that. That is all I should say on it.

JA - the statement you are referring to is the one made on 2 Feb 45?

Prosecution - That is right.

JA - this witness has already told us she saw fighting at the door, she saw Polish soldiers come in - one or two.

Witness is withdrawn.

Prosecution - the statement which I would like to have permission to use contains these words, "I have seen the same Scottish soldier who is now present in the bureau fight with two Polish soldiers as soon as they entered. I tried to separate them but it was not possible. I saw then that two soldiers of the 'Argyll and Sutherland Canada' regiment separated the fighters. One of these two soldiers was a tall man, the other a small one."

Then the middle part. "I saw the same scottish soldier giving a blow at another Polish soldier, who just entered the bar. As this Polish soldier didn't have the time in order to shut the street door, he fell backwards, his head struck the pavement."

Those are the facts that I would like to question this witness on and you can see I am in difficulty unless some latitude is granted.

Defending Officer - I would merely like to draw to the attention of the Court that this witness is intentionally or not failing to give straight answeres to the questions. In other words there has been so much confusion. While this statement has been read I think the Court out to know at the same time that a further statement taken on the Summary of Evidence, a sworn statement, in which she states referring to the Scottish soldier giving a blow, was the "same uniform but another soldier". I think these two statements should be read together when you decide whether or not this witness may be treated differently. I believe you have the Summary there.

JA - It seems to me, Maj WILLSON, that this is one of the most essential points of the whole case. So far the evidence of this witness stated that she saw fighting at the door, she saw Poles going to come in, one or two, she saw him open the door, the Scottish soldier was "Zig-Zag" went to the door and fought and that she saw the Polish soldier lying on the ground. It seems that this witness is not hostile sufficient to allow the producing of this statement.

Prosecutor - As Prosecutor you know I am bound to be fair. I do not want to have included here anything that is prejudicial to the accused person and should not be properly admitted. I suggest that this is not a question of anyone refreshing their memory. The statement that I read to you is to the effect that "I saw the same Scottish soldier giving a blow to a Polish soldier." As I have told you I can establish the circumstances under which this statement was taken and who was in the bureau at the time and who was seated and what was done to make the witness familiar with the fact that the accused person was DAVIS and that he was the only person sitting in the room.

The Court is closed to consider this question.

The Court is reopened.

FIRST WITNESS - For the Prosecution is recalled.
Seconde MARIS

Q.35 On the night of the 30th of Jan 45 at Maxie's Cafe do you know whether or not if any soldier there lost his coat or his badge or other equipment?

A.35 Yes I do.

Q.36 Who lost some equipment there that night?

A.36 The soldier that is sitting there, the Scottish soldier.

Q.37 That is the accused?

A.37 Yes sir,

Q.38 What did he lose?

A.38 He had lost his badge that he has on his cap.

Q.39 Anything else that you know of?

A.39 No.

Q.40 And what was he doing because of that?

A.40 He locked the door.

Q.41 And what did he do at the doorway?

A.41 He asked and felt to see if any soldier had his badge.

Q.42 Who did he feel and see if any soldier had his badge?

A.42 The Scottish soldiers.

Q.43 Do you know whether or not the door was open or closed leading to and from Maxie's Cafe?

A.43 He closed the door and stood in front of it.

Q.44 And what did he do then when the Polish soldiers entered?

A.44 How do you mean,"whe n the Polish soldiers entered"?

Q.45 When the Polish soldiers came into the cafe what did the accused do?

A.45 He offered to fight with the Polish soldiers at the door, there is a door and there is a corner.

Q.46 And what did you see him do at the doorway?

A.46 I saw that he was fighting.

Q.47 Do you know who he was fighting with?

A.47 He fought with the Polish soldiers.

Q.48 And then what happened to the Polish soldier.

A.48 When he was fighting with the Polish?

Q.49 Yes.

A.49 I went there and went in between them.

Q.50 And then what happened?

A.50 And then another two soldiers came over and took them apart.

Q.51 And what happened from then on?

A.51 I then went out on to the street and I saw a Polish soldier lying on the ground.

Q.52 Do you know how the Polish soldier came to be lying on the ground?

A.52 I could not exactly say how the Polish soldier came to be lying on the ground.

Q.53 Did you see anyone strike the Polish soldier?

A.53 No I never saw that.

Q.54 Are you sure of that? Are you sure that you did not see someone strike the Polish soldier?

A.54 When they took him away?

Q.55 Did you see anyone strike the Polish soldier in what you have called the corner of that cafe?

A.55 I saw that Scottish soldier fight there.

Q.56 And did you see that Scottish soldier strike the Polish soldier there?

A.56 I just saw them fight.

Q.57 What did the Polish soldier do then after this fight?

A.57 Was that the Polish soldier that fought?

Q.58 Yes.

A.58 There is soldiers that took him outside so that he would go away.

Q.59 Was he able to walk out?

A.59 I did not see that.

Q.60 Did you see the Polish soldier back out of the doorway?

A.60 No I never saw that.

Q.61 You did not see a Polish soldier back out of the doorway and close the door behind him at any time that night?

A.61 No I never saw that.

Q.62 Did you see a Polish soldier fall backwards through that doorway at any time that night?

A.62 No sir.

Q.63 Do you know how the Polish soldier that you saw lying in the street came to be there?

A.63 No I do not know. When I came outside I saw him lying on the street.

Q.64 Then you did not see this Scottish soldier strike a blow at any soldier that night?

A.64 I just saw that he was fighting.

Q.65 Did you see him strike anyone?

A.65 No I did not see him hit.

Q.66 Did you see the accused strike any Polish soldier there that day ?

A.66 I did not see that.

Prosecutor - I think that is as far as I can go unless the Court feels- if you feel that it is a question of this witness actually not knowing then it is not a question of granting me any leeway. If you feel that if at one time this witness did feel differently about this I should like to continue.

Defence - I do not wish to add any more objections because I feel that this witness either does not know or either has probably forgotten or never knew what happened. I do not wish to make any more objections or suggestions as to changing the method of the Prosecution's questioning here.

Prosecutor - Probably this may be cleared up if my friend goes on and cross-examines her and the Court may wish to recall her later if you feel that any advantage may be gained in that way.

Defence - In that respect the witness has not given any material evidence whatsoever against the accused. By cross-examining I would be sticking my neck out and I would rather leave any cross-examination until the Prosecution is finished rather than cross-examine and leave it open.

JA quotes from Archbolds - Hostile witness:

"A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. To be inconsistent within the meaning of the section the statement need not be directly or absolutely at variance. The word 'adverse' in this section means 'hostile', and not merely 'unfavourable'. The discretion of the Judge to give or refuse leave to cross-examine the party's own witness, however hostile he may be, is absolute. If the witness appears evidently to be hostile to the party who has called him, counsel may put leading questions to him, having first obtained permission of the Court to do so."

Prosecutor - May I say that you can not determine whether this witness is hostile or not at this time. How can the Court determine whether this witness is hostile until I bring the facts before the Court. I have asked you for permission to use this statement and you say that there is no grounds for using this statement as yet. I asked for permission to call a witness to state that what this witness is saying is not the truth, that she has stated otherwise.

JA - my advice to the Court is that this can not be done unless the Court is satisfied that this witness is adverse. You are now asking permission to prove that she is hostile.

Prosecutor - I am asking you to open the door a little bit and I will show you.

The Court is closed

The Court is reopened - President announces Court will adjourn until 1000 hrs 18 Apr 45.

Court re-assembles 1000 hrs 18 Apr 45 - is re-opened.

The First Witness, Seconde MARIE, being not available the Prosecution on the direction of the Court proceeds to call other witnesses.

SECOND WITNESS - For the Prosecution - duly sworn.
Maria WESTERLINK, Binnenweg 55, Ledebrug, GHENT.

(Evidence through Flemish interpreter)

Q.67 You are Maria WESTERLINK?

A.67 Yes sir.

Q.68 Do you recognise the accused soldier here in Court today?

A.68 Yes, witness indicates the accused.

Q.69 Were you in Maxie's Cafe in the City of GHENT on an occasion when he was there?

A.69 Yes sir.

Q.70 What day was that?

A.70 30th of Jan 45.

Q.71 At about what time?

A.71 Between 9.15 and 9.30 PM

Q.72 And were there many Canadian soldiers in Maxie's Cafe that night?

A.72 Approx 20 Cdn soldiers.

Q.73 Did you see some Polish soldiers in that Cafe that night?

A.73 Yes two Polish soldiers.

Q.74 What did you see happen so far as these Polish soldiers are concerned?

A.74 Before the two Polish soldiers came in Davis was fighting with two Belgian civilians. He then fought

with the Polish soldiers at the door of the Cafe.

Q.75 And what happened to the Polish soldiers?

A.75 Two of the A & SH of C took them apart.

Q.76 And then?

A.76 Then one Polish soldier came back in again and DAVIS started in to fight with him again. If DAVIS put him outside or hit him outside I could not say. DAVIS came back into the Cafe and said that he had lost his coat and his badge and that he wanted it back. That is all I saw.

Q.77 Did you see the Polish soldier outside afterwards?

A.77 No sir.

Q.78 Do you know anything about DAVIS' coat or hat badge?

A.78 I do not know if DAVIS got his coat or his badge back, everyone was asked if they knew anything about it?

Q.79 Who asked everyone?

A.79 DAVIS himself.

Q.80 Where was DAVIS standing?

A.80 At the door

Q.81 Now do you know the Argyle and Sutherland Highlanders hat badge, cap badge ?

A.81 Witness produces A & SH of C hat badge from purse.

Q.82 Now do you know what kind of a hat badge DAVIS wore.

A.82 With a cross on it (indicates with her fingers)

Q.83 Is there any doubt in your mind as to the identity of this man DAVIS?

A.83 I did not know his name exactly, I know he was the man with the Polish soldiers.

Q.84 Now I want to review with you a moment the facts about these Polish soldiers. Is it true that Polish soldiers came into the Cafe more than once that night?

A.84 Twice, only twice.

Q.85 And the first time how many Polish soldiers came in?

A.85 Two.

Q.86 And then the second time how many Polish soldiers came in?

A.86 There came two in the second time and one of them was one of the first ones that came in..

Q.87 Did anything happen at the doorway that night?

A.87 In the cafe or outside?

Q.88 Either?

A.88 I saw nothing else except that the accused fought with the Polish soldier.

Q.89 And what did you see the Polish soldier do?

A.89 The Polish soldier fought back

Q.90 And then what happened?

A.90 The accused also fought.

Q.91 What did you see the accused do?

A.91 The accused fought with the Polish soldier when they came in.

Q.92 What happened after the fight?

A.92 The accused wanted his badge and his coat back.

Q.93 Did the accused person fight with the Polish soldier on more than one occasion there that night?

A.93 I just saw him fight twice with the Polish soldiers.

Q.94 And where abouts did he fight twice with the Polish soldiers?

A.94 At the door of Maxie's Cafe on the left hand side, that is where they fought.

Q.95 You did not go outside of Maxie's Cafe after you saw this fight then?

A.95 No I could not go outside the Cafe as he was standing in front of the door.

Prosecutor - I am in the same position with this witness as I was with the other witness and I do not know whether I can proceed further. I believe I have gone as far as I should unless the Court wishes to give me permission to use the statement or to do anything further with this witness.

I would like permission, depending on what your instruction was on this matter this morning, I would like permission either by way of introducing a statement made by this witness establishing her signature or calling another witness to produce her statement.

Defence - I would like to oppose that motion. I submit that the witness has apparently told a straightforward story this morning. There is no indication that she is in any way adverse or is doing anything else other than answering the questions put to her as well as she can. If the Prosecutor produces the statement, however, the evidence which she has given this morning is substantially the same as is written in her statement taken some time ago.

JA - A motion has been made by the Prosecutor for leave to introduce or to produce a statement purporting to be made by the witness and asks the Court for permission to cross-examine his own witness.

In establishing whether the witness is adverse my advice is that the Prosecutor should be allowed to introduce the statement and prove if he can if this is a statement made by the witness. The decision being left with the Court to determine whether that statement if proven shows that the witness is adverse. The Court must be careful that any evidence which is brought forward at this stage - to remember that it is not evidence against the accused but it is merely evidence in issue as to whether the witness is adverse to the Prosecution and the Prosecutor must not introduce in evidence in chief any

evidence made in that statement.

Defence - May I just make one point on that. In this statement before it is introduced as evidence it should also be shown that the evidence given verbally in Court is different from her statement.

JA - that is a matter for the Court to determine.

Defence - Oh yes but I would like that point to be very definitely established by the Court.

Q.96 Do you read Flemish as well?

A.96 Yes.

Q.97 Is that your signature at the bottom of that page?

A.97 Yes sir.

Q.98 Will you read that statement, not out loud, to yourself. Is that statement a statement made and signed by you on the 2nd of Feb?

A.98 Yes sir.

Q.99 And is that a true statement?

A.99 Yes sir.

Q.100 Now do you recall being interviewed by an officer once again regarding this DAVIS trial?

A.100 No I do not remember.

Q.101 Do you remember that on the 2nd of Feb you made that statement?

A.101 Yes

Q.102 And then about 12th Mar?

A.102 Yes by the Cdn Police

Q.103 And an officer?

A.103 Yes sir.

Q.104 Now do you remember that at that time this statement was shown to you?

A.104 Yes

Q.105 And the question was asked of you, "Is this the statement you gave to the Police on the 2nd Feb 45" and you answered "Yes"?

A.105 Yes

Q.106 And do you remember that the next question that was asked was, "Is that a correct statement" and your answer was, "No, it was wrong"?

A.106 There was a wrong word in it.

Q.107 Now what is the wrong word that is in it?

A.107 The Cdn Police asked me if this was the Scottish soldier that killed the Polish soldier.

Q.108 Yes and did you answer this?

JA - Just a moment Maj WILLSON. I do not want anything read out of that statement in open Court. I do not want any evidence read out that is prejudicial to the accused.

Prosecutor - I just want to get from this witness a yes or no and if she says she made this statement I will read it to you.

Q.109 The next question. The question here that was put to you was, "What changes do you wish to make with reference to that statement" and your answer was, "It was not the accused whom I meant was the one who fought with the Pole entering the Cafe, it was another Scottish soldier." Is that what you said?

A.109 Yes.

Q.110 Now you were questioned by the accused, "Where was I when this Pole was hit at the doorway?" and you answered "I think you were at the counter." "I saw you fighting once in the corner with one Polish soldier."

And, "What did I do after fighting in the corner?" and you answered, "I didn't see you do anything more."

Is that the statement that you made at that time? Is that the questions and is that the answeres you gave?

A.110 That is correct.

Q.111 Is that your signature?

A.111 Yes that is my signature.

Court is closed.

Court is re-opened - Court has found that the submission of the Prosecution has been allowed and the Prosecution may treat the witness as adverse.

Second Witness for the Prosecution is recalled.
Maria WESTERLINK,

Prosecutor - I take it that I may proceed to cross-examine her in any way regarding the facts in this matter.

Q.112 I show you a copy of the statement signed by you on the 2nd of Feb. And that is your signature there?

A.112 Yes sir.

Q.113 Now did you say on the 2nd of Feb, "Some minutes after, another Polish soldier came in and immediately the Scottish soldier fought with him. I saw that the Polish soldier went backwards as he was obliged by the fighters. I saw that the Scottish soldier gave a violent blow at the Polish soldier. The Scottish soldier shut then the door and said that he must have his badge and his overcoat."

Is that true?

A.113 Yes that is true.

Q.114 That is the Scottish soldier that you refer to here, that Scottish soldier there (pointing to accused)?

A.114 No that is not him.

Q.115 Is that the Scottish soldier who lost his badge and his overcoat?

A.115 Yes sir.

Q.116 Then what did you mean when you said, "The Scottish soldier shut then the door and said he must have his badge and his overcoat"?

A.116 He did lock the door, he had lost his coat and his badge.

President - Would you remind the witness that this is a serious case, someone has been killed, and that she is under oath.

Original Flemish statement produced by Prosecution is entered as Exhibit "A".

Prosecutor - I have examined this witness before I raised the question of her being a hostile witness and I went over the evidence with this witness up to the time of the incident in the Cafe. Now I have put before you the position of this witness in so far as this incident is concerned. Now I think that all the evidence is in material form.

Once my friend is through cross - examining this witness if he wishes to go further I would like if you permit me to call the witness or the interpreter who was there at the time that statement was made and give the circumstances surrounding the making of that statement.

JA - That is a witness that is not in the Summary of Evidence. If the Defending Officer will waive RP 76?

Defence - I will not object to that.

Prosecutor - I think that once the Court have become seized of these facts of the case that they will want to hear what evidence this further witness can give. I do not know whether your ruling that you have discussed covers the question of my calling any witnesses to deal with that but I would like to do that if you see fit.

Cross-examination by Defence.

Q.117 You say that you saw DAVIS fighting with the first two Poles who came into the cafe?

A.117 Yes sir.

Q.118 Did they fight in the corner near the door, or in the mouth of the door, in the door itself.

A.118 In the corner of the door.

Q.119 You said that when some Poles came back the second time there was another fight. Where did this fight take place in the Cafe?

A.119 The same place as they fought the first time.

Q.120 That is in the corner to the side of the door?

A.120 Yes in the corner at the side of the door.

Q.121 Were there any other Cdn soldiers near the door while the fights were going on?

A.121 No sir.

Q.122 While either fight was going on?

A.122 Just the one time when the two soldiers pulled them apart.

Q.123 Where were you standing in the Cafe when the first fight took place?

A.123 At the stove.

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Q.124 And when the second fight took place?

A.124 On the same place.

Q.125 Where is this stove in the cafe?

A.125 The centre of the cafe

Q.126 Is there a bar in the cafe?

A.126 Yes.

Q.127 How far is the stove from the bar?

A.127 Approximately one metre.

Q.128 As you face the bar at which end of the bar is the stove?

A.128 On the right hand side of the bar.

Questioned by Judge-Advocate

Q.129 What time did the Polish soldiers come into the cafe on the first time?

A.129 Approx 9 o'clock.

Q.130 Was there a fight at that time with the Polish soldiers?

A.130 No, the first time at 9.15

Q.131 Who was fighting at 9.15?

A.131 The accused with the two Polish soldiers.

Q.132 Where were they fighting?

A.132 On the side of the door in the corner of the cafe.

Q.133 Where any blows struck?

A.133 Who?

Q.134 Did the Poles strike any blows at the accused or did the accused strike any blows at the Poles?

A.134 The accused hit the Polish soldiers.

Q.135 What did the Polish soldiers do?

A.135 Nothing.

Q.136 Did they leave the cafe?

A.136 After they had been fighting they left the cafe.

Q.137 Did the A & SH of C soldiers stop that fight?

A.137 Yes.

Q.138 Did you see the Poles come back again that night?

A.138 I saw one Polish soldier come back.

Q.139 Did this one Polish soldier come in the door?

A.139 Yes sir.

Q.140 Did the accused fight with this one Polish soldier?

A.140 Yes.

Q.141 Where did they fight?

A.141 In the corner of the cafe by the door.

Q.142 How far from the door?

A.142 The door just as you come in at the left hand side.

Q.143 Was the door open or closed?

A.143 The door was open.

Q.144 Who was fighting there?

A.144 First it was a Scottish soldier, he went back near to the counter, then there was another Scottish soldier who put the Polish soldier outside.

Q.145 Was it the accused who put the Polish soldier outside?

A.145 No sir.

Q.146 When did you see the accused looking for his badge and coat?

A.146 The Pole was outside and then he closed the door.

Q.147 Who closed the door.

A.147 The accused closed the door.

Q.148 Was the accused there when the Pole was put outside?

A.148 I could not exactly say.

Q.149 How soon after you saw the Pole put outside did you see the accused close the door?

A.149 5 minutes after that he closed the door.

Q.150 When did you see the accused looking for his overcout and his badge?

A.150 He did not look for his badge or his coat he stood at the door and said that he had lost his coat and his badge.

Q.151 Did he examine any soldiers to see if they had his badge and coat?

A.151 No he just looked through us.

Q.152 Who do you mean by us?

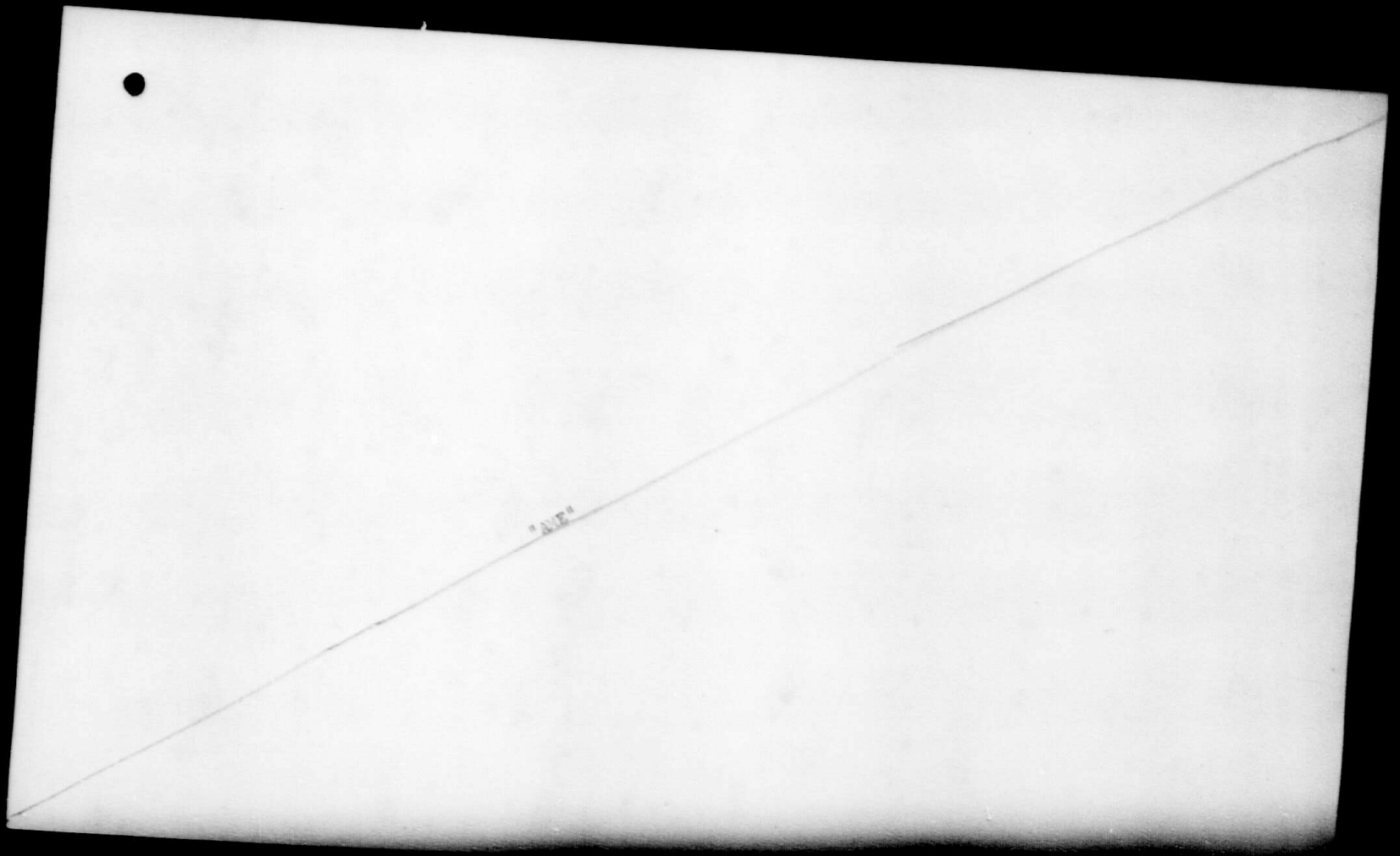
A.152 As we were going to go outside the accused asked us for his badge.

Q.153 When you made this statement on the 2nd of Feb did you make it under oath?

A.153 No sir.

Q.154 Is this statement where you say you saw the scottish soldier, meaning the accused, strike a violent blow at the Polish soldier - is that not correct?

A.154 Yes he hit him.


"AIE"

Q.155 Who hit him?

A.155 The accused hit the Polish soldier.

Q.156 Is this on the first fight or the 2nd fight?

A.156 The first time.

Q.157 Who hit the Polish soldier on the 2nd fight?

A.157 The second Scottish soldier I do not know.

Questioned by the Court.

Q.158 How long was the second fight after the first fight?

A.158 I think, which I am not very sure, about 8 or 10 minutes.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(3).

The witness withdraws.

The Court is adjourned 1210 hrs - will reassemble 1400 hrs.

The Court reassembles 1400 hrs 18 Apr 45 - is re-opened.

THIRD WITNESS - For the Prosecution - duly sworn.
Gaston Van den abeele, Interpreter, attached No. 2 Cdn L of C Provost, Ghent Detachment, SIS.

This witness not appearing in the Summary is called by the Prosecution, the Defence having waived notice under RP 76.

Q.159 I show you the statement which is known to this Court as Exhibit "A" and it is signed by Maria WESTENDINK. Whose hand writing is that?

A.159 My own.

Q.160 When was this statement taken?

A.160 2 Feb 45.

Q.161 Where was it taken?

A.161 At the SIS Detachment Station.

Q.162 Do you recognise this accused soldier here?

A.162 Yes sir.

Q.163 Who is that?

A.163 He is the soldier who was in the office when I was taking the statements from the girls.

Q.164 Where was he in the office when you were taking the statement?

A.164 The soldier was in the office in a big chair when I took the statement from the girls in a room adjoining the office.

Q.165 Who else was in the office?

A.165 C&M TAIT was also in the office.

Q.166 Where did you take this statement?

A.166 In a room adjoining the office.

Q.167 And is this room the room you have spoken of that DAVIS was sitting in? Do you know whether Maria WESTERLINK saw DAVIS there that day?

A.167 We passed forward into the room, she saw the soldier sitting in a big chair.

Q.168 Maria WESTERLINK has made a statement here about the accused soldier DAVIS. Did Maria in your presence do anything which indicated to you that she was talking of DAVIS?

A.168 I do not understand the question.

Q.169 The witness, Maria WESTERLINK, has referred to a Canadian Scottish soldier?

A.169 Yes.

Q.170 Do you know who she was referring to?

A.170 She was referring to a soldier who sat down in the office.

Q.171 Was there any other Scottish soldier in the room where CSM TAIT and the accused person sat?

A.171 No.

Cross-examination by Defence.

Q.172 At any time when you were speaking to this witness was the accused in that room?

A.172 He was in the office room.

Q.173 In the outer room?

A.173 Yes in the first room, the room where we would enter coming from the street.

Q.174 At any time were you, the witness, and the accused all in the same room?

A.174 No sir.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdrews.

FOURTH WITNESS - For the Prosecution - duly sworn.
Denies MALSCHARRT

This witness not appearing in the Summary is called by the Prosecution, the Defence having waived notice under RP 76.

Q.175 You speak fairly good English?

A.175 Yes.

Q.176 Do you know MARIE's Cafe?

A.176 Yes.

Q.177 Are you employed there?

A.177 Yes.

Q.178 And do you recognise this red haired soldier, or brown haired soldier?

A.178 Yes.

"AUG"

Q.179 Did you see him at MAXIE's Cafe on a night late in January?

A.179 Yes.

Q.180 Do you know the date?

A.180 I forget.

Q.181 Well can you tell me what went on there the night that you saw the accused soldier there? What happened there?

Q.182 Did you see any Polish soldiers there that night?

A.182 No sir.

Q.183 When you saw the accused person standing near the door was he alone?

A.183 Yes.

Q.184 What was he doing there?

A.184 He was standing alone in front of the door.

Cross-examination by Defence.

Q.185 Approx how many people were in the Cafe?

A.185 Approx 50.

Q.186 Were they mostly sitting down or standing up?

A.186 Most of them were sitting.

Q.187 You say that DAVIS was standing alone near the door - how close would the other soldiers be to him?

A.187 Approx 4 metres.

Q.188 Would it be as much as 4 metres from the door to the bar?

A.188 Yes it would approx be 4 metres from the bar to the door.

Q.189 Were there any soldiers standing or sitting at tables between the bar and the door?

A.189 Yes.

Q.190 Then the nearest soldiers to DAVIS must have been less than 4 metres. Would you think again and see if you can come to a better estimate as to how close the nearest soldiers were to DAVIS?

A.190 That was on the side of the stove.

Q.191 Which was on the side of the stove?

A.191 That is where the soldiers were standing.

Q.192 Were there any soldiers between the stove and the door?

A.192 I could not exactly say.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdrawn.

FIFTH WITNESS - For the Prosecution - duly sworn.

FIFTH WITNESS - For the Prosecution - duly sworn
Gabrielle DENULF, Mariaanstraat, 92 Gendbrugge

Q.193 Do you recognise this accused soldier here?

A.193 Yes.

Q.194 Did you see him at MAXIE's Cafe at some time in the month of January?

A.194 Yes.

Q.195 Do you know the date?

A.195 No I do not.

Q.196 About what time of night was it when you saw him?

A.196 Between 9 and 10 o'clock

Q.197 And what did you see happen at MAXIE's Cafe which involved this particular soldier?

A.197 He stood at the bar, he hit a Polish soldier and that is all I know.

Q.198 Were there any other Scottish soldiers there aside from this one?

A.198 I think so.

Q.199 Did you see or do you know whether or not this Scottish soldier lost anything that night?

A.199 He lost his coat, that is all I know.

Q.200 What was he doing because of that, do you know?

A.200 He went to the door, he stood there, then he said "there was no one allowed to go out of the cafe until I find my coat back."

Q.201 And what happened then?

A.201 The Canadians all started to fight amongst themselves.

Q.202 And where was this fight taking place?

A.202 In the Cafe.

Q.203 Where abouts in the cafe?

A.203 Close to the door.

Q.204 Did you see any Polish soldiers there that night?

A204 No I did not see them.

Q.205 You do not know then who was involved in the fight near the door?

A.205 No I can not say that.

Prosecutor - I find myself in the same position with this witness but I do not think there is any point in proceeding with this witness.

Cross-examination by the Defence.

Q.206 How many people were in the cafe?

A.206 I can not exactly say - between 50 or 60.

Q.207 In what part of the cafe were they ? Where in the cafe were they ?

A.207 They were sitting through the whole of the cafe.

Q.208 Were there any sitting near the door?

A.208 Yes sir.

Q.209 How far away would the nearest one be from the door?

A.209 2 metres at the most.

Questioned by the Judge-Advocate.

Q.210 Where were you when you saw soldiers were fighting?

A.210 I was in the cafe serving.

Q.211 Did you see them fighting?

A.211 I know that soldiers were fighting amongst themselves but I do not know whom.

Q.212 Did you go out of the cafe at any time that night?

A.212 No sir.

Q.213 Do you know whether anybody was injured in the fight or not?

A.213 I do not know that either.

Q.214 Did you see the accused soldier in the fight?

A.214 No I did not see that.

Q.215 Where was the accused soldier when the fight was going on?

A.215 In the cafe at the door.

Q.216 Was that near the door on the street?

A.216 Yes sir.

Q.217 Did anybody come in that door while he was standing there?

A.217 I could not say.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RS 83(3).

The witness withdrews.

Prosecutor - While I did indicate that I intended to call another one of these civilian witnesses, Georgetta EVERAERT, her evidence is similar to that given by these two civilians and unless my friend wishes me to call them in order that he may cross-examine them I do not think it necessary to produce this witness.

Defence replies - I do not require this witness for the purpose of cross-examination.

SIXTH WITNESS - For the Prosecution - duly sworn
M-3823 L/Cpl THOMLINSON W N, HQ 2 Cdn L of C Pro Coy.

Q.218 Cpl THOMLINSON, do you recall the night of 30 Jan 45?

A.218 Yes sir.

Q.219 And did you that night by reason of a call that you had received attend at the Victory Cafe, GHENT?

A.219 Yes sir.

Q.220 At what time?

A.220 At 2145 hrs.

Q.221 Did you at my request make a rough sketch of the area showing the Victory Cafe and Maxie's Cafe in the city of GHENT?

A.221 Yes sir.

Q.222 Is that it?

A.222 Yes sir.

Q.223 Does this sketch show roughly the location around The Victory Cafe and Maxie's Cafe?

A.223 Yes.

Q.224 I know it is not to scale but so far as direction and location is concerned is it fairly well set up?

A.224 Yes.

Sketch is tendered to the Court, admitted in evidence signed by the President and marked Exhibit "B".

Q.225 Would you indicate on this sketch where you did go that night and what you found there? Could you makr on there the cafe that you attended and what you found there and where?

A.225 I came down the street to the Victory Cafe and went through this front door and was taken through the bar to the back room. When I went into the back room there was a Polish soldier sitting on a chair

Q.226 Do you know the particulars of that soldier?

A.226 Yes sir, I took his pay book from his tunic pocket. I took the soldier's pay book from his pocket, took his particulars from it and put them in my own book.

Q.227 What was that soldier's name and number?

A.227 5088 Cpl Rataj Jan.

Q.228 Do you know what unit he belonged to?

A.228 10th Polish Rifles.

Q.229 What happened from there on as far as this man is concerned?

A.229 As soon as I saw him I phoned for an ambulance and then waited approx ½ hr for the ambulance and because it did not come I took him in my own jeep to 2 Cdn Gen Hosp.

Q.230 What did you see about the condition of this Polish soldier?

A.230 Bleeding from the mouth, the nose and th e ears.

Q.231 Now on the sketch that you have there can you for purpose of record - can you say where the Pilish soldier was in the Victory Cafe when you saw him? Mark with an "X" there.

A.231 Witness marks sketch with "X" position of Polish soldier.

Q.232 Yes and you have shown Maxie's Cafe on there as well?

A.232 Yes.

Q.233 Is it fair to say that Maxie's Cafe is almost directly opposite the Victory Cafe?

A.233 Yes sir.

Q.234 Now who was with the Polish soldier when you found him in the Victory Cafe?

A.234 Another Polish Cpl.

Q.235 Any Cdn soldiers with him?

A.235 No sir.

Q.236 What did you do when you took him to the hospital?

A.236 I took him to the hospital reception room and turned him over to the MO.

Q.237 That is the last that you saw of him?

A.237 Yes sir.

Cross-examination by Defence.

Q.238 When you got to the hospital you say you turned the Pole over to the MO. Would you be able to describe the scene at the hospital more fully?

A.238 I took the Polish Cpl and two orderlies laid him down on the stretcher and the MO Capt examined him.

Q.239 Did you see anything else happen after that or besides that?

A.239 No sir, they removed him and then I left the hospital.

Questioned by the JA

Q.240 Did you look to see if he had any identity discs at all?

A.240 No sir I did not.

Q.241 You just looked at his pay book?

A.241 Yes sir.

Q.242 Was there any other insignia that would identify him as belonging to the 10th Mounted Rifles?

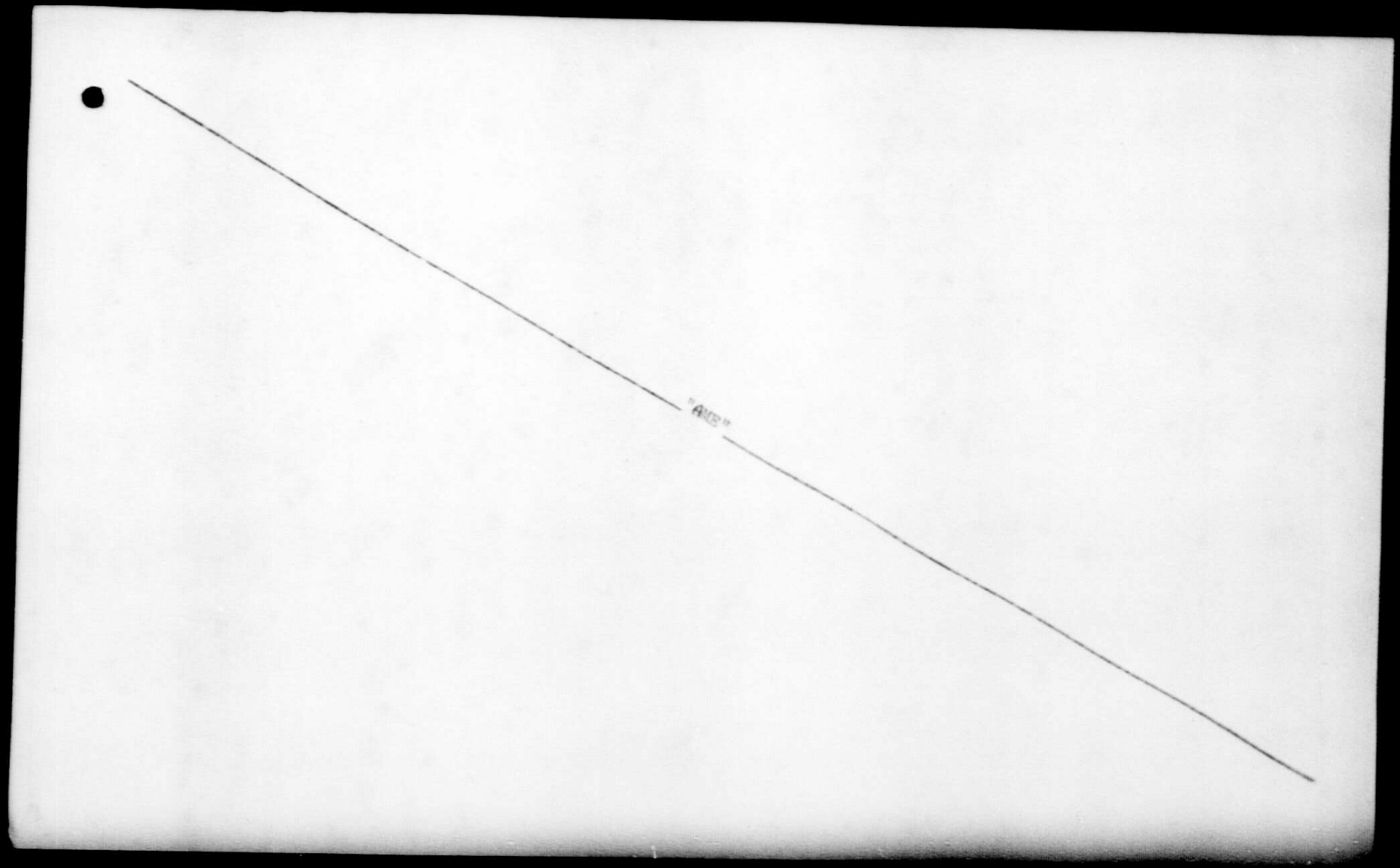
A.242 Not that I know sir.

Q.243 Where did you find his pay book?

A.243 In his breast pocket sir.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.


"Alto"

Prosecutor - Unless the witness Seconde MARIE is available the only other witness I have to call at the present is the Doctor from 2 Cdn Gen Hosp.

Due to the fact that his evidence may be rather lengthy if the other witness is not out here and if it is in keeping with what the Court might wish I suggest that we may adjourn and see the scene of this night and leave the other until the morning.

1500 hrs - the Court adjourns for a view of the scene of the incident. Those present, the Court, JA, Prosecuting, Defending Officers, accused, escort, court reporter and officers under instruction.

Judge-Advocate warns the accused that he is not obliged to say anything or point out anything to the Court. He is just there to see that no evidence is taken that he has no knowledge of.

The Court attended at Maxie's Cafe and viewed the surroundings from inside and out. It was noted by the Court that inside of the cafe was a small vestibule to the right of which was a small recess in one corner. The bar is on the opposite wall to the door. The stove is approx in the center of the room. There is another room which seems to be a type of dance hall. The enterance is at the left hand room in which the bar is. The enterance from the street to the cafe is reached by one step 2" and another step approx 8". The sidewalk and road-way are stone.

~~SEVENTH WITNESS---For the Prosecution--~~

The Court reassembles - is re-opened at 1000 hrs 19 Apr 45.

SEVENTH WITNESS - For the Prosecution - duly sworn.
Major J D DUFFIN, RCAMC, Pathologist, 2 Cdn Gen Hosp.

Q.244 Are you the Pathologist at 2 Cdn Gen Hosp?

A.244 Yes sir.

Q.245 And in the course of your duties there did you have occasion to perform an autopsy on Jan RATAJ?

A.245 Yes I did.

Q.246 When did you do this?

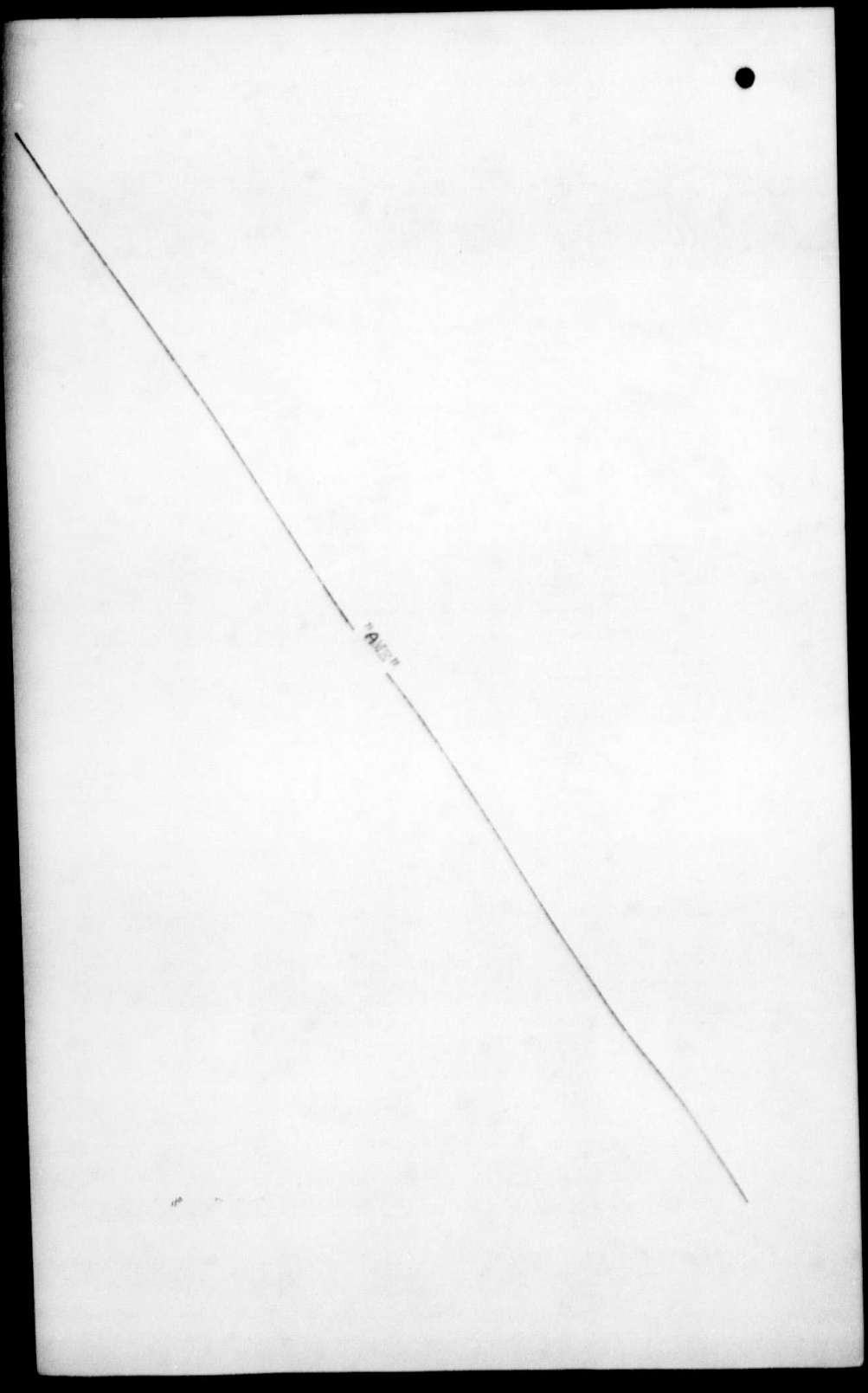
A.246 This was done on the afternoon of Jan 31 of this year at 1600 hrs.

Q.247 Now can you tell us what your examination of that body revealed in the sense of what injuries there were to it and if you do know what may or may not have caused it?

A.247 The cause of death was quite apparent. It was due to haemorrhage inside the scull together with fractures of the scull and in addition to that haemorrhage in the brain tissue itself. The haemorrhage was of such a type that it was quite evident it was some violence that we call tematic. That is some type of blow to the head. That is somebody either struck the deceased or he had fallen and hit his head very forcibly. Perhaps somebody had knocked him and he had fallen over backwards and he sustained injuries of that nature.

Q.248 Now can you show us with your own head at what part of the head the injuries were?

A.248 The violence had been applied to the back part of the head on the left side. (indicates to the Court).


"AXIS"

It was quite clear that violence had been indicated to that part.

Q.249 Could any more immediate medical treatment have saved this man's life if he had received this type of injury?

A.249 That is rather difficult to answer. Almost all cases that have this type of injury do die within a short period of time. I suppose it is theoretically possible, perhaps it is possible. I understand he had the routine treatment for injuries of this nature and rapidly died within a few hours after having been admitted.

Cross-examination by Defence.

Q.250 Were there any bruises on the front of the face?

A.250 No there were not.

Q.251 If a blow had been struck sufficient to knock him backwards on the sidewalk, on the face, would you expect to find a bruise there?

A.251 You may or you may not. As a matter of fact in this case there was no mark on the place where he had been struck externally. As a matter of fact I had to retract the skin to find this and as far as the front of the face is concerned we did not find any and it had no significance.

Q.252 Did you yourself know that the person you examined was Cpl RATAJ?

A.252 Yes it is a routine that we go through to identify everybody.

Q.253 Are you able to say of your own knowledge that the person you examined was Cpl RATAJ Jan?

A.253 It just depends on what you want for identification. The patient died and the Wardmaster who looks after this case came up to my office and got a book in which he wrote the name of the patient and he issued me with the keys to the morgue in which he put the patient. The body was wrapped in a sheet and was marked with the name of the patient. More over he was the only patient or body in the morgue at this time.

Q.254 Did you notice that his identity discs were still on?

A.254 No they were not. They are not usually on, sometimes they are on and sometimes they are not.

Q.255 You did not see him until dead?

A.255 No I did not.

Questioned by the Judge-Advocate.

Q.256 Did you notice any marks on the chest or stomach that would indicate the place where he was struck?

A.256 No there were no marks on the body externally at all.

Q.257 Is it fair to say that as far as identification is concerned it was just through the routine?

A.257 There were no special steps taken just the usual routine.

"AME"

Q.258 The body that you presumed the deceased, that you understood was the person referred to, merely because it was tagged?

A.258 It was reported to me that he was deceased and I was in charge of the morgue. Unless they substituted another body for this body and I think that is impossible. Provided that the identification through life was conducted which I presume had been.

Q.259 In your opinion this Polish soldier had been adequately medically attended to and did not die as a result of neglect?

A.259 I am quite sure that he did not die of neglect. I am not a specialist but as I pointed out to Major WILLSON he had every attention possible. He had a very extensive fracture of the scull and such cases almost never recover and in addition to this he had these fractures which I described which no medical surgery could have done anything for.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

President announces - When the Court adjourned on the 17th a motion had been made by the Prosecution opposed by the Defending Officer that the witness Seconde MARIE be declared adverse. The Court allows the submission of the Prosecuting Officer and permits the cross-examination of the witness Seconde MARIE and the witness Seconde MARIE may be treated by the Prosecution in all respects as if adverse.

FIRST WITNESS - For the Prosecution - reminded of the fact
Seconde MARIE, Binnenweg 78, that she is already sworn.
Ledeburg, GHENT.

Statement entered as Exhibit "C".

Witness is shown statement of evidence.

Q.260 Is that your signature?

A.261 Yes

Q.262 On the 2nd of Feb did you say these words and sign this statement?

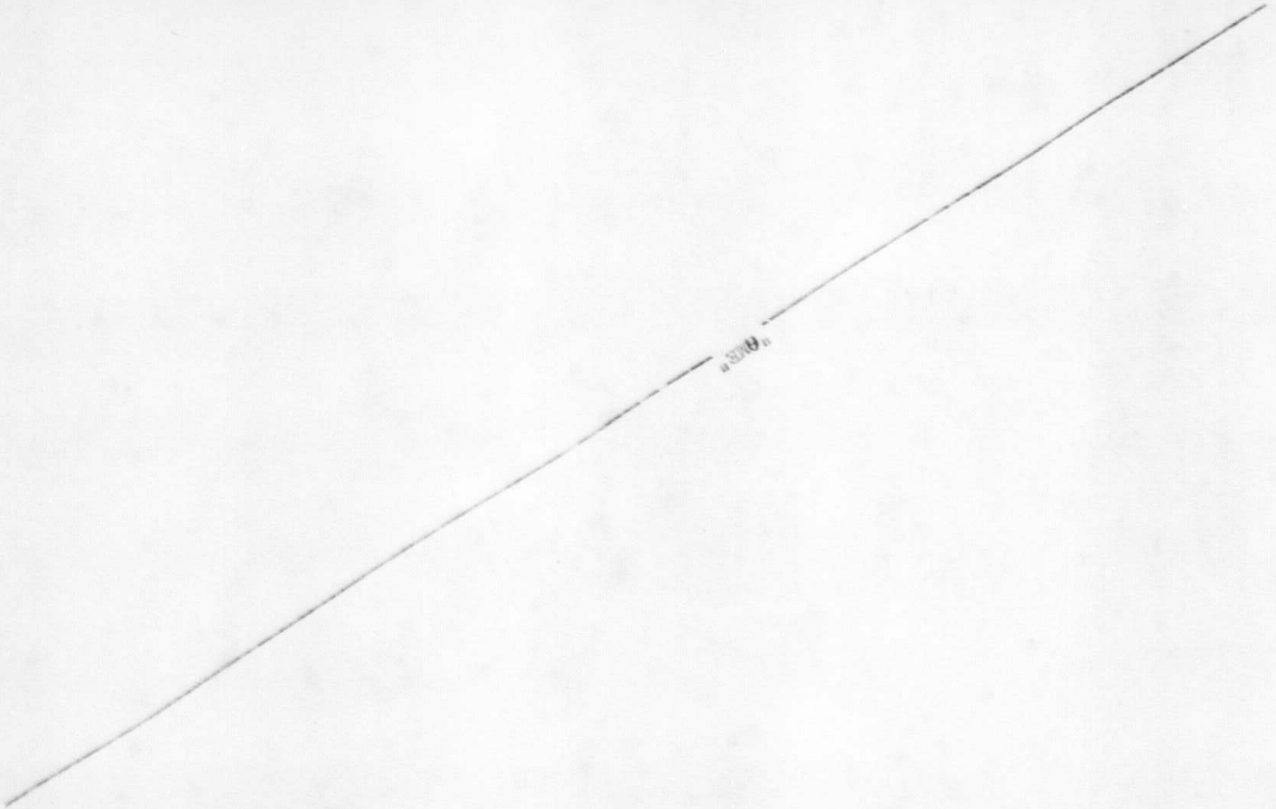
A.262 Yes I told the Belgian Interpreter and I signed it. (referring to Exhibit "C")

Prosecutor - For the benefit of the Court I will read the statement:

"The undersigned SECONDE Marie, declares that she as barmaid, was present in the bar 'MAXIE's' Kleine statiestraat, 13, Ghent, on the 30th January 1945, at about 9½ o'clock P.M.

About 40 soldiers were in the bar. Also two civilians who stood near the counter.

I have seen that the scottish soldier who is now present in the bureau, fought with two polish soldiers, as soon as these men entered. I tried to separate them, but it was no possible. I saw then that two soldiers of the 'Argyll and Sutherland Canada' regiment separated the fighters. One of these two soldiers was a tall man, the other a small one. They said me they come back the following day, but I didn't see them.



I saw the same scottish soldier giving a blow at another polish soldier, who just entered the bar. As this polish soldier didn't have the time in order to shut the streetdoor, he fell backwards, his head struck the pavement.

As I was also standing at the open streetdoor, and that the scottish soldier shut this door violently, I steped into the street and saw the polish soldier lying upon the ground. I saw that he was bleeding from mouth, nose and ears."

Q.263 Do you remember another Cdn Officer coming to see you and taking a statement from you about the 12th of March?

A.263. I have forgotten now.

Q.264 Well is that your signature there? (pointing to original Summary)

A.264 Yes.

Q.265 Do you remember that officer having with him that statement and he was showing it to you and then you said this: (Prosecutor presents Exhibit "G")

"I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd Feb 45."

And when questioned by the accused as follows:

"I was fighting with two Poles in the corner of the cafe, was I not?"

You said, "Yes".

And when further questioned:

"When you mentioned 'Same Scottish soldier' do you mean me or a soldier with the same Scottish uniform?"

You said, "Same uniform, it was another soldier."

Do you remember at the time that officer visited you with the accused present, the accused asked you this question. "I was fighting with two Poles in the corner of the Cafe, was I not? and you answered, "Yes"?

A.265 That is right.

Q.266 And do you remember being asked, "When you mention same Scottish soldier do you mean me or a soldier with the same Scottish uniform." And you answered, "Same uniform but another soldier"? Is that what you said?

A.266 Yes.

Q.267 Is that your signature?

A.267 Yes.

Q.268 Did the accused person ask you that and did you answer that at the time, "the same uniform but another soldier?

A.268 There were two in the cafe.

Judge-Advocate- I rule that you must introduce proof of the statement made not just some material part of it.

Prosecutor - I wish to ask the witness whether or not the question in the original Summary of Evidence which reads thus was asked of you:

"When you mention same Scottish soldier do you mean me or a soldier with the same Scottish uniform?"

Q.269 Was that question asked of you by the accused?

A.269 That is what I had to answer.

Q.270 What do you mean by that when you say, "that is what I had to answer"?

A.270 That is the question that was asked.

Q.271 Yes and did you answer, as is listed in answer 2, "Same uniform, it was another soldier"?

A.271 Yes I answered that.

Q.272 But were you not standing at the door of the cafe when that happened?

A.272 When what happened?

Q.273 When the Polish soldier was struck?

A.273 No I was not standing at the door then.

Prosecutor - Referring to Exhibit "C" I wish you to read to the witness in Flemish this paragraph which I read in English:

"I saw the same scottish soldier giving a blow at another polish soldier, who just entered the bar. As this Polish soldier didn't have the time in order to shut the street door, he fell backwards, his head struck the pavement.

Will you read that paragraph (referring to the 4th paragraph side-lined in read on Exhibit "C").

Interpreter reads paragraph in Flemish to witness.

Q.274 Do you remember saying that?

A.274 I can not remember what I said.

Prosecutor - That is all I have for this witness. I will produce the interpreter to ask what she said and leave the rest to the Court.

Cross-examination by Defence.

Q.275 Do you remember how many people were in the cafe that night?

A.275 Probably 30 or 40 soldiers.

Questioned by the Judge-Advocate.

Q.276 Where were you standing when the two Polish soldiers came in?

A.276 I was standing at the counter.

Q.277 Did you see a fight between these two Polish soldiers and some Canadians or a Canadian?

A.277 I saw that they were fighting between the door and the corner.

Q.278 Who was fighting between the door and the corner?

A.278 A Canadian soldier with 2 Poles.

"A"

Q.279 Is the Canadian soldier that you saw fighting the accused?

A.279 There was also a soldier in the cafe who also fought.

Q.280 Was the Canadian soldier in Court, the accused, one of the soldiers that was fighting?

A.280 The soldier sitting here fought. There was still another soldier who also fought.

A.281 What happened to the two Polish soldiers?

A.281 There is two other soldiers that came that took them apart.

Q.282 Where did the Polish soldiers go after they had been taken apart?

A.282 I did not see them.

Q.283 Did you see another Polish soldier come in later?

A.283 No sir.

Q.284 Did you see a Polish soldier lying on the ground outside the cafe?

A.284 Yes I saw that.

Q.285 How did you see that?

A.285 I was going to go to the door to tell them that they should not fight any more the door went shut and I was out on the street and I saw the Polish soldier lying there.

Q.286 Was anyone else out there besides the Polish soldier lying there?

A.286 No sir.

Q.287 Did anybody come while you were there with the Polish soldier?

A.287 I saw two soldiers and I asked them if they were Poles.

Q.288 Were these soldiers that came Polish?

A.288 Were they the ones that went in?

Q.289 No the ones that came when you were standing beside the Polish soldier on the ground.

A.289 They came around the corner.

Q.290 And did you see the soldier on the ground fall down?

A.290 No sir.

Q.291 Did you see anybody strike the soldier that was lying on the ground?

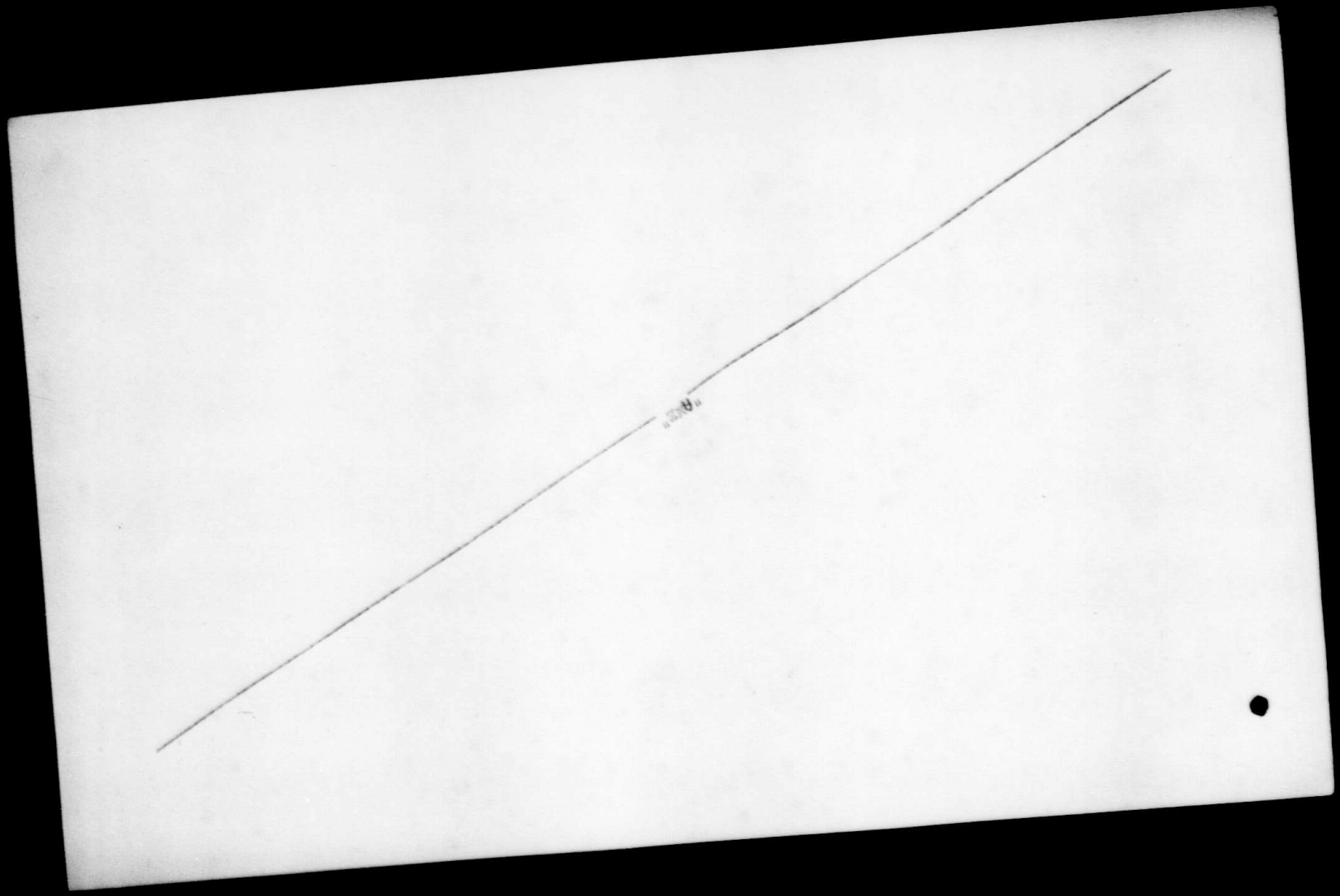
A.291 No sir.

Q.292 Did you make a statement (referring to Exhibit "C") at police HQ on the 2nd of Feb?

A.292 I said this in the bureau at police HQ.

Q.293 Did you say that under oath?

A.293 No sir I did not have to swear anything.



Q.294 Is that statement true?

A.294 I said that.

Q.295 Is everything that you said in the statement true?

A.295 I think so.

Q.296 In this statement (referring to Exhibit "C") you said that you saw the Polish soldier fall backwards and his head struck the pavement, is that true?

A.296 I saw one soldier fall.

Q.297 Was that the soldier you saw on the ground outside of the cafe?

A.297 I do not know I did not look to see what soldier it was.

Q.298 How long after you saw the soldier fall did you see the soldier lying on the ground outside the cafe?

A.298 About 15 minutes later.

Q.299 The soldier that you saw fall - was there anybody near him when he fell?

A.299 I did not see that.

Q.300 Did you see anybody strike the soldier that fell?

A.300 Yes I saw that.

Q.301 Who struck him?

A.301 It was a Canadian.

Q.302 Is the Canadian that struck him the Canadian in Court, the accused?

A.302 No sir.

Q.303 Was it a Scottish Canadian that struck him?

A.303 Yes sir.

<u>Questioned by the President.</u>

Q.304 Why are you sure the Scottish Cdn that struck him is not the same one that is sitting here?

A.304 The one soldier that hit the other soldier I saw him last week.

Q.305 Are you sure it is not the same one that is sitting here now?

A.305 Yes sir.

Q.306 Do you know the name of the man who struck the Polish soldier?

A.306 No sir.

Q.307 Do you know what regiment he belongs to?

A.307 I have forgotten but I remember he had a green thing on his cap.

Q.308 Did he have a metal badge over the green thing?

A.308 On his cap he also had a large badge.

Q.309 Would you recognise him again if you saw him? If you saw that man now would you recognise him?

A.309 Yes but he is not in GHENT any more, he is at ZELLE.

Q.310 Why did you say that?

A.310 He told me that he was not going to be in GHENT any more.

Q.311 Was this man with the Scottish soldier who is sitting here when the fighting took place?

A.311 No sir.

Q.312 Can you describe what he looks like?

A.312 He has dark hair, he is a tall person, he is broad.

A.313 Did this Scottish soldier come to MAXIE's Cafe often?

A.313 Yes, before it was closed he came there every day.

Q.314 Can you remember the exact day he left to go to ZELLE?

A.314 No I do not remember that.

Q.315 About when was it?

A.315 It was last week.

Questioned by the Court.

Q.316 Was that other soldier that you mention about - was he in the office when you made that statement here?

A.316 No sir.

Q.317 Why in this statement do you say that you saw the soldier strike the Polish soldier and now you say that you did not see it?

A.317 They never asked me if there was any more.

Q.318 I am asking why did you say in this statement that you saw the soldier, Scottish soldier who is present in the office, who is the accused here now - you saw him strike the Polish soldier, you saw the Polish soldier fall out and now you say you did not see that?

A.318 I can not answer the question.

Q.319 Were you forced or threatened by somebody to make this declaration that you saw the accused hit the Polish soldier?

A.319 No no one said that to me.

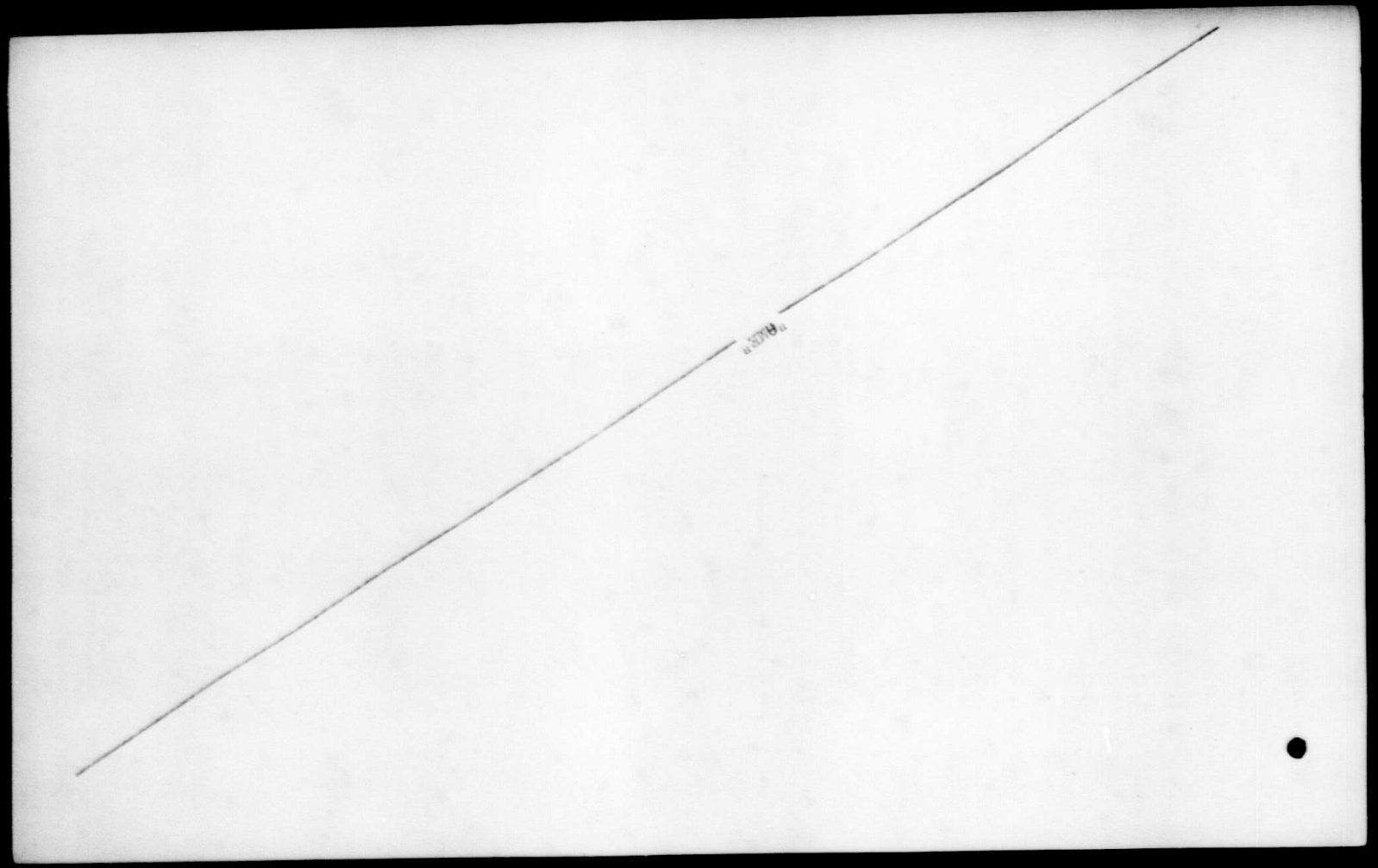
Q.320 If you were not threatened why did you make that statement?

A.320 I did not know what I was saying.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

In the opinion of the Court and the Judge-Advocate it is not necessary for the Prosecution to call a witness to establish the statement referred to in the evidence of this witness.



Prosecutor - Mr President, I have now produced on behalf of the Prosecution all of the available witnesses with the exception of two Polish soldiers who are named in the Summary of Evidence. Yesterday the Defending Officer and the Court I believe decided they wanted to hear the evidence of the two Polish soldiers and they have been sent for and they should be here at any time but in view of the courts of this trial and what has happened here during yesterday afternoon and this morning I would like to ask the Court if they feel that they would still like to have these two witnesses produced. May I say at this time the two Polish soldiers do not help in any respect in so far as the question of identification is concerned and who actually struck the blow which resulted in the death of the Polish Cpl. I raise this now because I feel that unless the Court do wish these witnesses produced or the Defence do then I feel that on behalf of the Prosecution they can add nothing to the actual facts of this assault. So perhaps if the Court would indicate to my friend the Defending Officer as to what their wishes are perhaps we could be guided by that in the future course of this trial.

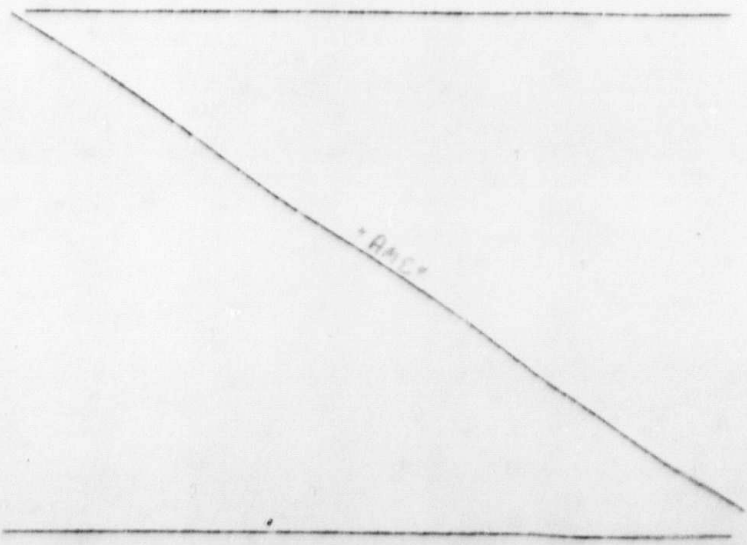
Judge-Advocate - You appreciate that the Defending Officer has the right to demand the attendance of these two witnesses due to the fact that the two Polish soldiers are witnesses to the Summary of Evidence and that you may be required to make them available to the Defending Officer for cross-examination.

Defence - I do not require the two Polish soldiers for my case.

President - In view of the statement of the Prosecuting Officer and the Defending Officer the Court feels that we do not require the two Polish soldiers to be required.

Prosecution - Then may I say, Mr. President, that aside from the two Polish soldiers that is the case for the Prosecution and those are all the witnesses that we are able to call.

The Prosecution is closed.



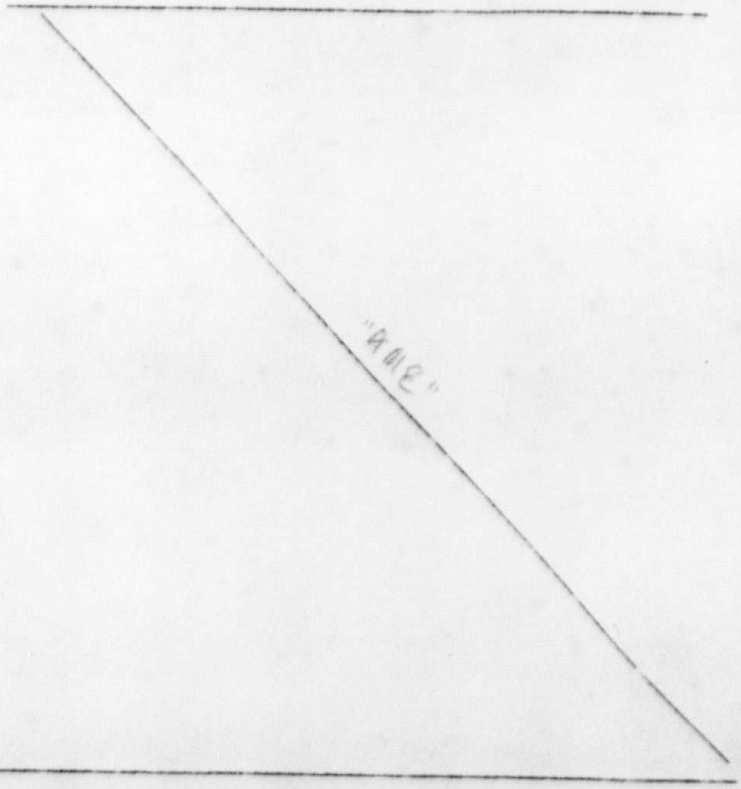
THE DEFENDING OFFICER SUBMITS THAT THE EVIDENCE FOR THE PROSECUTION DOES NOT ESTABLISH A PRIMA FACIE CASE AGAINST THE ACCUSED.

I submit that no prima facie case has been made out.

In a manslaughter case it must be shown among other things that there was a blow or some other unlawful act - that a blow was struck or some other unlawful act had been done and that the person who did this unlawful act is the accused.

I do not propose to examine the evidence of the witnesses in detail I shall merely say that the witness WESTERLINK and SECONDE have both stated that it was not DAVIS who hit the Pole who fell outside the door and one of them has stated that she did not see any blow struck at all against this particular Pole. It seems there was a fight in the corner of the Cafe and from the view which the Court had yesterday I think it is physically impossible for anybody in that corner to strike a blow so that a man would fall backwards outside the door. He would have to fall at 180° from where he was hit.

From that cursory examination of the evidence I submit that there is no evidence whatsoever that DAVIS is guilty of the charge of Manslaughter.



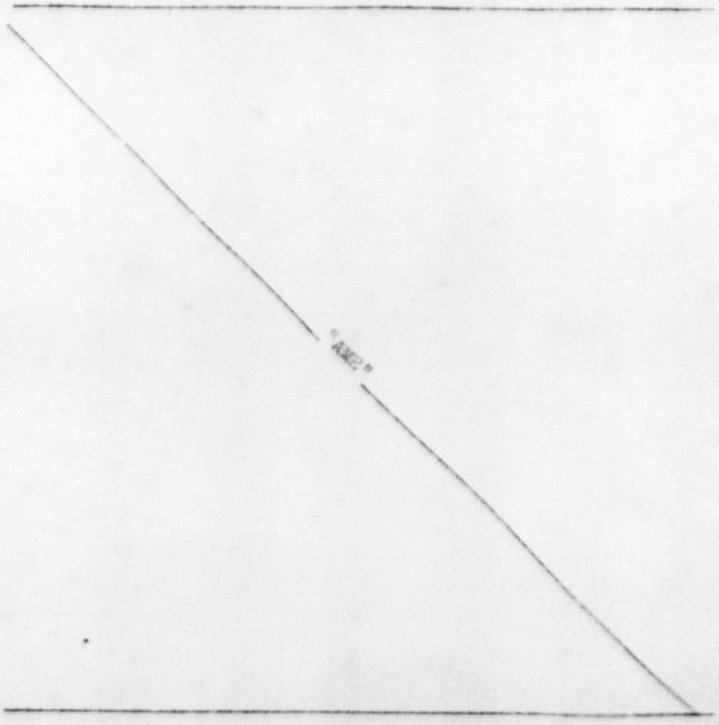
PROSECUTOR ANSWERS SUBMISSION BY DEFENCE OF NO PRIMA FACIE CASE

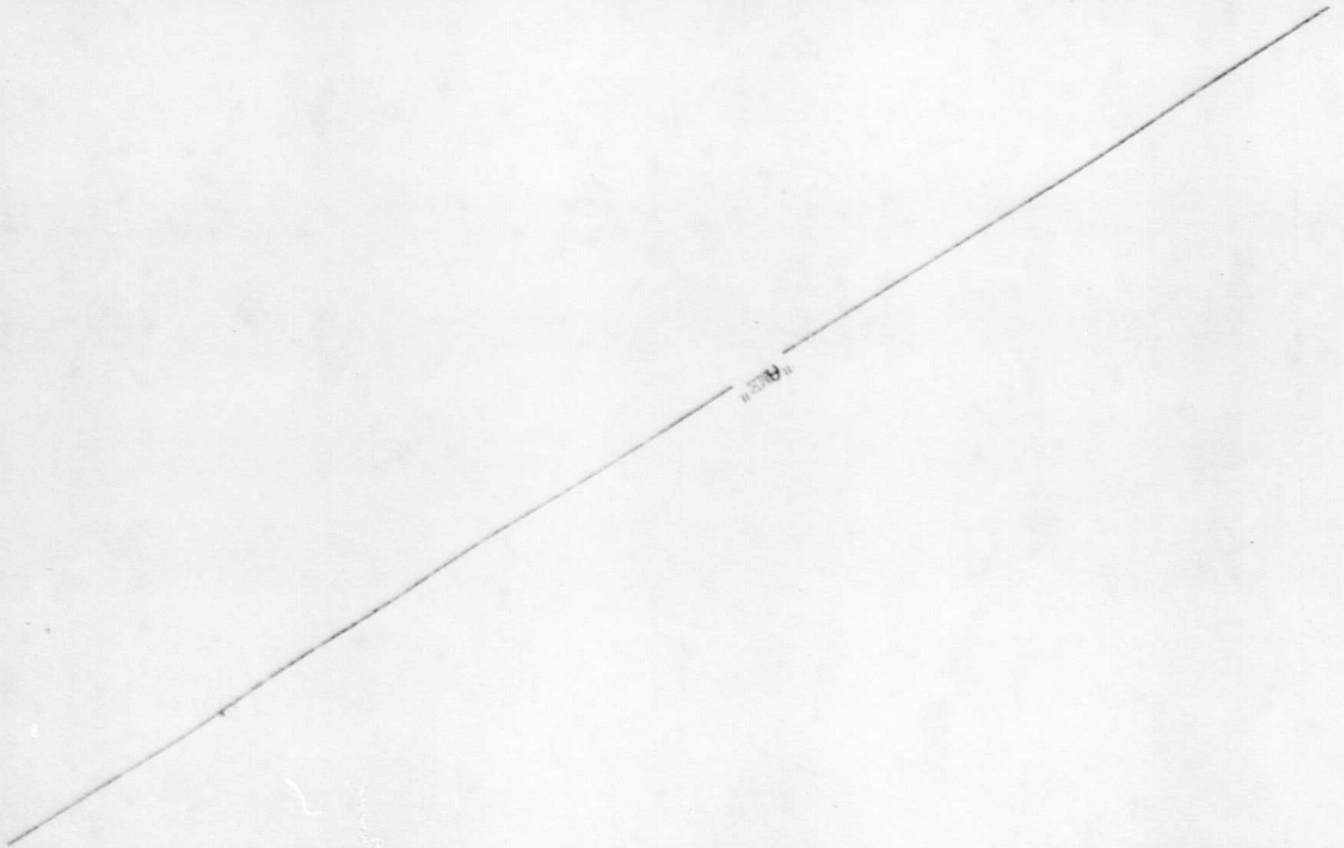
Mr President and gentlemen, this is a very serious case in the sense that a life has been taken and also from the point of view that a Canadian soldier is on trial here today on a very serious charge.

The evidence for the Prosecution in this case must necessarily depend upon the story of two civilian witnesses who as you know have been declared by the Court at my request to be hostile or adverse witnesses. You know the difficulty we have had in dealing with these witnesses, you have seen their manner and demeanor here and it is very much a question of what you can believe from what they said and what you believe they actually know. I must leave that entirely to you I know it is in a very unsatisfactory state. I think that the Prosecution has produced every available person, every civilian or soldier who could give any helpful facts on this incident. In so far as the identity of the deceased person is concerned I can not help but feel that you have been satisfied that the person who had been killed was Cpl RATAJ Jan.

It is purely for the Court to determine whether there has been sufficient here to satisfy that the accused person here, that DAVIS, was the man who struck the blow which resulted in the death of the Polish soldier.

It is purely a matter of fact and I must leave it to you.





JUDGE-ADVOCATE ADDRESSES THE COURT ADVISING ON SUBMISSION OF NO PRIMA FACIE CASE

Mr President, the Prosecution has presented its case and at this time the Defending Officer has made a motion that the Prosecution has not established a prima facie case and therefore the accused should be found not guilty at this time.

The definition of manslaughter is as follows:

"Manslaughter is the unlawful and felonious killing of another without any malice either express or implied".

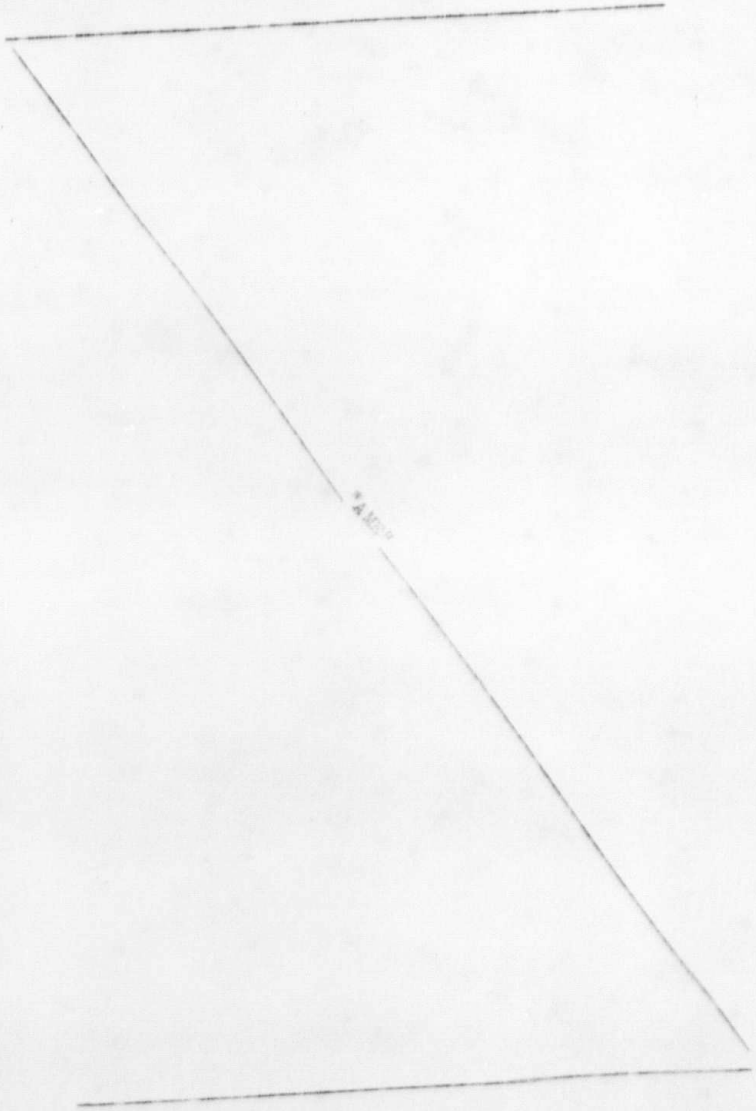
"The killing must be unlawful and not excusable or justifiable. It may be by poisoning, striking, starving, drowning, and a thousand other forms of death by which human nature may be overcome."

"It may be taken generally that in all cases where a killing, though not with malice, is nevertheless incapable of justification or excuse, it is manslaughter."

To establish whether or not a prima facie case has been made by the Prosecution it is not necessary for the Court at this stage to decide on credibility of witnesses. Nor need the Court decide whether the Prosecution has proved the accused guilty beyond a reasonable doubt. It is only necessary for the Court to determine that there is some evidence to support the charge laid and upon which if uncontradicted the Court could convict, that is more than a scintilla of evidence which supports the charge. The Court as I have said may believe everything they have heard to date the sole question before the Court now is is there or is there not a prima facie case of manslaughter.

The Court is re-opened, and the President announces that the submission is allowed on the First Charge.

Private DAVIS the submission by the Defending Officer has been allowed. You are therefore not guilty of the First charge of Manslaughter.



"AMÉ"

OFFICERS UNDER INSTRUCTION

Lieut G PREVOST, R de Mais,	10 CBR Bn
Lieut B.DUFOUR, Fus MR,	10 CBRBn
Lieut F W CUTHBERTSON, RHC,	10 CBR Bn
Lieut A G DECELLES, CIC,	10 CBR Bn
Lieut P E DEFOY, CIC,	10 CBR Bn
Lieut J E CHAISSON, CIC,	10 CBR Bn
Lieut C O'DOWD, CIC.	10 CBR Bn.
Lieut F R TREMBLAY, CIC,	10 CBR Bn

"AMÉ"

WESTERLINCK, Maria.
Original Flemish statement att to original proceedings

at Exhibit "A"

C O P Y

TRANSLATION OF FLEMISH STATEMENT

WESTERLINCK Maria,
barmaid,
Binnenweg, 55,
Ledeberg,
born in Ledeberg, on 9th August 1927.

Ghent, 2nd. February 1945.

The undersigned WESTERLINCK Maria declares that she as barmaid, was present in the bar "MAXIE'S" Kleine Statiestreet, 13, Ghent, on 30th. January 1945, at 9½ o'clock in the evening.

About 20 Canadians soldiers were in the bar, six of them apper-tained to the "ARGYLL AND SUNTHERLAND CANADA" regiment. I saw also 4 à 5 American soldiers, one belgian soldier and two civilians.

I sat down near the fire and heard that the canadian scottish soldier, who at this moment is present in the bureau, asked at the belgian soldier if he was of the police. I heard the belgian sol-dier answering "NO" and he said that the two civilians were of the secret police.

I saw that the above scottish soldier gave a slap on the face of one of the two civilians. The civilians didn't answer and the belgian soldier went out. I heard the scottish soldier saying: "I AM SORRY".

Thereafter I saw this scottish soldier drinking cognac of a bottle, but I don't know if it was his own bottle of well one of his friend.

I saw two polish soldiers entering the bar, and the scottish soldier fighted with them. Two soldiers of the "ARGYLL AND SUN-THERLAND CANADA" regiment separated the fighters, and the Polish soldiers went out.

Some minutes after, another Polish soldier came in and imm-ediatly the scottish soldier fought with him. I saw that the Polish soldier went backwards, as he was obliged by the fighters, I saw that the scottish soldier gave a violent blow at the polish soldier. The scottish soldier shut then the door and said that he must have his badge and his overcoat. Everyone who wanted to leave the bar, was examined by the scottish soldier.

Thereafter we left the bar and saw nothing more.

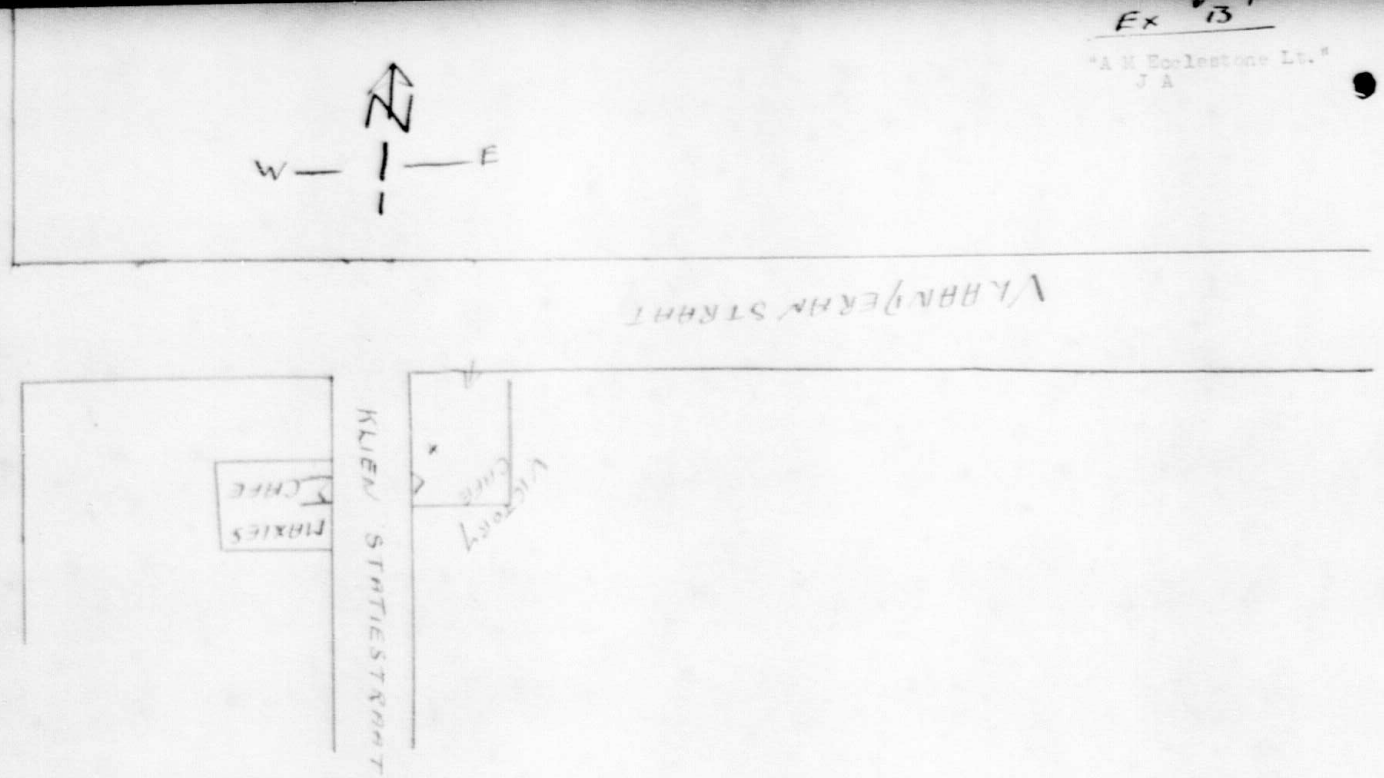
(Sign). Maria WESTERLINCK.

I hereby certify that the above is the true translation of the flemish statement, which I obtained from WESTERLINCK Maria on the 2nd. February 1945.

Gaston Van den abeele.
Interpreter.

Ex "B"

"A M Ecclestone Lt."
J A



Original Flemish statement of SECONDS, Marie att

to original proceedings as Exhibit "C"

"AME"

TRANSLATION OF FLEMISH STATEMENT.

SECONDE Marie,
Barmaid,
Binnenweg, 78,
Ledeberg.
born in Wetteren, on 8th July 1927.

Ghent, 2nd February 1945.

The undersigned SECONDE Marie, declares that she as barmaid, was present in the bar "MAXIE'S" Kleine statiestraat, 13, Ghent, on the 30th, January 1945, at about 9½ o'clock P.M.

About 40 soldiers were in the bar. Also two civilians who stood near the counter.

I have seen that the scottish soldier who is now present in the bureau, fought with two polish soldiers, as soon as these men entered. I tried to separate them , but it was no possible. I saw then that two soldiers of the "ARGYLL AND SUNTHERLAND CANADA" regiment separated the fighters. One of these two soldiers was a tall man, the other a small one. They said me they came back the following day, but I didn't see them.

I saw the same scottish soldier giving a blow at another polish soldier, who just entered the bar. As this polish soldier didn't have the time in order to shut the streetdoor, he fell backwards, his head struck the pavement.

As I was also standing at the open streetdoor, and that the scottish soldier shut this door violently, I stepped into the street and saw the polish soldier lying upon the ground. I saw that he was bleeding from mouth, nose and ears.

I saw two other polish soldiers and asked them if they were polish. They answered "YES". I said them that the canadian soldier who gave the blow at the polish soldier, was in the bar. At this answer, one of the two polish soldiers took his pistol, loaded it and asked me where this "BOCHE" was.

I returned into the bar, took my overcoat and went home.

(Sign) SECONDE Marie.

I hereby certify that the above is the true translation of the flemish statement, which I obtained from SECONDE Marie on the 2nd February, 1945.

Sgd. Gaston Van den Abeele.
Interpreter.

"AMF"

SUMMARY OF EVIDENCE

In the case of B-88312 Pte Lorne Dewey DAVIS, (Tor Scots) on the strength 42 Coy, 10 CHR Bn, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this evidence is taken on oath.

FIRST WITNESS PROSECUTION

Major J.D. Duffin, RCAMC, 2 Cdn Gen Hosp, Pathologist.

I certify that in my opinion the attendance of this witness is, owing to the absence of this officer on duty, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused, and is attached hereto and marked Exhibit "A".

Sgd. 'G E Collins' Lt.
(G.E. Collins) Lieut.,
Officer detailed to take
Summary of Evidence.

I do not require the attendance of Major J.D. Duffin for the purpose of cross examination.

Sgd. "L D Davis"
(L.D. Davis) Pte B-88312

R.P. 4(G) complied with.

SECOND WITNESS PROSECUTION

Seconde MARIE, Binnenweg 78, Ledeburg, Ghent, having been duly sworn states:

M-60043 Pte Radstaak J. att 2 Cdn L of C Provost, Ghent Det., having been duly sworn as interpreter.

I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd February 1945. (Statement produced with accompanying English translation duly certified by G. Van den Abeele, Interpreter, and is attached hereto and marked Exhibit "B").

Cross examined by the accused.

Q.1: I was fighting with two Poles in the corner of the cafe, was I not ?

A.1: Yes.

Q.2: When you mention "Same Scottish soldier" do you mean me or a soldier with the same Scottish uniform?

A.2: Same uniform, it was another soldier.

(Seconde Marie)

R.P. 83 (b) complied with.

THIRD WITNESS PROSECUTION

Maria Westerlink, Binnenweg 55, Ledebrug, Ghent, having been duly sworn states:

M-60043 Pte Radstaak J. att Ghent Det. 2 Cdn L of C Provost, having been duly sworn as interpreter.

Witness is shown statement purporting to be signed by her on 2nd February 1945 and interpreted by G. Van den Abeele and is asked by the officer detailed to take the Summary of Evidence. (Statement marked exhibit "C" and attached hereto).

THIRD WITNESS CONT'D PROSECUTION

Cross examination of the witness by the officer detailed to take Summary of Evidence.

Q.1: Is this the statement you gave to the Police on 2 Feb 45?
A.1: Yes.

Q.2: Is it a correct statement?
A.2: No, it is wrong.

Q.3: Why did you sign it at the time?
A.3: Because I did not have time to read it over, I had to leave right away.

Q.4: What changes do you wish to make with reference to the statement?
A.4: It was not the accused whom I meant was the one who fought with the Pole entering the cafe. It was another Scottish soldier.

Cross examined by the accused.

Q.1: Where was I when this Pole was hit at the doorway?
A.1: I think you were at the counter. I saw you fighting once in the corner with one Polish soldier.

Q.2: What did I do after fighting in the corner?
A.2: I didn't see you do anything more.

.....
(Maria Westerlink)

R.P. 83(b) complied with.

FOURTH WITNESS PROSECUTION

M-3823 L/Cpl Thomlinson W.N., 2 Cdn L of C Provost Coy.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable, and a written statement signed by him has been read to the accused and is attached hereto and marked Exhibit "D".

Sgd. "G E Collins' Lt.
(G.E. Collins) Lieut.
Officer detailed to take
Summary of Evidence.

I do not require the attendance of L/Cpl Thomlinson for the purpose of cross examination.

Sgd. "L.D. Davis'
(L.D. Davis) Pte. B-88312

R.P. 4(G) complied with.

The accused was cautioned as follows: "do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but what-so-ever you may say or any evidence you may give, will be taken down in writing and may be used as evidence", declines to give evidence and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of three (3) pages was taken down by me in the presence and hearing of the accused.

R.P. 4(c)(d)(e)(f) and (g) have been complied with.

Sgd. (G E Collins) Lt.
(G.E. Collins) Lieut.,
Officer detailed to take
Summary of Evidence.

This is exhibit "A" referred to in

the summary of evidence in the case of

B-88312 Pte Davis L.D.

G.E. Collins
offr detailed to
take the summary
of evidence.

"A"

AUTOPSY REPORT

5088 Cpl ROTAJ Jon 10 Polish Rifle Regiment.

admitted	at	2130 hrs	30 Jan 45.
died at		0710 hrs	31 Jan 45.
autopsy	at	1600 hrs	31 Jan 45.

This Polish N.C.O. sustained an injury to the back of the head on the evening of 30 Jan. He was unconscious for 20 minutes. On admission to hospital he had signs of a fractured skull, and lumber puncture showed bloody C.S.F. Death occurred, after the development of convulsions, on the morning of 31 Jan 45.

At autopsy the positive findings were confined to the head. On external examination there was no laceration or marking of any nature of the scalp. There was a large diffuse haematoma of the subcutaneous tissues and muscle of the scalp, discovered only after the latter was reflected. This measured 12 cm. in diameter and overlay the left parietal bone, being centred 6 cm. below the left parietal eminence. The calvarium was normal. There was a recent, diffuse, large, left sub-dural haematoma overlying the whole of the antero-lateral aspect of the left cerebral hemisphere and of its basal aspect in the middle fossa. The haematoma was made up of clotted blood having a total volume of approximately 120 C.C. There was a thin layer of blood overlying the antero-lateral aspect of the right hemisphere also. The tips of both frontal and both temporal lobes, as well as their under surfaces, exhibited severe contre-coup pulping and moderate contre-coup sub-arachnoid haemorrhage. A few small collections of blood were encountered elsewhere in the sub-arachnoid space. There was an area of recent haemorrhage in the left globus pallidus extending into the adjacent anterior limb of the left internal capsule, and measuring 2 cm. in greatest diameter. No other lesions were found in the brain, the structures beneath the tentorium being normal.

There was an "open-ring" type fracture of the base of the skull involving the bones of the middle and posterior fossae. It extended from the left parietal bone through the squamous plate and petrous portion of the left temporal bone, through the basic sphenoid and greater wings and body of the sphenoid bone, involving the sphenoid sinus. It reduplicated itself on the other side i.e. extended through the right petrous and squamous temporal, and the parietal bones as far as the occipital bone. The whole of the occipital bone at the level of the internal occipital protuberance formed the "open" or non-fractured part of the ring. There was haemorrhage into the mastoid air cells and middle ears on both sides with bilateral perforation of the ear-drums. No other significant lesions were encountered.

Anatomical Diganosis.

1. (Violence to back of head)
2. Haemetoma of scalp (left parietal)
3. Fractures of base of skull
4. Acute sub-dural haemorrhage (left)
5. Contre-coup sub-arachnoid haemorrhage and pulping of brain (tips of both temporal and frontal lobes)
6. Haemorrhage into globus pallidus and internal capsule (left)
7. Haemorrhage into middle ear cavities (bilateral)
8. Perforation of ear-drums (bilateral)

Summary

Death was due to intra-cranial haemorrhage, brain damage and fractures of the skull resulting from a violent force applied to the left parietal region. This force was either a powerful blow from a moderately heavy blunt instrument or a fall with violent impact of the head against a solid object

SGD "J D DUFFIN Maj"
(J.D. DUFFIN) MAJOR RCAMC
Pathologist
2 Cdn General Hospital

"AMK"

Statement of

M-3823 L/Cpl Thomlinson W.M.

At approximately 2145 hours on 30 January 1945 I was informed that a soldier had been hurt and was in the Victory Cafe, Kleine Staatiestraat, Ghent. I went to this cafe and found an injured Polish soldier in the back of the cafe. He was bleeding from the mouth, ears and nose. I sent for an ambulance at once. On checking his paybooks I discovered that he was 5088 Cpl. Rataj Jan , 10 Pol Mt d Rifles. The ambulance was slow in coming so I took the man to 2 Can General Hosp in my own jeep. When I asked the Victory Cafe proprietor how the Polish soldier came to be in the cafe, I was informed that he had been carried in from the street. Maxie's Cafe is directly opposite the rear door of Victory Cafe.

W.M. Thomlison L/Cpl.

Original statement att to original proceedings.

"AMF"

LIST OF WITNESSES

FOR THE PROSECUTION — Seconde Marie, Binnenweg 78, Ledeburg, Ghent.
Westerlinck Maria, Binnenweg 55, Ledeburg, Ghent.
Major J.D. Duffin, RCAMC, Pathologist, 2 Cdn Gen Hosp.
M-3823 L/Cpl Thomlinson W.N., HQ, 2 Cdn L of C Provost Coy, Brussels.

FOR THE DEFENCE — Nil.

LIST OF EXHIBITS

Exhibit "A" - Statement of Evidence, signed by Major J.D.DUFFIN, RCAMC, 2 Cdn Gen Hosp, Pathologist.

Exhibit "B" - Statement of Evidence, signed by Seconde Marie, Binnenweg 78, Ledeburg, Ghent and translated by M-60043 Pte Radstaak J., 2 Cdn L of C Provost, Ghent Det.

Exhibit "C" - Statement of Evidence, signed by Maria Westerlink, Binnenweg 55, Ledeburg, Ghent, and translated by M-60043 Pte Radstaak J., 2 Cdn L of C Provost, Ghent Det.

Exhibit "D" - Statement of Evidence, signed by M-3823 L/Cpl Thomlinson W.N., 2 Cdn L of C Provost Coy.

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE, A COPY OF THE CHARGE SHEET, THE SUMMARY OF EVIDENCE, THE LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

Sgd. "L D Davis"
(L.D. DAVIS) Pte B-86312

"AAA"

Summary of Evidence in the case of B-88312 Pte Davis, Lorne Dewey, Toronto Scottish Regiment, on strength 10 Bn CBRC, a soldier of the Canadian Army Overseas charged with manslaughter.

By direction of the commanding officer, the evidence is taken on oath.

First Witness. Major J.D. Duffin, RCAMC, 2 Cdn General Hospital, pathologist.

I certify that in my opinion the attendance of this witness is, owing to the absence of this officer on duty, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused, and is attached hereto and marked Exhibit "A".

Sgd. George E. Collins Lt.

I do not require the attendance of Major J.D. Duffin for the purpose of cross examination.

Sgd."Pte L.D. Davis"

2nd Witness: Seconde Marie, Binnenweg 78, Ledeburg, Ghent, having been duly sworn states through an interpreter, M.60043 Pte Radstaak, J. att 2 Cdn L of C Prov (Ghent det), also sworn to interpret accurately:

I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd February 1945. (Statement produced with accompanying English translation duly certified by G. Van den Abeele, interpreter, and is attached hereto and marked Exhibit "B")

Cross examined by the accused.

Q.1 I was fighting with two Poles in the corner of the cafe was I not?

A.1 Yes

Q.2 When you mention "Same Scottish soldier" do you mean me or a soldier with the same Scottish uniform?

A.2 Same uniform, it was another soldier.

"Seconde Marie"

rd Witness:

Maria Westerlink, Binnenweg 55, Ledeburg, having been duly sworn states through an interpreter, M-60034 Pte. Radsbank J. att Ghent Det 2 Cdn L of C Prov, also sworn:

Witness is shown statement purporting to be signed by her on 2nd February 1945 and interpreted by G. Van der Abeele and is asked by the officer detailed to take the summary of evidence - (statement marked exhibit "C") attached hereto.

Q.1. Is this the statement you gave to the Police on 2 Feb 1945?

A.1. Yes.

Q.2. Is it a correct statement?

A.2. No it is wrong.

Q.3. Why did you sign it at the time?

A.3. Because I did not have time to read it over, I had to leave right away.

Q.4. What changes do you wish to make with reference to the statement?

A.4. It was not the accused whom I meant was the one who fought with the Pole entering the cafe. It was another Scottish soldier.

Cross examined by the accused

Q.1. Where was I when this Pole was hit at the doorway?

A.1. I think you were at the counter. I saw you fighting once in the corner with one Polish soldier.

Q.2. What did I do after fighting in the corner?

A.2. I didn't see you do anything more

(Sgd) Westerlinck Maria

Fifth Witness. M-3823 L/Cpl Tomlinson W.N. 2 Cdn L of C Provost Coy

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable, and a written statement signed by him has been read to the accused and is attached hereto and marked Exhibit "D"

"George E Collins Lt."

I do not require the attendance of L/Cpl Thomlinson for the purpose of cross-examination.

"Pte L.D. Davis"

The accused was cautioned as follows "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing, and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing summary of evidence, consisting of 6 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

"G. E. Collins Lt."
Offr detailed to take summary

Field
12 Mar 45

CORRECTION

This document has been rephotographed to assure legibility

Statement of
M-3823 L/CPL Thomlinson W. N.

At approximately 2145 hours on 30 January 1945 I was informed that a soldier had been hurt and was in the Victory Cafe, Kleine Straatestraat, Ghent. I went to this cafe and found an injured Polish soldier in the back of the cafe. He was bleeding from the mouth, ears and nose. I sent for an ambulance at once. On checking his pay book I discovered that he was 5088 Cpl. Rataj Jan, 10 Pol Mtd Rifles. The ambulance was slow in coming so I took the man to 2 Cdn General Hosp in my own jeep. When I asked the Victory Cafe' proprietor how the Polish soldier came to be in the cafe, I was informed that he had been carried in from the street. Maxie's Cafe is directly opposite the rear door of Victory Cafe'.

W. N. Thomlinson L/Cpl.

Statement of: M-3823 L/Cpl THOMLINSON, W.H.

At approximately 2145 hours on 30 January 1945 I was informed that a soldier had been hurt and was in the Victory Cafe, Kleine Stantiestraat, Ghent. I went to this cafe and found an injured Polish soldier in the back of the cafe. He was bleeding from the mouth, ears and nose. I sent for an ambulance at once. On checking his paybook I discovered that he was 5080 Cpl. Rataj Jan, 10 Pol Mtd Rifles. The ambulance was slow in coming so I took the man to 2 Cdn General Hosp in my own jeep, when I asked the Victory Cafe proprietor how the Polish soldier came to be in the cafe, I was informed that he had been carried in from the street. Maxie's Cafe is directly opposite the rear door of Victory Cafe.

.....
W.H. THOMLINSON L/Cpl.

LIST OF WITNESSES

FOR THE PROSECUTION: Seconde Marie, Binnenweg 78, Ledeburg, Ghent.
Westerlinck Maria, Binnenweg 55, Ledeburg, Ghent.
Major J.D. Duffin, RCAMC, Pathologist, 2 Cdn Gen Hosp.
M-3823 L/Cpl Thomlinson W.N., HQ, 2 Cdn L of C Provost Coy, Brussels.

FOR THE DEFENCE: Nil.

LIST OF EXHIBITS

Exhibit "A" - Statement of Evidence, signed by Major J.D. DUFFIN, RCAMC, 2 Cdn Gen Hosp, Pathologist.

Exhibit "B" - Statement of Evidence, signed by Seconde Marie, Binnenweg78, Ledeburg, Ghent and translated by M-60043 Pte Radstaak J., 2 Cdn L of C Provost, Ghent Det.

Exhibit "C" - Statement of Evidence, signed by Maria Westerlink, Binnenweg 55, Ledeburg, Ghent, and translated by M-60043 Pte Radstaak J., 2 Cdn L of C Provost, Ghent Det.

Exhibit "D" - St atement of Evidence, signed by M-3823 L/Cpl Thomlinson W.N., 2 Cdn L of C Provost Coy.

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE, A COPY OF THE CHARGE SHEET, THE SUMMARY OF EVIDENCE, THE LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

...L.D. Davis.....
(L.D. DAVIS) Pte B-88312

Summary of Evidence in the case of B-88312 Pte. [illegible] Toronto Scottish Regiment, on strength 10 Bn C.D., 2 C.B.R.D., a soldier of the Canadian Army overseas, charged with manslaughter.

By direction of the commanding officer, the evidence is taken on oath.

First Witness. Major J. D. Duffin, RCAMC, 2 Cdn General Hospital, pathologist.

I certify that in my opinion the attendance of this witness is, owing to the absence of this officer on duty, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused, and is attached hereto and marked Exhibit "A"

George E. Collins Lt

I do not require the attendance of Major J D Duffin for the purpose of cross examination.

H. A. D. Davis

2nd. Witness: Seconde Marie, Binnenweg 78, Ledeburg Ghent, having been duly sworn states through an interpreter, M-60043 Pte Radstaak J. att 2 Cdn L of C Prov (Ghent det), also sworn to interpret accurately:

I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd February 1945. (Statement produced with accompanying English translation duly certified by G. Van den Abeele, interpreter, and is attached hereto and marked Exhibit "B")

Cross examined by the accused.

Q1 I was fighting with two Poles in the corner of the cafe, was I not?

A1 yes

Q2 when you mention "Same Scottish soldier" do you mean me or a soldier with the same Scottish uniform?

A2 Same uniform, it was another soldier.

Seconde Marie Louise

3rd Witness:
Maria Westerlink, Binnenweg 55, Hedeburg,
having been duly sworn states through an
interpreter, M-60034 Pte Radstaak J. att Ghent
Det 2 Cdn L of C Prov, also sworn:

Witness is shown statement purporting
to be signed by her on 2nd February 1945 and
interpreted by G. Van den Abeele and is asked
by the officer detailed to take the summary
of evidence - (statement Marked Exhibit "C") attached hereto

Q1 Is this the statement you gave to the
Police on 2 Feb 1945?

A1 yes.

Q2 Is it a correct statement?

A2 no it is wrong

Q3 Why did you sign it at the time?

A3 Because I did not have time to read
it over, I had to leave right away.

Q4 What changes do you wish to make
with reference to the statement?

A4 It was not the accused whom I meant
was the one who fought with the Pole entering
the cafe. It was another Scottish soldier.

Cross examined by the accused

Q1 Where was I when this Pole was hit at
the doorway?

A1 I think you were at the counter. I saw
you fighting once in the corner with one Polish
soldier.

Q2 What did I do after fighting in the corner?

A2 I didn't see you do anything more

Westerlink Maria

Fifth Witness. M-3823 L/CPL Thomlinson W.N, 2 Cdn L of C Provost Coy, a.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable, and a written statement signed by him has been read to the accused and is attached hereto and marked. Exhibit "D".

George E. Collins Lt

I do not require the attendance of L/CPL Thomlinson for the purpose of cross examination.

[illegible]

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing, and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing summary of evidence consisting of 6 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

G.E. Collins Lt
Offr detailed to take summary

Field.
12 Mar 45

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-88312 Pte Lorne Dewey DAVIS, Tor Scots, 10 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.R. 41	Not Guilty	Not Guilty	NOTED [signature] J.G. Swagger 7 Brig Comd. 2 CBRG.
2nd			
3rd			
4th			23. JUL 45
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 76 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Not Guilty

(Sgd) A.M. Lieutenant Jr — Judge-Advocate, if any. 19 Apr. 45 — Date awarded. (Sgd) [signature] — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ~~charge(s), and~~ allowed on the FIRST charge(s), and that, accordingly, ~~the trial will proceed on the former, but~~ the accused is (not) found Not Guilty on the ~~latter~~ charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

~~D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence~~ yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. DE you intend to call witnesses on your behalf? Ans. Are they witnesses as to character only? Ans.

(1. RP 115. 2. RP 40(A), see 80(2). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 45(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) ~~The Court is re-opened.~~

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST charge(s), being subject to confirmation, will be promulgated later.~~(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

~~D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. and Ex. respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 42. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 332, 563-566, Overseas RO 309, 1323, MML p 67, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B-88312 Pte Lorne Dewey DAVIS, Tor Scots, 10 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 41	Not Guilty	Not Guilty	NOTED
2nd				
3rd				Sgd "J G Spragge"
4th				(J G SPRAGGE) Brig
5th				Comd E C.B.H.Q.
6th				23 Jul 45

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ---------- beginning on (date)~~ ---------- (1) "AME"

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 76 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Not Guilty

(Sgd) "A M Ecclestone Lt," Judge-Advocate, if any. — 19 Apr 45 Date awarded. — (Sgd) "J F Taylor" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ---------- (Sgd) ---------- Commanding ----------

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) ----------

Date ---------- Commanding ---------- Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. — Date. — Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMH, IN AB 160 50-17

COPY

FIELD GENERAL COURT-MARTIAL

CPA88 (To lieu of AFA81, 40/P&B/1608 (R1&4)) 4/38B

Convened by Order of Brig G S N GOSTLING, ED Comd 8 CBRG dated 17 APR 45

RECEIVED 30 Jul 1945 JAG BRANCH CMHQ

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-88312	Pte	Lorne Dewey	DAVIS,	Tor Scots, 10 CBR Bn

Proceedings Reviewed "WWWS"
30 Jul 45
(Sgd) H.M.Gunter, Capt
Reviewing Officer JAG Branch CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 17, 18, 19 April 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/-

A1. The President, Members, ~~waiting Member~~, JA, ~~if any~~, and Offrs under instr, if any, assemble, and the "AME" Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1415 hours trial commences. "AME"

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ "AME"

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to M-60045 L/Cpl RADJI as Interpreter ? Ans No

The Interpreter is sworn.(1) Do you object to K-70650 J/Sgt DAVIS as shorthand writer ? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J F TAYLOR, RHC,	10 CBR Bn
Member	Captain	G R ROBERTSON, K-4 List CIC,	10 CBR Bn
Member	Captain	G ROBICHAUD, K-4 List CIC,	10 CBR Bn
Judge-Advocate	Lieut	A M ECCLESTONE, A & SH of C.	Att HQ 2 CBRG
Prosecutor	Major	R F WILSON, Linc & Welld, att 1 Cdn Disciplinary Centre.	
Defending Offr	Major	P S OSLER, RCA, K-9 att 5 Cdn NDTD,	

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused B-88312 Pte DAVIS L D before arraignment makes(s) (no) (a) plea "AME" (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) "AME" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A56 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3, para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of parts D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No .(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~his~~) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First charge(s).(2) The Court "AME" is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission ~~is disallowed on the .....charge(s)~~ and allowed on the First "AME" charge(s), and that, accordingly, ~~the trial will proceed on the former~~, but the accused is (~~are~~) found Not Guilty on "AME" the ~~latter~~ charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. ~~President to accused : Your trial now proceed with your defence (1). You may, if you wish, give evidence~~ "AME" yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)
AME

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if at all material, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I ~~of the Schedule (2)~~. "AME" ~~The Court is re-opened.~~
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....First~~ "AME" ~~charge(s) during subject to confirmation, will be promulgated later.~~(1) "AME"

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7) (c), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using~~ "AME" ~~Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. "AME" .(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 87, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Ordinance RO 309, 2323, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Medical Officers Certificate

I certify that I have this day examined B86312 Pte Davis L D
10 CBR Bn and in my opinion he is fit/~~unfit~~ to undergo trial by
"RHC"
Court Martial.

Station Field

Date 17 Apr 45

"R H Chalmers, Capt."
Medical Officer

10 CBR Bn
Unit

Medical Officers Certificate

I certify that I have this day examined B88312 Pte Davis L D "WS" 10 CBR Bn and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station Field

Date 18 Apr 45

"W Smith Capt"
Medical Officer

10 CBR Bn
Unit

Medical Officers Certificate

I certify that I have this day examined B 88312 Pte Davis, L D and in my opinion he is fit/~~unfit~~ to undergo trial by "RHC"

Court Martial.

" R H Chalmers Cert."
Medical Officer

Station Field

Date 19 Apr 45

10 Bn 2 CBRG
Unit

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-88312	Pte		Lorne Dewey	DAVIS	Tor Scots, 10 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Apr 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to order the said to assemble at a place within reach~~) (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~The said accused is to be kept in close custody until the trial is over.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J I TAYLOR, (Must be named. RP 106.)	RHC,	10 CBR Bn (Unit.)

MEMBERS.

Captain	G R ROBERTSON,	X-4 List CIC,	10 CBR Bn
Captain (Rank.)	G ROBICHAUD, (Named or detailed. RP 106.)	X-4 List CIC,	10 CBR Bn (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

Lieut (Rank.)	A M ECCLESTONE, A & SH of C, Legal Offr, att HQ 2 CBRG (Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 17 Apr 45

"G S N Gostling" (Signed personally. RP 105 fn 2.)

(G S N Gostling)

Brigadier (Rank.)

Commanding 2 CDN BASE RPT GP

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 66 (To Back of AFA 3) 40-P-A-D/1807 (6143)

On behalf of the JAG, Cdn Army Overseas, I approve the appointment of Lt A M ECCLESTONE as Judge-Advocate, the said Lt ECCLESTONE having legal qualifications.

"H H Griffin, Capt" ADJA HQ 2 CBRG
(H H Griffin, Capt)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said..." I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 85(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86(2).*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 85(C).*)

(v) Closing address (*on matters other than on imposition of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD OF PROCEEDINGS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iia) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of registered books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 93(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(8), RP 114(C), MML p 758.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or otherwise directed.

C H A R G E S H E E T

The accused, B-88312 Pte Lorne Dewey DAVIS, (Tor Scots) on the strength of 42 Coy, 10 CHR Bn, a soldier of the Canadian Army Overseas

is Charged with

FIRST CHARGE
A.A. Sec 41

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MANSLAUGHTER

in that he

In the Field, at Ghent, Belgium on 30 Jan 45, unlawfully killed Cpl Rataj Jan, of 10 Polish Mounted Rifles, Polish Army.

"D Y Patrick"
(D.Y. PATRICK) Capt.,
A/O.C., 10 C.H.R. Bn.

In the Field
31 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"G S N Gostling"
(G S N Gostling) Brig
Commander
2 Cdn Base Rft Gp

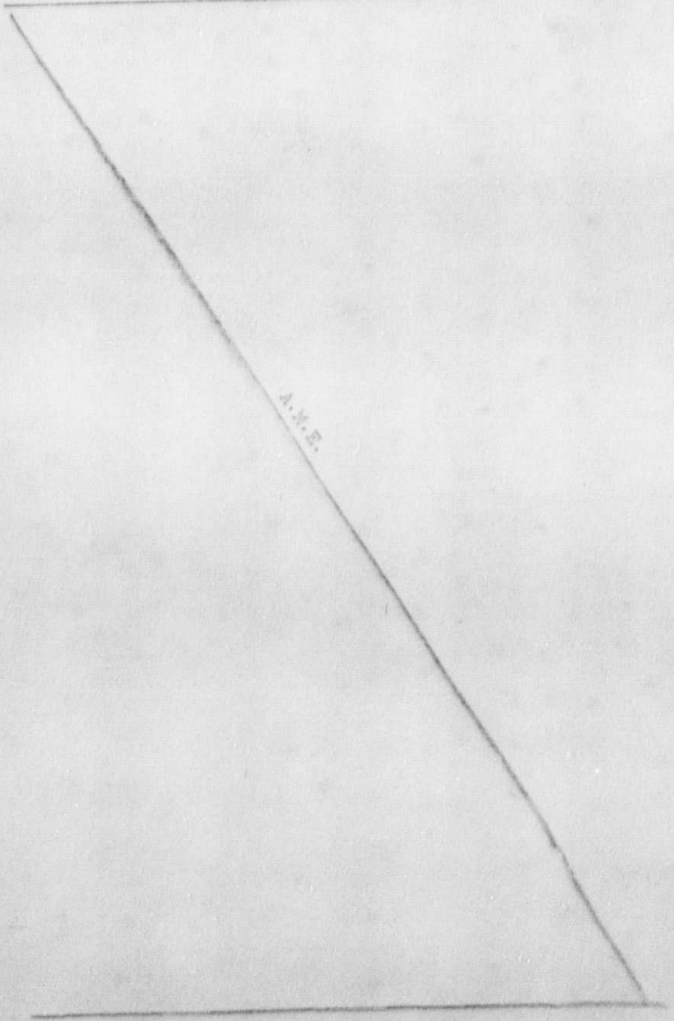
In the Field
17 Apr 45

PROSECUTOR MAKES AN OPENING ADDRESS

The facts in this case will be fairly well placed before the Court by any one of the first witnesses called by the Prosecution so that I believe it is sufficient for me to say at this time that the Prosecution will establish that on the night of 30th Jan 45 a sort of a cafe brawl took place in a spot known as Marie's Cafe here in the city of GHENT.

This affair was immediately in front of the doorway or exit leading to the street. By reason of what went on there a Polish Soldier was struck and was knocked to the pavement and he subsequently died.

I have had a sketch made for the benefit of the Court. I will have that sketch produced in order that direction and location will be established and I trust that this will be satisfactory.



"AVE"

FIRST WITNESS - For the Prosecution - duly sworn
Seconde MARIE, Binnenweg 78, Ledeburg, GHENT.

(Evidence through Flemish Interpreter)

Q.1 You are Seconde MARIE?

A.1 Yes Sir,

Q.2 Do you know the Cafe known as Maxie's here in the city of GHENT?

A.2 Yes sir,

Q.3 Were you at Maxie's Cafe on an evening late in Jan 45?

A.3 Yes sir.

Q.4 Do you know the date?

A.4 I cannot remember the date.

Q.5 Can you give us the date?

A.5 All I can say is that it was in January.

Q.6 Do you know the accused soldier DAVIS over here?

A.6 Yes I saw him there.

Q.7 Was he at Maxie's Cafe on the night late in Jan that you are talking about?

A.7 Yes I saw him.

Q.8 Were there other soldiers in Maxie's Cafe that night?

A.8 Yes there were lots of soldiers.

Q.9 Do you know from what regiment the accused person is?

A.9 No I do not.

Q.10 Do you know the regiment of any of the soldiers that were there?

A.10 I have forgotten what was on their shoulders, there were English soldiers there as well.

Q.11 You say English soldiers, do you mean English soldiers as compared to Scottish soldiers?

A.11 There were English soldiers, Scottish soldiers and Belgian soldiers.

Q.12 Now what did you see happen in front of the doorway leading out of Maxie's Cafe that night?

A.12 I saw that they were fighting.

Q.13 Did you see any Polish soldiers there in front of the doorway that night?

A.13 I saw Polish soldiers going to come in.

Q.14 How many Polish soldiers.

A.14 One or two.

Q.15 And did they come in Maxie's Cafe?

A.15 I saw them open the door.

"AKE"

Q.16 And then what happened?

A.16 There was a Scottish soldier sitting inside who was "Zig-Zag". He went to the door and he fought. I then went outside and I saw on the ground outside a Polish soldier lying down. I saw two other soldiers outside, I saw that he was bleeding.

Q.17 Where was he bleeding?

A.17. On his nose and his ears.

Q.18 And were there any more Polish soldiers other than this one there then?

A.18 No there was just one lying on the ground.

Q.19 Now you have told the Court that there was a Scottish soldier in Maxie's Cafe who was "Zig-Zag" and who went to the door and was fighting there with this Polish soldier?

A.19 You have the door and there is a corner.

Q.20 Yes, now who was fighting with the Polish soldier?

A.20 I saw the Scottish soldier who is sitting here fight with the Polish soldier.

Q.21 Is it the accused soldier that you have identified here?

A.21 I saw him fighting.

Q.22 With the Polish soldier?

A.22 Yes in the corner.

Q.23 In the corner, is that in front of the doorway in that building?

A.23 There is the door and there is a little place behind that where there is one table.

Q.24 Did you see him, did you see this Canadian soldier or the Scottish soldier as you have called him, fighting with the Polish soldier at the doorway?

A.24 I saw that he had been fighting.

Q.25 I ask you again did you see the Scottish soldier that you have identified here fighting with the Polish soldier in front of the doorway?

A.25 I saw them fighting in this corner

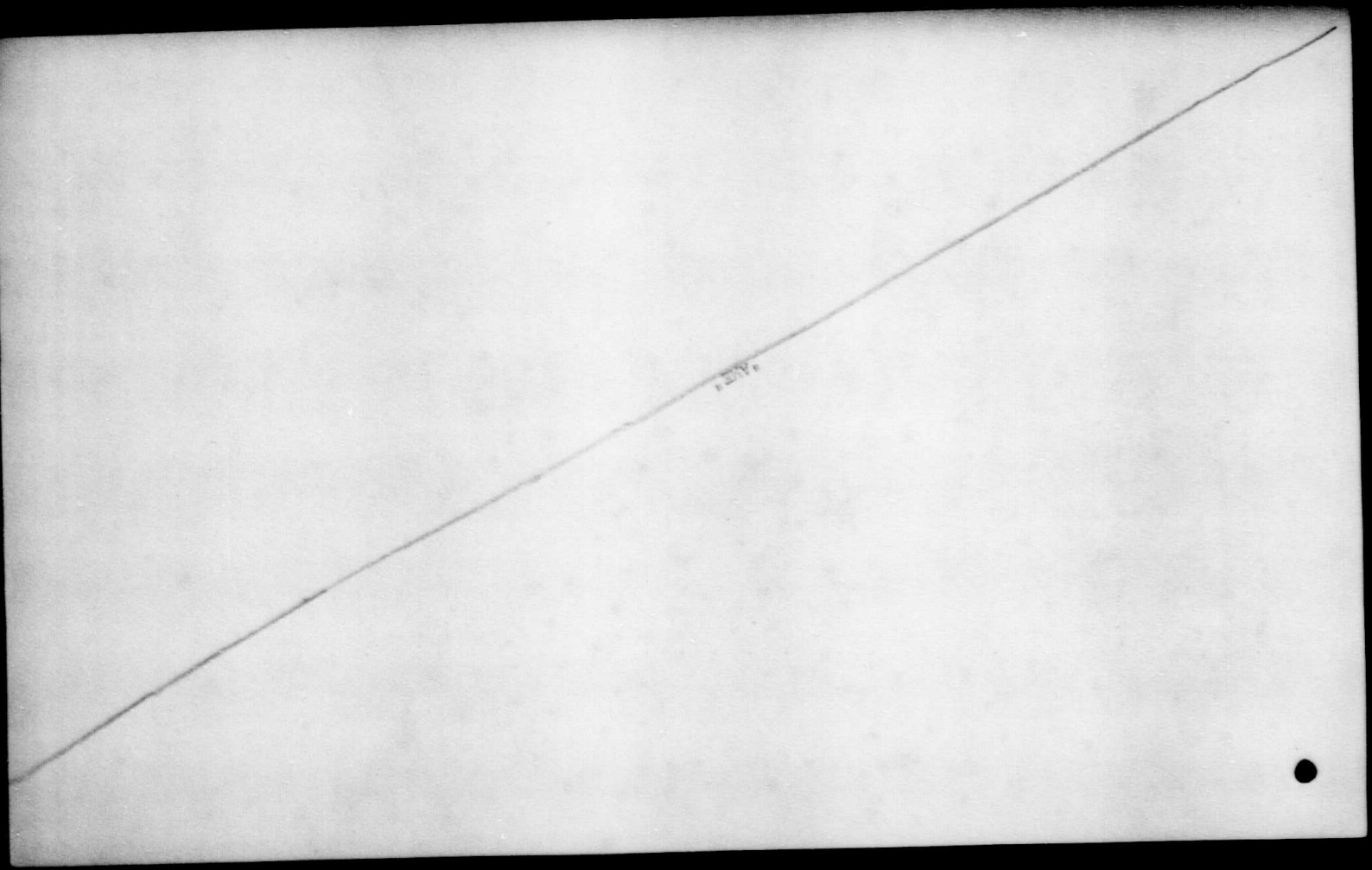
Q.26 Can you answer that yes or no?

A.26 All I can answer is that I saw them fighting in the corner

Prosecutor - May I ask the permission of the Court to cross-examine this witness and put leading questions to her. This is very material and I would like to know therefore if I may treat this witness as hostile?

Defence - From what the evidence has been so far it is too early to decide this question. She has merely stated one thing three times reframing it and I do not think that constitutes a hostile witness.

Prosecutor - I am prepared to argue that with my friend. It is not a question as to whether the evidence is favourable or not. I do not produce this witness for that.



I can go on and establish this fact. This witness is a very material witness or I would let that matter drop and establish it through somebody else but I am not in that position. I do need the permission of the Court as this is my witness and I can not cross-examine her and I can not put leading questions to her. It is more than the duty of the Prosecution to produce some one just because they are favourable or unfavourable. I am prepared or ready to cross-examine this witness if the Court will give me such permission.

Judge-Advocate - I think the witness should withdraw.

Witness withdraws.

Prosecutor - The question here is one of the statements made by the witness, Seconde MARIE, whom we have just had in the witness box and on behalf of the Prosecution. I have of course statements that the witness has made and I have tried to bring out from her in direct examination the facts that she has already stated. That direct examination of mine fails to bring out here those facts. Now without the permission of the Court I can not go on and put leading questions to this witness and I can not cross-examine her but it is a matter solely within the descretion of the Court as to whether or not I can be permitted to do that.

I can illustrate that by saying that I have a Flemish statement made by this witness. I can not as the Prosecution present it to this witness and say "is that what you said"? By so doing I impeach the credit of my own witness.

The Court being cognisant of the facts at this time decide whether I am permitted to act on that now or whether you feel something more can be done by way of direct examination. Now that goes even farther, if that does not establish the facts that she has already stated, with your permission I can call other evidence of the circumstances surrounding this statement which I propose to do with your permission. I can appreciate that there is some law there which you may like to consider but I feel that it is important and material and I do not want to leave it unless you so desire.

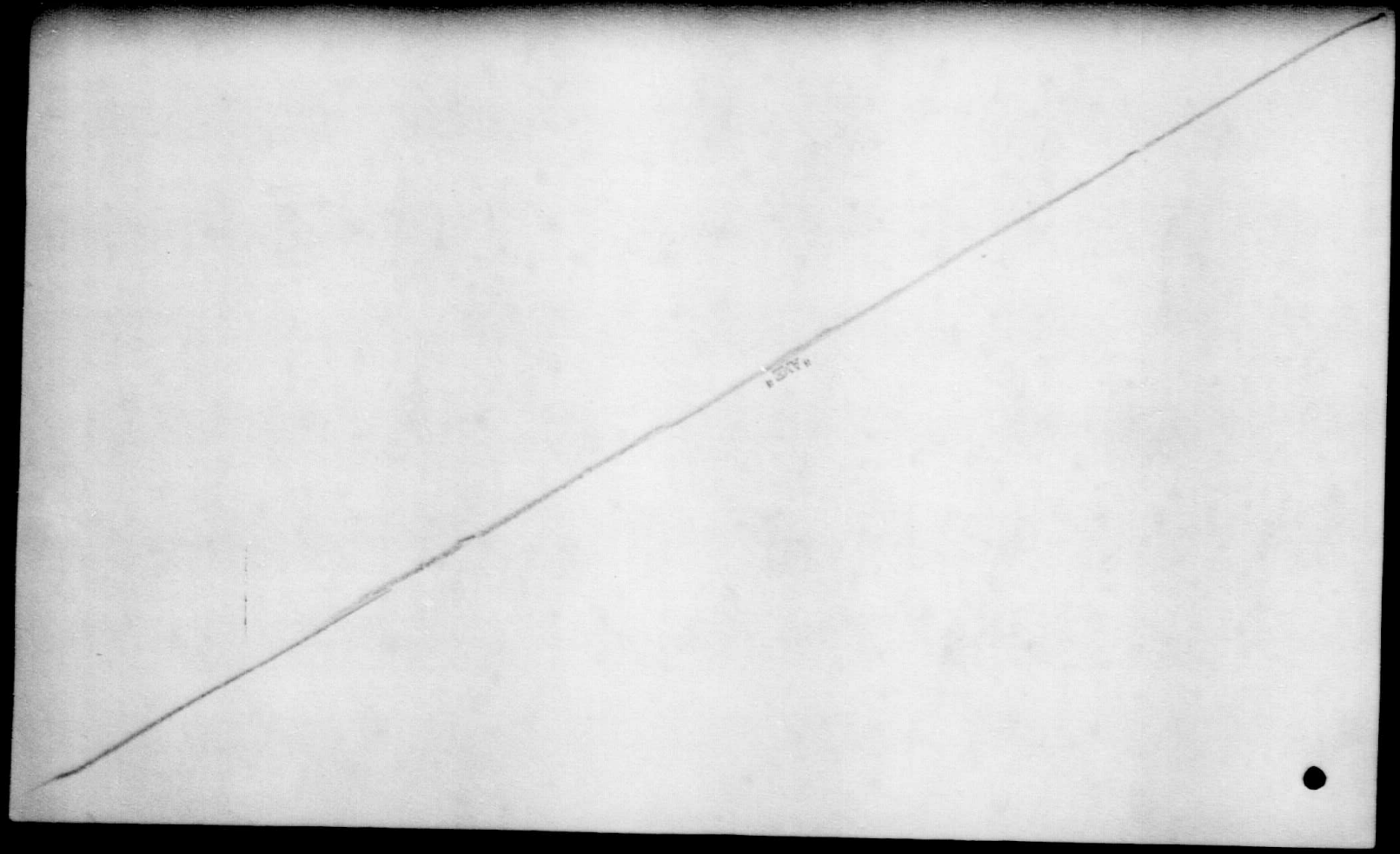
Defence - This witness has not shown herself to be hostile. It is for the descretion of the Court whether or not the Prosecution may ask leading questions and so on but the basis of the thing is that the witness is hostile, that I do not think has been shown.

The Court is closed to consider the request of the Prosecution.

The Court is reopened. The Court has disallowed the submission at this time of the Prosecuting Officer. The Court feels that there is not sufficient evidence before it to say that this witness is acting in a hostile manner. If after further evidence it is considered that she is acting in a hostile manner the matter will be considered again.

Prosecutor - Will the Court permit me to carry on further examination or put to her leading questions. That is the question that should be decided here not as to the hostility of this witness at this point?

JA - The Court feels, Maj WILLSON, that questions should be asked in either a yes or no answer.



FIRST WITNESS - For the Prosecution
Reconde MARIE - is recalled.

JA - will you warn this witness that she will answer these questions with a yes or no answer. That is if she is asked for a yes or no answer she will give a yes or no answer.

Q.27 I want to ask you another question about what you saw at the doorway when the Polish soldier entered Maxie's Cafe. Did you see, did you not see the accused person, DAVIS, fighting with the Polish soldier in front of the doorway of Maxie's Cafe?

A.27 I saw the soldier fighting in the corner of Maxie's Cafe with the Polish soldier.

Prosecutor - I am going to ask the Court that it is important that they go down and see the interior of Maxie's Cafe and the area where this incident occured but that still is not helpful at this moment.

Perhaps we need not go further there. I do not oppose the fact that there is a little nook around a table there that she is talking about. I submit that we do not need to go into the question.

Q.28 Did you see Polish soldiers in the Cafe on more than one occasion that night?

A.28 No I only saw them enter once.

Q.29 And how many Polish soldiers did you see enter at that time?

A.29 First one came in and then two come in.

Q.30 Now, where was the accused person, DAVIS, standing when the one Polish soldier entered Maxie's Cafe?

A.30 (No answer)

Q.31 Where was DAVIS standing when you saw the one Polish soldier enter the Cafe?

A.31 He was a prisoner then.

Q.32 What do you mean "he was a prisoner then"?

A.32 The police had already taken him away.

Q.33 Where was DAVIS standing when two Polish soldiers entered the door?

A.33 That was a week later.

Q.34 You have told the Court that on this night two Polish soldiers and then one Polish soldier entered. Now is that all on the same night?

A.34 No it is not on the same night.

Prosecution - May I have permission of the Court to have the statement made by this witness and ask her if she recalls making this statement. I have an additional Flemish witness and will put it to her through the interpreter who took it.

JA - Is he present?

Prosecution - Yes.

Defending Officer - On that point may I make a submission. I think it is in the interest of all that her mind should be directed to the evening in question using the statement for that purpose only and so much of the statement that will make that clear only. I feel that we are getting nowhere but to use the statement to bring out what occured on that evening is quite improper until the Court agrees that she may be treated as a hostile witness.

Prosecution - The difficulty is that the Court have no way of knowing these facts unless I am permitted to produce this statement.

For instance the Court still do not know what my examination is directed to and can not unless I am permitted in some way to establish that. That is all I should say on it.

JA - the statement you are referring to is the one made on 2 Feb 45?

Prosecution - That is right.

JA - this witness has already told us she saw fighting at the door, she saw Polish soldiers come in - one or two.

Witness is withdrawn.

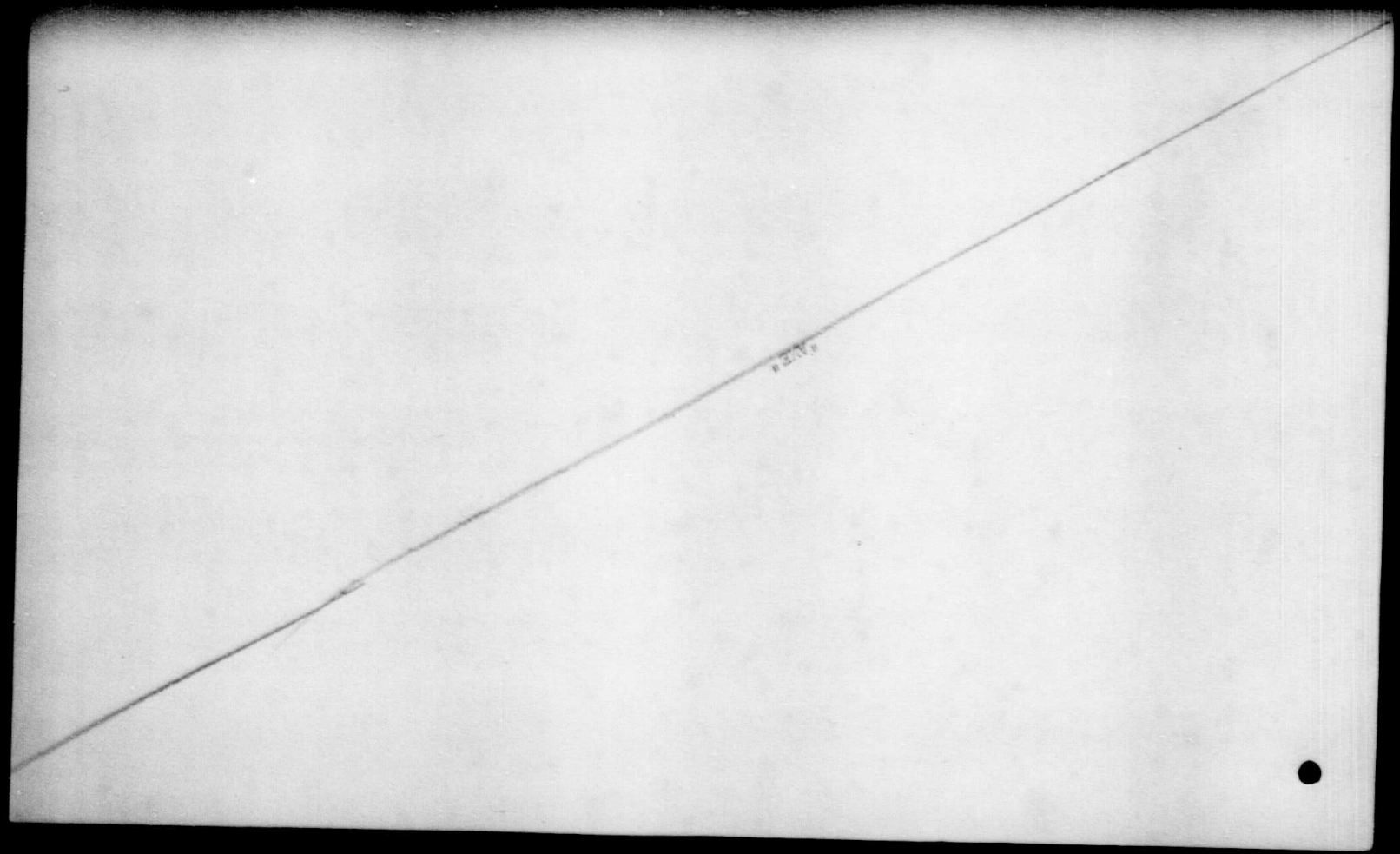
Prosecution - the statement which I would like to have permission to use contains these words, "I have seen the same Scottish soldier who is now present in the bureau fight with two Polish soldiers as soon as they entered. I tried to separate them but it was not possible. I saw then that two soldiers of the 'Argyll and Sutherland Canada' regiment separated the fighters. One of these two soldiers was a tall man, the other a small one."

Then the middle part. "I saw the same scottish soldier giving a blow at another Polish soldier, who just entered the bar. As this Polish soldier didn't have the time in order to shut the street door, he fell backwards, his head struck the pavement."

Those are the facts that I would like to question this witness on and you can see I am in difficulty unless some latitude is granted.

Defending Officer - I would merely like to draw to the attention of the Court that this witness is intentionally or not failing to give straight answeres to the questions. In other words there has been so much confusion. While this statement has been read I think the Court out to know at the same time that a further statement taken on the Summary of Evidence, a sworn statement, in which she states referring to the Scottish soldier giving a blow, was the "same uniform but another soldier". I think these two statements should be read together when you decide whether or not this witness may be treated differently. I believe you have the Summary there.

JA - It seems to me, Maj WILLSON, that this is one of the most essential points of the whole case. So far the evidence of this witness stated that she saw fighting at the door, she saw Poles going to come in, one or two, she saw him open the door, the Scottish soldier was "Zig-Zag" went to the door and fought and that she saw the Polish soldier lying on the ground. It seems that this witness is not hostile sufficient to allow the producing of this statement.



Prosecutor - As Prosecutor you know I am bound to be fair. I do not want to have included here anything that is prejudicial to the accused person and should not be properly admitted. I suggest that this is not a question of anyone refreshing their memory. The statement that I read to you is to the effect that "I saw the same Scottish soldier giving a blow to a Polish soldier." As I have told you I can establish the circumstances under which this statement was taken and who was in the bureau at the time and who was seated and what was done to make the witness familiar with the fact that the accused person was DAVIS and that he was the only person sitting in the room.

The Court is closed to consider this question.

The Court is reopened.

FIRST WITNESS - For the Prosecution is recalled.
Seconde MARIE

Q.35 On the night of the 30th of Jan 45 at Maxie's Cafe do you know whether or not if any soldier there lost his coat or his badge or other equipment?

A.35 Yes I do.

Q.36 Who lost some equipment there that night?

A.36 The soldier that is sitting there, the Scottish soldier.

Q.37 That is the accused?

A.37 Yes sir,

Q.38 What did he lose?

A.38 He had lost his badge that he has on his cap.

Q.39 Anything else that you know of?

A.39 No.

Q.40 And what was he doing because of that?

A.40 He locked the door.

Q.41 And what did he do at the doorway?

A.41 He asked and felt to see if any soldier had his badge.

Q.42 Who did he feel and see if any soldier had his badge?

A.42 The Scottish soldiers.

Q.43 Do you know whether or not the door was open or closed leading to and from Maxie's Cafe?

A.43 He closed the door and stood in front of it.

Q.44 And what did he do then when the Polish soldiers entered?

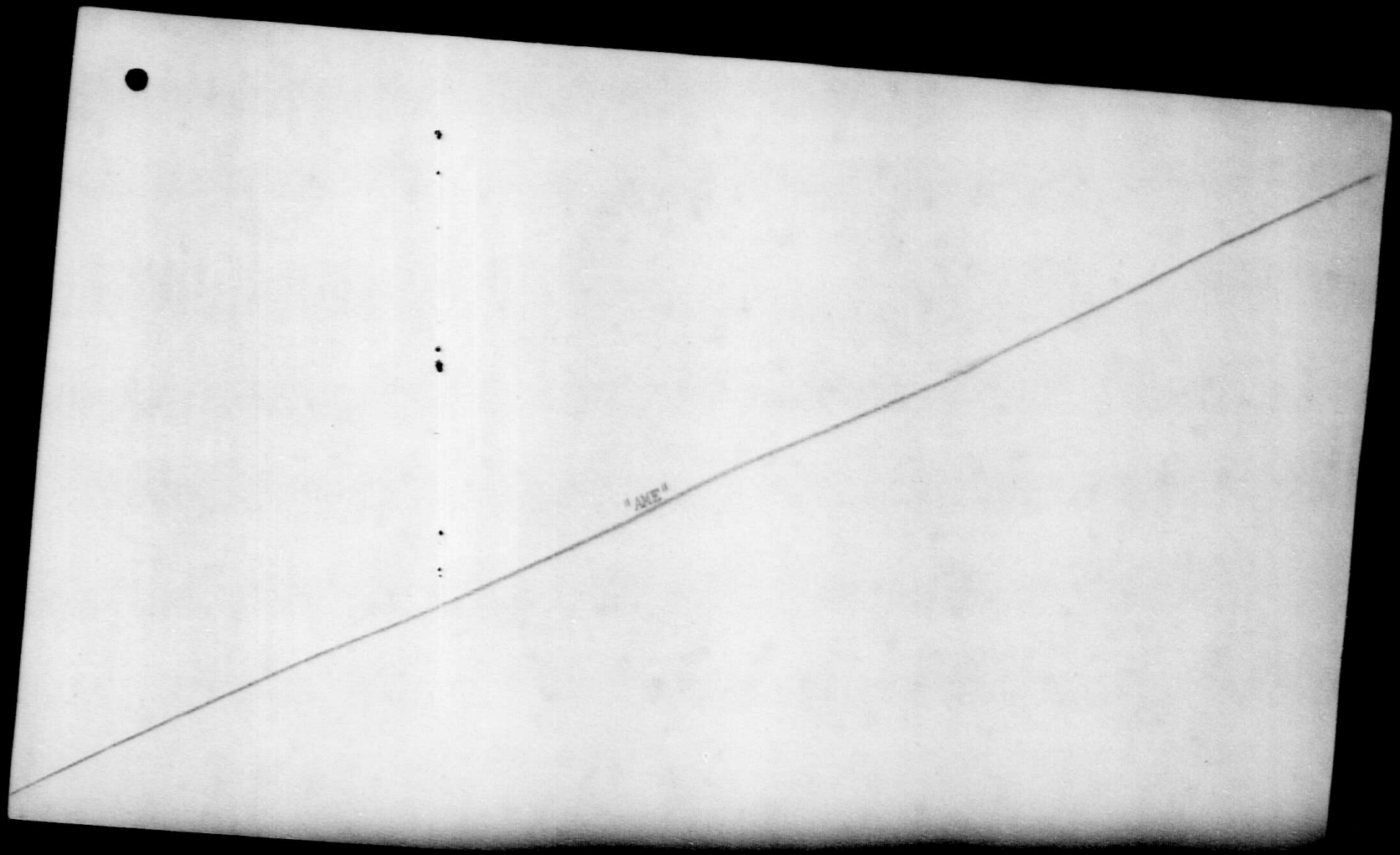
A.44 How do you mean,"whe n the Polish soldiers entered"?

Q.45 When the Polish soldiers came into the cafe what did the accused do?

A.45 He offered to fight with the Polish soldiers at the door, there is a door and there is a corner.

Q.46 And what did you see him do at the doorway?

A.46 I saw that he was fighting.


"AKE"

Q.47 Do you know who he was fighting with?

A.47 He fought with the Polish soldiers.

Q.48 And then what happened to the Polish soldier.

A.48 When he was fighting with the Polish?

Q.49 Yes.

A.49 I went there and went in between them.

Q.50 And then what happened?

A.50 And then another two soldiers came over and took them apart.

Q.51 And what happened from then on?

A.51 I then went out on to the street and I saw a Polish soldier lying on the ground.

Q.52 Do you know how the Polish soldier came to be lying on the ground?

A.52 I could not exactly say how the Polish soldier came to be lying on the ground.

Q.53 Did you see anyone strike the Polish soldier?

A.53 No I never saw that.

Q.54 Are you sure of that? Are you sure that you did not see someone strike the Polish soldier?

A.54 When they took him away?

Q.55 Did you see anyone strike the Polish soldier in what you have called the corner of that cafe?

A.55 I saw that Scottish soldier fight there.

Q.56 And did you see that Scottish soldier strike the Polish soldier there?

A.56 I just saw them fight.

Q.57 What did the Polish soldier do then after this fight?

A.57 Was that the Polish soldier that fought?

Q.58 Yes.

A.58 There is soldiers that took him outside so that he would go away.

Q.59 Was he able to walk out?

A.59 I did not see that.

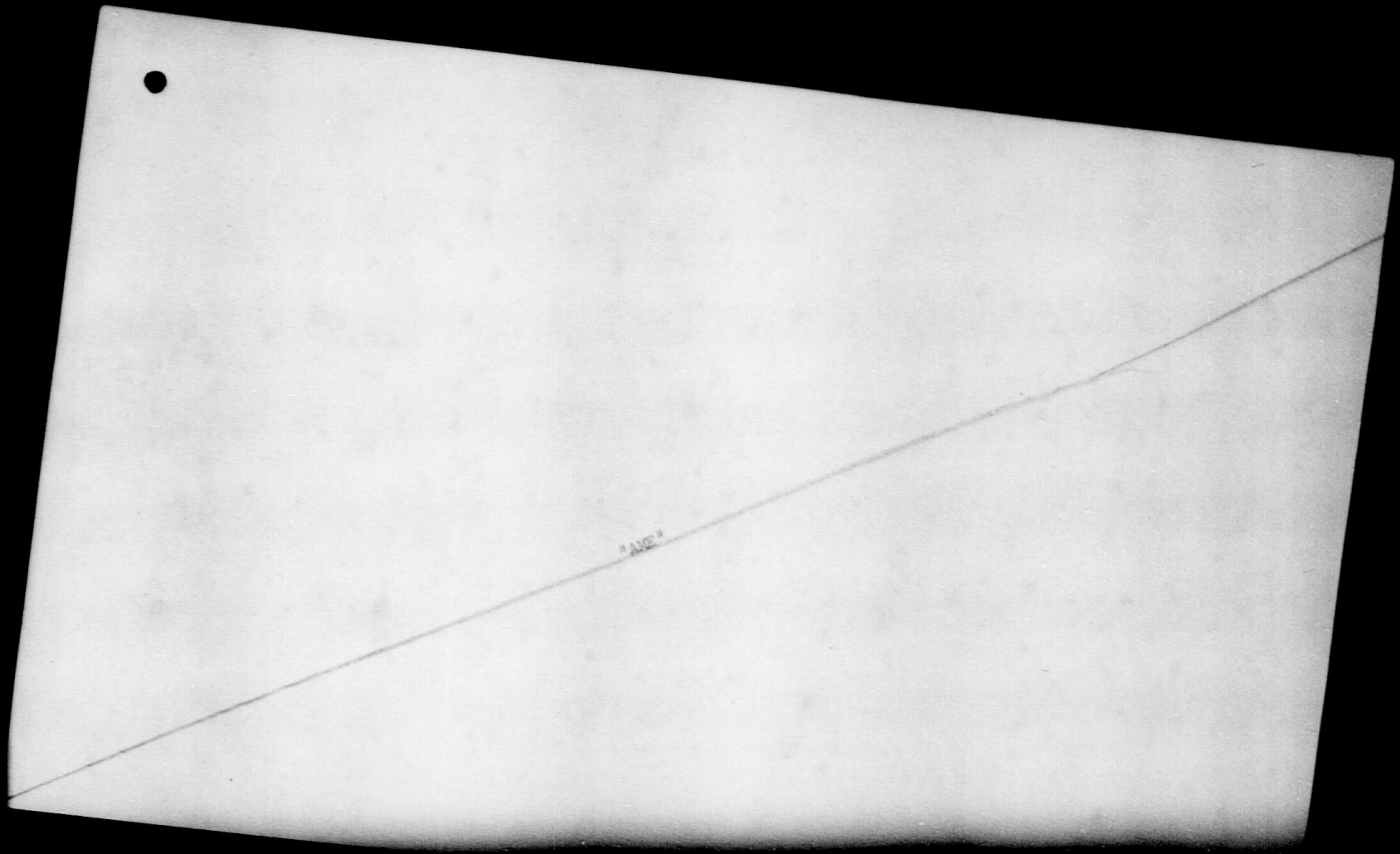
Q.60 Did you see the Polish soldier back out of the doorway?

A.60 No I never saw that.

Q.61 You did not see a Polish soldier back out of the doorway and close the door behind him at any time that night?

A.61 No I never saw that.

Q.62 Did you see a Polish soldier fall backwards through that doorway at any time that night?



A.62 No sir.

Q.63 Do you know how the Polish soldier that you saw lying in the street came to be there?

A.63 No I do not know. When I came outside I saw him lying on the street.

Q.64 Then you did not see this Scottish soldier strike a blow at any soldier that night?

A.64 I just saw that he was fighting.

Q.65 Did you see him strike anyone?

A.65 No I did not see him hit.

Q.66 Did you see the accused strike any Polish soldier there that day ?

A.66 I did not see that.

Prosecutor - I think that is as far as I can go unless the Court feels- if you feel that it is a question of this witness actually not knowing then it is not a question of granting me any leeway. If you feel that if at one time this witness did feel differently about this I should like to continue.

Defence - I do not wish to add any more objections because I feel that this witness either does not know or either has probably forgotten or never knew what happened. I do not wish to make any more objections or suggestions as to changing the method of the Prosecution's questioning here.

Prosecutor - Probably this may be cleared up if my friend goes on and cross-examines her and the Court may wish to recall her later if you feel that any advantage may be gained in that way.

Defence - In that respect the witness has not given any material evidence whatsoever against the accused. By cross-examining I would be sticking my neck out and I would rather leave any cross-examination until the Prosecution is finished rather than cross-examine and leave it open.

JA quotes from Archbolds - Hostile witness:

"A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall, in the opinion of the judge, prove adverse, contradict him by other evidence, or, by leave of the judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. To be inconsistent within the meaning of the section the statement need not be directly or absolutely at variance. The word 'adverse' in this section means 'hostile', and not merely 'unfavourable'. The discretion of the Judge to give or refuse leave to cross-examine the party's own witness, however hostile he may be, is absolute. If the witness appears evidently to be hostile to the party who has called him, counsel may put leading questions to him, having first obtained permission of the Court to do so."

Prosecutor - May I say that you can not determine whether this witness is hostile or not at this time. How can the Court determine whether this witness is hostile until I bring the facts before the Court. I have asked you for permission to use this statement and you say that there is no grounds for using this statement as yet. I asked for permission to call a witness to state that what this witness is saying is not the truth, that she has stated otherwise.

JA - my advice to the Court is that this can not be done unless the Court is satisfied that this witness is adverse. You are now asking permission to prove that she is hostile.

Prosecutor - I am asking you to open the door a little bit and I will show you.

The Court is closed

The Court is reopened - President announces Court will adjourn until 1000 hrs 18 Apr 45.

Court re-assembles 1000 hrs 18 Apr 45 - is re-opened.

The First Witness, Seconde MARIE, being not available the Prosecution on the direction of the Court proceeds to call other witnesses.

SECOND WITNESS - For the Prosecution - duly sworn.
Maria WESTERLINK, Binnenweg 55, Ledebrug, GHENT.

(Evidence through Flemish interpreter)

Q.67 You are Maria WESTERLINK?

A.67 Yes sir.

Q.68 Do you recognise the accused soldier here in Court today?

A.68 Yes, witness indicates the accused.

Q.69 Were you in Maxie's Cafe in the City of GHENT on an occasion when he was there?

A.69 Yes sir.

Q.70 What day was that?

A.70 30th of Jan 45.

Q.71 At about what time?

A.71 Between 9.15 and 9.30 PM

Q.72 And were there many Canadian soldiers in Maxie's Cafe that night?

A.72 Approx 20 Cdn soldiers.

Q.73 Did you see some Polish soldiers in that Cafe that night?

A.73 Yes two Polish soldiers.

Q.74 What did you see happen so far as these Polish soldiers are concerned?

A.74 Before the two Polish soldiers came in Davis was fighting with two Belgian civilians. He then fought

with the Polish soldiers at the door of the Cafe.

Q.75 And what happened to the Polish soldiers?

A.75 Two of the A & SH of C took them apart.

Q.76 And then?

A.76 Then one Polish soldier came back in again and DAVIS started in to fight with him again. If DAVIS put him outside or hit him outside I could not say. DAVIS came back into the Cafe and said that he had lost his coat and his badge and that he wanted it back. That is all I saw.

Q.77 Did you see the Polish soldier outside afterwards?

A.77 No sir.

Q.78 Do you know anything about DAVIS' coat or hat badge?

A.78 I do not know if DAVIS got his coat or his badge back, everyone was asked if they knew anything about it?

Q.79 Who asked everyone?

A.79 DAVIS himself.

Q.80 Where was DAVIS standing?

A.80 At the door

Q.81 Now do you know the Argyle and Sutherland Highlanders hat badge, cap badge ?

A.81 Witness produces A & SH of C hat badge from purse.

Q.82 Now do you know what kind of a hat badge DAVIS wore.

A.82 With a cross on it (indicates with her fingers)

Q.83 Is there any doubt in your mind as to the identity of this man DAVIS?

A.83 I did not know his name exactly, I know he was the man with the Polish soldiers.

Q.84 Now I want to review with you a moment the facts about these Polish soldiers. Is it true that Polish soldiers came into the Cafe more than once that night?

A.84 Twice, only twice.

Q.85 And the first time how many Polish soldiers came in?

A.85 Two.

Q.86 And then the second time how many Polish soldiers came in?

A.86 There came two in the second time and one of them was one of the first ones that came in..

Q.87 Did anything happen at the doorway that night?

A.87 In the cafe or outside?

Q.88 Either?

A.88 I saw nothing else except that the accused fought with the Polish soldier.

"AVE"

Q.89 And what did you see the Polish soldier do?

A.89 The Polish soldier fought back

Q.90 And then what happened?

A.90 The accused also fought.

Q.91 What did you see the accused do?

A.91 The accused fought with the Polish soldier when they came in.

Q.92 What happened after the fight?

A.92 The accused wanted his badge and his coat back.

Q.93 Did the accused person fight with the Polish soldier on more than one occasion there that night?

A.93 I just saw him fight twice with the Polish soldiers.

Q.94 And where abouts did he fight twice with the Polish soldiers?

A.94 At the door of Maxie's Cafe on the left hand side, that is where they fought.

Q.95 You did not go outside of Maxie's Cafe after you saw this fight then?

A.95 No I could not go outside the Cafe as he was standing in front of the door.

Prosecutor - I am in the same position with this witness as I was with the other witness and I do not know whether I can proceed further. I believe I have gone as far as I should unless the Court wishes to give me permission to use the statement or to do anything further with this witness.

I would like permission, depending on what your instruction was on this matter this morning, I would like permission either by way of introducing a statement made by this witness establishing her signature or calling another witness to produce her statement.

Defence - I would like to oppose that motion. I submit that the witness has apparently told a straightforward story this morning. There is no indication that she is in any way adverse or is doing anything else other than answering the questions put to her as well as she can. If the Prosecutor produces the statement, however, the evidence which she has given this morning is substantially the same as is written in her statement taken some time ago.

JA - A motion has been made by the Prosecutor for leave to introduce or to produce a statement purporting to be made by the witness and asks the Court for permission to cross-examine his own witness.

In establishing whether the witness is adverse my advice is that the Prosecutor should be allowed to introduce the statement and prove if he can if this is a statement made by the witness. The decision being left with the Court to determine whether that statement if proven shows that the witness is adverse. The Court must be careful that any evidence which is brought forward at this stage - to remember that it is not evidence against the accused but it is merely evidence in issue as to whether the witness is adverse to the Prosecution and the Prosecutor must not introduce in evidence in chief any

evidence made in that statement.

Defence - May I just make one point on that. In this statement before it is introduced as evidence it should also be shown that the evidence given verbally in Court is different from her statement.

JA - that is a matter for the Court to determine.

Defence - Oh yes but I would like that point to be very definitely established by the Court.

Q.96 Do you read Flemish as well?

A.96 Yes.

Q.97 Is that your signature at the bottom of that page?

A.97 Yes sir.

Q.98 Will you read that statement, not out loud, to yourself. Is that statement a statement made and signed by you on the 2nd of Feb?

A.98 Yes sir.

Q.99 And is that a true statement?

A.99 Yes sir.

Q.100 Now do you recall being interviewed by an officer once again regarding this DAVIS trial?

A.100 No I do not remember.

Q.101 Do you remember that on the 2nd of Feb you made that statement?

A.101 Yes

Q.102 And then about 12th Mar?

A.102 Yes by the Cdn Police

Q.103 And an officer?

A.103 Yes sir.

Q.104 Now do you remember that at that time this statement was shown to you?

A.104 Yes

Q.105 And the question was asked of you, "Is this the statement you gave to the Police on the 2nd Feb 45" and you answered "Yes"?

A.105 Yes

Q.106 And do you remember that the next question that was asked was, "Is that a correct statement" and your answer was, "No, it was wrong"?

A.106 There was a wrong word in it.

Q.107 Now what is the wrong word that is in it?

A.107 The Cdn Police asked me if this was the Scottish soldier that killed the Polish soldier.

Q.108 Yes and did you answer this?

JA - Just a moment Maj WILLSON. I do not want anything read out of that statement in open Court. I do not want any evidence read out that is prejudicial to the accused.

Prosecutor - I just want to get from this witness a yes or no and if she says she made this statement I will read it to you.

Q.109 The next question. The question here that was put to you was, "What changes do you wish to make with reference to that statement" and your answer was, "It was not the accused whom I meant was the one who fought with the Pole entering the Cafe, it was another Scottish soldier." Is that what you said?

A.109 Yes.

Q.110 Now you were questioned by the accused, "Where was I when this Pole was hit at the doorway?" and you answered "I think you were at the counter." "I saw you fighting once in the corner with one Polish soldier."

And, "What did I do after fighting in the corner?" and you answered, "I didn't see you do anything more."

Is that the statement that you made at that time? Is that the questions and is that the answeres you gave?

A.110 That is correct.

Q.111 Is that your signature?

A.111 Yes that is my signature.

Court is closed.

Court is re-opened - Court has found that the submission of the Prosecution has been allowed and the Prosecution may treat the witness as adverse.

Second Witness for the Prosecution is recalled.
Maria WŁOTKOWSKA,

Prosecutor - I take it that I may proceed to cross-examine her in any way regarding the facts in this matter.

Q.112 I show you a copy of the statement signed by you on the 2nd of Feb. And that is your signature there?

A.112 Yes sir.

Q.113 Now did you say on the 2nd of Feb, "Some minutes after, another Polish soldier came in and immediately the Scottish soldier fought with him. I saw that the Polish soldier went backwards as he was obliged by the fighters. I saw that the Scottish soldier gave a violent blow at the Polish soldier. The Scottish soldier shut then the door and said that he must have his badge and his overcoat."

Is that true?

A.113 Yes that is true.

Q.114 That is the Scottish soldier that you refer to here, that Scottish soldier there (pointing to accused)?

A.114 No that is not him.

Q.115 Is that the Scottish soldier who lost his badge and his overcoat?

A.115 Yes sir.

SAMPLE

Q.116 Then what did you mean when you said, "The Scottish soldier shut then the door and said he must have his badge and his overcoat"?

A.116 He did lock the door, he had lost his coat and his badge.

President - Would you remind the witness that this is a serious case, someone has been killed, and that she is under oath.

Original Flemish statement produced by Prosecution is entered as Exhibit "A".

Prosecutor - I have examined this witness before I raised the question of her being a hostile witness and I went over the evidence with this witness up to the time of the incident in the Cafe. Now I have put before you the position of this witness in so far as this incident is concerned. Now I think that all the evidence is in material form.

Once my friend is through cross - examining this witness if he wishes to go further I would like if you permit me to call the witness or the interpreter who was there at the time that statement was made and give the circumstances surrounding the making of that statement.

JA - That is a witness that is not in the Summary of Evidence. If the Defending Officer will waive RP 76?

Defence - I will not object to that.

Prosecutor - I think that once the Court have become seized of these facts of the case that they will want to hear what evidence this further witness can give. I do not know whether your ruling that you have discussed covers the question of my calling any witnesses to deal with that but I would like to do that if you see fit.

Cross-examination by Defence.

Q.117 You say that you saw DAVIS fighting with the first two Poles who came into the cafe?

A.117 Yes sir.

Q.118 Did they fight in the corner near the door, or in the mouth of the door, in the door itself.

A.118 In the corner of the door.

Q.119 You said that when some Poles came back the second time there was another fight. Where did this fight take place in the Cafe?

A.119 The same place as they fought the first time.

Q.120 That is in the corner to the side of the door?

A.120 Yes in the corner at the side of the door.

Q.121 Were there any other Cdn soldiers near the door while the fights were going on?

A.121 No sir.

Q.122 While either fight was going on?

A.122 Just the one time when the two soldiers pulled them apart.

Q.123 Where were you standing in the Cafe when the first fight took place?

A.123 At the stove.

PAUSE

Q.124 And when the second fight took place?

A.124 On the same place.

Q.125 Where is this stove in the cafe?

A.125 The centre of the cafe

Q.126 Is there a bar in the cafe?

A.126 Yes.

Q.127 How far is the stove from the bar?

A.127 Approximately one metre.

Q.128 As you face the bar at which end of the bar is the stove?

A.128 On the right hand side of the bar.

Questioned by Judge-Advocate

Q.129 What time did the Polish soldiers come into the cafe on the first time?

A.129 Approx 9 o'clock.

Q.130 Was there a fight at that time with the Polish soldiers?

A.130 No, the first time at 9.15

Q.131 Who was fighting at 9.15?

A.131 The accused with the two Polish soldiers.

Q.132 Where were they fighting?

A.132 On the side of the door in the corner of the cafe.

Q.133 Where any blows struck?

A.133 Who?

Q.134 Did the Poles strike any blows at the accused or did the accused strike any blows at the Poles?

A.134 The accused hit the Polish soldiers.

Q.135 What did the Polish soldiers do?

A.135 Nothing.

Q.136 Did they leave the cafe?

A.136 After they had been fighting they left the cafe.

Q.137 Did the A & SH of C soldiers stop that fight?

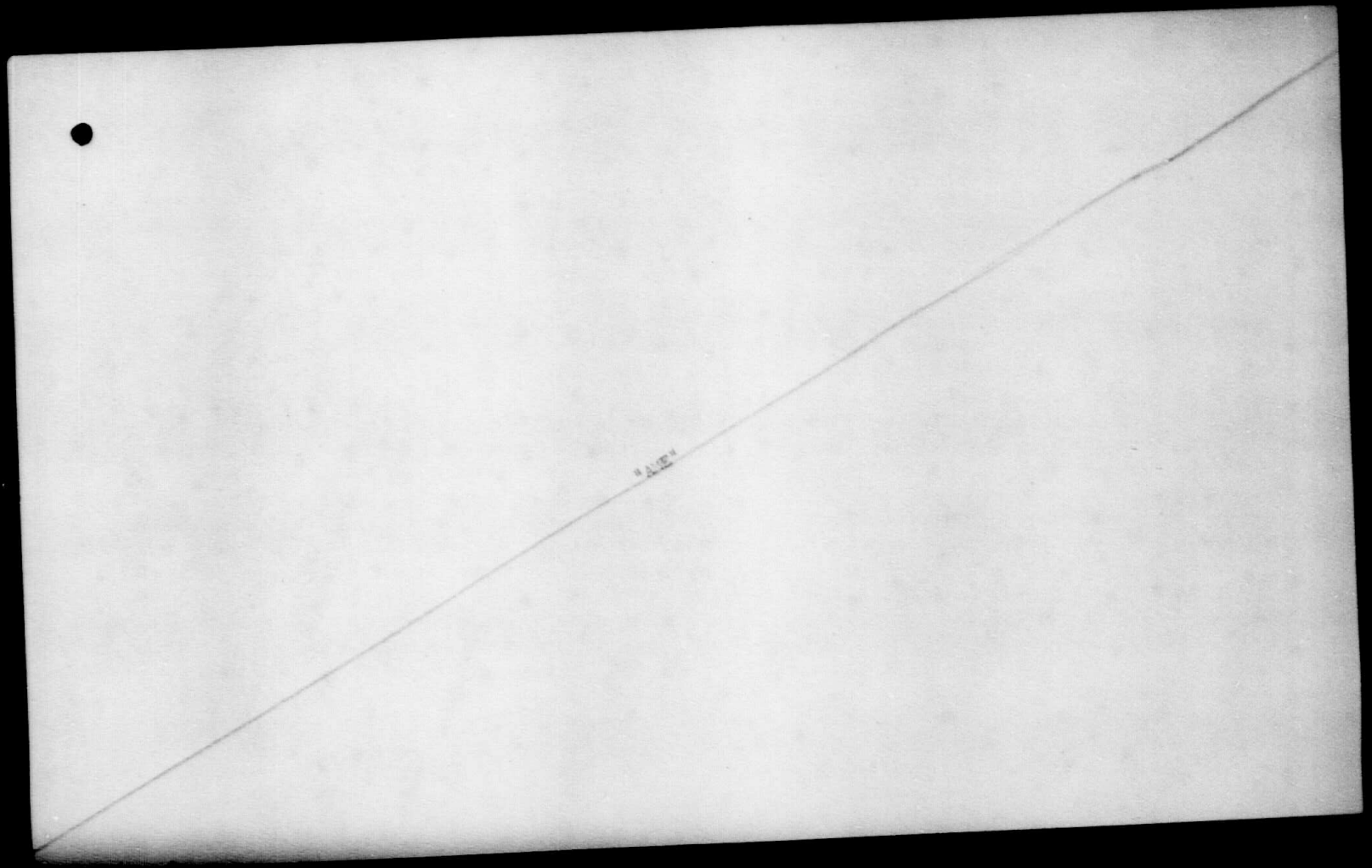
A.137 Yes.

Q.138 Did you see the Poles come back again that night?

A.138 I saw one Polish soldier come back.

Q.139 Did this one Polish soldier come in the door?

A.139 Yes sir.



Q.140 Did the accused fight with this one Polish soldier?

A.140 Yes.

Q.141 Where did they fight?

A.141 In the corner of the cafe by the door.

Q.142 How far from the door?

A.142 The door just as you come in at the left hand side.

Q.143 Was the door open or closed?

A.143 The door was open.

Q.144 Who was fighting there?

A.144 First it was a Scottish soldier, he went back near to the counter, then there was another Scottish soldier who put the Polish soldier outside.

Q.145 Was it the accused who put the Polish soldier outside?

A.145 No sir.

Q.146 When did you see the accused looking for his badge and coat?

A.146 The Pole was outside and then he closed the door.

Q.147 Who closed the door.

A.147 The accused closed the door.

Q.148 Was the accused there when the Pole was put outside?

A.148 I could not exactly say.

Q.149 How soon after you saw the Pole put outside did you see the accused close the door?

A.149 5 minutes after that he closed the door.

Q.150 When did you see the accused looking for his overcoat and his badge?

A.150 He did not look for his badge or his coat he stood at the door and said that he had lost his coat and his badge.

Q.151 Did he examine any soldiers to see if they had his badge and coat?

A.151 No he just looked through us.

Q.152 Who do you mean by us?

A.152 As we were going to go outside the accused asked us for his badge.

Q.153 When you made this statement on the 2nd of Feb did you make it under oath?

A.153 No sir.

Q.154 Is this statement where you say you saw the scottish soldier, meaning the accused, strike a violent blow at the Polish soldier - is that not correct?

A.154 Yes he hit him.

"AVE"

Q.155 Who hit him?

A.155 The accused hit the Polish soldier.

Q.156 Is this on the first fight or the 2nd fight?

A.156 The first time.

Q.157 Who hit the Polish soldier on the 2nd fight?

A.157 The second Scottish soldier I do not know.

Questioned by the Court.

Q.158 How long was the second fight after the first fight?

A.158 I think, which I am not very sure, about 8 or 10 minutes.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

The Court is adjourned 1210 hrs - will reassemble 1400 hrs.

The Court reassembles 1400 hrs 18 Apr 45 - is re-opened.

THIRD WITNESS - For the Prosecution - duly sworn.
Gaston Van den abeele, Interpreter, attached No. 2 Cdn L of C Provost, Ghent Detachment, SIS.

This witness not appearing in the Summary is called by the Prosecution, the Defence having waived notice under RP 76.

Q.159 I show you the statement which is known to this Court as Exhibit "A" and it is signed by Maria WESTERLINK. Whose hand writing is that?

A.159 My own.

Q.160 When was this statement taken?

A.160 2 Feb 45.

Q.161 Where was it taken?

A.161 At the SIS Detachment Station.

Q.162 Do you recognise this accused soldier here?

A.162 Yes sir.

Q.163 Who is that?

A.163 He is the soldier who was in the office when I was taking the statements from the girls.

Q.164 Where was he in the office when you were taking the statement?

A.164 The soldier was in the office in a big chair when I took the statement from the girls in a room adjoining the office.

Q.165 Who else was in the office?

A.165 CSM TAIT was also in the office.

Q.166 Where did you take this statement?

A.166 In a room adjoining the office.

"ALICE"

Q.167 And is this room the room you have spoken of that DAVIS was sitting in? Do you know whether Maria WESTERLINK saw DAVIS there that day?

A.167 We passed forward into the room, she saw the soldier sitting in a big chair.

Q.168 Maria WESTERLINK has made a statement here about the accused soldier DAVIS. Did Maria in your presence do anything which indicated to you that she was talking of DAVIS?

A.168 I do not understand the question.

Q.169 The witness, Maria WESTERLINK, has referred to a Canadian Scottish soldier?

A.169 Yes.

Q.170 Do you know who she was referring to?

A.170 She was referring to a soldier who sat down in the office.

Q.171 Was there any other Scottish soldier in the room where C.S.M. TAIT and the accused person sat?

A.171 No.

Cross-examination by Defence.

Q.172 At any time when you were speaking to this witness was the accused in that room?

A.172 He was in the office room.

Q.173 In the outer room?

A.173 Yes in the first room, the room where we would enter coming from the street.

Q.174 At any time were you, the witness, and the accused all in the same room?

A.174 No sir.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

FOURTH WITNESS - For the Prosecution - duly sworn.
Denies MALSCHAERT

This witness not appearing in the Summary is called by the Prosecution, the Defence having waived notice under RP 76.

Q.175 You speak fairly good English?

A.175 Yes.

Q.176 Do you know MAXIE's Cafe?

A.176 Yes.

Q.177 Are you employed there?

A.177 Yes.

Q.178 And do you recognize this red haired soldier, or brown haired soldier?

A.178 Yes.

"AME"

Q.179 Did you see him at MAXIE's Cafe on a night late in January?

A.179 Yes.

Q.180 Do you know the date?

A.180 I forget.

Q.181 Well can you tell me what went on there the night that you saw the accused soldier there? What happened there?

Q.182 Did you see any Polish soldiers there that night?

A.182 No sir.

Q.183 When you saw the accused person standing near the door was he alone?

A.183 Yes.

Q.184 What was he doing there?

A.184 He was standing alone in front of the door.

Cross-examination by Defence.

Q.185 Approx how many people were in the Cafe?

A.185 Approx 50.

Q.186 Were they mostly sitting down or standing up?

A.186 Most of them were sitting.

Q.187 You say that DAVIS was standing alone near the door - how close would the other soldiers be to him?

A.187 Approx 4 metres.

Q.188 Would it be as much as 4 metres from the door to the bar?

A.188 Yes it would approx be 4 metres from the bar to the door.

Q.189 Were there any soldiers standing or sitting at tables between the bar and the door?

A.189 Yes.

Q.190 Then the nearest soldiers to DAVIS must have been less than 4 metres. Would you think again and see if you can come to a better estimate as to how close the nearest soldiers were to DAVIS?

A.190 That was on the side of the stove.

Q.191 Which was on the side of the stove?

A.191 That is where the soldiers were standing.

Q.192 Were there any soldiers between the stove and the door?

A.192 I could not exactly say.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

FIFTH WITNESS - For the Prosecution - duly sworn.

"AIR"

FIFTH WITNESS - For the Prosecution - duly sworn
Gabrielle DEWULF, Morisanstraat, 92 Gendbrugge

Q.193 Do you recognise this accused soldier here?

A.193 Yes.

Q.194 Did you see him at MAXIE's Cafe at some time in the month of January?

A.194 Yes.

Q.195 Do you know the date?

A.195 No I do not.

Q.196 About what time of night was it when you saw him?

A.196 Between 9 and 10 o'clock

Q.197 And what did you see happen at MAXIE's Cafe which involved this particular soldier?

A.197 He stood at the bar, he hit a Polish soldier and that is all I know.

Q.198 Were there any other Scottish soldiers there aside from this one?

A.198 I think so.

Q.199 Did you see or do you know whether or not this Scottish soldier lost anything that night?

A.199 He lost his coat, that is all I know.

Q.200 What was he doing because of that, do you know?

A.200 He went to the door, he stood there, then he said "there was no one allowed to go out of the cafe until I find my coat back."

Q.201 And what happened then?

A.201 The Canadians all started to fight amongst themselves.

Q.202 And where was this fight taking place?

A.202 In the Cafe.

Q.203 Where abouts in the cafe?

A.203 Close to the door.

Q.204 Did you see any Polish soldiers there that night?

A204 No I did not see them.

Q.205 You do not know then who was involved in the fight near the door?

A.205 No I can not say that.

Prosecutor - I find myself in the same position with this witness but I do not think there is any point in proceeding with this witness.

Cross-examination by the Defence.

Q.206 How many people were in the cafe?

A.206 I can not exactly say - between 50 or 60.

RECEIVED

Q.207 In what part of the cafe were they ? Where in the cafe were they ?

A.207 They were sitting through the whole of the cafe.

Q.208 Were there any sitting near the door?

A.208 Yes sir.

Q.209 How far away would the nearest one be from the door?

A.209 2 metres at the most.

Questioned by the Judge-Advocate.

Q.210 Where were you when you saw soldiers were fighting?

A.210 I was in the cafe serving.

Q.211 Did you see them fighting?

A.211 I know that soldiers were fighting amongst themselves but I do not know whom.

Q.212 Did you go out of the cafe at any time that night?

A.212 No sir.

Q.213 Do you know whether anybody was injured in the fight or not?

A.213 I do not know that either.

Q.214 Did you see the accused soldier in the fight?

A.214 No I did not see that.

Q.215 Where was the accused soldier when the fight was going on?

A.215 In the cafe at the door.

Q.216 Was that near the door on the street?

A.216 Yes sir.

Q.217 Did anybody come in that door while he was standing there?

A.217 I could not say.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RF 83(B).

The witness withdraws.

Prosecutor - While I did indicate that I intended to call another one of these civilian witnesses, Georgetta EVERAERT, her evidence is similar to that given by these two civilians and unless my friend wishes me to call them in order that he may cross-examine them I do not think it necessary to produce this witness.

Defence replies - I do not require this witness for the purpose of cross-examination.

SIXTH WITNESS - For the Prosecution - duly sworn
M-3823 L/Cpl THOMLINSON W N, HQ 2 Cdn L of C Pro Coy.

Q.218 Cpl THOMLINSON, do you recall the night of 30 Jan 45?

A.218 Yes sir.

"AVE"

Q.219 And did you that night by reason of a call that you had received attend at the Victory Cafe, GHENT?

A.219 Yes sir.

Q.220 At what time?

A.220 At 2145 hrs.

Q.221 Did you at my request make a rough sketch of the area showing the Victory Cafe and Maxie's Cafe in the city of GHENT?

A.221 Yes sir.

Q.222 Is that it?

A.222 Yes sir.

Q.223 Does this sketch show roughly the location around The Victory Cafe and Maxie's Cafe?

A.223 Yes.

Q.224 I know it is not to scale but so far as direction and location is concerned is it fairly well set up?

A.224 Yes.

Sketch is tendered to the Court, admitted in evidence signed by the President and marked Exhibit "B".

Q.225 Would you indicate on this sketch where you did go that night and what you found there? Could you make on there the cafe that you attended and what you found there and where?

A.225 I came down the street to the Victory Cafe and went through this front door and was taken through the bar to the back room. When I went into the back room there was a Polish soldier sitting on a chair

Q.226 Do you know the particulars of that soldier?

A.226 Yes sir, I took his pay book from his tunic pocket. I took the soldier's pay book from his pocket, took his particulars from it and put them in my own book.

Q.227 What was that soldier's name and number?

A.227 5088 Cpl Rataj Jan.

Q.228 Do you know what unit he belonged to?

A.228 10th Polish Rifles.

Q.229 What happened from there on as far as this man is concerned?

A.229 As soon as I saw him I phoned for an ambulance and then waited approx ½ hr for the ambulance and because it did not come I took him in my own jeep to 2 Cdn Gen Hosp.

Q.230 What did you see about the condition of this Polish soldier?

A.230 Bleeding from the mouth, the nose and th e ears.

Q.231 Now on the sketch that you have there can you for purpose of record - can you say where the Polish soldier was in the Victory Cafe when you saw him? Mark with an "X" there.

FILM

A.231 Witness marks sketch with "X" position of Polish soldier.

Q.232 Yes and you have shown Maxie's Cafe on there as well?

A.232 Yes.

Q.233 Is it fair to say that Maxie's Cafe is almost directly opposite the Victory Cafe?

A.233 Yes sir.

Q.234 Now who was with the Polish soldier when you found him in the Victory Cafe?

A.234 Another Polish Cpl.

Q.235 Any Cdn soldiers with him?

A.235 No sir.

Q.236 What did you do when you took him to the hospital?

A.236 I took him to the hospital reception room and turned him over to the MO.

Q.237 That is the last that you saw of him?

A.237 Yes sir.

Cross-examination by Defence.

Q.238 When you got to the hospital you say you turned the Pole over to the MO. Would you be able to describe the scene at the hospital more fully?

A.238 I took the Polish Cpl and two orderlies laid him down on the stretcher and the MO Capt examined him.

Q.239 Did you see anything else happen after that or besides that?

A.239 No sir, they removed him and then I left the hospital.

Questioned by the JA

Q.240 Did you look to see if he had any identity discs at all?

A.240 No sir I did not.

Q.241 You just looked at his pay book?

A.241 Yes sir.

Q.242 Was there any other insignia that would identify him as belonging to the 10th Mounted Rifles?

A.242 Not that I know sir.

Q.243 Where did you find his pay book?

A.243 In his breast pocket sir.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

Prosecutor - Unless the witness Seconde MARIE is available the only other witness I have to call at the present is the Doctor from 2 Cdn Gen Hosp.

Due to the fact that his evidence may be rather lengthy if the other witness is not out here and if it is in keeping with what the Court might wish I suggest that we may adjourn and see the scene of this night and leave the other until the morning.

1500 hrs - the Court adjourns for a view of the scene of the incident. Those present, the Court, JA, Prosecuting, Defending Officers, accused, escort, court reporter and officers under instruction.

Judge-Advocate warns the accused that he is not obliged to say anything or point out anything to the Court. He is just there to see that no evidence is taken that he has no knowledge of.

The Court attended at Maxie's Cafe and viewed the surroundings from inside and out. It was noted by the Court that inside of the cafe was a small vestibule to the right of which was a small recess in one corner. The bar is on the opposite wall to the door. The stove is approx in the center of the room. There is another room which seems to be a type of dance hall. The enterance is at the left hand room in which the bar is. The enterance from the street to the cafe is reached by one step 2" and another step approx 8". The sidewalk and road-way are stone.

~~SEVENTH WITNESS---For the Prosecution--~~

The Court reassembles - is re-opened at 1000 hrs 19 Apr 45.

SEVENTH WITNESS - For the Prosecution - duly sworn.
Major J D DUFFIN, RCAMC, Pathologist, 2 Cdn Gen Hosp.

Q.244 Are you the Pathologist at 2 Cdn Gen Hosp?

A.244 Yes sir.

Q.245 And in the course of your duties there did you have occasion to perform an autopsy on Jan RATAJ?

A.245 Yes I did.

Q.246 When did you do this?

A.246 This was done on the afternoon of Jan 31 of this year at 1600 hrs.

Q.247 Now can you tell us what your examination of that body revealed in the sense of what injuries there were to it and if you do know what may or may not have caused it?

A.247 The cause of death was quite apparent. It was due to haemorrhage inside the scull together with fractures of the scull and in addition to that haemorrhage in the brain tissue itself. The haemorrhage was of such a type that it was quite evident it was some violence that we call tematic. That is some type of blow to the head. That is somebody either struck the deceased or he had fallen and hit his head very forcibly. Perhaps somebody had knocked him and he had fallen over backwards and he sustained injuries of that nature.

Q.248 Now can you show us with your own head at what part of the head the injuries were?

A.248 The violence had been applied to the back part of the head on the left side. (indicates to the Court).

"AMB"

It was quite clear that violence had been indicated to that part.

Q.249 Could any more immediate medical treatment have saved this man's life if he had received this type of injury?

A.249 That is rather difficult to answer. Almost all cases that have this type of injury do die within a short period of time. I suppose it is theoretically possible, perhaps it is possible. I understand he had the routine treatment for injuries of this nature and rapidly died within a few hours after having been admitted.

Cross-examination by Defence.

Q.250 Were there any bruises on the front of the face?

A.250 No there were not.

Q.251 If a blow had been struck sufficient to knock him backwards on the sidewalk, on the face, would you expect to find a bruise there?

A.251 You may or you may not. As a matter of fact in this case there was no mark on the place where he had been struck externally. As a matter of fact I had to retract the skin to find this and as far as the front of the face is concerned we did not find any and it had no significance.

Q.252 Did you yourself know that the person you examined was Cpl RATAJ?

A.252 Yes it is a routine that we go through to identify everybody.

Q.253 Are you able to say of your own knowledge that the person you examined was Cpl RATAJ Jan?

A.253 It just depends on what you want for identification. The patient died and the Wardmaster who looks after this case came up to my office and got a book in which he wrote the name of the patient and he issued me with the keys to the morgue in which he put the patient. The body was wrapped in a sheet and was marked with the name of the patient. More over he was the only patient or body in the morgue at this time.

Q.254 Did you notice that his identity discs were still on?

A.254 No they were not. They are not usually on, sometimes they are on and sometimes they are not.

Q.255 You did not see him until dead?

A.255 No I did not.

Questioned by the Judge-Advocate.

Q.256 Did you notice any marks on the chest or stomach that would indicate the place where he was struck?

A.256 No there were no marks on the body externally at all.

Q.257 Is it fair to say that as far as identification is concerned it was just through the routine?

A.257 There were no special steps taken just the usual routine.

"OME"

Q.258 The body that you presumed the deceased, that you understood was the person referred to, merely because it was tagged?

A.258 It was reported to me that he was deceased and I was in charge of the morgue. Unless they substituted another body for this body and I think that is impossible. Provided that the identification through life was conducted which I presume had been.

Q.259 In your opinion this Polish soldier had been adequately medically attended to and did not die as a result of neglect?

A.259 I am quite sure that he did not die of neglect. I am not a specialist but as I pointed out to Major WILLSON he had every attention possible. He had a very extensive fracture of the scull and such cases almost never recover and in addition to this he had these fractures which I described which no medical surgery could have done anything for.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(B).

The witness withdraws.

President announces - When the Court adjourned on the 17th a motion had been made by the Prosecution opposed by the Defending Officer that the witness Seconde MARIE be declared adverse. The Court allows the submission of the Prosecuting Officer and permits the cross-examination of the witness Seconde MARIE and the witness Seconde MARIE may be treated by the Prosecution in all respects as if adverse.

FIRST WITNESS - For the Prosecution - reminded of the fact
Seconde MARIE, Binnenweg 78, that she is already sworn.
Ledeburg, GHENT.

Statement entered as Exhibit "C".

Witness is shown statement of evidence.

Q.260 Is that your signature?

A.261 Yes

Q.262 On the 2nd of Feb did you say these words and sign this statement?

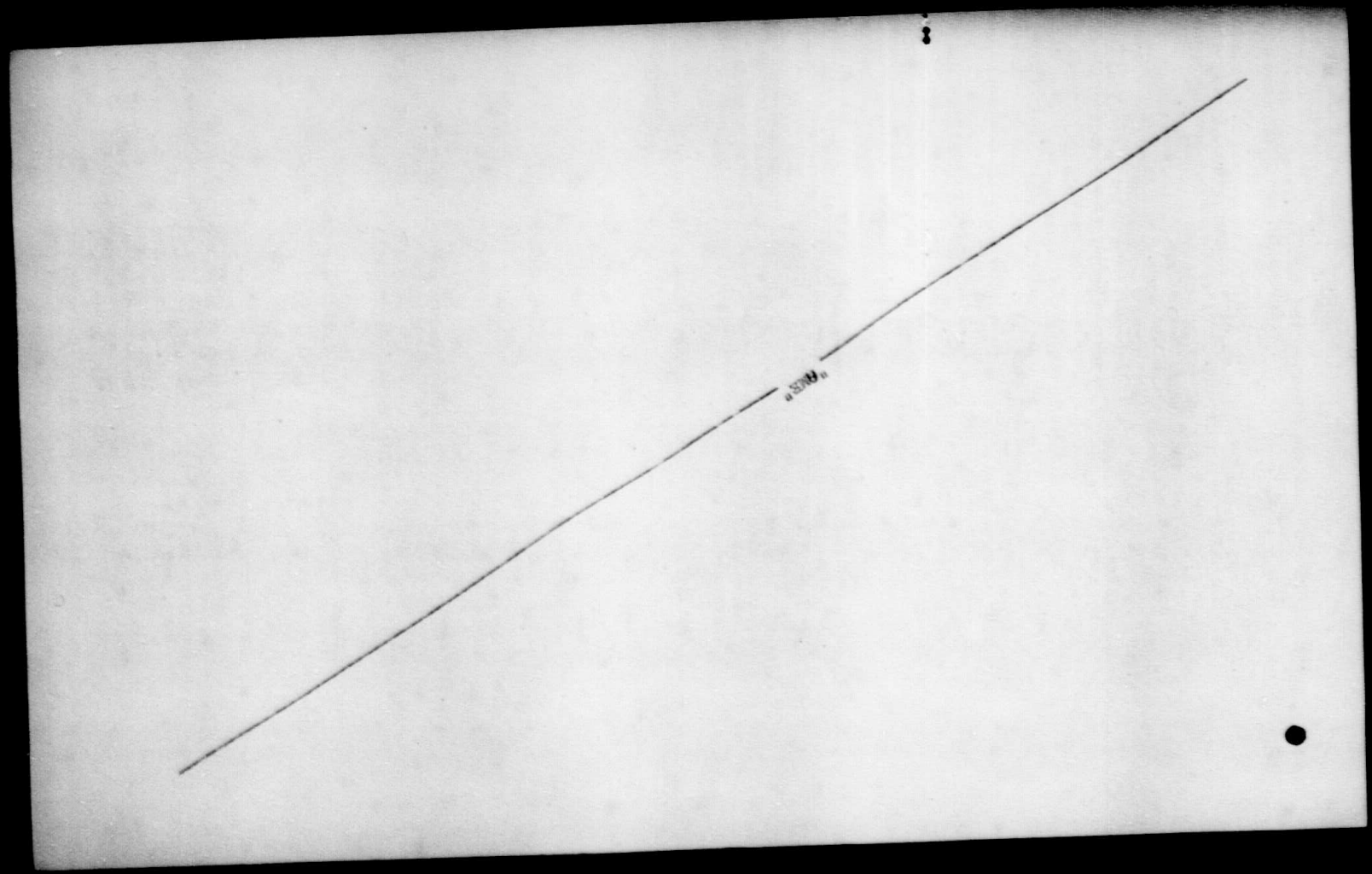
A.262 Yes I told the Belgian Interpreter and I signed it. (referring to Exhibit "C")

Prosecutor - For the benefit of the Court I will read the statement:

"The undersigned SECONDE Marie, declares that she as barmaid, was present in the bar 'MAXIE's' Kleine statiestraat, 13, Ghent, on the 30th January 1945, at about 9½ o'clock P.M.

About 40 soldiers were in the bar. Also two civilians who stood near the counter.

I have seen that the scottish soldier who is now present in the bureau, fought with two polish soldiers, as soon as these men entered. I tried to separate them, but it was no possible. I saw then that two soldiers of the 'Argyll and Sutherland Canada' regiment separated the fighters. One of these two soldiers was a tall man, the other a small one. They said me they come back the following day, but I didn't see them.



I saw the same scottish soldier giving a blow at another polish soldier, who just entered the bar. As this polish soldier didn't have the time in order to shut the streetdoor, he fell backwards, his head struck the pavement.

As I was also standing at the open streetdoor, and that the scottish soldier shut this door violently, I steped into the street and saw the polish soldier lying upon the ground. I saw that he was bleeding from mouth, nose and ears."

Q.263 Do you remember another Cdn Officer coming to see you and taking a statement from you about the 12th of March?

A.263. I have forgotten now.

Q.264 Well is that your signature there? (pointing to original Summary)

A.264 Yes.

Q.265 Do you remember that officer having with him that statement and he was showing it to you and then you said this: (Prosecutor presents Exhibit "C")

"I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd Feb 45."

And when questioned by the accused as follows:

"I was fighting with two Poles in the corner of the cafe, was I not?"

You said, "Yes".

And when further questioned:

"When you mentioned 'Same Scottish soldier' do you mean me or a soldier with the same Scottish uniform?"

You said, "Same uniform, it was another soldier."

Do you remember at the time that officer visited you with the accused present, the accused asked you this question. "I was fighting with two Poles in the corner of the Cafe, was I not? and you answered, "Yes"?

A.265 That is right.

Q.266 And do you remember being asked, "When you mention same Scottish soldier do you mean me or a soldier with the same Scottish uniform." And you answered, "Same uniform but another soldier"? Is that what you said?

A.266 Yes.

Q.267 Is that your signature?

A.267 Yes.

Q.268 Did the accused person ask you that and did you answer that at the time, "the same uniform but another soldier?

A.268 There were two in the cafe.

Judge-Advocate- I rule that you must introduce proof of the statement made not just some material part of it.

Prosecutor - I wish to ask the witness whether or not the question in the original Summary of Evidence which reads thus was asked of you:

"AME"

"When you mention same Scottish soldier do you mean me or a soldier with the same Scottish uniform?"

Q.269 Was that question asked of you by the accused?

A.269 That is what I had to answer.

Q.270 What do you mean by that when you say, "that is what I had to answer"?

A.270 That is the question that was asked.

Q.271 Yes and did you answer, as is listed in answer 2, "Same uniform, it was another soldier"?

A.271 Yes I answered that.

Q.272 But were you not standing at the door of the cafe when that happened?

A.272 When what happened?

Q.273 When the Polish soldier was struck?

A.273 No I was not standing at the door there.

Prosecutor - Referring to Exhibit "C" I wish you to read to the witness in Flemish this paragraph which I read in English:

"I saw the same scottish soldier giving a blow at another polish soldier, who just entered the bar. As this Polish soldier didn't have the time in order to shut the street door, he fell backwards, his head struck the pavement."

Will you read that paragraph (referring to the 4th paragraph side-lined in read on Exhibit "C").

Interpreter reads paragraph in Flemish to witness.

Q.274 Do you remember saying that?

A.274 I can not remember what I said.

Prosecutor - That is all I have for this witness. I will produce the interpreter to ask what she said and leave the rest to the Court.

Cross-examination by Defence.

Q.275 Do you remember how many people were in the cafe that night?

A.275 Probably 30 or 40 soldiers.

Questioned by the Judge-Advocate.

Q.276 Where were you standing when the two Polish soldiers came in?

A.276 I was standing at the counter.

Q.277 Did you see a fight between these two Polish soldiers and some Canadians or a Canadian?

A.277 I saw that they were fighting between the door and the corner.

Q.278 Who was fighting between the door and the corner?

A.278 A Canadian soldier with 2 Poles.

"A"

Q.279 Is the Canadian soldier that you saw fighting the accused?

A.279 There was also a soldier in the cafe who also fought.

Q.280 Was the Canadian soldier in Court, the accused, one of the soldiers that was fighting?

A.280 The soldier sitting here fought. There was still another soldier who also fought.

A.281 What happened to the two Polish soldiers?

A.281 There is two other soldiers that came that took them apart.

Q.282 Where did the Polish soldiers go after they had been taken apart?

A.282 I did not see them.

Q.283 Did you see another Polish soldier come in later?

A.283 No sir.

Q.284 Did you see a Polish soldier lying on the ground outside the cafe?

A.284 Yes I saw that.

Q.285 How did you see that?

A.285 I was going to go to the door to tell them that they should not fight any more the door went shut and I was out on the street and I saw the Polish soldier lying there.

Q.286 Was anyone else out there besides the Polish soldier lying there?

A.286 No sir.

Q.287 Did anybody come while you were there with the Polish soldier?

A.287 I saw two soldiers and I asked them if they were Poles.

Q.288 Were these soldiers that came Polish?

A.288 Were they the ones that went in?

Q.289 No the ones that came when you were standing beside the Polish soldier on the ground.

A.289 They came around the corner.

Q.290 And did you see the soldier on the ground fall down?

A.290 No sir.

Q.291 Did you see anybody strike the soldier that was lying on the ground?

A.291 No sir.

Q.292 Did you make a statement (referring to Exhibit "C") at police HQ on the 2nd of Feb?

A.292 I said this in the bureau at police HQ.

Q.293 Did you say that under oath?

A.293 No sir I did not have to swear anything.

Q.294 Is that statement true?

A.294 I said that.

Q.295 Is everything that you said in the statement true?

A.295 I think so.

Q.296 In this statement (referring to Exhibit "C") you said that you saw the Polish soldier fall backwards and his head struck the pavement, is that true?

A.296 I saw one soldier fall.

Q.297 Was that the soldier you saw on the ground outside of the cafe?

A.297 I do not know I did not look to see what soldier it was.

Q.298 How long after you saw the soldier fall did you see the soldier lying on the ground outside the cafe?

A.298 About 15 minutes later.

Q.299 The soldier that you saw fall - was there anybody near him when he fell?

A.299 I did not see that.

Q.300 Did you see anybody strike the soldier that fell?

A.300 Yes I saw that.

Q.301 Who struck him?

A.301 It was a Canadian.

Q.302 Is the Canadian that struck him the Canadian in Court, the accused?

A.302 No sir.

Q.303 Was it a Scottish Canadian that struck him?

A.303 Yes sir.

Questioned by the President.

Q.304 Why are you sure the Scottish Cdn that struck him is not the same one that is sitting here?

A.304 The one soldier that hit the other soldier I saw him last week.

Q.305 Are you sure it is not the same one that is sitting here now?

A.305 Yes sir.

Q.306 Do you know the name of the man who struck the Polish soldier?

A.306 No sir.

Q.307 Do you know what regiment he belongs to?

A.307 I have forgotten but I remember he had a green thing on his cap.

Q.308 Did he have a metal badge over the green thing?

A.308 On his cap he also had a large badge.

Q.294 Is that statement true?

A.294 I said that.

Q.295 Is everything that you said in the statement true?

A.295 I think so.

Q.296 In this statement (referring to Exhibit "C") you said that you saw the Polish soldier fall backwards and his head struck the pavement, is that true?

A.296 I saw one soldier fall.

Q.297 Was that the soldier you saw on the ground outside of the cafe?

A.297 I do not know I did not look to see what soldier it was.

Q.298 How long after you saw the soldier fall did you see the soldier lying on the ground outside the cafe?

A.298 About 15 minutes later.

Q.299 The soldier that you saw fall - was there anybody near him when he fell?

A.299 I did not see that.

Q.300 Did you see anybody strike the soldier that fell?

A.300 Yes I saw that.

Q.301 Who struck him?

A.301 It was a Canadian.

Q.302 Is the Canadian that struck him the Canadian in Court, the accused?

A.302 No sir.

Q.303 Was it a Scottish Canadian that struck him?

A.303 Yes sir.

<u>Questioned by the President.</u>

Q.304 Why are you sure the Scottish Cdn that struck him is not the same one that is sitting here?

A.304 The one soldier that hit the other soldier I saw him last week.

Q.305 Are you sure it is not the same one that is sitting here now?

A.305 Yes sir.

Q.306 Do you know the name of the man who struck the Polish soldier?

A.306 No sir.

Q.307 Do you know what regiment he belongs to?

A.307 I have forgotten but I remember he had a green thing on his cap.

Q.308 Did he have a metal badge over the green thing?

A.308 On his cap he also had a large badge.

Q.309 Would you recognise him again if you saw him? If you saw that man now would you recognise him?

A.309 Yes but he is not in GHENT any more, he is at ZELLE.

Q.310 Why did you say that?

A.310 He told me that he was not going to be in GHENT any more.

Q.311 Was this man with the Scottish soldier who is sitting here when the fighting took place?

A.311 No sir.

Q.312 Can you describe what he looks like?

A.312 He has dark hair, he is a tall person, he is broad.

A.313 Did this Scottish soldier come to MAXIE's Cafe often?

A.313 Yes, before it was closed he came there every day.

Q.314 Can you remember the exact day he left to go to ZELLE?

A.314 No I do not remember that.

Q.315 About when was it?

A.315 It was last week.

Questioned by the Court.

Q.316 Was that other soldier that you mention about - was he in the office when you made that statement here?

A.316 No sir.

Q.317 Why in this statement do you say that you saw the soldier strike the Polish soldier and now you say that you did not see it?

A.317 They never asked me if there was any more.

Q.318 I am asking why did you say in this statement that you saw the soldier, Scottish soldier who is present in the office, who is the accused here now - you saw him strike the Polish soldier, you saw the Polish soldier fall out and now you say you did not see that?

A.318 I can not answer the question.

Q.319 Were you forced or threatened by somebody to make this declaration that you saw the accused hit the Polish soldier?

A.319 No no one said that to me.

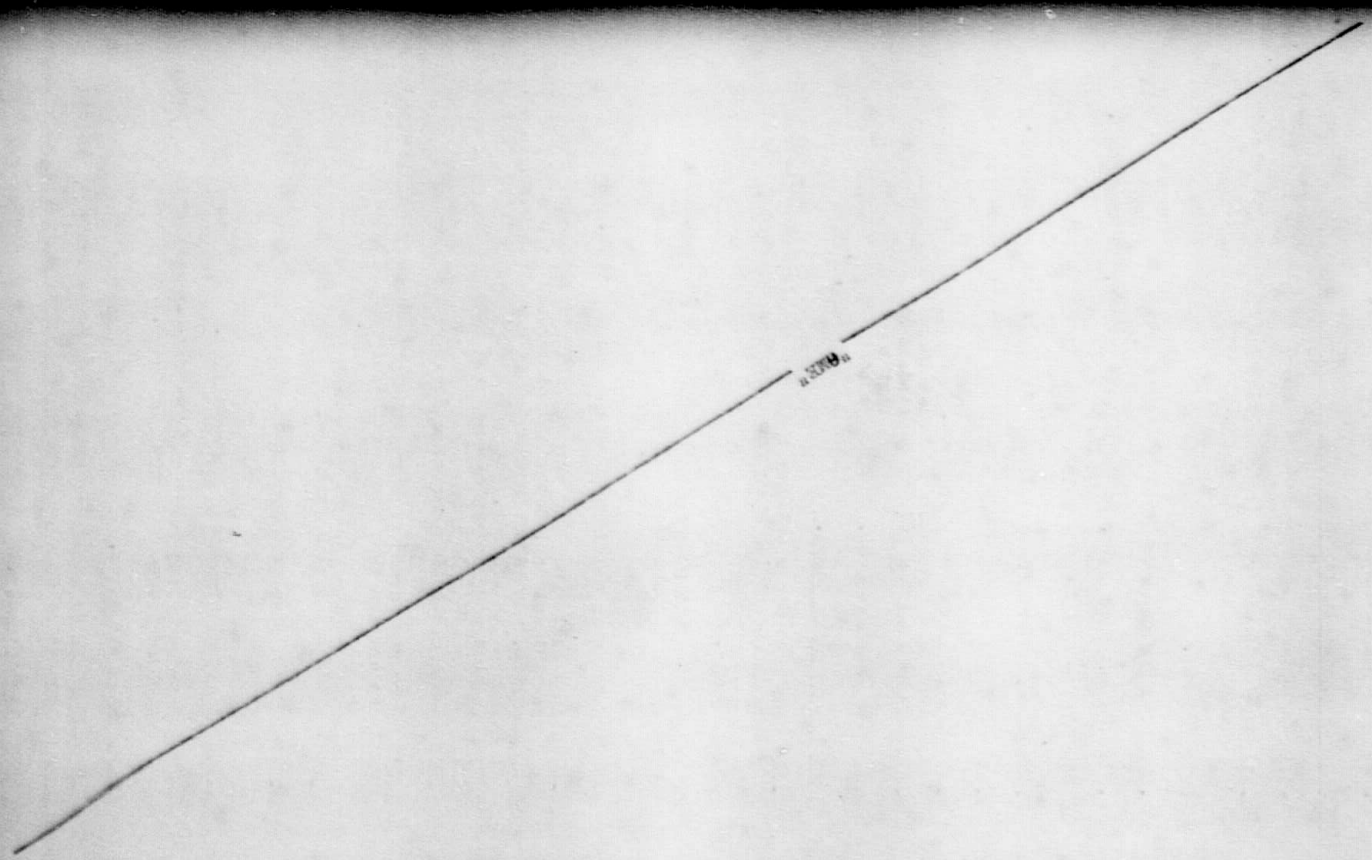
Q.320 If you were not threatened why did you make that statement?

A.320 I did not know what I was saying.

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with RP 83(2).

The witness withdraws.

In the opinion of the Court and the Judge-Advocate it is not necessary for the Prosecution to call a witness to establish the statement referred to in the evidence of this witness.



Prosecutor - Mr President, I have now produced on behalf of the Prosecution all of the available witnesses with the exception of two Polish soldiers who are named in the Summary of Evidence. Yesterday the Defending Officer and the Court I believe decided they wanted to hear the evidence of the two Polish soldiers and they have been sent for and they should be here at any time but in view of the courts of this trial and what has happened here during yesterday afternoon and this morning I would like to ask the Court if they feel that they would still like to have these two witnesses produced. May I say at this time the two Polish soldiers do not help in any respect in so far as the question of identification is concerned and who actually struck the blow which resulted in the death of the Polish Cpl. I raise this now because I feel that unless the Court do wish these witnesses produced or the Defence do then I feel that on behalf of the Prosecution they can add nothing to the actual facts of this assault. So perhaps if the Court would indicate to my friend the Defending Officer as to what their wishes are perhaps we could be guided by that in the future course of this trial.

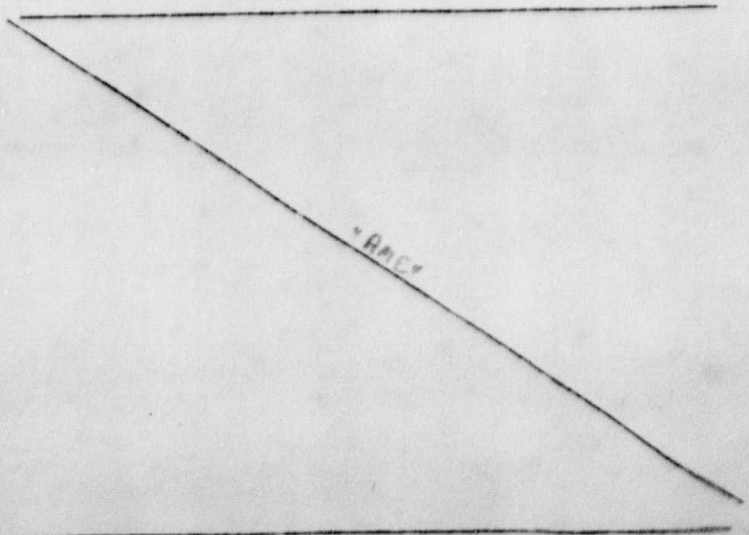
Judge-Advocate - You appreciate that the Defending Officer has the right to demand the attendance of these two witnesses due to the fact that the two Polish soldiers are witnesses to the Summary of Evidence and that you may be required to make them available to the Defending Officer for cross-examination.

Defence - I do not require the two Polish soldiers for my case.

President - In view of the statement of the Prosecuting Officer and the Defending Officer the Court feels that we do not require the two Polish soldiers to be required.

Prosecution - Then may I say, Mr. President, that aside from the two Polish soldiers that is the case for the Prosecution and those are all the witnesses that we are able to call.

The Prosecution is closed.



"AMB"

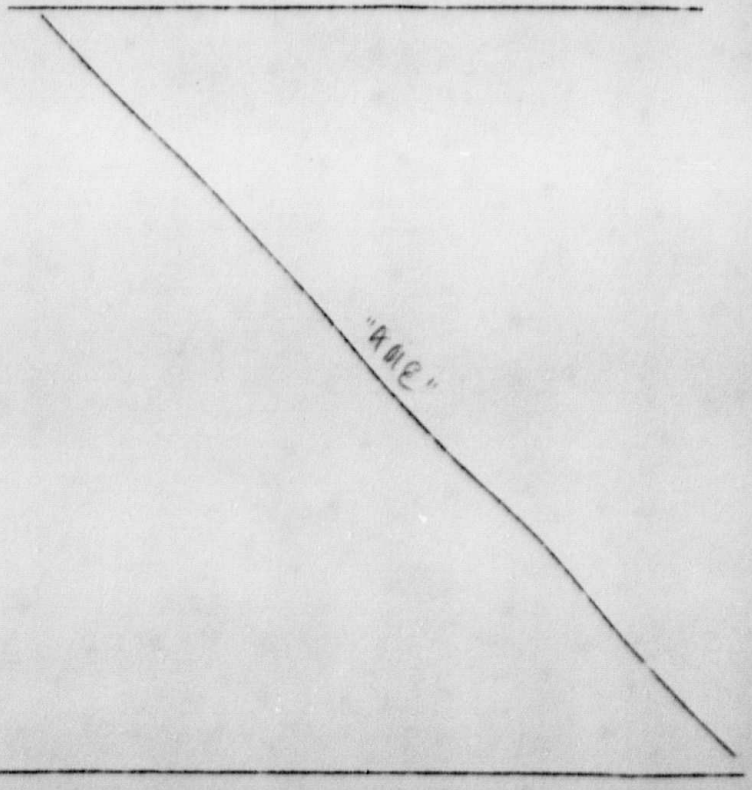
THE DEFENDING OFFICER SUBMITS THAT THE EVIDENCE FOR THE PROSECUTION DOES NOT ESTABLISH A PRIMA FACIE CASE AGAINST THE ACCUSED.

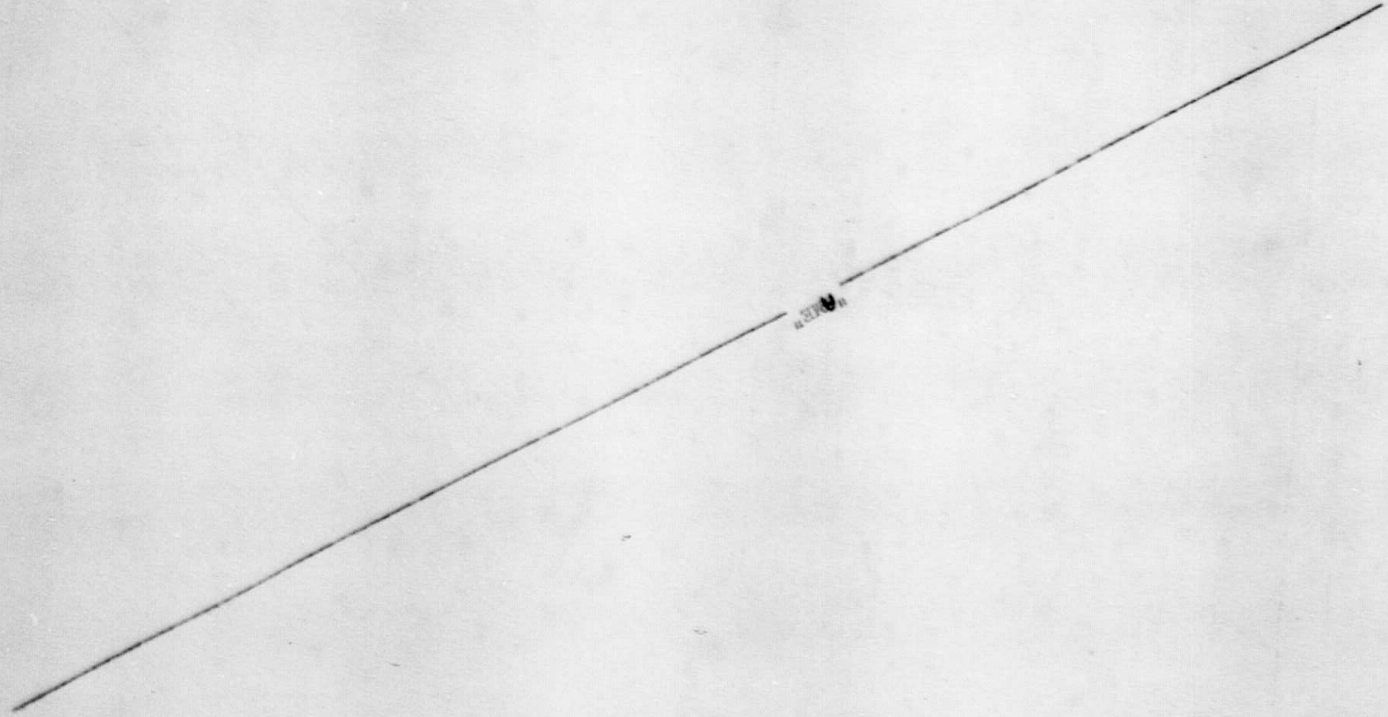
I submit that no prima facie case has been made out.

In a manslaughter case it must be shown among other things that there was a blow or some other unlawful act - that a blow was struck or some other unlawful act had been done and that the person who did this unlawful act is the accused.

I do not propose to examine the evidence of the witnesses in detail I shall merely say that the witness WESTERLINK and SECONDE have both stated that it was not DAVIS who hit the Pole who fell outside the door and one of them has stated that she did not see any blow struck at all against this particular Pole. It seems there was a fight in the corner of the Cafe and from the view which the Court had yesterday I think it is physically impossible for anybody in that corner to strike a blow so that a man would fall backwards outside the door. He would have to fall at 180° from where he was hit.

From that cursory examination of the evidence I submit that there is no evidence whatsoever that DAVIS is guilty of the charge of Manslaughter.





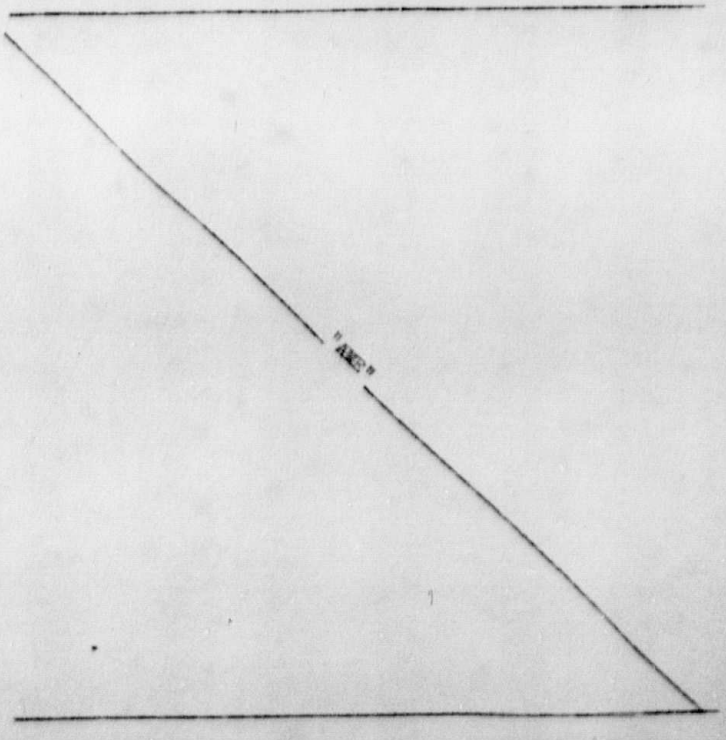
PROSECUTOR ANSWERS SUBMISSION BY DEFENCE OF NO PRIMA FACIE CASE

Mr President and gentlemen, this is a very serious case in the sense that a life has been taken and also from the point of view that a Canadian soldier is on trial here today on a very serious charge.

The evidence for the Prosecution in this case must necessarily depend upon the story of two civilian witnesses who as you know have been declared by the Court at my request to be hostile or adverse witnesses. You know the difficulty we have had in dealing with these witnesses, you have seen their manner and demeanor here and it is very much a question of what you can believe from what they said and what you believe they actually know. I must leave that entirely to you I know it is in a very unsatisfactory state. I think that the Prosecution has produced every available person, every civilian or soldier who could give any helpful facts on this incident. In so far as the identity of the deceased person is concerned I can not help but feel that you have been satisfied that the person who had been killed was Cpl RATAJ Jan.

It is purely for the Court to determine whether there has been sufficient here to satisfy that the accused person here, that DAVIS, was the man who struck the blow which resulted in the death of the Polish soldier.

It is purely a matter of fact and I must leave it to you.



JUDGE-ADVOCATE ADDRESSES THE COURT ADVISING ON SUBMISSION OF NO PRIMA FACIE CASE

Mr President, the Prosecution has presented its case and at this time the Defending Officer has made a motion that the Prosecution has not established a prima facie case and therefore the accused should be found not guilty at this time.

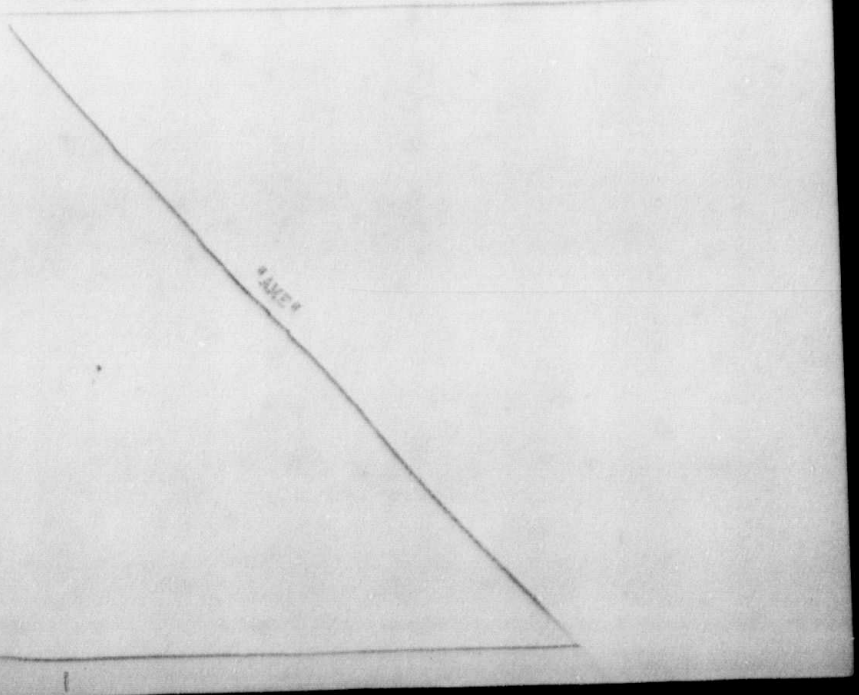
The definition of manslaughter is as follows:

"Manslaughter is the unlawful and felonious killing of another without any malice either express or implied".

"The killing must be unlawful and not excusable or justifiable. It may be by poisoning, striking, starving, drowning, and a thousand other forms of death by which human nature may be overcome."

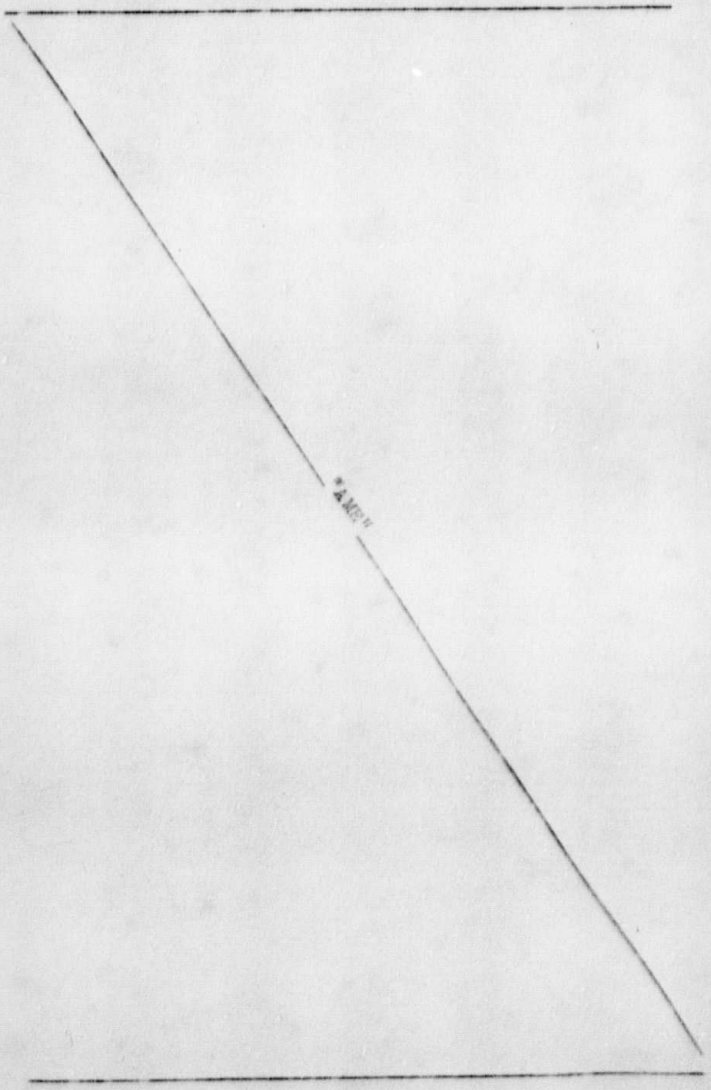
"It may be taken generally that in all cases where a killing, though not with malice, is nevertheless incapable of justification or excuse, it is manslaughter."

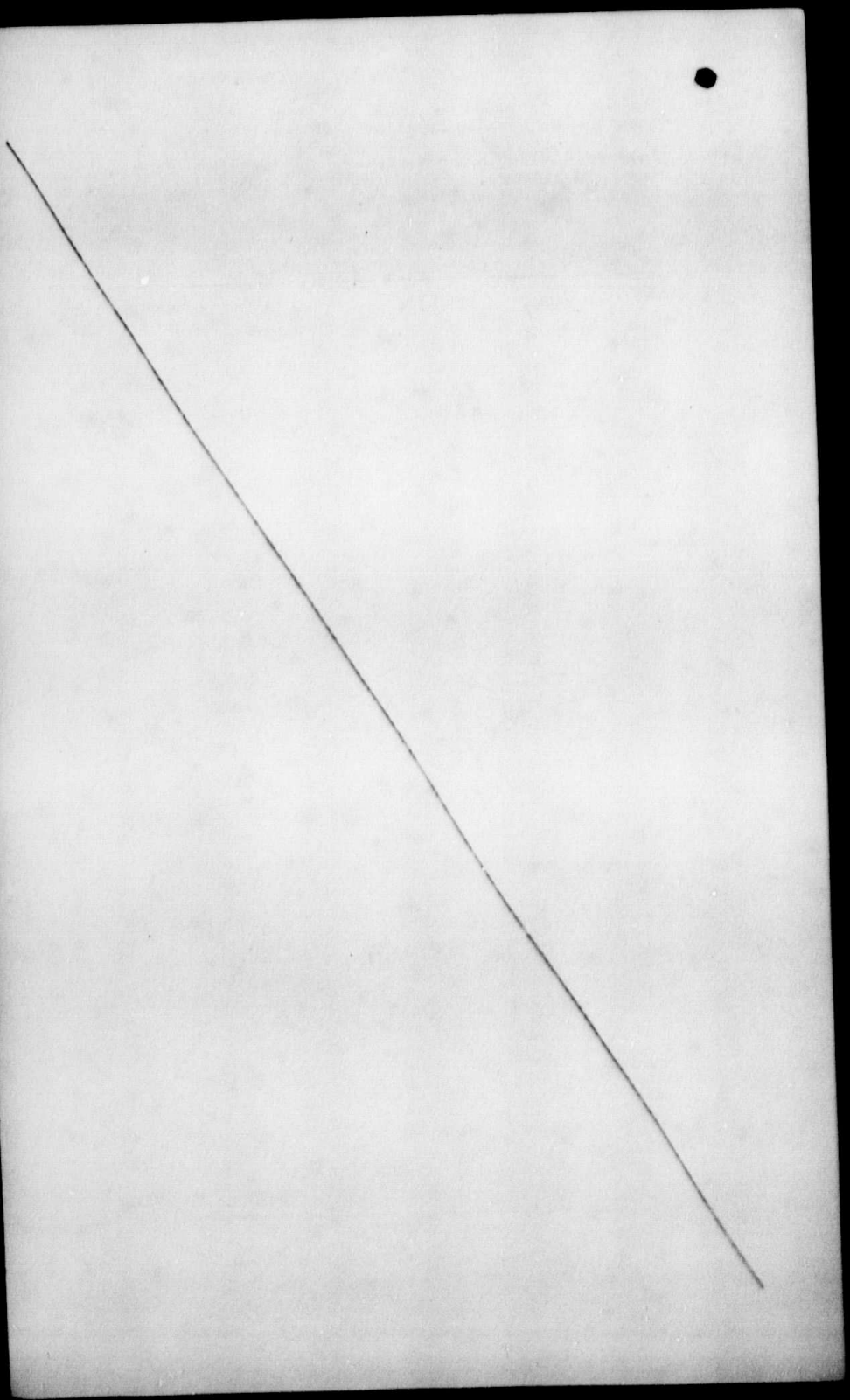
To establish whether or not a prima facie case has been made by the Prosecution it is not necessary for the Court at this stage to decide on credibility of witnesses. Nor need the Court decide whether the Prosecution has proved the accused guilty beyond a reasonable doubt. It is only necessary for the Court to determine that there is some evidence to support the charge laid and upon which if uncontradicted the Court could convict, that is more than a scintilla of evidence which supports the charge. The Court as I have said may believe everything they have heard to date the sole question before the Court now is is there or is there not a prima facie case of manslaughter.



The Court is re-opened, and the President announces that the submission is allowed on the First Charge.

Private DAVIS the submission by the Defending Officer has been allowed. You are therefore not guilty of the First charge of Manslaughter.





"AMÉ"

OFFICERS UNDER INSTRUCTION

Lieut G PREVOST, R de Mais,	10 CBR Bn
Lieut B.DUFOUR, Fus MR,	10 CBRBn
Lieut F W CUTHBERTSON, RHC,	10 CBR Bn
Lieut A G DECELLES, CIC,	10 CBR Bn
Lieut P E DEFOY, CIC,	10 CBR Bn
Lieut J E CHAISSON, CIC,	10 CBR Bn
Lieut C O'DOWD, CIC.	10 CBR Bn.
Lieut P R TREMBLAY, CIC,	10 CBR Bn

"AMÉ"

WESTERLINCK, Maria.
Original Flemish statement att to original proceedings

at Exhibit "A"

C O P Y

TRANSLATION OF FLEMISH STATEMENT

WESTERLINCK Maria,
barmaid,
Binnenweg, 55,
Ledeberg,
born in Ledeberg, on 9th August 1927.

Ghent, 2nd. February 1945.

The undersigned WESTERLINCK Maria declares that she as barmaid, was present in the bar "MAXIE'S" Kleine Statiestreet, 13, Ghent, on 30th. January 1945, at 9½ o'clock in the evening.

About 20 Canadians soldiers were in the bar, six of them appartained to the "ARGYILL AND SUNTHERLAND CANADA" regiment. I saw also 4 @ 5 American soldiers, one belgian soldier and two civilians.

I sat down near the fire and heard that the canadian scottish soldier, who at this moment is present in the bureau, asked at the belgian soldier if he was of the police. I heard the belgian soldier answering "NO" and he said that the two civilians were of the secret police.

I saw that the above scottish soldier gave a slap on the face of one of the two civilians. The civilians didn't answer and the belgian soldier went out. I heard the scottish soldier saying: "I AM SORRY".

Thereafter I saw this scottish soldier drinking cognac of a bottle, but I don't know if it was his own bottle of well one of his friend.

I saw two polish soldiers entering the bar, and the scottish soldier fighted with them. Two soldiers of the "ARGYIL AND SUNTHERLAND CANADA" regiment separeted the fighters, and the Polish soldiers went out.

Some minutes after, another Polish soldier came in and immediatly the scottish soldier fought with him. I saw that the Polish soldier went backwards, as he was obliged by the fighters, I saw that the scottish soldier gave a violent blow at the polish soldier. The scottish soldier shut then the door and said that he must have his badge and his overcoat. Everyone who wanted to leave the bar, was examined by the scottish soldier.

Thereafter we left the bar and saw nothing more.

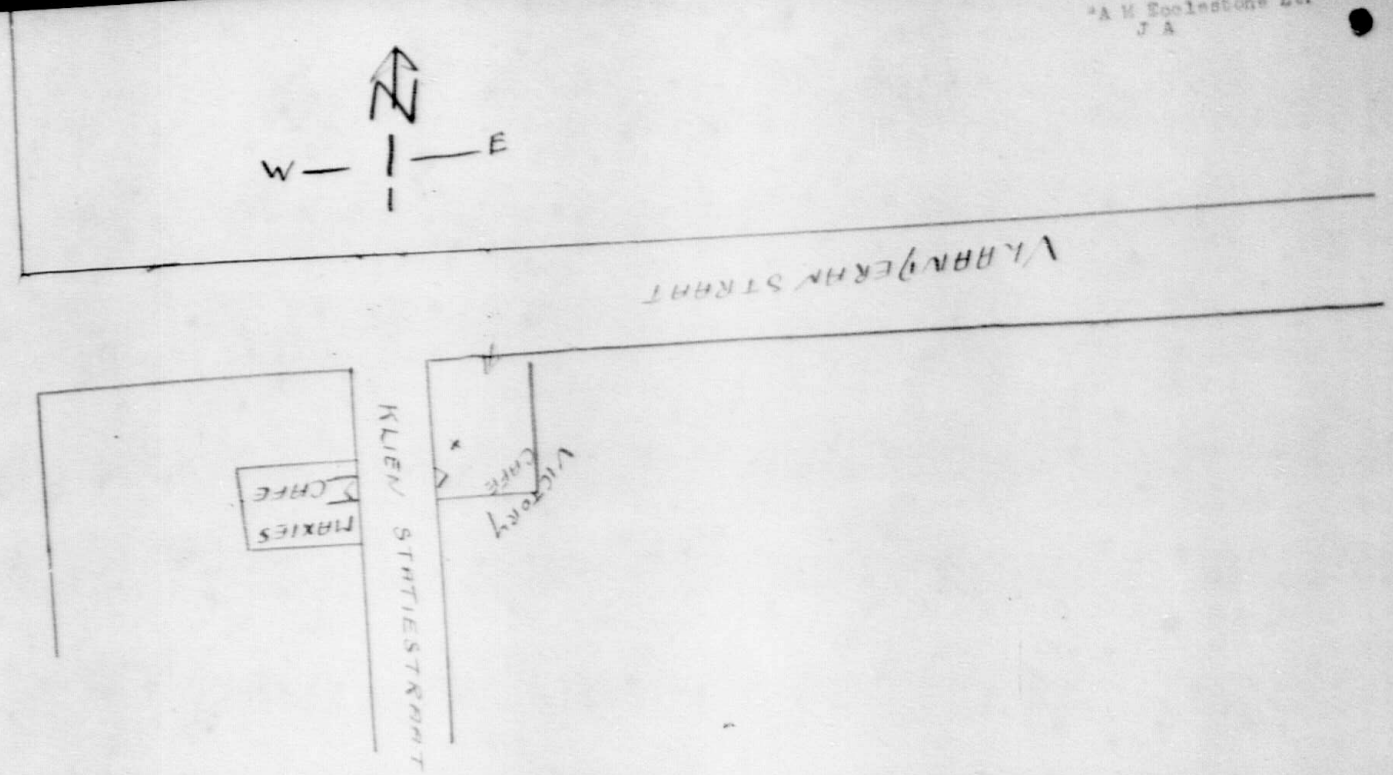
(Sign). Maria WESTERLINCK.

I hereby certify that the above is the true translation of the flemish statement, which I obtained from WESTERLINCK Maria on the 2nd. February 1945.

Gaston Van den abeele.
Interpreter.

Ex "B"

"A M Ecclestone Lt."
J A



Original Flemish statement of SECONDE, Marie att

to original proceedings as Exhibit "C"

"AME"

TRANSLATION OF FLEMISH STATEMENT.

SECONDE Marie,
Barmaid,
Binnenweg, 78,
Ledeberg.
born in Wetteren, on 8th July 1927.

Ghent, 2nd February 1945.

The undersigned SECONDE Marie, declares that she as barmaid, was present in the bar "MAXIE'S" Kleine statiestraat, 13, Ghent, on the 30th, January 1945, at about 9½ o'clock P.M.

About 40 soldiers were in the bar. Also two civilians who stood near the counter.

I have seen that the scottish soldier who is now present in the bureau, fought with two polish soldiers, as soon as these men entered. I tried to seperate them , but it was no possible. I saw then that two soldiers of the "ARGYLL AND SUNTHERLAND CANADA" regiment separated the fighters. One of these two soldiers was a tall man, the other a small one. They said me they came back the following day, but I didn't see them.

I saw the same scottish soldier giving a blow at another polish soldier, who just entered the bar. As this polish soldier didn't have the time in order to shut the streetdoor, he fell backwards, his head struck the pavement.

As I was also standing at the open streetdoor, and that the scottish soldier shut this door violently, I stepped into the street and saw the polish soldier lying upon the ground. I saw that he was bleeding from mouth, nose and ears.

I saw two other polish soldiers and asked them if they were polish. They answered "YES". I said them that the canadian soldier who gave the blow at the polish soldier, was in the bar. At this answer, one of the two polish soldiers took his pistol, loaded it and asked me where this "BOCHE" was.

I returned into the bar, took my overcoat and went home.

(Sign) SECONDE Marie.

I hereby certify that the above is the true translation of the flemish statement, which I obtained from SECONDE Marie on the 2nd February, 1945.

.Sgd..Gaston.Van.den.abeele.
Interpreter.

SUMMARY OF EVIDENCE

In the case of B-88312 Pte Lorne Dewey DAVIS, (Tor Scots) on the strength 42 Coy, 10 CBR Bn, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this evidence is taken on oath.

FIRST WITNESS PROSECUTION

Major J.D. Duffin, RCAMC, 2 Cdn Gen Hosp, Pathologist.

I certify that in my opinion the attendance of this witness is, owing to the absence of this officer on duty, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused, and is attached hereto and marked Exhibit "A".

Sgd. 'G E Collins' Lt.
(G.E. Collins) Lieut.,
Officer detailed to take
Summary of Evidence.

I do not require the attendance of Major J.D. Duffin for the purpose of cross examination.

Sgd. "L D Davis"
(L.D. Davis) Pte B-88312

SECOND WITNESS PROSECUTION

R.P. 4(G) complied with.
Seconde MARIE, Binnenweg 78, Ledeburg, Ghent, having been duly sworn states:

M-60043 Pte Radstaak J. att 2 Cdn L of C Provost, Ghent Det., having been duly sworn as interpreter.

I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd February 1945. (Statement produced with accompanying English translation duly certified by G. Van den Abeele, interpreter, and is attached hereto and marked Exhibit "B").

Cross examined by the accused.

Q.1: I was fighting with two Poles in the corner of the cafe, was I not ?

A.1: Yes.

Q.2: When you mention "Same Scottish soldier" do you mean me or a soldier with the same Scottish uniform?

A.2: Same uniform, it was another soldier.

(Seconde Marie)

R.P. 85 (b) complied with.

THIRD WITNESS PROSECUTION

Maria Westerlinck, Binnenweg 55, Ledebrug, Ghent, having been duly sworn states:

M-60043 Pte Radstaak J. att Ghent Det. 2 Cdn L of C Provost, having been duly sworn as interpreter.

Witness is shown statement purporting to be signed by her on 2nd February 1945 and interpreted by G. Van den Abeele and is asked by the officer detailed to take the Summary of Evidence. (Statement marked exhibit "C" and attached hereto).

THIRD WITNESS CONT'D PROSECUTION

Cross examination of the witness by the officer detailed to take Summary of Evidence.

Q.1: Is this the statement you gave to the Police on 2 Feb 45?
A.1: Yes.

Q.2: Is it a correct statement?
A.2: No, it is wrong.

Q.3: Why did you sign it at the time?
A.3: Because I did not have time to read it over, I had to leave right away.

Q.4: What changes do you wish to make with reference to the statement?
A.4: It was not the accused whom I meant was the one who fought with the Pole entering the cafe. It was another Scottish soldier.

Cross examined by the accused.

Q.1: Where was I when this Pole was hit at the doorway?
A.1: I think you were at the counter. I saw you fighting once in the corner with one Polish soldier.

Q.2: What did I do after fighting in the corner?
A.2: I didn't see you do anything more.

.....
(Maria Westerlink)

R.P. 83(b) complied with.

FOURTH WITNESS PROSECUTION

M-3823 L/Cpl Thomlinson W.N., 2 Cdn L of C Provost Coy.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable, and a written statement signed by him has been read to the accused and is attached hereto and marked Exhibit "D".

Sgd. "G E Collins' Lt.
(G.E. Collins) Lieut.
Officer detailed to take
Summary of Evidence.

I do not require the attendance of L/Cpl Thomlinson for the purpose of cross examination.

Sgd. "L.D. Davis'
(L.D. Davis) Pte. B-88312

R.P. 4(G) complied with.

The accused was cautioned as follows: "do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but what-so-ever you may say or any evidence you may give, will be taken down in writing and may be used as evidence", declines to give evidence and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of three (3) pages was taken down by me in the presence and hearing of the accused.

R.P. 4(c)(d)(e)(f) and (g) have been complied with.

Sgd. (G E Collins) Lt.
(G.E. Collins) Lieut.,
Officer detailed to take
Summary of Evidence.

This is exhibit "A" referred to in

the summary of evidence in the case of

B-88312 Pte Davis L.D.

G.E. Collins
offr detailed to
take the summary
of evidence.

AUTOPSY REPORT

"AAA"

5088 Cpl ROTAJ Jon 10 Polish Rifle Regiment.

admitted	at	2130 hrs	30 Jan 45.
died at		0710 hrs	31 Jan 45.
autopsy	at	1600 hrs	31 Jan 45.

This Polish N.C.O. sustained an injury to the back of the head on the evening of 30 Jan. He was unconscious for 20 minutes. On admission to hospital he had signs of a fractured skull, and lumber puncture showed bloody C.S.F. Death occurred, after the development of convulsions, on the morning of 31 Jan 45.

At autopsy the positive findings were confined to the head. On external examination there was no laceration or [redacted] marking of any nature of the scalp. There was a large diffuse haematoma of the subcutaneous tissues and muscle of the scalp, discovered only after the latter was reflected. This measured 12 cm. in diameter and overlay the left parietal bone, being centred 6 cm. below the left parietal eminence. The calvarium was normal. There was a recent, diffuse, large, left sub-dural haematoma overlying the whole of the antero-lateral aspect of the left cerebral hemisphere and of its basal aspect in the middle fossa. The haematoma was made up of clotted blood having a total volume of approximately 120 C.C. There was a thin layer of blood overlying the antero-lateral aspect of the right hemisphere also. The tips of both frontal and both temporal lobes, as well as their under surfaces, exhibited severe contre-coup pulping and moderate contre-coup sub-arachnoid haemorrhage. A few small collections of blood were encountered elsewhere in the sub-arachnoid space. There was an area of recent haemorrhage in the left globus pallidus extending into the adjecent anterior limb of the left internal capsule, and measuring 2 cm. in greatest diameter. No other lesions were found in the brain, the structures beneath the tentorium being normal.

There was an "open-ring" type fracture of the base of the skull involving the bones of the middle and posterior fossae. It extended from the left parietal bone through the squamous plate and petrous portion of the left temporal bone, through the basic sphenoid and greater wings and body of the sphenoid bone, involving the sphenoid sinus. It reduplicated itself on the other side i.e. extended through the right petrous and squamous temporal, and the parietal bones as far as the occipital bone. The whole of the occipital bone at the level of the internal occipital protuberance formed the "open" or non-fractured part of the ring. There was haemorrhage into the mastoid air cells and middle ears on both sides with bilateral perforation of the ear-drums. No other significant lesions were encountered.

Anatomical Diagnosis.

1. (Violence to back of head)

2. Haemetoma of scalp (left parietal)

3. Fractures of base of skull

4. Acute sub-dural haemorrhage (left)

5. Centre-coup sub-arachnoid haemorrhage and pulping of brain (tips of both temporal and frontal lobes)

6. Haemorrhage into globus pallidus and internal capsule (left)

7. Haemorrhage into middle ear cavities (bilateral)

8. Perforation of ear-drums (bilateral)

Summary

Death was due to intra-cranial haemorrhage, brain damage and fractures of the skull resulting from a violent force applied to the left parietal region. This force was either a powerful blow from a moderately heavy blunt instrument or a fall with violent impact of the head against a solid object

SGD "J D DUFFIN Maj"
(J.D. DUFFIN) MAJOR RCAMC
Pathologist
2 Cdn General Hospital

"AME"

Statement of

M-3823 L/Cpl Thomlinson W.N.

At approximately 2145 hours on 30 January 1945 I was informed that a soldier had been hurt and was in the Victory Cafe, Kleine Staatiestraat, Ghent. I went to this cafe and found an injured Polish soldier in the back of the cafe. He was bleeding from the mouth, ears and nose. I sent for an ambulance at once. On checking his paybooks I discovered that he was 5088 Cpl. Hataj Jan , 10 Pol M t d Rifles. The ambulance was slow in coming so I took the man to 2 Cdn General Hosp in my own jeep. When I asked the Victory Cafe proprietor how the Polish soldier came to be in the cafe, I was informed that he had been carried in from the street. Maxie's Cafe is directly opposite the rear door of Victory Cafe.

W.M. Thomlison L/Cpl.

Original statement att to original proceedings.

LIST OF WITNESSES

FOR THE PROSECUTION

Seconde Marie, Binnenweg 78, Ledeburg, Ghent.
Westerlinck Maria, Binnenweg 55, Ledeburg, Ghent.
Major J.D. Duffin, RCAMC, Pathologist, 2 Cdn Gen Hosp.
M-3823 L/Cpl Thomlinson W.N., HQ, 2 Cdn L of C Provost Coy, Brussels.

FOR THE DEFENCE

Nil.

LIST OF EXHIBITS

Exhibit "A" - Statement of Evidence, signed by Major J.D.DUFFIN, RCAMC, 2 Cdn Gen Hosp, Pathologist.

Exhibit "B" - Statement of Evidence, signed by Seconde Marie, Binnenweg 78, Ledeburg, Ghent and translated by M-60043 Pte Radstaak J., 2 Cdn L of C Provost, Ghent Det.

Exhibit "C" - Statement of Evidence, signed by Maria Westerlink, Binnenweg 55, Ledeburg, Ghent, and translated by M-60043 Pte Radstaak J., 2 Cdn L of C Provost, Ghent Det.

Exhibit "D" Statement of Evidence, signed by M-3823 L/Cpl Thomlinson W.N., 2 Cdn L of C Provost Coy.

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE, A COPY OF THE CHARGE SHEET, THE SUMMARY OF EVIDENCE, THE LIST OF WITNESSES, AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

Sgd. "L D Davis"
(L.D. DAVIS) Pte B-88312

"AAA"

Summary of Evidence in the case of B-88312 Pte Davis, Lorne Dewey, Toronto Scottish Regiment, on strength 10 Bn CBRG, a soldier of the Canadian Army Overseas, charged with manslaughter.

By direction of the commanding officer, the evidence is taken on oath.

First Witness. Major J.D. Duffin, RCAMC, 2 Cdn General Hospital, pathologist.

I certify that in my opinion the attendance of this witness is, owing to the absence of this officer on duty, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused, and is attached hereto and marked Exhibit "A".

Sgd. George E. Collins Lt.

I do not require the attendance of Major J.D. Duffin for the purpose of cross examination.

Sgd."Pte L.D. Davis"

2nd Witness: Seconde Marie, Binnenweg 78, Ledeburg, Ghent, having been duly sworn states through an interpreter, M.60043 Pte Radstaak, J. att 2 Cdn L of C Prov (Ghent det), also sworn to interpret accurately:

I have nothing to add nor have I any changes to make in the statement which I gave to the Provost on 2nd February 1945. (Statement produced with accompanying English translation duly certified by G. Van den Abeele, interpreter, and is attached hereto and marked Exhibit "B")

Cross examined by the accused.

Q.1 I was fighting with two Poles in the corner of the cafe was I not?

A.1 Yes

Q.2 When you mention "Same Scottish soldier" do you mean me or a soldier with the same Scottish uniform?

A.2 Same uniform, it was another soldier.

"Seconde Marie"

rd Witness:

Maria Westerlink, Binnenweg 55, Ledeburg, having been duly sworn states through an interpreter, M-60034 Pte. Radsbank J. att Ghent Det 2 Cdn L of C Prov, also sworn:

Witness is shown statement purporting to be signed by her on 2nd February 1945 and interpreted by G. Van der Abeele and is asked by the officer detailed to take the summary of evidence - (statement marked exhibit "C") attached hereto.

Q.1. Is this the statement you gave to the Police on 2 Feb 1945?

A.1. Yes.

Q.2. Is it a correct statement?

A.2. No it is wrong.

Q.3. Why did you sign it at the time?

A.3. Because I did not have time to read it over, I had to leave right away.

Q.4. What changes do you wish to make with reference to the statement?

A.4. It was not the accused whom I meant was the one who fought with the Pole entering the cafe. It was another Scottish soldier.

Cross examined by the accused

Q.1. Where was I when this Pole was hit at the doorway?

A.1. I think you were at the counter. I saw you fighting once in the corner with one Polish soldier.

Q.2. What did I do after fighting in the corner?

A.2. I didn't see you do anything more

(Sgd) Westerlinck Maria

"AMR"

Fifth Witness. M-3823 L/Cpl Tomlinson W.N. 2 Cdn L of C Provost Coy

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable, and a written statement signed by him has been read to the accused and is attached hereto and marked Exhibit "D"

"George E Collins Lt."

I do not require the attendance of L/Cpl Thomlinson for the purpose of cross-examination.

"Pte L.D. Davis"

The accused was cautioned as follows "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing, and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing summary of evidence, consisting of 6 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

Field
12 Mar 45

"G. E. Collins Lt."
Offr detailed to take summary

(NO. 1-3) Pa. Davis, M.G. (Ft. Wash. NO. 1-40) CAO-1-40

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H.22063 Pte Mervyn John DAVIS
K.8120 Tpr Roy Thomas WEAVER

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	NOT GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of N/L days, of which — days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:
Both accused are sentenced to undergo detention for a period of sixty (60) days and to be put under stoppages of pay to the amount of £10:0:0 towards cost of repair to Rad. Vch No CZ 428985.

18 JUN 46
Date awarded.

(Sgd) Judge-Advocate, if any.

(Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding ;

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attested before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:
I confirm the finding and sentence of the Court but remit the stoppages of Pay in the amount of £10/0/0 and towards cost of repair of the Rad Vehicle No CZ 428985.
~~I withhold the award pursuant to prison or detention barracks until further release.~~

(1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 27 June 46 Commanding C.R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H.3120 Pte Ulmer R.T.	29 June 46	[illegible]
H.22063 Pte. Davis. M.J.	29 June 46.	[illegible] Major.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

[illegible] 1/7 JUN 46

RECORDED AT CMHQ IN AB 160 CAO-1-39-48

CFAGE (In lieu of AFA3) 40/F & S/1608 (6/44) 4/388

FIELD GENERAL COURT-MARTIAL

Convened by Comd [illegible] Lt. S.J. Rutherford, RNR, D Comd CRU dated 17 Jun 46

RECEIVED JUL 8 1946 JAG BRANCH C.M.H.Q.

ACCUSED.

Convened for the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) absent, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.22063	Pte	Mervyn John	DAVIS	4 Cdn Repat Depot
K.8120	Tpr	Roy Thomas	WEAVER	

PROCEEDINGS REVIEWED

8 Jul 46 C.A. Tait Maj
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

Held in the Fd in (country) on (date(s)) 18 Jun 46

PROCEEDINGS OF TRIAL.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ____ hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ____ as interpreter? Ans ____
The Interpreter is sworn.(1) Do you object to 3156 Set Rimsted, RA as shorthand writer? Ans NO SIR
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO SIR(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	G.E. WOODROW OBE ED	R CAN
Member	Capt	J.C. DUNN	4 Cdn Rep Dep
Member	Lieut	CHS BAKER	4 Cdn Rep Dep
~~Judge Advocate~~		J.G. ENGLAND	4 Cdn Rep Dep
Prosecutor	Capt	G.H. JOHNSTON	4 Cdn Rep Dep
Defending Offr: (counsel)	Capt	MARSHALL	4 Cdn Rep Dep

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If fmn a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ____ before arraignment make(s) (no) (a) plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused ✓ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~deny~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The accused pleads as in Part I of the Schedule. The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. RP 32, RP 53. If otherwise, delete and make appropriate record per Notes.)
(3. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A64 to record proceedings.)

A10. The Court (is advised and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 3

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORDED AT CMHQ IN AB 168 CAO-1-39-40

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40/P & B/1698 (6144) 4/38B

RECEIVED JUL 8 1946 JAG BRANCH C.M.H.Q.

Convened by Order of Lt-Col T.J. Rutherford, CME ED Comd CRU dated 17 Jun 46

ACCUSED.

C.M.H.Q. As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.22063	Pte		Mervyn John	DAVIS	4 Cdn Repat
K.3180	Tpr		ROY Thomas	WEAVER	Depot

PROCEEDINGS REVIEWED

8 Jul 46 C.A. Topp Maj

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (*country*) on (*date(s)*) 18 Jun 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and ~~Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and such charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ..... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as ~~interpreter~~ ? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to W.46156 Sgt Rimstad,RA as shorthand writer ? Ans NO SIR

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and ~~Offrs under instr, if any;~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	C.R. WOODROW CME ED	H, CMH
Member	Capt	J.C. DUNN	4 Cdn Rep Dep
Member	Lieut	C.H.S. BAKER	4 Cdn Rep Dep
~~Judge Advocate~~			
Prosecutor	Capt	J.G. ENGLAND	4 Cdn Rep Dep
Defending Offr (DAVIS)	Capt	W.I. JOHNSTON	4 Cdn Rep Dep
(WEAVER)	Capt	MARSHALL	4 CDN REP DEP

Questions by President: Is the Prosecutor a lawyer ? Ans N.C. Is the Defending Offr a lawyer ? Ans N.C.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment made ~~(no)~~ (a) plea

(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 27), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form ... 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*B*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(*1. RP 27(B). 2. RP 27(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 27(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO SIR (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) evidence recorded.

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the~~ charge(s), ~~and allowed on the~~ charge(s), ~~and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. GIVE EVIDENCE SIR. Do you intend to call witnesses on your behalf ?

Ans. NO SIR. ~~Are they witnesses as to character only ?~~ Ans. evidence recorded.

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)

(1. AA 54(7) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO SIR.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. MFB 355 or AFB 2961. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Defending Officer's plea in mitigation attached.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A., if any~~.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 208, 330, 563-566, Overseas RO 309, 1339, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(f), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : H.22063 Pte Mervyn John DAVIS
H.3120 Tpr Roy Thomas WEAVER

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NIL days, of which — days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Both accused are sentenced to undergo detention for a period of sixty (60) days and to be put under stoppages of pay in the amount of £10=0=0 each towards cost of repair of Eds. Mil. Veh No CZ 4289851

(Sgd) Judge-Advocate, if any. 18 JUN 46 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding and sentence of the court but remit the stoppages of pay in the amount of £10/0/0 each towards cost of repair of Eds Mil Vehicle No CZ 4289851

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~ [initials]

(1. AA 57A. Delete if not used.)

(Sgd) [signature] Brig

Date 27 June 46 Commanding C.R.V. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H 3120 Tpr Weaver R.T.	29 June 46	[signature]
H 22063 Pte. Davis. M.J.	28 June 46.	[signature] Major.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

prom. in DD 143 - 3/2 Jul 46 [signature]

CHARGE SHEET

The accused, No H 22063 Pte M.J. Davis and K 3120 Tpr A.T. Weaver, both on strength of No 4 Canadian Repatriation Depot, soldiers of the Canadian Army Overseas, are charged with:-

FIRST CHARGE — WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

9 A Sec 40

in that they

In the Field, in England, on the night of 24-25 Mar 46, improperly and without authority used Canadian Military vehicle No CZ-4289851 for private purposes, thereby occasioning damage to the said vehicle in the sum of £85-17-0.

Field
3 June 46

.....
(HGW Woods) Lt-Col. E.D.
Commanding
4 Cdn Repat Depot

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
17 Jun 46

(T.J. Rutherford) Brigadier
Comd.
Canadian Repatriation Units

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks

CERTIFIED TRUE COPY FROM MFM 4



No. H22063 Name DAVIS M.J. Sqn, Battery, or Company Corps CIC Date of enlistment GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc

Character

3/17 MFM 6 (AFB 121) 40(F&S)/136 (5415)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
UK		PTE		AA Sec 15(1) Absent 11 hrs 31 Min Forf 1 Days Pay			11/5/45		DO 118/45 (1 CITR)
UK		PTE		Awarded 7 Days Pay for and offence under Sec 15(1) AA AWL from 0615 hrs 29 Sep 45 to 0700 hrs 29 Sep 45 Absent(45 Min)			1/10/45		2 CSIB DO 39/45
UK		PTE		Awarded 14 days Pay & 14 Days CB Sec (40)			29/10/45		DO 49/45
UK		PTE		AWARDED 14 days Detention			29/10/45		DO 49/45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40 F&R/1607 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-22063	Pte		Mervyn John	DAVIS	4 Cdn Repat
K-3120	Tpr		Roy Thomas	BEAVER	Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~who~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 17 Jun 46 endorsed by me, (~~a copy of which is attached hereto~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~It is unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I hereby appoint as Judge Advocate thereat the officer mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	C.E. Woodrow, OBE ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CO of	4 Cdn Repat Depot
Lt	To be detailed by CO of	4 Cdn Repat Depot
	~~VOTING MEMBER~~	
	~~JUDGE ADVOCATE~~	

On Active Service in the Fd

in England (*Country.*)

Date 17 Jun 46

(*Signed personally. RP 105 (2).*) Brigadier (*Rank.*)
(T.J. Rutherford)
Commanding Canadian Repatriation Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 763, RP 82, 111.*)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2693.*)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.
2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.
3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.
4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA*) (*RP 40 fn 10*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(K), KR Can 563(a).*)
(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.
2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy on item of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.
3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)
4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER's REPORT
(KR (Can) 557)

I hereby certify that I have this morning medically examined

No. H 22063 Pte DAVIES M.J.

and that in my opinion he is ~~(unfit)~~ (fit)

to undergo trial by court-martial.

Station No. 4 Cdn Repat Depot

Date 18.6.46

W. J. Lucas Capt
RCAMC
Medical Officer
"A" Wing, 4 Cdn Repat Depot

M E D I C A L O F F I C E R 's R E P O R T
(KR (Can) 557)

I hereby certify that I have this morning medically examined

No. K.3120 Tpr WEAVER, R.T.

and that in my opinion he is (~~unfit~~) (fit) fit

to undergo trial by court-martial.

Station No. 4 Cdn Repat Depot

Date 18. 6. 46

[signature] Capt
RCAMC
Medical Officer
"A" Wing, 4 Cdn Repat Depot

ctd

TRIAL OF

M.22063 Pte Mervyn John DAVIS --- 4 Cdn Repat Depot

K.3120 Tpr Roy Thomas WEAVER ---- 4 Cdn Repat Depot

PROSECUTION

FIRST WITNESS FOR THE PROSECUTION

Capt J.S. GARDNAR, Transport Officer of No. 4 Cdn Repat Depot, sworn, states:-

Q. Do you recognize this document (Work Ticket)?
A. Yes, I do.

Q. What is it?
A. It is a work ticket made out to Camberly for a Chev MUP CZ.4289851, March 46 and the date is 24 of Mar 46 and was authorized to go to Camberly and Bramshot to pick up W/Capt Phillips.

Q. Will you present it to the court?
A. Yes sir.

Q. This work ticket is made out for a Pte Davis and also a Spr Graham?
A. Yes he was originally authorized to drive the vehicle and Pte Davis would take it on different trips.

WORK TICKET (ARMY FORM G 3518) MARKED EXHIBIT 1 BY THE COURT

Q. Was Pte Davis authorized as driver of CZ 4289851 on the night of the 24 - 25 March 46?
A. He was.

Q. Was anyone else authorized to drive that vehicle?
A. Not after the particular trip he was authorized for.

Q. Was Pte Davis given written authority or permission by you to drive to Staines after picking up W/Capt Phillips?
A. He was not.

Q. After a driver is given authority to drive a vehicle can he give the authority to anyone else to drive his vehicle?
A. He can in case of emergency.

Q. Are the drivers in your department aware of this?
A. Yes.

Q. Did you authorize Tpr Weaver to drive CZ 4289851 on the 24 - 25 Mar 46?
A. No I didn't.

CROSS-EXAMINED BY DEFENDING OFFICER FOR DAVIS

Q. Would a driver when authorized to take a vehicle over does he take over the responsibility?
A. Yes, he does.

CROSS-EXAMINED BY DEFENDING OFFICER FOR WEAVER

Q. You told the Prosecuting officer that in case of Emergency, Tpr Weaver in this case, could have taken over the driving of the vehicle?
A. Yes, to clarify that, for example, if a driver knows that he is over-fatigued and turns the vehicle over for the safety of the vehicle and turns it over to a competent driver

FIRST WITNESS FOR THE PROSECUTION (CONT'D)

QUESTIONS BY THE COURT

Q. You have presented to the court a work ticket for a certain vehicle in which it shows the names of two drivers, Pte Davis and Spr Graham?
A. Yes sir.

Q. And you have said that both these people could drive this vehicle on authorized trips as shown by the work ticket?
A. Yes sir, in this particular case it was a Sunday and we have only a few drivers and if the despatcher found he couldn't get a driver to take that particular trip that drove that vehicle he would take another driver and put him on that trip.

Q. Wouldn't he change the name of the driver?
A. No.

Q. Have you anything to show from this work ticket who the particular driver was on that day?
A. The despatcher who sent the trip out keeps the name in the records in the transport office.

Q. On this particular day there is only one entry on the work ticket and that is Witley to Witley by way of Bramshot and Camberly, authorized by Lieut P.J. O'Brien and the time out is shown as 0900 hours. There is no record shown here when that vehicle returned?
A. The vehicle in question was authorized for the use of Padres and as he had several trips to make that day, one to Bramshot and one to the church in camp and the church in Camberly and that is why he was authorized to use that vehicle for all those trips.

Q. There is no entry to show when the vehicle returned?
A. In that particular case the vehicle was to make two trips to Camberly and the despatcher was to have closed off this entry and make another entry for the second trip to Camberly and he didn't do so.

Q. The exhibit you have presented to us, showing a properly authorized trip on the 24 of Mar from Witely to Witley by way of Bramshot and Camberly and that trip started at 0900 hrs in the morning and that is all it shows?
A. Yes sir. He made the trip to Bramshot in the morning.

Q. Have you in your possession as Transport officer any document which can show what happened to this particular vehicle and what trips it made on that particular day?
A. Just the check on the work sheet in the office.

Q. Have you a copy of that?
A. I can check through the files and get it, unfortunately the particular despatcher employed in this case was repatriated to Canada a few days after it happened.

Q. From your own knowledge was there an unauthorized trip made by this vehicle on that day?
A. Yes, as I examined the despatchers work sheet in the office on the night of the 24 I know that no trip had been authorized to Staines or it would have been [redacted] entered on the sheet.

Q. This vehicle did make a trip to Staines that day?
A. Yes sir, from what I heard about the accident and where it was involved.

Q. What did you hear about this particular vehicle on that particular day?

FIRST WITNESS FOR THE PROSECUTION (CONT'D)

A. The Duty Officer Lieut O'Brien reported to me that one of our vehicles had been involved in an accident at the Staines Bridge, namely, HUP CZ 4289851, this was reported to me at approximately 0200 hrs on the morning of the 25 Mar 46.

Q. When you got that report what did you do?
A. I immediately despatched Lieut O'Brien to Staines to investigate the accident.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH DP 83(B).

SECOND WITNESS FOR THE PROSECUTION

L.607813 Pte ARNDT, R. - "A" Wing 4 Cdn Repat Depot, sworn, states:-

Q. Could you tell the court exactly what happened on the evening of the 24 from the time that you were picked up?
A. Well, we had been drinking quite a bit that night.

Q. To begin with, what evening is this?
A. I believe it was the night of the 24 of Mar 46.

Q. Go on?
A. We had been drinking quite a bit and I had gone to bed at 1130 in an air raid shelter and at 0030 hrs somebody came along and asked me if I wanted a ride back to camp, I agreed. I never buttoned up my clothes, I slid them on and got into the vehicle and never said anything to anybody, we only travelled a little way and the accident occured.

Q. Who was driving the vehicle at the time of the accident?
A. Tpr Weaver sir.

Q. Do you recognize Tpr Weaver?
A. Yes sir.

NO CROSS-EXAMINATION BY THE DEFENDING OFFICER FOR DAVIS

CROSS-EXAMINATION BY THE DEFENDING OFFICER FOR WEAVER

Q. You say someone woke you up in the Air Raid shelter?
A. Yes sir.

Q. You don't know who woke you up?
A. No sir, I don't.

Q. Would you recognize him after you got up and did get into the vehicle?
A. I couldn't say sir.

Q. Did this person lead you to the vehicle?
A. I walked out on my own, the vehicle was in front of the shelter.

Q. You didn't see the face of the person who woke you up?
A. I might have seen it, I don't remember, I had been drinking a lot and had only been in bed an hour.

QUESTIONED BY THE COURT

Q. Where were you doing your drinking?
A. In several public houses in Staines.

Q. In Staines?
A. Yes sir.

Q. You say about 1130 you went to bed?

SECOND WITNESS FOR THE PROSECUTION (CONT'D)

A. Yes sir.

Q. Where was this you went to bed?
A. In an air raid shelter, it was arranged for sleeping for people who couldn't get a bed and they would put you up with a bed at any time of night.

Q. That is where you went to bed?
A. Yes sir.

Q. Who had you been spending the evening with?
A. Some of my friends from 1 Repat, we had been split up, most of my friends are at 1 Repat, I was the only one at 4 Repat.

Q. You all went to bed in the shelter?
A. Yes sir.

Q. About 0030 hours you were wakened up?
A. Yes sir.

Q. You don't know who wakened you up?
A. No sir.

Q. And were asked if you wanted a ride back to camp?
A. Yes sir.

Q. You said yes?
A. Yes.

Q. Did you immediately get up?
A. I got up in a minute or two and they had kept on shaking me and I finally decided to get up.

Q. Was there more than this one?
A. I wouldn't know.

Q. You climbed into the vehicle after getting out of the shelter?
A. Yes sir.

Q. What kind of vehicle was it?
A. A N.Z.E.

Q. Do you know the number of it?
A. No sir.

Q. How many people were in there?
A. Eight sir.

Q. Do you know any of their names?
A. I knew Tpr Weaver, Pte Davis and Pte Evans and Pte Roachfield.

Q. And Tpr Weaver was definitely there
A. Yes sir.

Q. Do you know where he was sitting in the vehicle?
A. He was driving.

Q. Pte Davis was there?
A. Yes sir.

Q. Where was he sitting in the vehicle?
A. I don't know sir.

Q. Where were you sitting in the vehicle?
A. Right behind the driver.

Q. Do you know who was sitting next to you?
A. Yes, a friend of mine, Pte Roachfield sir.

SECOND WITNESS FOR THE PROSECUTION (CONT'D)

Q. Two in the centre seat?
A. Yes sir.

Q. Any more in the centre seat?
A. I couldn't say.

Q. Any more in the front seat?
A. I don't know if there was anyone else besides the driver.

Q. Was there a rear seat in the vehicle?
A. I guess there was.

Q. Were there people back there?
A. Yes sir, there were.

Q. You say shortly after you started off there was an accident?
A. Yes sir.

Q. Do you know what happened?
A. We hit part of the bridge.

Q. What happened to the vehicle?
A. It stopped.

Q. Yes and what did you do after that?
A. I got out as quickly as possible.

Q. What did you do after that?
A. I got out and hung my head out over the side of the bridge.

Q. At that time do you remember seeing anybody else getting out of the vehicle?
A. No sir.

Q. Was Tpr Weaver still there?
A. I couldn't say for sure.

Q. Anybody badly hurt?
A. There was one man unconscious, he was lying alongside the road on the pavement.

Q. Do you know who that was?
A. No sir.

Q. Anybody else hurt?
A. My friend had a broken jaw.

Q. Roachfield had a broken jaw?
A. Yes, I was caring for him.

Q. Was Tpr Weaver hurt?
A. I couldn't say sir.

Q. Was Pte Davis hurt?
A. I don't know the condition of any of them after the accident.

Q. What happened after you were looking after your friend?
A. An ambulance picked us up.

Q. All of you?
A. Yes sir, in two trips.

Q. All eight were taken to the hospital?
A. Yes sir.

Q. When did you go back to your unit?
A. I was in hospital till 2 o'clock the next day.

Q. What happened to your friend?
A. He is still in Hospital.

SECOND WITNESS FOR THE PROSECUTION (CONT'D)

Q. Were any others discharged from Hospital on the same day as you?
A. Yes, Pte Weaver was on the say day.

Q. You are quite positive that the driver of the vehicle at time of the accident was Tpr Weaver?
A. Yes sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH KR 83(B).

THIRD WITNESS FOR THE PROSECUTION

B.627039 Pte NADON, R. - 4 Cdn Repat Depot, sworn, states:-

Q. Can you tell the court exactly what happened on the night of the 24 - 25 Mar 46?
A. Yes sir. I was in Staines drinking with a couple of friends of mine and then after the pubs closed we went down to a restaurant to have something to eat and then we went down to the air raid shelter. It was about 12 o'clock, I am not sure though and then somebody came in and asked us if we wanted a ride back to 4 Repat. He said he was going to Ashford and on his way back he would pick us up. When he did come back we went aboard the truck, it was only a short time after that the crash occured.

Q. Were you sober when you got into the vehicle?
A. Not exactly sober but I knew what I was doing.

Q. Approximately what speed do you think the vehicle was travelling at after you got aboard?
A. A moderate speed.

Q. Didn't seem to be going too fast?
A. No sir.

Q. Who was driving the vehicle?
A. Tpr Weaver sir.

Q. Do you recognize him in this court?
A. Yes sir.

Q. Where is he?
A. Witness indicates the accused (Weaver).

Q. Do you recognize anyone else in the court that was in the vehicle?
A. Yes sir, Pte Davis.

Q. You know Pte Davis?
A. I didn't know him before.

Q. Where was Pte Davis sitting in the vehicle?
A. Next to the driver sir.

NO CROSS-EXAMINATION BY THE DEFENDING OFFICER FOR DAVIS

CROSS-EXAMINATION BY THE DEFENDING OFFICER FOR WEAVER

Q. Was there anybody else in this air raid shelter from 4 Repat?
A. Yes sir.

Q. Who was it?
A. Pte Mackie.

Q. Anybody else?
A. Pte Arndt, he was in the truck when I got in.

THIRD WITNESS FOR THE PROSECUTION (CONT'D)

Q. Did you know Arndt before you got in the truck?
A. I have only seen him around Staines.

Q. You don't know whether he was in the air raid shelter?
A. No sir.

Q. What would that moderate rate of speed be?
A. Approximately 25 m.p.h.

QUESTIONS BY THE COURT

Q. You had been in Staines spending the evening?
A. Yes sir.

Q. Who had you been spending the evening with?
A. My friend.

Q. Who is that?
A. Pte Mackie sir.

Q. After having something to eat you went to the air raid shelter?
A. Yes sir.

Q. Were there a number of Canadian soldiers spending the night in the air raid shelter?
A. I don't know sir.

Q. You went to bed in the air raid shelter?
A. Yes sir.

Q. You were wakened up by somebody who offered to give you a drive to camp?
A. I was going to bed, I am not sure if it was Pte Davis but it was a driver and he said he was going to 4 Repat and I said I would wait.

Q. You think it was Pte Davis?
A. I am pretty sure.

Q. He said he was going to Ashford and would call for you?
A. Yes sir.

Q. How long was it till he called for you?
A. I don't know sir, I went to sleep.

Q. They came back and woke you up?
A. Yes sir.

Q. Who woke you up?
A. I don't know sir.

Q. You went out to the truck?
A. Yes sir.

Q. What sort of a truck was it?
A. An M.W.P.

Q. Do you know the number of it?
A. No sir.

Q. How many other people were there at the truck when you went out and got into it?
A. Eight of us.

Q. Can you remember the names of how many?
A. Pte Weaver, Pte Davis, Pte Evans and Pte Mackie and myself and the other fellows I don't know.

THIRD WITNESS FOR THE PROSECUTION (CONT'D)

Q. You say that Tpr Weaver was driving the vehicle?
A. Yes sir.

Q. Pte Davis was sitting next to him in the front seat?
A. Right sir.

Q. Was anybody else in the front seat?
A. No sir, just the two of them.

Q. Where did you sit in the vehicle?
A. Way in the back in the centre.

Q. Who was sitting next to you?
A. Pte Mackie was on my left and I don't know the fellow on my right.

Q. Was anybody sitting in the seat in front of you?
A. Yes sir.

Q. Who was sitting in front of you?
A. I don't remember.

Q. You say shortly after leaving the air raid shelter there was an accident?
A. Right sir.

Q. What happened?
A. We started off and it was just a short distance away.

Q. What did you mean by an accident?
A. We crashed up.

Q. Where?
A. Into the bridge at Staines.

Q. The vehicle crashed the side of the bridge at Staines?
A. Yes sir.

Q. And stopped?
A. I believe it did.

Q. Did it overturn?
A. No sir.

Q. After leaving it crashed into the bridge, what happened?
A. We got out of the truck.

Q. What happened then?
A. We waited there and a policeman come along and he said we would get an ambulance.

Q. Some people were hurt?
A. Yes sir.

Q. Can you tell me the names of the people who were hurt?
A. Myself and Pte Mackie and the other fellows I don't know, I knew one fellow had a broken jaw, I heard that.

Q. What happened when the ambulance arrived?
A. We went to the hospital.

Q. All of you?
A. No my friend and I first went back to the air raid shelter and the policeman told us to get into the ambulance.

Q. How many did go to the hospital?
A. Quite a few of us, I don't know if they all went.

Q. How long did they keep you in Hospital?
A. Until the next noon.

THIRD WITNESS FOR THE PROSECUTION (CONT'D)

Q. Which hospital were you taken to?
A. I believe it was the Ashford Hospital.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

FIRST WITNESS FOR THE PROSECUTION (RECALLED)

Capt. J.S. GARDHAM - Transport Officer 4 Cdn Repat Depot, already sworn, states:-

Q. The Prosecuting Officer hands the witness a document and asks: What is this?
A. This is Exhibit **B** is an estimate of damage estimated by RCEME Sub Workshops and was certified as a true copy by me and signed as such by myself, here.

Q. That is an estimate of damage to a particular vehicle, which vehicle is that?
A. An estimate of damage to vehicle HUP CZ 4289651, and the estimate of damage totals £80/17/0.

Q. It is signed by whom?
A. It was originally signed by Capt. T.R. Neal, RCEME of 1 Sub Wksps.

PRESIDENT TO THE DEFENDING OFFICERS

Q. Do you have any objection to this document being entered as an exhibit?
A. No sir. (By both defending officers).

PROSECUTING OFFICER TO THE WITNESS

Q. That damage was done to that particular vehicle and from your own knowledge can you tell us what accident that vehicle was involved in?
A. In an accident on Staines Bridge on the 25 Mar 45.

ESTIMATE OF DAMAGE MARKED AS EXHIBIT B BY THE COURT

NO CROSS-EXAMINATION BY EITHER DEFENDING OFFICER

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS FOR THE DEFENCE

N.22063 Pte Mervyn John DAVIS (Accused) sworn, states:-

Q. Would you tell the court of the events leading up to the accident?
A. On the morning of the 24th I started as duty driver and I drove all day until approximately 2230 hrs. I made a trip to get the Padre at Camberly and I brought the Padre back to "G" Wing 4 Repat, from there I went to Staines and I stopped at a little cafe there and I seen some fellows from 4 Repat and told them if they wanted a ride back that I would pick them up on the way back at the Air raid shelter, from there I went to Ashford and I ran into Tpr Weaver and asked him where Pte Evans was. That was my reason for going down there, to pick up Evans. He showed me where Pte Evans place was and when we got there I asked him to drive.

Q. He took over the vehicle willingly?
A. Yes sir, he didn't argue.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. Go on?
A. From there we proceeded to the Air raid shelter and picked up these other fellows from 4 Repat. We started homeand smashed up.

Q. Just prior to the accident did you notice that he was going to miss the turn, you were in the front seat?
A. I felt a bump and I yelled "keep over to the left."

Q. You did yell keep over to the left?
A. Yes and he turned the vehicle, it didn't respond, we went to the right.

CROSS-EXAMINED BY THE PROSECUTING OFFICER

Q. On the night of the 24 Mar 46 did you report into the despatcher's office on your return from Camberly, after bringing the Padre back from Camberly?
A. No sir.

Q. Did you have authority to proceed to Staines to pick up your friend?
A. No sir.

Q. Why did you ask Pte Weaver to drive?
A. I had been driving all day and was tired and asked him to take over.

Q. Tpr Weaver was quite willing to take the vehicle over?
A. He seemed to be.

Q. No argument about taking it over?
A. No sir.

Q. Did Tpr Weaver know the vehicle was on an unauthorized trip?
A. I don't know sir, I never told him.

Q. You never told him that it was?
A. No sir.

Q. Were you quite confident that Tpr Weaver could handle the vehicle?
A. Yes sir, I was, I know him as a driver at 4 Repat and have seen him handle vehicles before.

Q. What was the approximate speed of the vehicle at the time of the accident?
A. I am not sure, I never seen the speedometer, it seemed to be moderate.

Q. What would you call moderate?
A. 25 to 30 m.p.h.

CROSS-EXAMINED BY THE DEFENDING OFFICER FOR WEAVER

Q. You say you went to Staines to pick up Pte Evans?
A. Yes sir.

Q. Then you did not know that Tpr Weaver was in Staines?
A. No sir, I just ran into him by accident.

Q. When you went around the curve later in your statement you say the vehicle didn't respond to his turning to the left?
A. It wouldn't react.

Q. Would you say there was something wrong with the steering?
A. Yes sir.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. It was your own vehicle?
A. It was alright when I drove it but it happened when we hit the curve.
Q. There could have been a defect in the steering of the vehicle?
A. Yes sir.

QUESTIONS BY THE COURT

Q. You state that you had been driving as a duty driver on the 25 Mar 46 you mean the 24th Mar 46, don't you?
A. Yes sir.

Q. So it is the 24 Mar 46?
A. Yes sir, Sunday.

Q. And you had been driving all day?
A. Yes sir.

Q. You got back from your driving of the padre about 2230 hours?
A. Approximately that.

Q. At that time you were tired?
A. Yes sir.

Q. But yet you started out on another trip?
A. I promised him I would bring him back.

Q. Where did you drop the padre at 2230 hours?
A. To his quarters at "C" Wing 4 Repat.

Q. You left him at his quarters, when?
A. At about 2230 hours.

Q. You were not going to drive him any more that night?
A. No sir.

Q. Instead of checking in you went off on a trip of your own?
A. Yes sir.

Q. You knew you had no authority to do that?
A. Yes sir.

Q. You knew you were taking a vehicle out on an unauthorized trip?
A. Yes sir.

Q. You went then to Staines?
A. Yes sir.

Q. What time did you get to Staines?
A. I don't know the time sir, just as long as it takes from here to Staines.

Q. You say you saw some people you knew in a restaurant in Staines?
A. Yes sir.

Q. Did you meet Tpr Weaver there in that restaurant?
A. No sir.

Q. Where did you meet him?
A. Down in Ashford.

Q. Did you go down to Ashford to pick him up?
A. No sir, Pte Evans sir.

Q. You saw Tpr Weaver at Ashford?
A. Yes sir, he was walking down the road.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. You invited him to get into the vehicle?
A. I stopped him and asked him if he was going to 4 Repat, I also asked him where Pte Evans was, he showed me and when we got there I asked him to drive.

Q. Did you tell him that you had no permission to drive down to Ashford?
A. No sir.

Q. Pretty late at night and you were out there all by yourself in a vehicle?
A. Yes sir.

Q. As a matter of fact Tpr Weaver knew you didn't have any right to have that vehicle there?
A. I don't know. Just his own opinion I guess, I didn't tell him.

Q. You didn't tell him you were there without authority?
A. No sir.

Q. Is Tpr Weaver a driver in the same M.T. section as yourself?
A. Yes sir.

Q. How long have you both been drivers there?
A. In this section about last Feb I guess.

Q. You heard the evidence this morning that somebody went into an air raid shelter in Staines and said he would call back and call for the people from 4 Repat after he had been to Ashford?
A. On the way back Evans went in and called them out.

Q. How would they know the vehicle was going to Ashford before you picked them up?
A. I believe I was in the cafe and told them I was going to 4 Repat and would pick them up on the way back.

Q. Under what circumstances did you ask Tpr Weaver to drive the vehicle? You say after you picked him up you asked him to drive, what did you tell him at that time?
A. I said would you drive I am tired of driving and he said he would.

Q. Did he ask to see your work ticket?
A. No sir.

Q. He is a driver and you drivers know that you have to have a work ticket to drive?
A. Yes sir.

Q. He didn't ask for it at all?
A. No sir.

Q. He took over and drove the vehicle up until the time of the accident?
A. Yes sir.

RE-EXAMINED BY THE DEFENDING OFFICER FOR WEAVER

A. Is it in accordance to ask any driver to take over when you are tired, has it happened previous to the night of the accident, if two drivers were going to London on a trip and one was tired the other would take over if the first was tired?
A. Yes sir.

Q. Is there any order in Transport that says that is right or is not right?
A. I don't know sir.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. You can hand over to another driver on an authorized trip?
A. If he is appointed as a co-driver yes.

Q. If he is a co-driver he drives for that trip?
A. Yes sir.

Q. If he is not a co-driver the regulations do not enter into it at all do they?
A. I never have seen an order that says you can't let a driver take over your vehicle while on a trip.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS FOR THE DEFENCE

W.3180 Tpr Roy Thomas WEAVER (the accused) sworn, states:-

Q. Tell the members of the court your story about the night of the 24 and morning and 25 of Mar 46?
A. On the night of Mar 24 I spent the night at Staines with my girl friend. We had one or two beers and left for her home, pretty early in the evening, roughly around 9.30 we went to have something to eat and then we went to Ashford to my girl friends home and stayed there the rest of the time, it was pretty close to mid-night when I heard an Army vehicle going down the road so I looked out the window and I recognized it as an Army vehicle so I figured it might be one of 4 Repat's trucks so I thought I would get a ride back to camp. After I left the girl friend's place I started to walk up the road, by that time the vehicle had turned around and was coming down the road towards me. I flagged the vehicle down and asked if he was going to 4 Repat, he said he was and I recognized the driver to be Pte Davis, so when I got into the vehicle he asked me where Pte Evans was staying, I told him, he was staying down the road a ways and he asked me if I would show him, I showed him where Pte Evans was staying and then that was where he said he was too tired to drive, I saw he was tired so I told him I would drive the vehicle back to camp. After we picked up Pte Evans we proceeded on to Staines and Pte Davis told me to stop at an air raid shelter as he was going to pick up some more fellows, we stopped there and we picked up 5 fellows and then proceeded back to camp. I know this Staines bridge and there was a curve there, I slowed the vehicle down before I came to the curve but with the weight in the back and the road being slippery the vehicle seemed to push over to the right of the bridge and hit the side wall, there Pte Davis told me to get the vehicle to the left, I tried to keep it to the left but the wheels didn't seem to respond to the way I wanted them and the vehicle headed for the edge of the bridge and crashed and then the ambulance came and picked us up and took us to the hospital.

Q. When you took over the driving of the vehicle did you take over the driving because you like to drive or because you thought you would be helping Pte Davis out because he was tired and had been driving a lot that day?
A. I thought I would be helping him out, I could see he was pretty tired.

CROSS-EXAMINED BY THE PROSECUTING OFFICER

Q. Did you know that when Pte Davis asked you to drive that it was an unauthorized trip?
A. I knew nothing about it sir.

Q. Did you realize that when you consented to drive that you were taking full responsibility for the vehicle?

SECOND WITNESS FOR THE DEFENCE (CONT'D)

A. As far as I understand is that when a vehicle is signed out to a driver he takes the responsibility for the vehicle under any circumstances, no matter who drives. I mean the man to whom the vehicle is signed out to.

Q. What was the weather like at the Staines bridge?
A. It was foggy, It was almost impossible to have the lights on bright as it would reflect against the fog, I had the lights dim after leaving Ashford.

Q. Then the visibility was poor?
A. Yes sir.

Q. Pte Davis admitted the speed of the vehicle at the time of the accident was 25 m.p.h., do you agree with this?
A. Yes because I slowed down before I came to the bridge.

Q. You think you were doing 25 m.p.h.?
A. Yes sir.

Q. Do you usually drive at this speed when the weather is foggy?
A. I am not quite sure what the regulations are on that sir.

Q. You say that the road was slippery?
A. Yes a little moist on the road from the fog.

CROSS-EXAMINED BY THE DEFENDING OFFICER FOR DAVIS

Q. When you went out of your girl friend's house to stop the vehicle, what made you think it was a 4 Repat vehicle?
A. I just took that chance, I was planning on spending the evening at my girl friend's house and the vehicle would take me back just that much earlier.

Q. Do you know this Pte Evans?
A. Yes I knew them both.

Q. When you understood the trip was made to Staines to pick up this Pte Evans you must have realized that it was an unauthorized trip?
A. No, not necessarily.

QUESTIONS BY THE COURT

Q. How long have you been a driver?
A. Since the latter part of Feb with this Depot here.

Q. I see that you are wearing the DM badge on your arm?
A. Yes sir.

Q. That stands for Driver Mech and did you just take that up in the latter part of Feb 46?
A. No sir, I was authorized as a driver mech in Canada.

Q. You have been only driving in this country here since the latter part of Feb?
A. In this transport section here.

Q. How long have you been a driver?
A. Ever since I came over.

Q. How long have you been over?
A. Since Feb 45.

Q. As a driver mech you know standing orders for M.T. drivers?
A. Yes sir.

Q. Did you see this Pte Evans at all on the evening of the 24 in Ashford?

SECOND WITNESS FOR THE DEFENCE (CONT'D)

A. I believe I saw him once.

Q. Did you have any conversation with him then?
A. No sir.

Q. You didn't know from Pte Evans that Pte Davis was coming down to pick him up?
A. No sir.

Q. But yet when you heard an army vehicle passing your girl friend's house you left the house and started back for camp on the chance that you would get a ride to the repat depot?
A. Yes sir.

Q. How did you know that vehicle was going to turn around and come back in the direction you were going?
A. I just took that chance that he would come or go as far as the main road and then turn around.

Q. You hear it passing your girl friend's house and you went out on the strength of that and started to walk, that is correct is it not?
A. Yes sir.

Q. What were you going to do if the vehicle had not turned around?
A. I would have waited awhile and gone back to the girl friends house.

Q. You had an idea it was going to turn around?
A. Yes sir.

Q. What gave you that idea?
A. I don't know I had the idea that it would that is all.

Q. It did turn around and you flagged it down?
A. Yes sir.

Q. You recognized the driver as Pte Davis?
A. Yes sir.

Q. He works with you in the M.T. section?
A. Yes sir.

Q. After you directed him to Pte Evans and you picked him up he asked you to drive the vehicle?
A. Yes sir.

Q. Why did he want you to drive the vehicle?
A. He told me he was to tired to drive it.

Q. Did you see that he was tired?
A. Yes sir.

Q. Did he say why he was tired?
A. He said he was duty driver and had been driving all day and night.

Q. You as a driver knowing the regulations of course understood that it was a duty trip to pick up Pte Evans?
A. No I didn't when he told me he was going to pick up Evans I didn't know whether it was a duty trip or not.

Q. You didn't think it was as a driver of experience?
A. No sir.

Q. You thought as a matter of fact that Pte Davis was taking an unauthorized trip?
A. Yes sir.

SECOND WITNESS FOR THE DEFENCE (CONT'D)

Q. And yet having that in mind that the trip was unauthorized you took control of the vehicle by becoming the driver?
A. Yes sir. I took it because I thought it would be better if I did as he was pretty tired.

Q. Althought you were trying to help Pte Davis out did you know you were taking a chance by driving the vehicle on an unauthorized trip?
A. I have not seen M.T. laws that says you can't help another driver out, whether the trip is authorized or unauthorized.

Q. A work ticket makes the trip authorized?
A. Yes sir.

Q. If there is a co-driver the names are shown on the work ticket?
A. Yes sir.

Q. Did you bother to ask to see the work ticket?
A. No sir.

Q. You knew your name could not be on the work ticket as co-driver?
A. No sir.

Q. You were taking a chance by assuming control of the vehicle on the unauthorized trip?
A. Yes sir.

Q. While you were driving on this unauthorized trip an accident occured?
A. Yes sir.

Q. That is the root of the thing?
A. Yes sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH SP 82(B).

ADDRESS BY THE PROSECUTION

Upon the evidence that has been presented it appears that Pte Davis made an unauthorized trip to Staines and on to Ashford to pick up his friend and that when he arrived in Staines he picked up a driver whom he knew by name, a Pte Weaver, and because he was tired he asked Pte Weaver to drive. Pte Weaver has admitted that he didn't think it was an authorized trip but consented to drive the vehicle back to camp and while the vehicle was under the control of Pte Weaver it ran into and damaged the bridge at Staines and also caused damage to the vehicle to the amount of £86-17-0. That is all I have to say sir.

ADDRESS BY THE DEFENCE FOR PTE DAVIS

Pte Davis did take this unauthorized journey but the point in question is that Tpr Weaver took over the vehicle, realizing it to be an unauthorized journey, therefore no driver had been allotted to the vehicle, so the vehicle could not be tied down to the responsibility of anyone in particular so the person driving should be the person responsible for the custody of that vehicle.

ADDRESS BY THE DEFENDING OFFICER FOR WEAVER

I should like to follow the events as they actually happened. Tpr Weaver was in Staines or Ashford on the night of Mar 24 and when he saw a vehicle going to 4 Repat he thought he would take a chance and get a ride, he was lucky, it happened to be a 4 Repat vehicle. He flagged down the driver of the vehicle who was Pte Davis. He knew him and he was asked where Pte Evans was, they went down to see Evans and while sitting waiting for Pte Evans, Pte Davis asked Tpr Weaver to take the vehicle over because he was tired. Now I am pretty sure this has happened hundreds and hundres of times where a driver meets a driver he knows is authorized to drive and gives him the vehicle. The unfortunate thing about that night is that they were involved in an accident. You have heard his evidence, the evidence of the first witness was that Tpr Weaver was perfectly justified in taking over the vehicle because Pte Davis was tired. The fact that Tpr Weaver took the vehicle over and is responsible, nobody is sure of. Tpr Weaver took over the vehicle, he started out back to camp, he came to a curve and slowed down and was driving at a moderate rate of speed which is 25 m.p.h. and he tried to make the curve at Staines bridge and as far as we can find out when he tried to turn it to the left there was a defect in the steering. Anyway the accident occured at an unfortunate time. I don't think Tpr Weaver is guilty of the charge.

THE COURT IS CLOSED TO CONSIDER IT'S FINDING

THE COURT RE-OPENS

PLEA OF MITIGATION FOR PTE DAVIS BY HIS DEFENDING OFFICER

All I have to say is that according to what Pte Davis told me his first charge on the conduct sheet was an offence that was committed in one week of him joining the army and the other charges are to my estimation minor offences. I wish the court would look into that when considering the sentence.

PLEA OF MITIGATION FOR TPR WEAVER BY HIS DEFENDING OFFICER

I would like to make a plea for Tpr Weaver. This court has dragged out for three months and during that time Tpr Weaver has been trying to make arrangements to be married over here since he has not been under close arrest but under open arrest. He couldn't get out to see his girl friend and he has had a hard time trying to make arrangements by telephone to get married because of the dragging out of the Court Martial.

Since I have known him he has been working in the Admin Office with me and he has been an outstanding soldier.

TRIAL OF

H.22063 Pte Mervyn John DAVIS --- 4 Cdn Repat Depot

K.3120 Tpr Roy Thomas WEAVER ---- 4 Cdn Repat Depot

PROSECUTION

FIRST WITNESS FOR THE PROSECUTION

Capt J.S. GARDHAM, Transport Officer of No. 4 Cdn Repat Depot, sworn, states:-

Q. Do you recognize this document (Work Ticket)?
A. Yes, I do.

Q. What is it?
A. It is a work ticket made out to Camberly for a Chev HUP CZ.4289851, March 46 and the date is 24 of Mar 46 and was authorized to go to Camberly and Bramshot to pick up M/Capt Phillips.

Q. Will you present it to the court?
A. Yes sir.

Q. This work ticket is made out for a Pte Davis and also a Spr Graham?
A. Yes he was originally authorized to drive the vehicle and Pte Davis would take it on different trips.

WORK TICKET (ARMY FORM G 3518) MARKED EXHIBIT 1 BY THE COURT

Q. Was Pte Davis authorized as driver of CZ 4289851 on the night of the 24 - 25 March 46?
A. He was.

Q. Was anyone else authorized to drive that vehicle?
A. Not after the particular trip he was authorized for.

Q. Was Pte Davis given written authority or permission by you to drive to Staines after picking up M/Capt Phillips?
A. He was not.

Q. After a driver is given authority to drive a vehicle can he give the authority to anyone else to drive his vehicle?
A. He can in case of emergency.

Q. Are the drivers in your department aware of this?
A. Yes.

Q. Did you authorize Tpr Weaver to drive CZ 4289851 on the 24 - 25 Mar 46?
A. No I didn't.

CROSS-EXAMINED BY DEFENDING OFFICER FOR DAVIS

Q. Would a driver when authorized to take a vehicle over does he take over the responsibility?
A. Yes, he does.

CROSS-EXAMINED BY DEFENDING OFFICER FOR WEAVER

Q. You told the Prosecuting officer that in case of Emergency, Tpr Weaver in this case, could have taken over the driving of the vehicle?
A. Yes, to clarify that, for example, if a driver knows that he is over-fatigued and turns the vehicle over for the safety of the vehicle and turns it over to a competent driver

FIRST WITNESS FOR THE PROSECUTION (CONT'D)

QUESTIONS BY THE COURT

Q. You have presented to the court a work ticket for a certain vehicle in which it shows the names of two drivers, Pte Davis and Spr Graham?
A. Yes sir.

Q. And you have said that both these people could drive this vehicle on authorized trips as shown by the work ticket?
A. Yes sir, in this particular case it was a Sunday and we have only a few drivers and if the despatcher found he couldn't get a driver to take that particular trip that drove that vehicle he would take another driver and put him on that trip.

Q. Wouldn't he change the name of the driver?
A. No.

Q. Have you anything to show from this work ticket who the particular driver was on that day?
A. The despatcher who sent the trip out keeps the name in the records in the transport office.

Q. On this particular day there is only one entry on the work ticket and that is Witley to Witley by way of Bramshot and Camberly, authorized by LieutP.J. O'Brien and the time out is shown as 0900 hours. There is no record shown here when that vehicle returned?
A. The vehicle in question was authorized for the use of Padres and as he had several trips to make that day, one to Bramshot and one to the church in camp and the church in Camberly and that is why he was authorized to use that vehicle for all those trips.

Q. There is no entry to show when the vehicle returned?
A. In that particular case the vehicle was to make two trips to Camberly and the despatcher was to have closed off this entry and make another entry for the second trip to Camberly and he didn't do so.

Q. The exhibit you have presented to us, showing a properly auth rized trip on the 24 of Mar from Witely to Witley by way of Bramshot and Camberly and that trip started at 0900 hrs in the morning and that is all it shows?
A. Yes sir. He made the trip to Bramshot in the morning.

Q. Have you in your possession as Transport Officer any document which can show what happened to this particular vehicle and what trips it made on that particular day?
A. Just the check on the work sheet in the office.

Q. Have you a copy of that?
A. I can check through the files and get it, unfortunately the particular despatcher employed in this case was repatriated to Canada a few days after it happened.

Q. From your own knowledge was there an unauthorized trip made by this vehicle on that day?
A. Yes, as I examined the despatchers work sheet in the office on the night of the 24 I knew that no trip had been authorized to Staines or it would have been ~~as it would have been~~ entered on the sheet.

Q. This vehicle did make a trip to Staines that day?
A. Yes sir, from what I heard about the accident and where it was involved?

Q. What did you hear about this particular vehicle on that particular day?

FIRST WITNESS FOR THE PROSECUTION (CONT'D)

A. The Duty Officer Lieut O'Brien reported to me that one of our vehicles had been involved in an accident at the Staines Bridge, namely, HUP CZ 4289851, t is was reported to me at approximately 0200 hrs on the morning of the 25 Mar 46.

Q. When you got that report what did you do?
A. I immediately despatched Lieut O'Brien to Staines to investigate the accident.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS FOR THE PROSECUTION

L.607213 Pte ARNDT, R. - "A" Wing 4 Cdn Repat Depot, sworn, states:-

Q. Could you tell the court exactly what happened on the evening of the 24 from the time that you were picked up?
A. Well, we had been drinking quite a bit that night.

Q. To begin with, what evening is this?
A. I believe it was the night of the 24 of Mar 46.

Q. Go on?
A. We had been drinking quite a bit and I had gone to bed at 1130 in an air raid shelter and at 0030 hrs somebody came along and asked me if I wanted a ride back to camp, I agreed. I never buttoned up my clothes, I slid them on and got into the vehicle and never said anything to anybody, we only travelled a little way and the accident occured.

Q. Who was driving the vehicle at the time of the accident?
A. Tpr Weaver sir.

Q. Do you recognize Tpr Weaver?
A. Yes sir.

NO CROSS-EXAMINATION BY THE DEFENDING OFFICER FOR DAVIS

CROSS-EXAMINATION BY THE DEFENDING OFFICER FOR WEAVER

Q. You say someone woke you up in the Air Raid shelter?
A. Yes sir.

Q. You don't know who woke you up?
A. No sir, I don't.

Q. Would you recognize him after you got up and did get into the vehicle?
A. I couldn't say sir.

Q. Did this person lead you to the vehicle?
A. I walked out on my own, the vehicle was in front of the shelter.

Q. You didn't see the face of the person who woke you up?
A. I might have seen it, I don't remember, I had been drinking a lot and had only been in bed an hour.

QUESTIONS BY THE COURT

Q. Where were you doing your drinking?
A. In several public houses in Staines.

Q. In Staines?
A. Yes sir.

Q. You say about 1130 you went to bed?

SECOND WITNESS FOR THE PROSECUTION (CONT'D)

A. Yes sir.

Q. Where was this you went to bed?
A. In an air raid shelter, it was arranged for sleeping for people who couldn't get a bed and they would put you up with a bed at any time of night.

Q. That is where you went to bed?
A. Yes sir.

Q. Who had you been spending the evening with?
A. Some of my friends from 1 Repat, we had been split up, most of my friends are at 1 Repat, I was the only one at 4 Repat.

Q. You all went to bed in the shelter?
A. Yes sir.

Q. About 0030 hours you were wakened up?
A. Yes sir.

Q. You don't know who wakened you up?
A. No sir.

Q. And were asked if you wanted a ride back to camp?
A. Yes sir.

Q. You said yes?
A. Yes.

Q. Did you immediately get up?
A. I got up in a minute or two and they had kept on shaking me and I finally decided to get up.

Q. Was there more than this one?
A. I wouldn't know.

Q. You climbed into the vehicle after getting out of the shelter?
A. Yes sir.

Q. What kind of vehicle was it?
A. A M.U.P.

Q. Do you know the number of it?
A. No sir.

Q. How many people were in there?
A. Eight sir.

Q. Do you know any of their names?
A. I new Tpr Weaver, Pte Davis and Pte Evans and Pte Roschfield.

Q. And Tpr Weaver was definitely there
A. Yes sir.

Q. Do you know where he was sitting in the vehicle?
A. He was driving.

Q. Pte Davis was there?
A. Yes sir.

Q. Where was he sitting in the vehicle?
A. I don't know sir.

Q. Where were you sitting in the vehicle?
A. Right behind the driver.

Q. Do you know who was sitting next to you?
A. Yes, a friend of mine, Pte Roschfield sir.

SECOND WITNESS FOR THE PROSECUTION (CONT'D)

Q. Two in the centre seat?
A. Yes sir.

Q. Any more in the centre seat?
A. I couldn't say.

Q. Any more in the front seat?
A. I don't know if there was anyone else besides the driver.

Q. Was there a rear seat in the vehicle?
A. I guess there was.

Q. Were there people back there?
A. Yes sir, there were.

Q. You say shortly after you started off there was an accident?
A. Yes sir.

Q. Do you know what happened?
A. We hit part of the bridge.

Q. What happened to the vehicle?
A. It stopped.

Q. Yes and what did you do after that?
A. I got out as quickly as possible.

Q. What did you do after that?
A. I got out and hung my head out over the side of the bridge.

Q. At that time do you remember seeing anybody else getting out of the vehicle?
A. No sir.

Q. Was Tpr Weaver still there?
A. I couldn't say for sure.

Q. Anybody badly hurt?
A. There was one man unconcious, he was lying alongside the road on the pavement.

Q. Do you know who that was?
A. No sir.

Q. Anybody else hurt?
A. My friend had a broken jaw.

Q. Roschfield had a broken jaw?
A. Yes, I was caring for him.

Q. Was Tpr Weaver hurt?
A. I couldn't say sir.

Q. Was Pte Davis hurt?
A. I don't know the condition of any of them after the accident.

Q. What happened after you were looking after your friend?
A. An ambulance picked us up.

Q. All of you?
A. Yes sir, in two trips.

Q. All eight were taken to the hospital?
A. Yes sir.

Q. When did you go back to your unit?
A. I was in hospital till 2 o'clock the next day.

Q. What happened to your friend?
A. He is still in Hospital.

SECOND WITNESS FOR THE PROSECUTION (CONT'D)

Q. Were any others discharged from hospital on the same day as you?
A. Yes, Pte Weaver was on the say day.

Q. You are quite positive that the driver of the vehicle at time of the accident was Tpr Weaver?
A. Yes sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS FOR THE PROSECUTION

B.627039 Pte NADON, R. - 4 Cdn Repat Depot, sworn, states:-

Q. Can you tell the court exactly what happened on the night of the 24 - 25 Mar 46?
A. Yes sir. I was in Staines drinking with a couple of friends of mine and then after the pubs closed we went down to a restaurant to have something to eat and then we went down to the air raid shelter. It was about 12 o'clock, I am not sure though and then somebody came in and asked us if we wanted a ride back to 4 Repat. He said he was going to Ashford and on his way back he would pick us up. When he did come back we went aboard the truck, it was only a short time after that the crash occured.

Q. Were you sober when you got into the vehicle?
A. Not exactly sober but I knew what I was doing.

Q. Approximately what speed do you think the vehicle was travelling at after you got aboard?
A. A moderate speed.

Q. Didn't seem to be going too fast?
A. No sir.

Q. Who was driving the vehicle?
A. Tpr Weaver sir.

Q. Do you recognize him in this court?
A. Yes sir.

Q. Where is he?
A. Witness indicates the accused (Weaver).

Q. Do you recognize anyone else in the court that was in the vehicle?
A. Yes sir, Pte Davis.

Q. You know Pte Davis?
A. I didn't know him before.

Q. Where was Pte Davis sitting in the vehicle?
A. Next to the driver sir.

NO CROSS-EXAMINATION BY THE DEFENDING OFFICER FOR DAVIS

CROSS-EXAMINATION BY THE DEFENDING OFFICER FOR WEAVER

Q. Was there anybody else in this air raid shelter from 4 Repat?
A. Yes sir.

Q. Who was it?
A. Pte Mackie.

Q. Anybody else?
A. Pte Arndt, he was in the truck when I got in.

THIRD WITNESS FOR THE PROSECUTION (CONT'D)

Q. Did you know Arndt before you got in the truck?
A. I have only seen him around Staines.

Q. You don't know whether he was in the air raid shelter?
A. No sir.

Q. What would that moderate rate of speed be?
A. Approximately 25 m.p.h.

QUESTIONS BY THE COURT

Q. You had been in Staines spending the evening?
A. Yes sir.

Q. Who had you been spending the evening with?
A. My friend.

Q. Who is that?
A. Pte Mackie sir.

Q. After having something to eat you went to the air raid shelter?
A. Yes sir.

Q. Were there a number of Canadian soldiers spending the night in the air raid shelter?
A. I don't know sir.

Q. You went to bed in the air raid shelter?
A. Yes sir.

Q. You were wakened up by somebody who offered to give you a drive to camp?
A. I was going to bed, I am not sure if it was Pte Davis but it was a driver and he said he was going to 4 Repat and I said I would wait.

Q. You think it was Pte Davis?
A. I am pretty sure.

Q. He said he was going to Ashford and would call for you?
A. Yes sir.

Q. How long was it till he called for you?
A. I don't know sir, I went to sleep.

Q. They came back and woke you up?
A. Yes sir.

Q. Who woke you up?
A. I don't know sir.

Q. You went out to the truck?
A. Yes sir.

Q. What sort of a truck was it?
A. An H.U.P.

Q. Do you know the number of it?
A. No sir.

Q. How many other people were there at the truck when you went out and got into it?
A. Eight of us.

Q. Can you remember the names of how many?
A. Pte Weaver, Pte Davis, Pte Evans and Pte Mackie and myself and the other fellows I don't know.

THIRD WITNESS FOR THE PROSECUTION (CONT'D)

Q. You say that Tpr Weaver was driving the vehicle?
A. Yes sir.

Q. Pte Davis was sitting next to him in the front seat?
A. Right sir.

Q. Was anybody else in the front seat?
A. No sir, just the two of them.

Q. Where did you sit in the vehicle?
A. Way in the back in the centre.

Q. Who was sitting next to you?
A. Pte Mackie was on my left and I don't know the fellow on my right.

Q. Was anybody sitting in the seat in front of you?
A. Yes sir.

Q. [redacted] you?
A. I don't remember.

Q. You say shortly after leaving the air raid shelter there was an accident?
A. Right sir.

Q. What happened?
A. We started off and it was just a short distance away.

Q. What did you mean by an accident?
A. We crashed up.

Q. Where?
A. Into the bridge at Staines.

Q. The vehicle crashed the side of the bridge at Staines?
A. Yes sir.

Q. And stopped?
A. I believe it did.

Q. Did it overturn?
A. No sir.

Q. After leaving it crashed into the bridge, what happened?
A. We got out of the truck.

Q. What happened then?
A. We waited there and a policeman came along and he said we would get an ambulance.

Q. Some people were hurt?
A. Yes sir.

Q. Can you tell me the names of the people who were hurt?
A. Myself and Pte Mackie and the other fellows I don't know, I knew one fellow had a broken jaw, I heard that.

Q. What happened when the ambulance arrived?
A. We went to the hospital.

Q. All of you?
A. No my friend and I first went back to the air raid shelter and the policeman told us to get into the ambulance.

Q. How many did go to the hospital?
A. Quite a few of us, I don't know if they all went.

Q. How long did they keep you in Hospital?
A. Until the next noon.

THIRD WITNESS FOR THE PROSECUTION (CONT'D)

Q. Which hospital were you taken to?
A. I believe it was the Ashford Hospital.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

FIRST WITNESS FOR THE PROSECUTION (RECALLED)

Capt. J.S. GARDHAM - Transport Officer 4 Cdn Repat Depot, already sworn, states:-

Q. The Prosecuting Officer hands the witness a document and asks: What is this?
A. This is Exhibit B is an estimate of damage estimated by RCEME Sub Workshops and was certified as a true copy by me and signed as such by myself, here.

Q. That is an estimate of damage to a particular vehicle, which vehicle is that?
A. An estimate of damage to vehicle HUF CZ 4289851, and the estimate of damage totals £85/17/0.

Q. It is signed by whom?
A. It was originally signed by Capt. T.R. Neal, RCEME of 1 Sub Wksps.

PRESIDENT TO THE DEFENDING OFFICERS

Q. Do you have any objection to this document being entered as an exhibit?
A. No sir. (By both defending officers).

PROSECUTING OFFICER TO THE WITNESS

Q. That damage was done to that particular vehicle and from your own knowledge can you tell us what accident that vehicle was involved in?
A. In an accident on Staines Bridge on the 25 Mar 46.

ESTIMATE OF DAMAGE MARKED AS EXHIBIT 2 BY THE COURT

NO CROSS-EXAMINATION BY EITHER DEFENDING OFFICER

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS FOR THE DEFENCE

H.22063 Pte Mervyn John DAVIS (Accused) sworn, states:-

Q. Would you tell the court of the events leading up to the accident?
A. On the morning of the 25th I started as duty driver and I drove all day until approximately 2230 hrs. I made a trip to get the Padre at Camberly and I brought the Padre back to "C" Wing 4 Repat, from there I went to Staines and I stopped at a little cafe there and I seen some fellows from 4 Repat and told them if they wanted a ride back that I would pick them up on the way back at the Air raid shelter, from there I went to Ashford and I ran into Tpr Weaver and asked him where Pte Evans was. That was my reason for going down there, to pick up Evans. He showed me where Pte Evans place was and when we got there I asked him to drive.

Q. He took over the vehicle willingly?
A. Yes sir, he didn't argue.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. Go on?
A. From there we proceeded to the Air raid shelter and picked up these other fellows from 4 Repat. We started homeand smashed up.

Q. Just prior to the accident did you notice that he was going to miss the turn, you were in the front seat?
A. I felt a bump and I yelled "keep over to the left."

Q. You did yell keep over to the left?
A. Yes and he turned the vehicle, it didn't respond, we went to the right.

CROSS-EXAMINED BY THE PROSECUTING OFFICER

Q. On the night of the 24 Mar 46 did you report into the despatcher's office on your return from Camberly, after bringing the Padre back from Camberly?
A. No sir.

Q. Did you have authority to proceed to Staines to pick up your friend?
A. No sir.

Q. Why did you ask Pte Weaver to drive?
A. I had been driving all day and was tired and asked him to take over.

Q. Tpr Weaver was quite willing to take the vehicle over?
A. He seemed to be.

Q. No argument about taking it over?
A. No sir.

Q. Did Tpr Weaver know the vehicle was on an unauthorized trip?
A. I don't know sir, I never told him.

Q. You never told him that it was?
A. No sir.

Q. Were you quite confident that Tpr Weaver could handle the vehicle?
A. Yes sir, I was, I know him as a driver at 4 Repat and have seen him handle vehicles before.

Q. What was the approximate speed of the vehicle at the time of the accident?
A. I am not sure, I never seen the speedometer, it seemed to be moderate.

Q. What would you call moderate?
A. 25 to 30 m.p.h.

CROSS-EXAMINED BY THE DEFENDING OFFICER FOR WEAVER

Q. You say you went to Staines to pick up Pte Evans?
A. Yes sir.

Q. Then you did not know that Tpr Weaver was in Staines?
A. No sir, I just ran into him by accident.

Q. When you went around the curve later in your statement you say the vehicle didn't respond to his turning to the left?
A. It wouldn't react.

Q. Would you say there was something wrong with the steering?
A. Yes sir.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. It was your own vehicle?
A. It was alright when I drove it but it happened when we hit the curve.
Q. There could have been a defect in the steering of the vehicle?
A. Yes sir.

QUESTIONS BY THE COURT

Q. You state that you had been driving as a duty driver on the 25 Mar 46 you mean the 24th Mar 46, don't you?
A. Yes sir.

Q. So it is the 24 Mar 46?
A. Yes sir, Sunday.

Q. And you had been driving all day?
A. Yes sir.

Q. You got back from your driving of the padre about 2230 hours?
A. Approximately that.

Q. At that time you were tired?
A. Yes sir.

Q. But yet you started out on another trip?
A. I promised him I would bring him back.

Q. Where did you drop the padre at 2230 hours?
A. To his quarters at "C" Wing 4 Repat.

Q. You left him at his quarters, when?
A. At about 2230 hours.

Q. You were not going to drive him any more that night?
A. No sir.

Q. Instead of checking in you went off on a trip of your own?
A. Yes sir.

Q. You knew you had no authority to do that?
A. Yes sir.

Q. You knew you were taking a vehicle out on an unauthorized trip?
A. Yes sir.

Q. You went then to Staines?
A. Yes sir.

Q. What time did you get to Staines?
A. I don't know the time sir, just as long as it takes from here to Staines.

Q. You say you saw some people you knew in a restaurant in Staines?
A. Yes sir.

Q. Did you meet Tpr Weaver there in that restaurant?
A. No sir.

Q. Where did you meet him?
A. Down in Ashford.

Q. Did you go down to Ashford to pick him up?
A. No sir, Pte Evans sir.

Q. You saw Tpr Weaver at Ashford?
A. Yes sir, he was walking down the road.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. You invited him to get into the vehicle?
A. I stopped him and asked him if he was going to 4 Repat, I also asked him where Pte Evans was, he showed me and when we got there I asked him to drive.

Q. Did you tell him that you had no permission to drive down to Ashford?
A. No sir.

Q. Pretty late at night and you were out there all by yourself in a vehicle?
A. Yes sir.

Q. As a matter of fact Tpr Weaver knew you didn't have any right to have that vehicle there?
A. I don't know. Just his own opinion I guess, I didn't tell him.

Q. You didn't tell him you were there without authority?
A. No sir.

Q. Is Tpr Weaver a driver in the same M.T. section as yourself?
A. Yes sir.

Q. How long have you both been drivers there?
A. In this section about last Feb I guess.

Q. You heard the evidence this morning that somebody went into an air raid shelter in Staines and said he would call back and call for the people from 4 Repat after he had been to Ashford?
A. On the way back Evans went in and called them out.

Q. How would they know the vehicle was going to Ashford before you picked them up?
A. I believe I was in the cafe and told them I was going to 4 Repat and would pick them up on the way back.

Q. Under what circumstances did you ask Tpr Weaver to drive the vehicle? You say after you picked him up you asked him to drive, what did you tell him at that time?
A. I said would you drive I am tired of driving and he said he would.

Q. Did he ask to see your work ticket?
A. No sir.

Q. He is a driver and you drivers know that you have to have a work ticket to drive?
A. Yes sir.

Q. He didn't ask for it at all?
A. No sir.

Q. He took over and drove the vehicle up until the time of the accident?
A. Yes sir.

RE-EXAMINED BY THE DEFENDING OFFICER FOR WEAVER

A. Is it in accordance to ask any driver to take over when you are tired, has it happened previous to the night of the accident, if two drivers were going to London on a trip and one was tired the other would take over if the first was tired?
A. Yes sir.

Q. Is there any order in Transport that says that is right or is not right?
A. I don't know sir.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. You can hand over to another driver on an authorized trip?
A. If he is appointed as a co-driver yes.

Q. If he is a co-driver he drives for that trip?
A. Yes sir.

Q. If he is not a co-driver the regulations do not enter into it at all do they?
A. I never have seen an order that says you can't let a driver take over your vehicle while on a trip.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS FOR THE DEFENCE

K.3120 Tpr Roy Thomas WEAVER (the accused) sworn, states:-

Q. Tell the members of the court your story about the night of the 24 and morning and 25 of Mar 46?
A. On the night of Mar 24 I spent the night at Staines with my girl friend. We had one or two beers and left for her home, pretty early in the evening, roughly arpund 9.30 we went to have something to eat and then we went to Ashford to my girl friends home and stayed there the rest of the time, it was pretty close to mid-night when I heard an Army vehicle going down the road so I looked out the window and I recognized it as an Army vehicle so I figured it might be one of 4 Repat's trucks so I thought I would get a ride back to camp. After I left the girl friend's place I started to walk up the road, by that time the vehicle had turned around and was coming down the road towards me. I flagged the vehicle down and asked if he was going to 4 Repat, he said he was and I recognized the driver to be Pte Davis, so when I got into the vehicle he asked me where Pte Evans was staying, I told him, he was staying down the road a ways and he asked me if I would show him, I showed him where Pte Evans was staying and then that was where he said he was too tired to drive, I saw he was tired so I told him I would drive the vehicle back to camp. After we picked up Pte Evans we proceeded on to Staines and Pte Davis told me to stop at an air raid shelter as he was going to pick up some more fellows, we stopped there and we picked up 5 fellows and then proceeded back to camp. I knew this Staines bridge and there was a curve there, I slowed the vehicle down before I came to the curve but with the weight in the back and the road being slippery the vehicle seemed to push over to the right of the bridge and hit the side wall, there Pte Davis told me to get the vehicle to the left, I tried to keep it to the left but the wheels didn't seem to respond to the way I wanted them and the vehicle headed for the edge of the bridge and crashed and then the ambulance came and picked us up and took us to the hospital.

Q. When you took over the driving of the vehicle did you take over the driving because you like to drive or because you thought you would be helping Pte Davis out because he was tired and had been driving a lot that day?
A. I thought I would be helping him out, I could see he was pretty tired.

CROSS-EXAMINED BY THE PROSECUTING OFFICER

Q. Did you know that when Pte Davis asked you to drive that it was an unauthorized trip?
A. I knew nothing about it sir.

Q. Did you realize that when you consented to drive that you were taking full responsibility for the vehicle?

SECOND WITNESS FOR THE DEFENCE (CONT'D)

A. As far as I understand is that when a vehicle is signed out to a driver he takes the responsibility for the vehicle under any circumstances, no matter who drives. I mean the man to whom the vehicle is signed out to.

Q. What was the weather like at the Staines bridge?
A. It was foggy, It was almost impossible to have the lights on bright as it would reflect against the fog, I had the lights dim after leaving Ashford.

Q. Then the visibility was poor?
A. Yes sir.

Q. Pte Davis admitted the speed of the vehicle at the time of the accident was 25 m.p.h., do you agree with this?
A. Yes because I slowed down before I came to the bridge.

Q. You think you were doing 25 m.p.h.?
A. Yes sir.

Q. Do you usually drive at this speed when the weather is foggy?
A. I am not quite sure what the regulations are on that sir.

Q. You say that the road was slippery?
A. Yes a little moist on the road from the fog.

CROSS-EXAMINED BY THE DEFENDING OFFICER FOR DAVIS

Q. When you went out of your girl friend's house to stop the vehicle, what made you think it was a 4 Repat vehicle?
A. I just took that chance, I was planning on spending the evening at my girl friend's house and the vehicle would take me back just that much earlier.

Q. Do you know this Pte Evans?
A. Yes I knew them both.

Q. When you understood the trip was made to Staines to pick up this Pte Evans you must have realized that it was an unauthorized trip?
A. No, not necessarily.

QUESTIONS BY THE COURT

Q. How long have you been a driver?
A. Since the latter part of Feb with this Depot here.

Q. I see that you are wearing the DM badge on your arm?
A. Yes sir.

Q. That stands for Driver Mech and did you just take that up in the latter part of Feb 46?
A. No sir, I was authorized as a driver mech in Canada.

Q. You have been only driving in this country here since the latter part of Feb?
A. In this transport section here.

Q. How long have you been a driver?
A. Ever since I came over.

Q. How long have you been over?
A. Since Feb 45.

Q. As a driver mech you know standing orders for M.T. drivers?
A. Yes sir.

Q. Did you see this Pte Evans at all on the evening of the 24 in Ashford?

SECOND WITNESS FOR THE DEFENCE (CONT'D)

A. I believe I saw him once.

Q. Did you have any conversation with him then?
A. No sir.

Q. You didn't know from Pte Evans that Pte Davis was coming down to pick him up?
A. No sir.

Q. But yet when you heard an army vehicle passing your girl friend's house you left the house and started back for camp on the chance that you would get a ride to the repat depot?
A. Yes sir.

Q. How did you know that vehicle was going to turn around and come back in the direction you were going?
A. I just took that chance that he would come or go as far as the main road and then turn around.

Q. You hear it passing your girl friend's house and you went out on the strength of that and started to walk, that is correct is it not?
A. Yes sir.

Q. What were you going to do if the vehicle had not turned around?
A. I would have waited awhile and gone back to the girl friends house.

Q. You had an idea it was going to turn around?
A. Yes sir.

Q. What gave you that idea?
A. I don't know I had the idea that it would that is all.

Q. It did turn around and you flagged it down?
A. Yes sir.

Q. You recognized the driver as Pte Davis?
A. Yes sir.

Q. He works with you in the M.T. section?
A. Yes sir.

Q. After you directed him to Pte Evans and you picked him up he asked you to drive the vehicle?
A. Yes sir.

Q. Why did he want you to drive the vehicle?
A. He told me he was to tired to drive it.

Q. Did you see that he was tired?
A. Yes sir.

Q. Did he say why he was tired?
A. He said he was duty driver and had been driving all day and night.

Q. You as a driver knowing the regulations of course understood that it was a duty trip to pick up Pte Evans?
A. No I didn't when he told me he was going to pick up Evans I didn't know whether it was a duty trip or not.

Q. You didn't think it was as a driver of experience?
A. No sir.

Q. You thought as a matter of fact that Pte Davis was taking an unauthorized trip?
A. Yes sir.

SECOND WITNESS FOR THE DEFENCE (CONT'D)

Q. And yet having that in mind that the trip was unauthorized you took control of the vehicle by becoming the driver?
A. Yes sir. I took it because I thought it would be better if I did as he was pretty tired.

Q. Althought you were trying to help Pte Davis out did you know you were taking a chance by driving the vehicle on an unauthorized trip?
A. I have not seen M.T. laws that says you can't help another driver out, whether the trip is authorized or unauthorized.

Q. A work ticket makes the trip authorized?
A. Yes sir.

Q. If there is a co-driver the names are shown on the work ticket?
A. Yes sir.

Q. Did you bother to ask to see the work ticket?
A. No sir.

Q. You knew your name could not be on the work ticket as co-driver?
A. No sir.

Q. You were taking a chance by assuming control of the vehicle on the unauthorized trip?
A. Yes sir.

Q. While you were driving on this unauthorized trip an accident occured?
A. Yes sir.

Q. That is the root of the thing?
A. Yes sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

ADDRESS BY THE PROSECUTION

Upon the evidence that has been presented it appears that Pte Davis made an unauthorized trip to Staines and on to Ashford to pick up his friend and that when he arrived in Staines he picked up a driver whom he knew by name, a Pte Weaver, and because he was tired he asked Pte Weaver to drive. Pte Weaver has admitted that he didn't think it was an authorized trip but consented to drive the vehicle back to camp and while the vehicle was under the control of Pte Weaver it ran into and damaged the bridge at Staines and also caused damage to the vehicle to the amount of £85-17-0. That is all I have to say sir.

ADDRESS BY THE DEFENCE FOR PTE DAVIS

Pte Davis did make this unauthorized journey but the point in question is that Tpr Weaver took over the vehicle, realizing it to be an unauthorized journey, therefore no driver had been allotted to the vehicle, so the vehicle could not be tied down to the responsibility of anyone in particular so the person driving should be the person responsible for the custody of that vehicle.

ADDRESS BY THE DEFENDING OFFICER FOR WEAVER

I should like to follow the events as they actually happened. Tpr Weaver was in Staines or Ashford on the night of Mar 24 and when he saw a vehicle going to 4 Repat he t ought he would take a chance and get a ride, he was lucky, it happened to be a 4 Repat vehicle. He flagged down the driver of the vehicle who was Pte Davis. He knew him and he was asked where Pte Evans was, they went down to see Evans and while sitting waiting for Pte Evans, Pte Davis asked Tpr Weaver to take the vehicle over because he was tired. Now I am pretty sure this has happened hundreds and hundres of times where a driver meets a driver he knows is authorized to drive and gives him the vehicle. The unfortunate thing about that night is that they were involved in an accident. You have heard his evidence, the evidence of the first witness was that Tpr Weaver was perfectly justified in taking over the vehicle because Pte Davis was tired. The fact that Tpr Weaver took the vehicle over and is responsible, nobody is sure of. Tpr Weaver took over the vehicle, he started out back to camp, he came to a curve and slowed down and was driving at a moderate rate of speed which is 25 m.p.h. and he tried to make the curve at Staines bridge and as far as we can find out when he tried to turn it to the left there was a defect in the steering. Anyway the accident occured at an unfortunate time. I don't think Tpr Weaver is guilty of the charge.

THE COURT IS CLOSED TO CONSIDER IT'S FINDING

THE COURT RE-OPENS

PLEA OF MITIGATION FOR PTE DAVIS BY HIS DEFENDING OFFICER

All I have to say is that according to what Pte Davis told me his first charge on the conduct sheet was an offence that was committed in one week of him joining the army and the other charges are to my estimation minor offences. I wish the court would look into that when considering the sentence.

PLEA OF MITIGATION FOR TPR WEAVER BY HIS DEFENDING OFFICER

I would like to make a plea for Tpr Weaver. This court has dragged out for three months and during that time Tpr Weaver has been trying to make arrangements to be married over here since he has not been under close arrest but under open arrest. He couldn't get out to see his girl friend and he has had a hard time trying to make arrangements by telephone to get married because of the dragging out of the Court Martial.

Since I have known him he has been working in the Admin Office with me and he has been an outstanding soldier.

Army Form G 3518 (Revised 1942)

TRANSPORT WORK TICKET

TO BE COMPLETED IN INK WHENEVER PRACTICABLE

4 Cen. Repat. Depot.

Pa Davis

D-94 No ~~D-99~~ Exhibit A

MAKE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	W.D. No.	MONTH & YEAR
Chev	H.U.P		MT	Sgt Graham	CZ 4289851	March 46

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	To (5)	Via (6)	SIGNATURE OF PERSON AUTHORISING JOURNEY (7)	LOGGING TYPE (8)	Plate (9)	FUEL GALLONS At Start (10)	Drawn (11)	At End (12)	Used (13)	TIME Out (14)	In (15)	SPEEDOMETER In (16)	Out (17)	Dist (18)
	A		Brought forward from Work Ticket No. D-15						15				1230		15514		
23	Own Unit	Personnel	Witley	Witley	Guildford	NON CAPT PHILLIPS					13	2		1345		15533	19
24	Own Unit	Legt Duty	Witley	Witley	Camberley	P.J. OBRIEN	LT						0900				
	D																
	E																
	F																
	G																
	H																
	J																
	K																
	L																
	M																

Certified true copy

J. Gardner Capt

Exhibit 17

M.P.G. for work ..... or totals carried over.

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE Via (5)	SIGNATURE OF PERSON AUTHORISING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER End (17)	SPEEDOMETER Day (18)
	N		Brought forward from Reverse		N											
	O				O											
	P				P											
	Q				Q											
	R				R											
	S				S											
	T				T											
	U				U											
	V				V											
	W				W											
	X				X											
	Y	M.P.G. for week ..... or totals carried to Work Ticket No.			Y											

LINE	SPECIAL INSTRUCTIONS TO DRIVER	DATE	DRIVER'S REPORT OF BREAKDOWNS, ACCIDENTS AND DEFECTS	SIGNATURE OF DRIVER	COUNTERSIGNATURE
					Back

Particulars of Damage to Cdn Army Veh.

No. CZ 4289851 Chev. H.U.P.

Frame	£11/15/0	
Front End Assy	10/ 0/0	
Front Springs (2)	3/ 0/0	
Headlamp	0/14/0	
Rad Grill	1/10/0	
Windshield Glass	2/ 0/0	
Instrument Panel	1/10/0	
Steering Assy	4/ 0/0	
Radiator	6/ 0/0	
Motor Exchange	15/ 0/0	
Transmission Casw	4/10/0	
Front Drive Shaft	1/ 0/0	
Rad F an Assy	0/13/0	
Bumper	1/ 0/0	
Spring Hangers (4)	2/ 0/0	
Brake Line Connections	1/ 0/0	
Total	£65/12/0	£65/12/0
Labour 135 Hrs. @ 3/-		£20/ 5/0
TOTAL		£85/17/0

Exhibit 2
CEO

Date 30 March 46

(sgd) T R Neal Capt EME
For OC 1 Cdn Sub-wksp, RCEME

Certified True Copy

J Gardham
Capt.
24. APR. 46

exhibit 2 B

SUMMARY OF EVIDENCE

Summary of Evidence in the case of K 3120 Tpr Weaver R.T. and H 22063 Pte Davis, M.J. on the strength of 1 Cdn Repat Depot, soldiers of the Canadian Army Overseas.

The Commanding Officer directs that all evidence be taken on oath.

First Witness for the Prosecution

Capt J.S. Gardham, Transport Officer of No 4 Cdn Repat Depot an Officer of the Canadian Army Overseas having been duly sworn states:-

I am Capt J.S. Gardham, Transport Officer of 4 Cdn Repat Depot. At Appxrimately 0200 hrs 25 Mar 46, I was informed by Lt O'Brien who was duty officer at "A" Wing 4 Cdn Repat Depot, that one of 4 Cdn Repat Depot's vehicles had been involved in an accident at Staines Bridge. I was in the Transport Office the night before and checked the dispatcher's sheet and knew that no vehicle was authorized to take a trip to Staines. The vehicle in question was authorized to take H/Capt Phillips to Camberley only at about 1600 hrs 24 Mar 46. The vehicle returned to Transport lines. The same vehicle was authorized to make a second trip to Camberley to pick H/Capt Phillips up and take him back to Cdn Repat Depot. From this trip the vehicle did not return to transport lines. The next I heard of it was when Mr O'Brien reported it involved in an accident at Staines. I submit a certified true copy of the work ticket for this vehicle which shows that no trip to Staines was authorized. Exhibit "A".

Q What was the type of vehicle in question ?
A H.U.P. # CZ 4289851.
Q Who was the authorized driver ?
A H 22063 Pte Davis, M.J. whom I recognize.
Q Who was driving the vehicle at the time of the accident ?
A Checking with the civilian police on the following morning I was informed that K 3120 Tpr Weaver, R.T. was driving. I recognize him as being a driver on strength of transport in 4 Cdn Repat Depot.

The accused declines to cross-examine the witness.

J.S. Gardham Capt

(J.S. Gardham) Capt.

Second Witness for the Prosecution

L 607213 Pte Arndt, R. on strength "A" Wing 4 Cdn Repat Depot a soldier of the Canadian Army Overseas having been duly sworn states:-

I am L 607213 Pte Arndt, R. of 4 Cdn Repat Depot. After spending the evening celebrating my repat, I went to bed in the air raid shelter at Staines at 2330 hrs. At approx 0030 hrs someone woke me and asked if I wanted a ride to 4 Cdn Repat Depot. I accepted, I got into the H.U.P. and was seated directly behind the driver. After getting into the vehicle I spoke to no one. I was busy covering myself up with blankets when the crash occured. Someone shouted "get out she may catch on fire" I got out.

Q Were you sober at the time of the crash ?
A I can remember getting in but was groggy from the celebration.
Q How fast was the vehicle going at the time of the accident ?
A I don't know.
Q Who was driving the vehicle when it crashed ?
A Pte. Weaver.

Q What was the condition of the weather where the vehicle crashed ?
A It was somewhat foggy. It was impossible to see very far ahead.

The accused declines to cross-examine the witness.

R. Arndt.

L 607213 Pte Arndt, R.

Third Witness for the Prosecution

B 627059 Pte Nadon, R. a soldier of the Canadian Army Overseas, on strength of Transit, 4 Cdn Repat Depot having been duly sworn states:-

I am B 627059 Pte Nadon, R. on strength of Transit 4 Cdn Repat Depot. I spent the evening of 24 Mar 46 in Staines drinking with my friend. Later we went to the air raid shelter in Staines. A driver come in from 4 Cdn Repat Depot and said he was going to Ashford then coming back to 4 Cdn Repat Depot and if we wanted a ride to wait his return. About an hour leter, I think it was after midnight the driver returned. I got up in the Hup and sat in the center of the backseat. We started off and it was only a short time before the accident occured.

Q Was the weather foggy at the scene of the accident ?
A I don't remember.
Q How fast was the vehicle going when it crashed ?
A About 25 to 30 m.p.h.
Q Were you sober when you got out of the vehicle ?
A Yes.
Q Who was driving when the vehicle crashed ?
A Pte Weaver.

The accused decline to cross examine the witness.

R. Nadon

B 627059 Pte. Nadon, R.

Fourth Witness for the Prosecution

Capt J.A. Wilson O.C. of 1 Cdn Sub Wksp RCEME an officer of the Canadian Army Overseas having been duly sworn states:-

I am Capt J.A. Wilson O.C. 1 Cdn Sub Wksp RCEME. About the last of March, the exact date I don't remember, WD vehicle HUP # CZ 4289851 was brought into Wksps in a damaged condition. I had it checked and submit a certified true copy of the W/S report showing an estimate of the damage to the said vehicle. Exhibit "B".

The accused declines to cross-examine the witness.

.....
(J.A. Wilson) Capt

The accused was cautioned as follows:-

Do you wish to make a statement or to give evidence on oath ? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence.

"I certify that the above Summary of Evidence consisting of four pages was taken down by me in the presence and hearing of the accused and that the rules of Procedure 4 (c)(d)(e) and (f) have been complied with".

In the field
3 Jun 46

(W.G. McCulloch)Lt
Officer detailed to take
The Summary of Evidence.

NO 4 CANADIAN REPATRIAT ION DEPOT

THE CASE OF K 3120 Tpr Weaver, R.T. and
H 22063 Pte Davis, M.J.

I) List of Witnesses for the Prosecution

Capt J.S. Gardham - 4 Cdn Repat Depot

L 607213 Pte Arndt, R. - 4 Cdn Repat Depot

B 627059 Pte Nadon, R. - 4 Cdn Repat Depot

Capt J.A. Wilson - 1 Cdn Sub Wksp RCEME

II) List of Witnessses for the Defence

Nil

III) List of Exhibits for the Prosecution.

Exhibit "A" - Certified true copy of transport Work ticket (AFM G 3518).

Exhibit "B" - Certified true copy of W/S report showing damage to HUP # CZ 4289851.

IV) List of Exhibits for the Defence.

Nil

V) Receipt by the accused for copy of Charge and Summary of Evidence.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken in the Field, preliminary to my forthcoming Court Martial. I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

R.T. Weaver
K 3120 Tpr Weaver, R.T.

VI) Receipt by the accused for copy of Charge and Summary of Evidence.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken in the Field, preliminary to my forthcoming Court Martial. I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

M.J. Davis
H 22063 Pte Davis, M.J.

VII) Application by the accused for Defending Officer.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

R.T. Weaver
K 3120 Tpr Weaver, R.T.

VIII) Application by the accused for Defending Officer.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

Exhibit "B" [illegible]

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-22063	Pte	Davis M.J.	4 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) 2 times.

For A.A. Sec 40 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 11 May 45

Date of last entry in Field Conduct Sheet 29 Oct 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for ——— days in civil custody; and for 54 days in military custody, *i.e.*, 54 days in open arrest, No days in close arrest; of which 54 days were spent in hospital.

5. The present age of the accused is 20 yrs 4 mos.

6. The date of his attestation ~~[illegible]~~ is 3 Feb 44

7. The service which the accused is allowed to reckon is 2 yrs 4 mos.

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡ Nil

~~9. (If the accused is a warrant officer, N.C.O.) The accused has served continuously, without reduction, to the present date.~~

Date of Promotion.

~~In the substantive rank of~~

~~In the war substantive rank of~~

~~In the acting rank of~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(25094) Wt.42128/4390 42,000 11/44 A.A.E.W.Ltd. Gp.693 Forms 7-2 & Warp.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18th day of June 46

T.H.B. Payne

(T.H.B. Payne) Lt.
Asst Adjt "A" Wing 4 C.R.D.

Exhibit "B"

ARMY FORM B.206 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K-3120	Tpr	Weaver R.F.	4 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereinafter stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) ..... 1 times.

For A.A. Sec 40 ..... 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 27 Feb 45

Date of last entry in Field Conduct Sheet 17 Dec 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ——— days in civil custody; and for 54 days in military custody, *i.e.*, 54 days in open arrest, NO days in close arrest; of which NO days were spent in hospital.

5. The present age of the accused is 21 yrs 6 mos.

6. The date of his attestation is 20 Apr 44

~~which up to date of this service~~

7. The service which the accused is allowed to reckon is 2 yrs 1 month

†State the military decorations of any held by accused.

8. The accused is in possession of† Nil

9. ~~(If the accused is a warrant officer, C.O.): The accused has served continuously, without reduction, to the present date, as~~

Date of Promotion.

~~In the substantive rank of~~ .....

~~In the war substantive rank of~~ .....

~~In the acting rank of~~ .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(20504) W.4211/P.4206 42,000 11/44 A.A. & S.W.Ltd. Gp.679 Forms/T.2 (C.W.O.)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18th day of June 46

T. M. B. Payne

(T.M.B. Payne) Lt
Asst Adjt "A" Wing 4 C.A.D.

4A-114

Pte. Davis, M. J

RECORDED AT CMHQ IN AD 180. HA-114

RECEIVED 26 OCT 1944 JAG BRANCH C.M.H.Q.

RECEIVED 26 OCT 1944 Number JAG BRANCH C.M.H.Q.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 122044 Pte Malcolm Joseph Davis. RCAMC on strength No 19 Cdn Gen Hosp.

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	18 (4)	Guilty	Guilty	
2nd	40 (alt)	Withdrawn by Prosecutor		
3rd	18 (4)	Guilty	Guilty	
4th	40 (alt)	Withdrawn by Prosecutor		
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn b.)

At present under sentence for N/A beginning on (date) .....(1)
(1. Insert sentence being served" or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for one hundred and thirty-five (135) days.

(Sgd) J.C.A. Campbell Major — Judge-Advocate, if any.
6 Oct 44 — Date awarded.
(Sgd) D.S. Milligan Brig. — President. (RP 45, 46)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 (n 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

P J Montague Mjr
(Sgd) .....
Date .....
Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C.122044 Pte Davis, M.J.	16 Oct 44	(H.E. Tenner) Colonel, RCAMC O.C., 19 Cdn General Hosp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No illegalities or irregularities such as would warrant withholding confirmation.
(H.E. Tenner) Lt-Col.
A.J.A.G., C.M.H.Q.
16/10/44

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA21) 40/P & S/1698 (50 000) 4/38B

Convened by Order of Major General P.J. Montague Comdg in charge of Administration C.M.H.Q. dated 5 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 122044	Pte	Malcolm Joseph	Davis	RCAMC on strength No 19 Cdn Gen Hosp

PROCEEDINGS REVIEWED 26 Oct 44
J.C.A. Campbell Major
REVIEWING OFFICER JAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 6 Oct 44 JCC

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

JCC A2. The President initials and lays before the Court the Convening Order and Charge Sheet, ✓ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

JCC A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1045 hours trial commences.

JCC A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

JCC A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~
JCC ~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~
JCC ~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by any as President or by any of the Members of the Court?
Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.S. Milligan	C.A.C. "G" Bty C.M.H.Q.
Member	Major	A.J. Andreae	R.C.A.M.C. 19 Cdn Gen Hosp.
Member	Lieut	B.L. McLean	R.C.A.S.C. Veterinary 19 Cdn Gen Hosp
Judge-Advocate	Major	J.C.A. Campbell	R.C.A. JAG Br C.M.H.Q.
Prosecutor	Capt	R. Dean Wills	R.C.A. JAG Br C.M.H.Q.
Defending Offr	Capt	H.J. McDougall	R.C.A. Patient 19 Cdn Gen Hosp

Questions by President: Is the Prosecutor a lawyer? Ans yes Is the Defending Offr a lawyer? Ans yes (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Convg Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused ..... before arraignment make(s) (no) ✓ plea(s) JCC (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB name and name of the accused making the plea.)

JCC A9. The accused is ~~not~~ arraigned ~~severally~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is ~~no~~ amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

JCC A10. The Court ~~is informed~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO.(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty was (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114. KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Age and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)

(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement of Age and Conduct Sheet, and in mitigation of punishment ?(1) Ans yes, mitigation only, through my defending officer.

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove as to character anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2327, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 58(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 547. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B2.

CHARGE SHEET

THE ACCUSED, No. C122044 Private DAVIS, Malcolm Joseph, R.C.A.M.C. on strength No. 19 Canadian General Hospital, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE Sec 18 (4) ARMY ACT

WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

at #19 Canadian General Hospital between 6 Sep 44 and 25 Sep 44 stole 1000 Sweet Caporal cigarettes and 600 Senior Service Cigarettes, the property of Lieut. A.R. Martin CAC, a patient in #19 Canadian General Hospital, a person subject to Military Law.

SECOND CHARGE (ALTERNATIVE) Sec. 40 ARMY ACT.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

in that he

at #19 Canadian General Hospital, between 6 Sep 44 and 25 Sep 44 was improperly in possession of 1000 Sweet Caporal cigarettes and 600 Senior Service cigarettes, the property of Lieut. A.R. Martin.

THIRD CHARGE Sec 18(4)

WHEN ON ACTIVE SERVICE, RECEIVED KNOWING IT TO HAVE BEEN STOLEN PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

at #19 Canadian General Hospital between 6 Sep 44 and 25 Sep 44 did receive:

3 boxes of safety matches (Bryant & May)
1 pr. khaki braces.
2 pkgs. of Wrigley's Chewing Gum
3 pkgs of Gillette Razor Blades, containing 12 blades each.
1 pocket comb.
1 pr. puttees.

the property of Lieut. A.R. Martin CAC, a patient in #19 Canadian General Hospital, a person subject to Military law, which he (C122044 Private Davis M.J.) knew to have been stolen.

FOURTH CHARGE Section 40 (ALTERNATIVE) ARMY ACT.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at #19 Canadian General Hospital between 6 Sep and 25 Sep 44 was improperly in possession of

3 boxes of safety matches(Bryant & May
1 pr. Khaki braces
2 pkgs Wrigley's Chewing Gum
3 pkgs GILLETTE Razor Blades containing 12 blades each.
1 pocket comb
1 pr of puttees.

the property of Lieut. A.R. Martin.

In the field.
30 Sep 44.

(H.B. Kenner) Colonel, RCAMC
Commanding Officer,
#19 Canadian General Hospital.

Approved on behalf of the Judge Advocate General, Cdn Army Overseas pursuant to KR(Can) 540 and Overseas RO 4756.

4 Oct 44

(R G Morden) Lt-col
AJAG

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
5 Oct 44

(P J Montague) Major-General
In Charge of Administration
CANADIAN MILITARY HEADQUARTERS
Convening Officer

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-122044	Pte		Malcolm Joseph	DAVIS	RCAMC, on strength #19 Cdn Gen Hosp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~[illegible]~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) this date endorsed by me, (~~[illegible]~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~[illegible]~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

~~[illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	D S Milligan (Must be named. RP 106.)	CAC	"G" Br CMHQ (Unit.)

MEMBERS.

Major	A J Andreae	RCAMC	#19 Cdn Gen Hosp
Lieut (Rank.)	B L McLean (Named or detailed. RP 106.)	RCASC	Patient in #19 Cdn Gen Hosp

WAITING MEMBER.

Capt. (Rank.)	T McConnachie (Named or detailed, if any. RP 106.)	RCAMC	#19 Cdn Gen Hosp (Unit.)

JUDGE-ADVOCATE.

Major (Rank.)	J C A Campbell (Must be named, if any. RP 106.)	RCA	JAG Br CMHQ (Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally, RP 105 fn 2.) Major-General (Rank.)

(P J Montague) Major-General
In Charge of Administration
Commanding Canadian Military Headquarters
Convening Officer.

Date Oct 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (Ass "In lieu of AFA") 40/P & [illegible] (4001)

G. [illegible] Lt-Col
A.J.G., C.M.H.Q.

[illegible] Capt
AGSA

J C A Campbell Major
Judge Advocate.

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN.) PARA.557

J.A. Campbell Major Judge Advocate

I certify that I have this morning examined

No. C-122044 DAVIS G.M.

of #19 C.G.H. and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court martial.

J.B. Tindall Capt.
Medical Officer

Station #19 C.G.H.

Date 6 Oct '44

M.F.B.246

D
J.C.H. Campbell was
Judge advocate.

E 3. Mitigation.

Accused Evidence in S of E shows utility cupboard of Ward H was not locked & open to personnel in hospital. In other words temptation more or less placed before orderlies working in ward. Accused has of own volition pleaded guilty to charges. Everyone is aware of difficulty of proving the theft of common brand of cigarettes. He decided he was in the wrong & so make a clean breast of whole affair & start over again. Respectfully request Court to consider carefully the age of accused - 19 yrs. Enlisted in Can. Army minute he could do so for service. He assign signed for active service & in my opinion has makings of good soldier. He has requested Court take into consideration the value of articles stolen & that they be guided by this fact in considering sentence. Further fact that all these soldiers on trial today are very young, new to this country & have not had an opportunity of becoming settled. Customs are different than in Canada & living conditions more expensive. Respectfully requested Court consider these things & give accused a light sentence & an opportunity of proving himself both as a man & a soldier.

Pte Davis also requested a transfer to another

Corps & is desirous of seeing more active service with the Cdn Inf.

JCC ~~R.P. 93 (b) complied with.~~

SUMMARY OF EVIDENCE

IN THE CASE OF C122044 Pte. Davis. M.J.

A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

CHARGES: First Stealing

Second Improper possession (alt.)

Third Receiving

Fourth Improper possession (alt.)

~~Fifth~~

~~Sixth~~

BY DIRECTION OF THE COMMANDING OFFICER, THE EVIDENCE IS TAKEN ON OATH.

D139130 Pte. GRIMBLE John Leslie, duly sworn as shorthand reporter.

(SEE TRANSCRIPT OF EVIDENCE ATTACHED).

"A"

J.C. Campbell Major
Judge Advocate.

FIRST WITNESS
FOR THE PROSECUTION

GEORGE THOMAS HOLLIS, Police Sergeant, Warwicks County Police, attached to Coleshill, having been duly sworn,- states:

I received information from Lieut. Ramsberry #19 Canadian General Hospital, on the 24th September 1944 that a theft had been committed in Ward H. I came to the Hospital and ascertained what the property was that was missing, and on the 25th September, I interviewed Pte. Davis in the presence of Lieut. Ramsberry. I said to him "I am a Police Officer and I am making enquiries into a case of theft from the kit bag of Lieut Martin, who is a patient in Ward H. Do you know anything about it" He replied "No". I questioned him further about the matter and he said "I did have some of the cigarettes, I'll tell you." I cautioned him, giving him the usual form of caution and he went on to make a statement which I took down in writing at his dictation. When he was finished, I read it over to him, and, after initialling several alterations, he signed it. I produce the original of the statement made by the accused, consisting of three pages of writing in ink.

(RECEIVED AND MARKED EXHIBIT "A")

I then took the accused to Pte. Davis to No.1 hut where he sleeps and searched his kit. I found two packages of Gillette Razor Blades, one pair braces, one comb, two boxes of matches and one pair of puttees. These articles I have shown to Lieut. Martin (not in the presence of the accused) and he identified them as property similar to property lost by him. I labelled the recovered property in the presence of Lieut Ramsberry and handed it to him for safe keeping.

I produce copy of a report I have compiled with respect to this investigation.

(REPORT RECEIVED AND MARKED EXHIBIT "B")

Question-to Accused: Do you wish to ask the witness any questions?
Answer - No Sir.

(G.T. Hollis) Sgt. of Police
Warwicks County.

SECOND WITNESS FOR THE PROSECUTION

Statement of Lieut. A.R. MARTIN CIC, a patient in No. 19 Canadian General Hospital.
(STATEMENT PRODUCED AND MARKED EXHIBIT "X")

I certify that the attendance of this witness is not readily procurable due to his physical condition:

R. Dean Wills.

(R. Dean Wills) Capt.
Officer taking
SUMMARY OF EVIDENCE.

I do not require the attendance of this witness for the purpose of cross-examination.

(Accused). Jno Davis

THIRD WITNESS FOR THE PROSECUTION

Statement of Lieut. Walter Melville HANSBERRY, Administration Officer, #19 Canadian General Hospital.
(STATEMENT PRODUCED AND MARKED EXHIBIT"Y")

I certify that the attendance of this witness is not readily procurable due to military exigencies.

R. Dean Wills.

(R. Dean Wills) Capt.
Officer taking
SUMMARY OF EVIDENCE

I do not require the attendance of this witness for the purpose of cross-examination.

(Accused). Jno Davis

FOURTH WITNESS FOR THE PROSECUTION — A117360 Pte. CRAIG, WILFRED ALVIN, R.C.A.M.C. No. 19 Canadian General Hospital, having been duly sworn in stated:

Question: To witness — The accused, Pte. Davis, has made a statement that certain articles were given to him by you. It is alleged that these articles were stolen from Lieut. Martin, and that other parties, at present unknown. The law requires me to inform you that you are not obliged to answer any question if the answer, in the opinion of the court, might tend to incriminate you of any criminal offense. Do you understand?

Answer: By witness: I think I do.

Question: Therefore, if any questions are put to you, which you believe might incriminate you, you may ask permission of the court not to answer them. Do you understand that?

Answer: I do not think I do (after explanation by Officer) Yes, I understand.

Question: Do you know the accused, Pte. Davis?

Answer: Yes, I do (indicating him)

Question: I produce and show to you, Exhibit "L" two boxes of matches. Do you know anything about those?

Answer: Yes I do.

Question: What do you know?

Answer: I took them out of Lieut. Martin's kit bag and gave them to Pte. Davis.

Question: I produce and show to you Exhibit 'I' a pair of Braces. Do you know anything about those?

Answer: Yes I do.

Question: What do you know about these.

Answer: I took them out of Lieut. Martin's kit bag and gave them to Pte. Davis.

Question: I produce and show to you Exhibit "G" three packages of Gillette Razor Blades. Can you tell us anything about these.

Answer: Not that I can remember.

Question: I produce and show to you, Exhibit "M" a pair of puttees. Do you know anything about these?

Answer: I took them out of Lieut Martin's kit bag and gave them to Pte. Davis.

Question: I produce and show to you, Exhibit "K" a comb. Do you know anything about this?

Answer: Yes I took it out of Lieut. Martin's kit bag and gave it to Pte. Davis.

Question: Did you have any conversation with Pte. Davis at the time you gave him these articles?

Answer: Yes, I told him that I had them out of Lieut. Martin's kit bag and that I was giving them to him.

Question: Where did this conversation take place?

Answer: I think it was on the ward.

Question: Were you ever in the storage closet with the accused, Pte. Davis?

Answer: Yes, I was.

Question: What happened at that time?

Answer: We were straightening out the cupboard.

Question: Did you ever see Pte. Davis take anything out of the kit bags in the cupboard.

Answer: Just once.

Question: What was taken on that occasion?

Answer: I think it was a shirt, and I think there was some socks.

Question: From whose kit bag?

Answer: Lieut. Martin's .

Question: Is there anything else you wish to add to this at this time.

Answer: No.

Question: to accused: Do you wish to ask any questions of the witness?

Answer: by accused: No.

(W.A. Craig) Pte. RCAMC

COURT WAS ADJOURNED AT 1200 hrs.

Fifth Witness for the Prosecution.

D125539 S/Sgt. HUXLEY John Charles Edward, R.C.A.M.C. #19 Canadian General Hospital having been duly sworn states:
I am the Head Wardmaster of the #19 Canadian General Hospital. One of the wards in my care is Ward "H", which contains officer patients. I received a complaint that some articles were missing from an officer's kit. As a result I interviewed Lieut Martin and he gave me a list of articles missing from his kit. I reported the matter to R.S.M. Richard.
When Officer patients were admitted to Ward "H" their personnel kit was stored in the utility cupboard next to the front door of the ward. Some of the personnel kit was also kept under the officer patient's bed. The door to this utility cupboard was not kept locked, and anyone could have had access to it. The ward orderlies of ward "H" were Ptes.Otis, Craig, Davis and Chisholm. Pte. Otis was the night orderly. It was from this ward that the articles were missing. As a result of my investigation I learned that Pte. Ramsey had visited ward "H" on one occasion when Pte. Otis was on night duty. When an officer patient wants anything of his kit, it is the duty of the ward orderly to get it from the utility cupboard and bring it to him and to return it to the utility cupboard when the officer is through with it.

~~Question: To accused~~ ~~Do you wish to ask this witness any question.~~
Answer Yes I do.
Question:By accused Wasn't the night Ramsey was in the ward the night after the articles were stolen.
Answer I do not know the actual date.
Question: Was Ramsey on leave at that time?
~~Answer~~ ~~This was before he went on leave.~~

Question: To accused Do you wish to question the witness ~~further~~?
Answer No.

S/Sgt Huxley JCE

(J.C.E. Huxley)S/Sgt. RCAMC
#19 Canadian General Hospital.

The accused is cautioned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused declines to make a statement or call witnesses.

J. M. Dawe

I hereby certify that the foregoing SUMMARY OF EVIDENCE consisting of 5 pages was taken down before me in the presence of the accused, and that R.P. 4(c)(d)(e)(f) and (g) were complied with.

R. Dean Wills.

(R. Dean Wills)Capt.
Officer detailed to take Summary of Evidence.

In the field

29 Sep 44.

Ex. "X"

SECOND WITNESS FOR THE PROSECUTION

Lieut. ALFRED REMUS MARTIN, 12th Canadian Arm'd Reg't. (T.R.R.), a patient in No. 19 Canadian General Hospital, having been duly sworn, states:

I was admitted to #19 Canadian General Hospital on 8th September, 1944. My kit consisting of one bed roll, 2 kit bags, and one officer's haversack. On or about 17th September, my kit was brought to me at my request in Ward "H" to be repacked. The kit was repacked by Pte. Davis, who was ward orderly, and myself. My kit was then taken and stored in the cupboard of Ward "H", which was used for that purpose. The cupboard is on the right of the entrance to Ward "H". The door to the cupboard opened on the outside of the building. It has a yale lock, but there is no key, so the door was left unlocked. On or about 22 September, my trunk arrived from No.1 Kit Storage, and accompanied by Pte. Davis, we went to the cupboard to get my kit out so that we could pack it into my trunk, which had been delivered to Ward "H" upon my request. At that time, I found my one kit bag wide open, but the other had been tied up again.

The following articles were missing from my kit:
1 carton of Sweet Caporal cigarettes, containing 1,000, value 15/-
4 cartons of Sweet Caporal cigarettes, 300 in each carton, value 17/6d.
3 cartons of Senior Service cigarettes, 200 in each carton value £1/2/-
1 carton of Three Threes cigarettes, containing 200, value 7/-
60 Gillette razor blades, value 15/-
1 shaving stick, Yardleys make, value 2/6d
6 Williams shaving sticks, value 7/-
1 Ivory pocket knife, value 10/6d
4 pocket combs, value 4/-
2 London Town shirts, value £2, with MAR printed inside.
1 pr. brown kid gloves, make unknown, unlined, value £1.
1 pr. braces, value 5/-
3 films, two .120mm, one .620 mm
2 boxes .38 revolver ammunition containing 12 rounds each, value 3/-
1 pr. puttees, marked L & R with indelible pencil, value 3/-
There was also one box containing soap, tooth-paste, shaving sticks, which were returned to me two days later by Pte. Craig.
I reported the theft to the Nursing Sister in the Ward, who in turn passed it on to the Administration officer. On the 27th September 1944, I was shown the following articles, which I identified as my property:
17 pkts of Sweet Caporal cigarettes containing a total of 425 cigarettes.
2 pkts of Senior Service containing 20 each.
1 pkt. Three Threes containing 20.
2 shirts.
3 pkts Gillette razor blades containing 5 each.
2 boxes of .38 revolver ammunition.
1 pr of braces.
2 films, 1 comb, two boxes of matches and one pr of puttees.
(THE ABOVE ARTICLES WERE PRODUCED AND MARKED EXHIBIT "C" TO "M" INCLUSIVE).

Ex. "X" cont'd.

SECOND WITNESS FOR
THE PROSECUTION
(Continued)

Question: To witness: Can you identify the Sweet Caporal Cigarettes?
Answer: No, other than that they are similar to the ones I lost.
Question: Can you identify the Senior Service Cigarettes?
Answer: No, other than that they are similar to the ones I lost.
Question: Can you identify the Three Threes Cigarettes?
Answer: No, other than that they are similar to the ones I lost.
Question: Can you identify the two packages of Gillette Razor Blades?
Answer: No, other than that they are similar to the ones I lost.
Question: Can you identify the two boxes of ammunition?
Answer: These are the same type as issued to our regiment and were issued as my personnel property, and which I had.
Question: Can you identify these shirts as being your property?
Answer: One is mine and has my mark on it "M.A.R.) and the other, bearing no mark is of similar brand and name to the one I lost.
Question: Can you identify those pair of braces?
Answer: These are similar to the ones I lost.
Question: Can you identify these films.
Answer: Yes, they are my property.
Question: Can you identify this comb?
Answer: It is the same make as I have in my kit.
Question: Can you identify the matches?
Answer: They are the same make as the ones I still have in my kit.
Question: Can you identify these puttees?
Answer: Yes, they are my property.

Question: To accused: Do you wish to ask this witness any questions?
Answer. No.

A.R. Martin Lieut

(A.R. Martin) Lieut.
12 Canadian Arm'd Reg't. (T.R.R.)

Ex. "Y"

THIRD WITNESS FOR THE PROSECUTION	Lieut. WALTER MELVILLE RANSBERRY, Administration Officer of No. 19 Canadian General Hospital, having been duly sworn, states:
	During the investigation into these charges, I was present, with Sgt. Hollis of Warwicks Constabulory, who I called in to help clear up this matter, during the interrogation of the accused. I was present when the Accused made his statement.
Question: to Witness	I produce and show you Exhibit "A" reported to be a statement signed by the accused. Was this the statement made in your presence?
Answer:	Yes.
Question	Was this signed in your presence?
Answer:	Yes. Sgt Hollis drew my attention to the signature at the bottom.
Question:	I produce and show to you Exhibits"C"to "M" inclusive. What do you know about these articles.
Answer:	These exhibits, some of them were found in the accused's kit when we made an inspection and some of it was subsequently found in the home of the James' family at No. 16 Leaford Road, Lea Hall, Birmingham.
Question:	Were you present at the time these articles were found?
Answer:	I was present, with Sgt. Hollis, when all these articles were found. Sgt. Hollis and I, on return to my office, with these articles, labelled them and an inventory was taken. Then Sgt. Hollis turned them over to my custody. I put them in my strong box, locked it, where they have been since that time. No one else has access to my strong box. These are definitely the articles recovered and placed in that strong box.
Question: to accused:	Do you wish to ask the witness any questions?
Answer: by accused:	No.

W.M. Ransberry Lieut

(W.M. Ransberry)Lieut.
Administration Officer,
#19 Canadian General Hospital.

Ex. "A."
"Davis"

Rte C. 122044 Malcolm Joseph Davis.
No 19 Canadian General Hospital.
States after being cautioned: — JM

About 3 weeks ago in the morning St Martin asked me for his ~~kit~~ baggage. He gave me some papers to get his baggage up to the Ward. I was at the time Ward Orderly in Ward H. His kit was sent up and left under the verandah on the side walk. I went to fetch it as he asked for something out of it. I don't know what it was he asked for. With St. Martin I started looking through one of the kit bags. He took out what he wanted and he told me to pack it up and put it away in the store closet at the end of the ward. I did this, and I left them in the closet. The door was not locked. ~~as the~~ The ~~same mouth~~ next morning St. Craig came to me in Ward H and said, "I've got some cigarettes here for Mr Martin's kit bag." and he showed me 600 Sweet Caporal Cigarettes ~~in a carton~~ in two cartons of 300 each. He then ~~said~~ gave me one carton of 300 Sweet Caporal cigarettes. I did not actually take possession of them but he said he would sell them for me. He has not given me the money, but he told me that he had 18/- for me. He also gave me two or three small boxes of matches pair of braces, 2 packets of Wrigley's gum, 3 packages of Gillette razor blades with 12 in each. ~~a small~~ I took myself out of the kit bag

JM Davis

JCC

one box of 1,000 Sweet Caporal Cigarettes. I've still got some left, I didn't sell any. Ex short time later Sweet went braig to ~~the~~ an air round shelter ~~next to~~ in between Wand H & J. He showed me a small wood box and inside he had quantities of Sweet Caporal Cigarettes. and a little black flask, pair of gloves, white pocket knife, matches (about 5 boxes) pair of putties, razor blades (about 4 packets I think) 1 comb, two boxes of revolver ammunition.

He left it there for the day and the following day ~~brought~~ braig fetched the stuff over to the No 1. hut. and divided ~~the~~ it up. The articles I stated I had in the Wand for braig, were actually given to me in the No 1 hut and not in the Wand. I have still got the stuff in my bag box.

~~At the beginning of last week Sweet again found orderly in H Wand. Sweet to the store room and took 1,000 Sweet Caporal Cigarettes for St Mark's bag.~~

JM

I didn't tell you at the time. but when I had the 1,000 Sweet Caporal I also took 600 Senior Service Cigarettes. I have sold one carton of senior Service cigarettes to ~~[illegible]~~ St Ottes for 10/-, this would be the beginning of last week. I ~~told~~ said to him at the time, "I'd had them for the little room." I also gave one carton to St Chisholm as he asked for them. I remember him

JM Davis

saying at the time "Davey get me some cigarettes". I told him at the time I had got them for Lt Martin's kit bag. This was also the beginning of last week. He said, "Are there any shirts?" I said, "I think there is". The next day he told me he had one, and said, "I've had it from Lt Martin's kit bag". He wanted me to exchange the shirt for one of my own ~~for that one~~, but I did not.

A day or so later Mr Martin asked for his kit bag and Christopher told me not to get it. I did not get it then, but in the afternoon I unbuckled Lt Martin out. I opened the store room and the kit bag was wide open. I fetched it out, and when he saw all the stuff had gone he was pretty mad about it. He took the stuff that was left in his kit bag and re-packed it in his trunk. He gave me five shirts.

J M Davis

25/9/44

Statement taken by me at Mt Gowen on the 25/9/44. and read over to the above named before he signed same

[illegible]

Pte.C.122044 Malcolm Joseph DAVIS,
No.19 Canadian General Hospital.

STATES, after being cautioned:-

About 3 weeks ago in the morning, Lt. Martin asked me for his baggage. He gave me some papers to get his baggage up to the Ward. I was at the time Ward Orderly on Ward 'H'. His kit was sent up and left under the verandah on the side walk. I went to fetch it as he asked for something out of it, I don't know what it was he asked for. With Lt. Martin I started looking through one of the kit bags. He took out what he wanted and he told me to pack it up and put it away in the store closet at the end of the ward. I did this and I left them in the closet. The door was not locked. The next morning Pte. Craig came to me in Ward 'H' and said, "I've got some cigarettes here from Mr. Martin's kit bag", and he showed me 600 Sweet Caporal cigarettes in two cartons of 300 each. He then gave me one carton of 300 Sweet Caporal cigarettes. I did not actually take possession of them, but he said he would sell them for me. He has not given me the money, but he told me that he had 18/- for me. He also gave me two or three small boxes of matches, pair of braces, 2 packets of Wrigleys gum, 3 packages of Gillette razor blades with 12 in each. I took myself out of the kit bag one box of 1,000 Sweet Caporal cigarettes. I've still got some left, I didn't sell any. A short time later I went with Craig to an air raid shelter in between Ward 'H' and 'J'. He showed me a small wood box and inside he had quantities of Sweet Caporal cigarettes and a little black fleck pair of gloves, white pocket knife, matches (about 5 boxes), pair of puttees, razor blades (about 4 packets), one comb, two boxes of revolver ammunition.

We left it there for the day and the following day Craig fetched the stuff over to the No.1 Hut and divided it up. The articles I stated I had in the Ward from Craig were actually given to me in the No.1 Hut and not in the Ward. I have still got this stuff in my bag box. I didn't tell you at the time, but when I had the 1,000 Sweet Caporal I also took 600 Senior Service cigarettes. I have sold one carton of Senior Service cigarettes to Pte. Otis for 18/-, this would be the beginning of last week. I said to him at the time, "I had them from the little room". I also gave one carton to Pte. Chisholm, as he asked for them. I remember him saying at the time, "Davey, get me some cigarettes". I told him at the time I had got them from Lt. Martin's kit bag. This was also the beginning of last week. He said, "Are there any shirts?". I said, "I think there is". The next day he told me he had one and said, "I've had it from Lt. Martin's kit bag". He wanted me to exchange the shirt for one of my own, but I did not.

A day or so later Mr. Martin asked for his kit bag, and Chisholm told me not to get it. I did not get it then, but in the afternoon I wheeled Lt. Martin out. I opened the store-room and the kit bag was wide open. I fetched it out and when he saw all the stuff had gone he was pretty mad about it. He took the stuff that was left in his kit bag and re-packed it in his trunk. He gave me five shirts.

(Signed) M.J. DAVIS.

Statement taken at Marston Green on 25/9/44 by me, and read over to the above-named before he signed same.

(Signed) O.T. HOLLIS. Sergt.CA.

"B" J.C. Campbell may a judge advocate

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.122044	Pte.	DAVIS, J.M.	19 Cdn.Gen.Hosp. RCAMC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. 40 — 1 times.

For A.A. 15 — 2 times.

For _____ — _____ times.

For _____ — _____ times.

Date of first entry in Field Conduct Sheet 1 Nov. '43

Date of last entry in Field Conduct Sheet 29 Aug. '44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A beginning on the _____ day of _____

4. The accused has been awaiting trial on the present charges for NA days in civil custody; and for 10 days in military custody, *i.e.*, N/A days in open arrest, 10 days in close arrest; of which N/A days were spent in hospital.

5. The present age of the accused is 19

6. The date of his attestation / calling up for military service is 19-8-43

7. The service which the accused is allowed to reckon is _____

‡State the military decorations (if any) held by accused.

8. The accused is in possession of‡

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of _____	_____
In the war substantive rank of _____	_____
In the acting rank of _____	_____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.5670/[illegible] 100,000 4/42 A.& E.W.Ltd. Gp.498
(22456) Wt.29256/1872 60,000 6/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
	Peterboro Ont. 1 Nov'43	STEALING	$20 fine without costs.	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30 day of September, 1944

B Borchuboard Major
Registrar, No. 19 Cdn.Gen.Hosp.

No. C.122044 Name DAVIS J.M.

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Sqn., Battery, or Company No.3"A" Corps RCAMC NT District De pot.

Period not reckoning towards freedom from extra fine

Date of enlistment 19.8.43

G.C. Badges

Service or Proficiency Pay

Sheet No. One

Signature O.C. Company, etc. Signature not eligible.

Character

M.F.M. 5

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Kingston, Ont.				No entries, S.O.S. 3 A.D.D.	Sep 2 1943			Signature not eligible.	
Peterboro				Nil 30 Oct '43				Sig. not eligible O.C. #3 Coy. CABTC 32.	
Peterboro	1Nov'43	Pte.		Civil conviction-Stealing-In the city of Peterboro, contrary to Sec 386 of the Criminal Code.		Fine $20.00 without costs.	1 Nov '43.	O.A. Langley, Police Magistrate.	
U.K.	24Aug '44	Pte.		Sec 15(1)A.A.-AWL 2 days from 2359 hrs 21 Aug '44.	R.S.M. Bichard.	7 days C.B.		Sig. not eligible, 2/Lt. Col. H.B. Kenner. 24 Aug '44	Awd. forf. 2 Days pay.

"C" J.A. Campbell Maj. Judge Advocate

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
U.K.	29Aug '44	Pte.		Conduct to the neglect - Sec. 40 AA	R.S.M. Richard	2 days pay- 149(2)FR&I	29 Aug '44	Col. Kenner.	
U.K.	14Aug '44	"		Sec 15(1)AA-AWL from 1500 hrs. 13Aug to 1900 hrs.13Aug '44.	Sgt. Fagan	14 days pay- 149(2)FR&I	14Aug '44	Col. Kenner.	

CERTIFIED TRUE EXTRACT FROM THE REGIMENTAL BOOKS IN MY CUSTODY

30 Sep '44

Registrar No. 19 Cdn. Gen. Hospital,
Officer having custody of
Regimental Books.

The following officers under instruction were duly sworn.

Capt T. Mc Connachie R.C.A.M.C
19 Cdn Gen Hosp.

Capt W. J. Higgins RCAMC
19 Cdn Gen Hosp.

Exhibit B to Summary of Evidence not included in Summary, said Exhibit B being inadmissible in evidence

J C A Campbell Majr
Judge Advocate.

For disposal of Exhibits see record of proceedings - 79 C M Pte Ramsay B. J.

J C A Campbell Majr
Judge Advocate

A E Millington Maj

I request that my Commanding Officer appoint an officer to defend me at my forthcoming trial, by Field General Court Martial.

I am aware that the Prosecuting Officer is an Officer with legal qualifications, and I hereby waive the seven (7) days notice, to which I am entitled by R.P. 89.

Dated. Oct. 1/44 . . . . . .

J M Davis . . . . . .

W M Rosberry Lt.
Witness:

I hereby acknowledge receipt of copy of Charge Sheet, and Summary of Evidence in my case.

Dated: Oct. 1/44

J M Davis . . . . . .

Witness. W M Rosberry Lt

HC-51

PIE DAVIS R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F40981 PTE. ROBERT. DAVIS. W.N.S.R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 46 A.A. Act. Can.		GUILTY OF	
2nd		INDECENT	
3rd		ASSAULT.	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44. Findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~As present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 25 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned without hard labor for nine (6) months

(Sgd) A.J. Brody Capt — 5 Oct 44 — (Sgd) D.R. Thorsen Major.

Judge-Advocate, if any. — Date awarded. — President (or Member if Pres. is Jr. to accused)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence Confirmed

~~I direct that the accused be not committed to prison or detention barracks~~ until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 8 Oct 44 — Commanding — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. — Date. — Signature of Offr.

F40981 Pte Robert Davis — 9 Oct 44 — [illegible] Capt. N.S.R.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 4C-51

CFA96 (In lieu of AFA3) 40/P.A.S./1600 (2864)

FIELD GENERAL COURT-MARTIAL

RECEIVED 3 OCT 1944 BRANCH C.M.H.Q.

Convened by [illegible] Dist. Pt. Debarkation. DSO Comd 2 Can. Inf. Bde dated 30 Sept 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F40981	Pte.	ROBERT	DAVIS	W.N.S.R.

PROCEEDINGS REWEWED

JCTC R Lumsden Lt Col 1 Nov 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) Italy. on (date(s)) 4 Oct. 44 and 5 Oct. 44

PROCEEDINGS OF TRIAL.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 5a, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Maj. Sowerby as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to as shorthand writer? Ans~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(6). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR.	R.M. HORSEY.	C.Y.R.
Member	CAPT.	R.E. POTVIN. M.C.	R22R.
Member	LIEUT.	D.B. KNOWLES.	W.N.S.R.
Judge-Advocate	CAPT.	A.J. BRODY.	HQ 1 Can Inf Div
Prosecutor	LIEUT.	G.N. BWORASKI	W.N.S.R.
Defending Offr	CAPT.	H.R. MOORE	C.Y.R.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused Pte. Robert Davis before arraignment make(s) (two) (no) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(B).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 2.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty, or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused : Do you wish to make a statement ? Ans ..... (4)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 4 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 5.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence and read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 5.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans N/A (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1) N/A
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ N/A
(1. *Delete remainder of this para. If submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Court evidence on oath temporarily. Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans No.
(1. *RP 135.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)~~
~~or~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. ~~President to accused : Do you wish to give evidence~~ Record date. yourself or to call any witnesses as to your character ?(1)
Ans No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(1. *MFR 253 or MFR 254.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, by my Defending Officer.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7/12/50
(1. *When several accused tried separately see RP 94(f). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 139, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 4(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. F40981 Private Robert DAVIS, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, Allied Armies in Italy, on Active Service, is charged with:-

CHARGE
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY RAPE,

in that he,

In the field, at RICCIONE, ITALY, on the 9th day of September 1944, had carnal knowledge of Celli Tonina, a resident of RICCIONE, ITALY, without her consent.

In the Field
26 Sep 44

(A L Saunders) Lt col.,
Comd West N S R.

29 Sep 44.
Approved under KR(Can) 540
A.J. Brady Capt
A.D.J.A. 1st Cdn Div

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field 30 Sep 44

..... Brigadier
Comd - 3 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1097 (2563)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F40981	Pte		Robert	DAVIS	WNSR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 30 Sep 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior authority and~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint an Officer Offr to try the said, (b) a Fd Offr or President, etc. as above~~ attached hereto. (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	R M Horsey (Must be named. RP 106.)	C Y R (Unit.)

MEMBERS.

Captain (Rank.)	P F Potvin MC	R 22 R (Unit.)
Lieutenant (Rank.)	D B Knowles (Named or detailed. RP 106.)	W N S R (Unit.)

WAITING MEMBER.

Lieutenant (Rank.)	J P L Rousseau (Named or detailed, if any. RP 106.)	R 22 R (Unit.)

JUDGE-ADVOCATE.

CAPTAIN (Rank.)	L. J. BRODY (Must be named, if any. RP 106.)	HQ. 1 Cdn Div (Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 30 Sep 44

(Signed personally. RP 105 fn 2) Brigadier (Rank.)

Commanding 3 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12346 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He refused and did not say he was sick. *(or, None.)*

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pages in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or *JA* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*) (*See RP 46 fn 1.*)

(iv) Evidence of witnesses for accused as to facts or his character or both. (*See RP 40 fns 8, 12, 87(C), 92(C) (D).*)

(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (*See RP 40 fns 8, 12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused charged jointly see *RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fns 7, 87(C), 92(C) (D).*) Prosecutor has no right to address Court on subject of sentence except as provided by *RP 46(K), KR Can 565(a).*)

(vii) Summing up by *JA*, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

All deletions and alterations in printed and written record MUST BE INITIALLED by President or *JA*, if any. RECORD B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA*, and then gummed by top left corner to p 3 of CF A 96 in following order:

Cover Sheet. (*See top.*)

Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

Medical Certificate(s). (*KR Can 557.*)

Witnesses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see EE Can 560. As to certified copies of requested books see AA 163 (1) (g) (ii).*)

Summary of Evidence, if not already an exhibit.

Report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute recorded. (*AA 53(3), RP 118(C), MML p 739.*)

President or *JA*, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", to who directed.

MEDICAL OFFICER'S CERTIFICATE

AR (OAN) ... 227

I certify that I have this morning examined ;

No: F40981 Pte Davis R of the West Nova Scotia Regiment

and in my opinion is fit/[redacted] to undergo trial by Court Martial

Station: Field

Date: 4 Oct 44

W B Bourlegat
Medical Officer

MEDICAL OFFICERS CERTIFICATE

KR (OAN) PARA 557

I certify that I have this morning examined:

No: F40981 Pte Davis R.R. .....of the West Nova Scotia Regiment

and in my opinion he is fit: ~~unfit~~ to undergo trial by Court Martial

Station: Guld

Date: 5 Oct 44

R J Burdeskapt
Medical Officer
RMO CYR

Davis: F.G.C.M.

A 5 - D86057 L/Cpl. L.S. Somlyay, H.Q. No 1 Coy C.Pro.C., is sworn in to act as interpreter for civilian witnesses.

D 2 - Opening address by Prosecutor

The prosecution intends to call witnesses to establish that the accused committed the offence charged as alleged in the particulars.

D 3 Evidence for Prosecution

First witness for Prosecution: B19520 L/Cpl. F.B.H. Harding, No 1 Coy, C.Pro.C., sworn, states:

At about 1900 hours on Sept. 9th, 1944, L/Cpl. Dudley and myself were making a routine patrol in the vicinity of the Grand Hotel L.B.B. in Riccione, Italy, when Sgt. Parker C.Pro.C. ~~[illegible]~~ driving a jeep stopped and asked us to accompany him on a complaint. Sgt. Parker, myself and L/Cpl Dudley then went down the street to the Hotel Lido in Riccione. On entering this hotel the first person we met was a sergt. whose name I did not know at the time, but whom I now know to be Sgt. Salsman of the West Nova Scotia Regt. When I first saw Sgt. Salsman he was coming through the doorway of the room adjoining the room which was the lobby of the hotel, on the main floor. While Sgt. Parker and L/Cpl Dudley stopped to interrogate this Sgt. Salsman, I proceeded into the next room, that is, the room out of which I had seen Sgt. Salsman come. (At the request of the Court the witness prepared a sketch of the layout of the main floor of the Hotel. The sketch is shown to the Def. Offr. who consents to the sketch being accepted by the Court. The sketch is accepted by the Court and marked Exhibit "A"). It took us about five minutes to reach the Hotel Lido after Sgt. Parker had spoken to us. The Room shown as Room 1 on Exhibit A is the room in which I first entered the hotel. The door shown between Room 1 and Room 2 is the door out of which Sgt. Salsman appeared to be coming. This is the same door which I used to go from Room 1 to Room 2. I saw nothing in Room 2. I did not stop in Room 2 but continued to walk from Room 2 into Room 3 through the door shown between Room 2 and Room 3. When we entered the Hotel Lido it was just beginning to get dusk. I do not remember whether there were any lights on or any means of illumination being used in Rooms 1, 2 or 3 when I entered these rooms. Just as I was stepping through the door from Room 2 into Room 3

N

FIRST WITNESS FOR PROS (CONT'D)

I saw a man wearing either denim or battle dress lying in a prone position on top of a woman lying on her back on the floor. I could only see them from the waist down to and including the feet. The remainder of their bodies was hidden by some kind of a stove located about half way across the room. I saw another soldier standing in the room about 2 feet beyond where the people were on the floor apparently watching them. The people on the floor were between me and the soldier standing up as I entered the room. The light in this room that is Room 3 when I entered was a little shadowy in the corners but was sufficient for me to see the occupants. I did not see any other person in Room 3 except the three people I have mentioned. I did not hear any sound coming from Room 3 before I entered it and I did not attempt to find any person in Room 3 before I entered it. As soon as I saw these people in the Room I stopped and watched them for about 15 or 20 seconds and without saying anything I turned around and walked directly back through Room 2 into Room 1 and told Sgt. Parker what I had seen and then I went directly back into Room 3 not more than one minute could have elapsed between the time I left Room 3 and the time I returned to it. I could hear the woman moaning when I first entered Room 3 and during the short time I was in there before going out to speak to Sgt. Parker. When I returned to Room 3 all the three occupants were still in the same positions they were in when I first saw them. I walked up to the soldier who was on top of the woman, put my hand on his shoulder and ordered him to get up which he did. At the time I went up to this soldier, I saw that he was lying in a prone position on top of this woman who was lying on her back on the floor. The woman was completely naked. The soldier was fully dressed. I cannot remember whether he had a hat on or not. The women's legs were spread out and the soldier was between the woman's legs. I noted as the soldier's back going up and down while on top of the woman. After the soldier had got to his feet, I saw him fiddling around with the fly of his pants but I did not actually see whether his fly was open when he got up or whether his penis was out of his trousers. I identify the accused as the soldier who was on top of the woman. When he got up I ordered him and the other soldier who was the deputy to come with me into Room 1. In the best of my recollection I was the only person in Room 3 apart from those three persons at the time. After the accused got up off this woman, the woman got up from the floor and stood up and picked a cloth which might have been a sheet or some part of her clothing off the floor and covered her body. When she got to her feet she was sniffing. At no time did I hear her scream or shout. I noted at that time there was what appeared to be blood smeared on her face, around her chin and

FIRST WITNESS FOR PROS (CONT'D)

When I ordered the 2 soldiers to accompany me into Room 1 they did so. On entering Room 1 I saw 4 Cpl Dudley talking to another soldier whom I had not seen before, and the Sgt. whom I now know to be Sgt. Salsman was nowhere to be seen. About 5 minutes after I had returned to Room 3 with the 2 soldiers I noticed that the 2 soldiers had disappeared. I do not know when they had left the Room 1. I did not, nor did any other ~~[illegible]~~ persons give them permission to leave. About 5 or 10 minutes after I noticed their disappearance 4 Cpl Dudley and myself took the soldier ~~the~~ 4 Cpl Dudley was talking to from the Hido Hotel to a garage on the next street. It took us about 3 minutes to reach the garage. Just as we left the Hido Hotel the enemy started mortarring the Minty. The nearest shell landed about half a block away from us. After we got into the garage I saw these two soldiers, that is the accused and the other soldier who was a spectator, in the garage. I spoke to them and noticing the accused was wearing a beret I asked him why he had put on a beret. He told me, to the best of my recollection "I ~~[illegible]~~ don't know what you're talking about I have been in this garage all evening." About 5 or 10 minutes later Sgt. Parker drove by the garage and slowed his jeep down & told us to bring the three men down to section HQ. I could see there was a woman in the jeep with Sgt. Parker. I then noticed for the first time that the accused and the spectator soldier had left the garage. I do not know exactly when they left and I did not see them leave. They did not have my permission or 4 Cpl Dudley's permission to leave. The one remaining man, who was a well-built blonde fellow with a mustache was taken to Section H.Q. I did not see the accused again until about ~~0400~~ 1000 hours the following day, that is Sept. 10th when I saw him at an identification parade held at the West Nova Scotia Regt's lines. There was a W.N.S.R. hient whose name I do not know, in charge of the identification parade. There were about 6 gun crews lined up in crews when I reached about the third gun crew. I believe it was the third gun crew, I recognized the accused as the man I had found on top of the woman in the first place. I was unable to find the other soldier who had acted as a spectator. The blond soldier I have mentioned was also in this parade. The accused was placed under arrest at 10 Sept. ~~[illegible]~~ within ten minutes after I had pushed him out on the identification parade. I had not given any description of the soldier I saw lying on the woman before the identification parade. Nobody had asked me to describe him. (The prosecutor shows the witness some garments) I do not recognize the garments now shown to me by the Prosecutor.

[illegible]

FIRST WITNESS FOR PROS (CONTINUED)

CROSS-EXAMINATION: When I first entered Room 1 the Sgt whom I now know to be Sgt. Salsman was standing about one foot from the door leading into Room 2. He was facing the hotel entrance. I later identified this sergt. by his voice and manner of speaking, not by his facial features. So the best of my knowledge, I entered Room 3 the first time alone. I cannot say whether there was any window in Room 3. When I entered Room 3 the first time I heard a moan and a sob. I remember saying in my evidence on the taking of the Summary of Evidence that when I walked into Room 3 I saw a soldier having intercourse and I walked over and grabbed him and ordered him to get up. I did not on the Summary say that this took place the second time I entered Room 3 because I was told when giving my evidence on the Summary to state only the bare facts and that is why I did not say anything about going into Room 3 twice. I was instructed as to this by a Provost Cpl. When I first entered Room 3 the spectator was not holding the girl. When I entered Room 3 the second time all 3 of occupants were in the same position. The spectator was not holding the woman at that time either. I am sure that when I entered Room 3 the second time and the soldier got off the woman that she did not have any clothes on her. I could not see her fully until the soldier got up. She appeared to have a very thin coating of blood on her face. The bleeding may have resulted from a tiny scratch and the blood smeared around her face. I heard faint moaning when I entered Room 3 both the first and second times. I could not tell from the moaning whether she was suffering any pain. On both occasions when I entered Room 3 I could see the soldier moving but the woman appeared to be lying motionless. I could not see the woman's arms the first time, and I am not positive as to the position of her arms the second time. I did not see from the waist to the head of the girl until the soldier got up. When I took the soldier by the shoulder I am sure that the woman did not have either arm around the soldier. I am sure I would have noticed this. The woman's legs were spread wide and the soldier's legs were close together between her legs. The first time I could not see the soldier's arms; the second time I could have noticed his arms but I do not recollect doing so. There was nothing as far as I could see to indicate that the woman was being forced to do anything against her will, except the appearance of her face when the soldier got up — I noticed the blood I have described and her face looked puffed up. She looked miserable and not as though she was enjoying something. The soldier could have been scratching himself when I saw him fiddling with his fly after he got up. I did not at any time see any persons in Rooms 2 and 3 other than those I have described. When we first entered Room 1 the only person I saw there was Sgt. Salsman. When I returned to Room 1 from Room 3 there were 2 or 3 R.C.D.'s who had apparently entered Room 1 after me had arrived. The accused is one of the 2 soldiers who disappeared on the two occasions I have mentioned. As far as I know,

H.

FIRST WITNESS FOR PROS (CONTINUED)

CROSS-EXAM (CONT'D): no one had ordered them to stay on either occasion.

RE-EXAM: It was about 1915 hrs when I ordered the accused to get off the woman.

EXAM BY COURT: The woman's legs were spread out with her legs straight at the knees. The floor was cement or tile. There may have been one or two chairs in Room 3 but I did not see any beds couches or other furnishings, except the stove. The light in Room 3 was sufficient for me to see the face of the soldier who got up off the woman. It was the accused. I did not know the accused before this occurrence and as far as I know had never seen him before. Room 7 I believe was the kitchen of the hotel. As far as I could see there was no indication in Room 3 that any struggle had taken place.

EXAM BY J.A.: I did not have any difficulty or hesitation in picking out the accused at the identification parade. At the identification parade he was wearing a tin helmet. The accused has the kind of face that can be easily remembered. I cannot identify the woman I saw on the floor.

R.P. 83(B) complied with.

SECOND WITNESS FOR PROSECUTION: CELLI TONINA, residing at Hotel Lido, Riccione, Italy, sworn, states: (THROUGH THE INTERPRETER) 26 years old.

LJB I am an Italian citizen. I am unmarried. On Sept. 9th 1944 I was unemployed. On that day I was living at the Hotel Lido, Riccione, Italy. I had been living there for 3 or 4 days prior to Sept 9/44. On the evening of Sept 9th, 1944, at about 6 o'clock, four or five soldiers I do not know how many, entered the kitchen of the Hotel Lido, looking for wine. I told them we have no wine and the soldiers started to take pocket books from the civilians in the kitchen. When this happened most of the civilians in the kitchen ran away. When these civilians were scared away by the soldiers remaining behind was myself an old man and a young married man, both Italians. The old man was robbed of his pocket book & seeing this I tried to run away. As I was trying to run away, a soldier with a bruised hand approached me asking for some bandage. I showed him different pieces of cloth. He kept on saying, no it wouldn't do. While doing that he kept walking towards me, forcing me backward. This soldier whispered something in my ear to which I replied "I do not understand". He kept on insisting and repeating whether it was he was whispering in my ear. On seeing this I got scared and started shouting for help. When I started to shout for help this soldier struck me on the head. He struck me several times. Finally he threw me ~~on the~~ down. When the soldier had me on the floor I kept on calling for help. This soldier struck me a couple more times and he started to tear my clothes off. After he had taken all my clothes off he had sexual intercourse with me. After the first soldier had finished intercourse he held me until other soldiers arrived. I believe three or four other soldiers had sexual intercourse with me. The police arrived on the scene and found a soldier on top of me. I cannot say whether he was the last one or not because my eyes were closed and I was in hysterics. As soon as the police took this man off of me

SECOND WITNESS FOR PROS. (CONT'D)

I ran upstairs to find some clothes to put on as I was all naked and afraid that the soldiers might return. As I went upstairs, there was some clothing in the corridor beside the door of an apartment and I picked a few things up and put them on. A policeman came upstairs and instructed me to stay in my room. He left me alone. Being afraid that soldiers might return I went downstairs to a villa in front of the hotel to look for my brother and sister. As I was going across the road to the villa the police arrived in a Jeep and took me away to their billets. I was shown a soldier and asked if he was one of the soldiers who had intercourse with me. I could not identify him as being one of the soldiers. I probably could recognize the soldier with the bruised head. I could not identify any of the other soldiers. I did not in any way give my consent to the acts of any of the soldiers having sexual intercourse with me. The soldier that the police took off of me made female contact with his penis into my female organ. I identify the torn garments now shown to me by the Prosecutor as the clothing I was wearing when I was attacked. (Clothing as the time they were torn off me when I was attacked. (Clothing placed in Bundle, marked Exhibit "B")

CROSS-EXAMINATION: Four or five or six soldiers arrived first. I did not count them. I was scared. Other soldiers came in and out of the kitchen while I was in there between the time the first group of soldiers arrived and the time I was first attacked. I do not know whether any soldiers other than those who had intercourse with me came into the kitchen while I was having intercourse. I am not sure if the first group of soldiers arrived at the kitchen. I believe it was the time the first group of soldiers arrived at the kitchen. The time between the time the first group of soldiers arrived and the time the first soldier attacked me. I cannot remember any identifying features about any of the soldiers who had sexual intercourse with me, other than the bruised head of the first soldier. I had not previously had sexual intercourse with any man. The blood on my face was caused by the soldier with the bruised head. I do not know whether the soldier with the bruised head got his head injury from me. I did not see any blood on his head. I admit that on the morning of October 6th I said that whilst I was being held another soldier grabbed my legs and a third soldier started taking my clothes off. This story I did not tell the police. The soldier who first had sexual intercourse with me did leave my room. The soldier who had sexual intercourse with me whilst one of the other two had sexual intercourse with me. The sexual intercourse took place in the room where we all slept. I struggled with all the soldiers who had sexual intercourse with me. I was struggling with the soldier who was on top of me at the time the police arrived. The police arrived I should say about 5 minutes after the soldiers arrived. The police dragged me off the soldier who was on top of me at the time and very weak. Because I was very weak I could not offer any more resistance against the last soldier who was on me. Nobody was holding me while the last soldier was on me. I have not seen the soldier with the bruised head since he had intercourse with me.

NO RE-EXAMINATION:

EXAM. BY COURT: The soldiers who had intercourse with me appeared at the time. It was fairly dark in the room when the

H.

SECOND WITNESS FOR PROS: (CONT'D)

soldiers had intercourse with me. I do not know which soldier was the last to have intercourse with me, but it was not the soldier with the bruised hand. The soldier the police took off me was the last man who had sexual intercourse with me. I was not feeling well at the time the Summary of Evidence was taken.

R.P. 83(B) complied with.

THIRD WITNESS FOR PROSECUTION: URBANI FERDINANDO, residing at Hotel Lido, Riccione, Italy is called by the Prosecution. This witness was not called as a witness on the taking of the Summary of Evidence. The Prosecutor states no notice of the calling of this witness was given to the accused. The accused is informed by the Court of his rights under Rule of Procedure 76. The witness, sworn, states:

(THROUGH THE INTERPRETER):

I am an Italian citizen. On 9th Sept. 1944 I was employed as a storeman at the Hotel Lido, Riccione, Italy. At about 6 o'clock in the evening ~~[illegible]~~ four soldiers who were drunk showed up at the hotel. I was scared and ran away along with some other workers who were in the hotel when the soldiers entered. Being the custodian of the hotel I returned about 5 minutes later to see what was going on. As I was returning I heard somebody shouting for help. As I came close to the door of the room adjoining the kitchen I looked into the room adjoining the kitchen and I saw CELLI TONINA on the floor and three soldiers on top of her and another soldier leaning up against the wall. I saw CELLI TONINA struggling and heard her shouting for help. On seeing and hearing this I went out to get help. I went and found a civilian who spoke a little English and told him what was happening & he spoke to some soldiers. ~~A soldier then went to the hotel and~~ When I returned to the hotel the police had already arrived. About 20 or more minutes elapsed between the time I left to look for help & the time I returned to the hotel. The room adjoining the kitchen is used as a dining room mainly.

L.J.B.

L.J.B.

CROSS-EXAMINATION: I am not related to Sigrana Tonina. I had not seen her before. I am sure there were only four soldiers who came in. I cannot say for sure how drunk the soldiers were. One of the three soldiers was right on top of her and I can't say exactly what the other 2 were doing as there was a table between them and me. I could very well see that there were 3 soldiers. I could see their heads and shoulders. I could see clearly under the table and I was able to see the soldier who was on top of her. I couldn't see whether she had any clothing on. I cannot identify any of the soldiers who were in the room with Sigrana Tonina.

L.J.B.

NO RE-EXAM:

EXAM BY THE COURT: There is a stove in the kitchen but not in the room in which I saw the soldiers and Sigrana Tonina.

R.P. 83(B) complied with.

FOURTH WITNESS FOR PROSECUTION: DOCTOR Jan Franco Olgjioni, a civilian doctor, residing in Riccione, Italy, sworn, states:

At about 9 o'clock in the evening of September 9th, 1944, I examined Signorina Celli Tonina. She was suffering from nervous shocks. There were abrasions on her face and on her back, and also an abrasion ~~[illegible]~~ under her left breast. There were bruises on the inside of the thighs of both her legs. There were also a few abrasions apparently made by the scratching of finger nails on the inside of the thighs of both legs. There was dried blood which had formed between her hairs near her womb.

CROSS-EXAMINATION: Her nervous condition could have been caused by having sexual intercourse with a number of men. In my opinion she had had sexual intercourse prior to the 9th September 1944. ~~[illegible]~~ LJB

RE-EXAM: In my opinion she had had sexual intercourse on the night of Sept 9th, 1944.

R.P. 83(B) complied with.

FIFTH WITNESS FOR PROSECUTION: B95591, Sgt. G.F. Parker, No1 Coy, C.Pro C., sworn, states:

At about 1900 hrs 9th Sept. 1944, as a result of information received by me from 2 R.C.D.'s I drove with them in my jeep to go to the Hotel Lido in Riccione, Italy. On the way to the Hotel I came across two Provosts L/cpls Dudley and Harding and asked them to accompany me which they did. When I entered the hotel I saw a sgt. coming towards me through the doorway of an adjoining room. This would be the room shown as Room 2 on the sketch Exhibit A. I accosted the sgt and at the same time sent L/cpls Harding and Dudley into the adjoining room, that is Room 2. I then questioned the sgt. whom I did not know then. I saw L/cpls Dudley and Harding go into Room No. 2. A minute or two later L/cpl Harding returned to Room 1 with 2 Canadian soldiers and about a minute later L/cpl Dudley returned alone. I told L/cpls Harding and Dudley to keep a close eye on the 2 soldiers & the sgt. I then proceeded upstairs as a result of information L/cpl Harding gave me and found a woman whom I now know to be Celli Tonina with a shot wrapped around her. When I got close to her she started to back away from me. I told her to get dressed and met me downstairs. On returning downstairs I found that the sgt. had left and one of the soldiers L/cpl Harding had brought with him ~~[illegible]~~ I identify the accused to be one of the two soldiers who came into the room with L/cpl Harding. The accused and the sgt had left by the time I returned downstairs.

LJB

WHO ALSO LEFT LJB

FIFTH WITNESS FOR PROSECUTION'.

When I first saw the accused in Room 1 of the hotel he was wearing a civilian fedora hat. I wasn't close enough thing to be able to judge whether he had been drinking or not. I saw the accused and the other soldier again about 7 or 10 minutes after I had left them in the custody of the provosts. When I saw them again they were walking in a normal manner out of a garage about 150 to 200 ft from the hotel. The accused at that time was wearing a beret in place of the civilian hat he had previously worn. I told L/Cpls Dudley and Harding who came into the garage right behind me to take care of the accused + this other soldier and take them down to their section H.Q. I went to take Celli Tonina to the provost sec. H.Q.

L.J.B.

L.J.B.

CROSS-EXAMINATION'. I ordered L/Cpls Dudley and Harding to take the accused + the other soldier into custody for the first time when I saw the accused and the other soldier coming out of the garage. This was said by me within the hearing of the accused.

L.J.B.

NO RE-EXAM.

EXAM. BY COURT'. It was the sgt. and the accused who I found had left Room 1 when I returned downstairs. When L/Cpl Harding brought the accused and the other soldier into Room 1 he said to me in their hearing, "there is a woman in there."

L.J.B.

EXAM. BY J.A.: At the time I entered the hotel until I left every officer was facing around the bldg. I did not hear any noise or sound other than gunfire from the time I entered the hotel until I left. I saw the accused from a distance of 7 or 8 feet at the most when L/Cpl Harding brought him into Room 1. I distinctly remember his face.

R.P. 83(B) complied with.

SIXTH WITNESS FOR PROSECUTION'. A22489 L/Cpl. G. J. Dudley, No. 1 Coy, C.Pro.C., sworn, states:

I entered the Hotel Lido with L/Cpl Harding and Sgt Parker. Sgt. Parker ordered L/Cpl Harding and myself to go into the adjoing room of the room into which we entered the hotel. When I entered the adjoing room I saw the soldier lying on the floor with a girl underneath. The soldier was through the motions of intercourse. Another soldier was standing up looking on. I immediately turned to call Sgt. Parker who was talking to this Sgt. I then turned to go back into the room when L/Cpl Harding came out of the room with two soldiers. I could clearly see the faces of the two soldiers. One of them I identify as the accused.

SIXTH WITNESS FOR PROSECUTION:

CROSS-EXAMINATION: I was present at an identification parade at the WNSR. The men on this parade had on their helmets when I first saw them and I was unable to pick out the accused. I then asked that their helmets be removed and when this was done I picked out the accused as one of the two soldiers who had come out of the room with L/Cpl Harding. I did not tell the accused I had identified him until after I had informed the officer on the parade that he was the man. I did not see any struggling in the room in which I saw the soldier and the woman. I did not hear any moaning or crying. I could not see the face of the man lying on the woman. I could see the face of the soldier standing up. The soldier standing up was not the accused.

NO RE-EXAM:

EXAM BY COURT: I saw the back and right hand side of the man who was on top of the woman. He was wearing denim pants. He did not have a hat on. He was wearing gaiters & boots. I was in the room about 30 seconds. L/Cpl Harding and I went into the room together. When L/Cpl Harding brought the 2 soldiers out they both smelled strongly of liquor.

R.P.83(B) complied with.

The Prosecution is closed.

Court is adjourned at 1715 hrs 4 Oct 44 until 0900 hrs 5 Oct 44.

Court resumed at 0900 hrs 5 Oct 44

The Defending Officer desires to make an opening address.

EVIDENCE FOR THE DEFENCE

First Witness for The Defence: F40981, Pte ROBERT, DAVIS, WNSR, the accused, sworn, states:

In the aft of Sept 9, 1944, I was in Rimini. I had drinking all afternoon. Towards evening around dusk I wandered into the Hotel Rubo. There were a few soldiers in there. I believe 6 or 7 soldiers in there. I went in and was talking to a couple of them in the kitchen. This was at approx 1830 hrs. I went to the door adjoining the kitchen. I looked in and saw one soldier standing watching a woman. Another soldier was preparing to have intercourse with her. When this last soldier was through he asked me if I wanted to go ahead. I did not know anything about this thing they call rope. During the time I saw these

FIRST WITNESS FOR THE DEFENCE (CONT'D)

two soldiers having intercourse the woman did not cry or moan or struggle or in any other way indicate that the intercourse was N.D. ~~not~~ taking place without her consent. There was some kind of window overhead in the room and shutters were drawn over the window. There was no light coming into the room from any of the doors in the room. I could not see real plain in the room, it was pretty dusky in the room. It was light enough for me to be able to recognize any persons in the room. When the second soldier asked me if I wanted to have intercourse I answered yes. I had consumed about three quarts of vermouth over a period of about four and a half hours that afternoon. I was sober enough to ~~[illegible]~~ know what I was doing. This woman was lying on the floor 7 or 8 feet in front of the door. She was lying on her back with her legs open. I ~~[illegible]~~ intended to have intercourse with this woman. With the liquor I had in me I ~~[illegible]~~ could not get a hardon, and I was unable to have intercourse with this woman for that reason. When I got on her to have intercourse she never raised a hand or said a word. While I was on the woman the provost walked in, tapped me on the shoulder and told me to get up. He then took me out to the next room where there was a sgt of the Provost. I was not told I was under arrest. When I entered the hotel and saw all the soldiers around I thought there was a prostitute there. I got this impression because the soldiers were not drinking any liquor there. I was present on one identification parade. I was not identified by any woman. I was picked out of the detachment which consisted of 6 men and a sgt by Lt Cpl. Harding, the first witness for the prosecution. I was never at any time identified by Lt Cpl Dudley, the 6th witness for the prosecution. Lt Cpl Dudley did not at any time pick anybody out on an identification parade to my knowledge. When I was trying to have intercourse with this woman my penis was not sufficiently hard for me to penetrate into her. I have been in the Canadian Active Army since August 2nd, 1940. I have been overseas since June 23rd, 1941. I have never had a charge of any kind laid against me since I joined the Army. I took part in ~~[illegible]~~ the entire Sicilian and Italian Campaigns as a D.R., and latterly as a member of a 6 pounder anti-tank gun crew. When off duty I am normally a pretty heavy drinker. I am 22 years old and married. I have one child. In civilian life I was a store clerk. I completed the first year of high school only. I am happily married. No person held the woman while I was attempting to have intercourse with her. She was wearing clothes while I was having intercourse with her. She looked to me as though she had a dress on which was up to her waist.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

CROSS-EXAMINATION: I was in the hotel approx. 20 minutes I stood in the doorway of the room in which I saw the intercourse taking place for five minutes. I knew both the soldiers. She did not struggle with me. She did not assist me. She did not ask me to have intercourse with her. No one charged me with rape. Before I had a chance to offer the woman some money the provost took me out. I was not placed under arrest when the provost took me out of the room. No one told me to leave the Hotel. As far as I know no civilians were present from the time I entered the Hotel until the time I left the Hotel. As far as I could see, the girls clothes were not torn. I could not see any blood on her. She did not speak to me and I did not speak to her.

RE-EXAMINATION: I did not speak Italian. I did not pay any particular attention to the details of the woman's clothing.

EXAM. BY COURT: I have seen the woman since. I saw her yesterday when she appeared as a witness in this case. I took my penis out of my pants. I tried to get my penis into her vagina but I couldn't succeed. I used my hand in guiding my penis. I knew who some of the soldiers were that I found in the hotel when I got there. I was not on duty that afternoon. I was stationed just outside the town of Riccioli. After I left the hotel I went to a garage alone. The garage was across the street from the hotel. The provost arrived at the garage after I got there. They did not say anything to me. I started on my way home from the garage alone. I then got a ride back to where I was stationed. I was wearing denim trousers. I don't believe I had a coat on when the provost found me in the Hotel. The woman did not make any sign to indicate that she was agreeable to having intercourse with me.

EXAM BY D.A.: I was on the woman for three or four minutes before the provost came in. There was another soldier in the room while I was attempting to have intercourse. He was just standing there watching. This soldier had come into the room after I had got on top of the woman. I did not notice any bruises on her body or any indication that a struggle had taken place. I did not have any blood on me. When I got up off the woman neither of my hands was bruised or scratched. I did not see any woman in the hotel until I saw this woman on the floor. I got on the woman about one minute after the last soldier had finished having intercourse with her.

R.P. 53(B) complied with.

SECOND WITNESS FOR THE DEFENCE: Capt. Lg. Lt. Taylor, WNSR, sworn, states:

I first met the accused in July 1942. He has been in my platoon since that time up until about two weeks ago. All the time he was with me I found him to be a dependable, trustworthy and good living soldier. He was with me during the entire Sicilian Campaign and the Italian Campaign up to two weeks ago and I found he was a good man in action and carried out orders when given to him.

CROSS-EXAMINATION: I have considered the accused as being worthy of promotion. I did not promote him because I felt the job he was doing was essential in the platoon and that there were other men in the platoon who would make better N.C.O's than the accused at that time. As far as I know, the accused is not a heavy drinker.

RE-EXAM: I have never had to take any action of any kind with respect to the accused, resulting from any drinking by him.

R.P. 83(B) complied with.

THIRD WITNESS FOR THE DEFENCE: Lieut. E.H. Holloway, WNSR, sworn, states:

I have known the accused since I came to the WNSR in January, 1944. During that time he has been reliable, both in and out of action. I have never had to take any disciplinary action against him. I was the commissioned officer in charge of the identification parade. The parade took place by platoons and all the soldiers were wearing tin helmets. There were three provost with me on this parade. Only one provost N/Cpl claimed to identify the accused at this time. N/Cpl Harding, the first witness for the prosecution, was the provost who picked out the accused. I cannot remember whether N/Cpl Dudley the 6th witness for the prosecution was with us on this identification parade.

CROSS EXAMINATION: The accused was taken off D.R. in my platoon because I did not have a motorcycle for him to use.

NO RE-EXAM:

R.P. 83(B) complied with.

FOURTH WITNESS FOR THE DEFENSE: F39678

sworn, states:

I have known the accused su[illegible] a member of the anti-tank plat[illegible] platoon sgt. for one one year. [illegible] steady, soldier and quite well. He is a very heavy drinker but lies with any of his duties

CROSS EXAM: As far as I know, the a[illegible] taken off any job due to drink

R.P. 83(B) complied with

FIFTH WITNESS FOR THE DEFENSE: F42643 Sgt. J. F. Steelwell, WNSR, sworn, states:

I am pl. sgt of the a-tank pl. in the WNSR. I have known the accused since 1940. Since I have known him he has been a good soldier, obeyed all orders given to him, and is a good worker and has done his job well

NO CROSS EXAM:

R.P. 83(B) complied with

The Defense is closed.

CLOSING ADDRESS BY DEF OFFR.

Rape is defined as having carnal knowledge of a woman other than his wife without her consent. It is necessary for the prosecution to prove penetration, consent, and identification. The defense submits that the prosecution has failed to do so. The defense has not denied that the accused attempted to have sexual intercourse pressing under the circumstances, seeing several soldiers in an Italian house, none of whom were drinking, that the hotel was a small brothel. The young woman herself has failed to identify the accused. The evidence of Lieut Holloway shows that one of the Provost M/Cpls, M/Cpl Dudley did not identify the accused whereby contradicting M/Cpl Dudley's evidence before this Court. The Italian doctor has stated that this young woman was in a nervous state and has stated further that her nervous condition could be the result of having sexual intercourse with several men adding that in his opinion this woman had had sexual intercourse prior to sept 9, 1944. This contradicts the evidence given by this woman in court that she was a virgin. The woman herself has admitted that she had sexual intercourse with an unknown number of men that evening and has further stated that the man who was lying on her when the

FOURTH WITNESS FOR THE DEFENSE: F39618 Sgt A. Oickle, WNSR, sworn, states:

I have known the accused since July 1942. He has been a member of the anti-tanks platoon of which I am the platoon sgt. for over one year. He has always been a good, steady, soldier and quite willing to do anything you asked him. He is a very heavy drinker but his drinking never interfered with any of his duties.

CROSS-EXAM: As far as I know, the accused was never taken off any job due to drink.

R.P. 83(B) complied with

FIFTH WITNESS FOR THE DEFENSE: F42643 Sgt. J. F. Hatchwell, WNSR, sworn, states:

I am Pl. sgt of the anti-tank pl. in the WNSR. I have known the accused since 1940. Since I have known him he has been a good soldier, obeyed all orders given to him, and is a good worker and has done his job well.

NO CROSS-EXAM:

R.P. 83(B) complied with.

The Defence is closed.

CLOSING ADDRESS BY DEF OFFR.

Rape is defined as having carnal knowledge of a woman other than his wife without her consent. It is necessary for the prosecution to prove penetration, consent, and identification. The defence submits that the prosecution has failed to do so. The defence has not denied that the accused attempted to have sexual intercourse pleading under the circumstances, seeing several soldiers in an Italian house, more of whom were hunting, that the hotel was a small brothel. The young woman herself has failed to identify the accused. The evidence of Lieut Holloway shows that one of the Provost L/Cpls, L/Cpl Dudley did not identify the accused at all, contradicting L/Cpl Dudley's evidence before this Court. The Italian doctor has stated that this young woman was in a nervous state and has stated further that her nervous condition could be the result of having sexual intercourse with several men. He added that in his opinion this woman had had sexual intercourse prior to Sept 9, 1943. This contradicts the evidence given by the woman herself who stated that she was a virgin. The woman herself has admitted that she had sexual intercourse with an unknown number of men that evening, and has further stated that the man who was lying on her, when the

SECOND WITNESS FOR THE DEFENCE: Capt. G. G. Taylor, WNSR, sworn, states:

I first met the accused in July 1942. He has been in my platoon since that time up until about two weeks ago. All the time he was with me I found him to be a dependable, trustworthy, and good living soldier. He was with me during the entire Sicilian Campaign and the Italian Campaign up to two weeks ago and I found he was a good man in action and carried out orders when given to him.

CROSS-EXAMINATION: I ~~[illegible]~~ L.J.B. have considered the accused as being worthy of promotion. I did not promote him because I felt the job he was doing was essential in the platoon and that there were other men in the platoon who would make better N.C.O.'s than the accused at that time. As far as I know, the accused is not a heavy drinker.

RE-EXAM: I have never had to take any action of any kind with respect to the accused, resulting from any drinking by him.

R.P. 83(B) complied with.

THIRD WITNESS FOR THE DEFENCE: Lieut. E.H. Holloway, WNSR, sworn, states:

I have known the accused since I came to the WNSR in January, 1944. During that time he has been reliable, both in and out of action. I have never had to take any disciplinary action against him. I was the commissioned officer in charge of the identification parade. The parade took place by gun detachments and all the soldiers were wearing tin helmets. There were three provost with me on this parade. Only ~~[illegible]~~ one provost L/Cpl claimed to identify the accused at this time. L/Cpl Harding, the first witness for the prosecution, was the provost who picked out the accused. I cannot remember whether L/Cpl Dudley the 6th witness for the prosecution was with us on this identification parade.

CROSS EXAMINATION: The accused was taken off DR in my platoon because I did not have a motorcycle for him to use.

NO RE-EXAM:

R.P. 83(B) complied with.

H.

CLOSING ADDRESS BY DEF. OFFR (CONT'D)

provost arrived had suffered no resistance from her. This woman repeatedly contradicted herself. L/Cpl Harding has admitted that the blood on the young woman's face could be the result of a very minor scratch, also admitting that he did not put the soldiers found in this house under close arrest and did not order them to remain there. The defence has proven that at least 6 soldiers were in or about the room where the alleged crime is supposed to have been committed, and it has been proven that there was a general flow of traffic there as several soldiers had come in and out. L/Cpl Harding has stated that the woman was naked. The accused has stated she wore clothes from her waist up. It is one man's sworn evidence against the other. Furthermore L/Cpl Harding has stated that the moans and cries he mentioned did not indicate to him that she was suffering any pain. The prosecution has failed to produce any evidence showing that this woman was forced by the accused or by any person with the knowledge or consent of the accused to submit to sexual intercourse. Surely if she were being raped, with the amount of traffic, someone would have interfered. The defence has proven that the accused had been drinking heavily all afternoon, not enough to be stupidly drunk but quite sufficient that he was unable to erect his fears, proving that in this case there was no penetration. The defence submits that the accused was an innocent bystander presuming he was a member of a "queue" awaiting his turn which may be seen in any small brothel. There has been no evidence by the prosecution that the accused had any intention when entering this house of committing rape and no evidence that he committed rape after he entered the house. The defence has produced at least 4 witnesses as to the excellent character of this soldier. He is a veteran soldier, happily married. I submit it is extremely unlikely that this accused would commit such a crime. It is the duty of the prosecution to establish the guilt of the accused beyond a reasonable doubt. Therefore I submit that the accused must be found not guilty of any crime.

CLOSING ADDRESS BY PROSECUTOR.

The prosecution has proven the absence of consent on the part of the woman, by her own evidence, which is corroborated by the evidence of the third witness who stated he heard her scream for help and saw her struggling. The accused also states himself that the woman did not ask him to have sexual intercourse and did not assist him. It can well be imagined she was in a high state of nervous shock and fatigue as the doctor stated after struggling with at least 4 to 6 men.

CLOSING ADDRESS BY PROS (CONT'D)

for about an hour and would be quite unable to resist the accused at this time. As to penetration the doctor states there was penetration on that night. The girl herself states that the last man on top of her made penetration. The prosecution has shown by L/Cpl Hardings evidence that the accused was the last person on her. The accused states this woman was dressed from the shoulders to the waist. L/Cpl Harding in his evidence states she was naked. Sgt. Parker stated in his evidence he told the girl to get dressed. I suggest Sgt Parker would not tell her this if she was dressed as the accused alleges. The accused states that before he had a chance to pay her the provost pulled him off. To my mind I do not think it is likely he would pay for something he didn't have or get sexual intercourse. The accused stated he did not know anything about safeguarding on the room. The accused states he saw a man having sexual intercourse. How did he know this? The defence has brought forth witnesses as to the exemplary character of the accused. If the man is of such a good character why did not the accused assist the girl as the defending officer in his address suggested someone would have done. In closing I wish to point out that it has been proven that no consent was given by the girl to any of these men; that the accused was identified beyond a doubt and that there was penetration. I therefore submit the accused should be found guilty of the charge.

AB

SUMMING-UP BY JA

The Court should accept my advice as to the law. The Court are the sole judges of the facts.

Upon this charge, the Court may arrive at any one of the following findings:

(1) Guilty of Rape
(2) Guilty of attempted rape
(3) Guilty of indecent assault
(4) Not Guilty

Rape is the act of a man having carnal knowledge without the consent of a female who is not his wife. Penetration is considered to constitute carnal knowledge. There must be actual penetration of the female organ by some part of the male organ. The slightest penetration will be sufficient: it is not necessary to prove that there was such penetration as would be sufficient to rupture the hymen. Whether there was a emission of semen or not is immaterial. It is not an excuse that the woman was a common prostitute, or had previously had sexual intercourse although unmarried. Evidence of this nature should be taken into consideration by the Court in considering whether or not she is likely to have consented. Consent to be an excuse, must be actual consent, and not mere submission, and it must be voluntary, and not extorted by force or duress or fear of immediate bodily harm. Indecent assault, is an assault accompanied with circumstances of indecency, on the part of the accused. Actual consent on the part of the woman would constitute a defence in this case to both rape and attempted rape and also to indecent assault. In other words if the woman actually consented to sexual intercourse with the accused, the Court should find him "Not Guilty."

The prosecution must prove the accused to be guilty beyond a reasonable doubt. This is a very serious charge and the Court should be very careful to satisfy themselves that the guilt of the accused has been est beyond a reasonable doubt by the evidence they have heard before finding him "Guilty." A reasonable doubt is a doubt honestly entertained after weighing all the evidence. The accused is entitled to the benefit of any reasonable doubt.

It is my duty to warn the Court that in a case of this nature it is dangerous to convict on the uncorroborated evidence of the woman herself, although you can convict on her evidence alone, if you see fit to do so. The corroboration required is independent testimony which confirms in some material particular not only the evidence that the crime has been committed, but also that the accused committed it.

If the Court entertain a reasonable doubt as whether the woman voluntarily consented to have sexual intercourse with the accused, the accused should be given the benefit of the doubt and the Court should bring in a finding of "Not Guilty." If the Court entertains a reasonable doubt as to whether there was penetration by the accused, the Court should not find him guilty of rape. Penetration is not a necessary element however to constitute attempted rape or indecent assault.

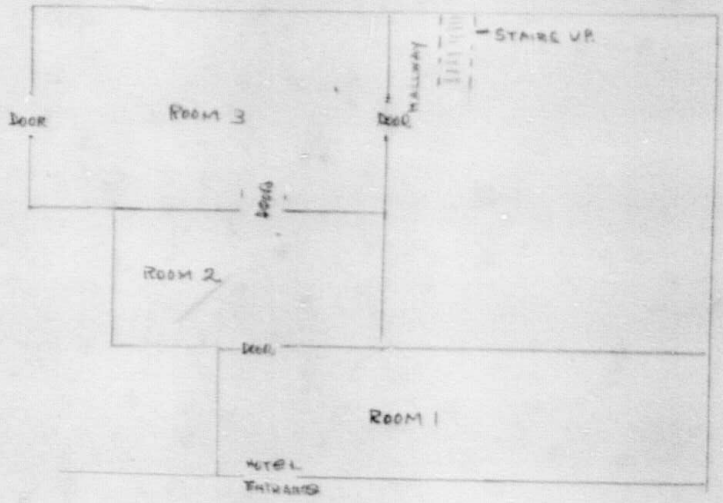
It is important that the Court bear in mind that the defence contends that whether or not there was in fact a voluntary consent on the part of the woman to sexual intercourse with the accused, the accused honestly believed that she was voluntarily consenting and consequently did not have the intent to commit a crime which it is necessary

(Over)

E-3 Address by Def. Off. in mitigation of Punishment

I wish to point out again the military history of the accused. He joined up in the Canadian Active Army on August 2nd, 1940, came overseas in June, 1941, fought through the entire Sicilian and Italian campaigns until the day of his arrest. Witnesses have been called who have testified that he is an excellent and well-behaved soldier. I might add that this man served as a rifleman in my own company when he first came overseas giving me no trouble. He is 23 years of age, married, has a son, is hotelkeeper married has completed one year high school and previous to the war worked as a clerk in a store in Truro, N.S. This man is a volunteer and although still a very young man has over four years' service in the army. I would ask the court to consider the fact that this man has dependent upon him a wife and son and that the court take all these circumstances including his excellent military record when awarding sentence. I submit it is perfectly clear from the evidence that the fact he had been drinking heavily while off duty was responsible for his getting into trouble. I wish also to point out that he has already spent 25 days in close arrest awaiting trial. I ask for a very lenient sentence under the circumstances.

A.


STAIRS UP
HALLWAY
DOOR
ROOM 3
DOOR
DOOR
ROOM 2
DOOR
ROOM 1
HOTEL
ENTRANCE

"A"

Davis - FGCM.

Exhibit "B" is a bundle of clothing produced and marked as Exhibit "B" in the evidence of CECILI TONINA the 2nd witness for the Prosecution, and consisting of 5 articles of feminine clothing, as follows: 1 dress, 1 underskirt, 1 slip, 1 pair of pants and 1 sweater, all in a torn condition.

L. J. Brody Capt.

J. A.

Pres FGCM.

F40981 Pte Davis R R

No Entries on MFM 6

25

23.

N/A

5 Oct 43

"C"
H.

MFM 6
(AFB 122)
[illegible]

No. 140981 Name Davis RR | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc E Holloway Lt | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with Trial	By whom awarded	Remarks
				Original Lost By Enemy Action	E H Holloway Lt				

Certified true Copy from the regimental Books in my Custody 12 Sep 44

[illegible] Capt
Officer Ic Dept Records

u D

SUMMARY OF EVIDENCE in the case of
F40981 Pte Robert DAVIS, West Nova Scotia Regiment,
a soldier of the Canadian Army Overseas, AAI, when on
Active Service.

By Order of Lt col R S E Waterman, Comd West N S R.

Evidence taken on Oath.

The interpretor T/177616 Sgt Brattersany C, FGS, As duly sworn.

First Witness
For Prosecution

Celli Tonina, Italian civilian, Hotel LIDO, Riccione, Italy, having been duly sworn states:

"At about 6 O'clock 9 Sep 44 four soldiers entered the kitchen here at the hotel. One soldier claimed to have a sore hand and asked if I had anything he could wrap it with. His right hand appeared to be bruised and skinned. Whilst he was asking me for bandages, he was backing me up. This man was fairly heavy built, full face, blond moustache. He struck me in the face after he had thrown me to the floor. I was screaming so he pushed my head back and put his hand over my face. Whilst I was being held, another soldier grabbed my legs and a third soldier started taking my clothes off. This they did, leaving me nude. The soldier who hit me held me whilst one of the other two "screwed" me. I do not know which one started but I had intercourse a number of times - first one and then the other. I was so frightened and hysterical, I did not pay much attention to their appearances. I do not believe I could recognize them. This statement was read over to me and is correct".

Signed: Celli Tonina

The accused declines to cross-examine this witness.

Second Witness
for Prosecution

Dr. Jan Franco OGGIONI, civilian doctor, Riccione, Italy, having been duly sworn states:

"On the night of the 9th of Sept at approx 9.30 P.M. I examined Celli Tonina. I found traces of blood near the genital opening. On the inside of her legs were marks on either leg which suggested that this girl had been taken by force. There were marks on her face, and bruises on either shoulder blade plus abruise on the left of her body just below the left breast. She was in a nervous state due to the shock.

Questioned by Officer taking Summary:

Q. Was there penetration or attempted penetration?
A. From a medical point of view when a woman has had intercourse at a previous time the doctor must presume. In this case I presume that there was actual penetration.

Signed: [illegible]

The accused declines to cross-examine this witness.

...../2.

Third Witness
for Prosecution

Sgr Parker C F, No 1 Cdn Provost Coy, having been duly sworn states:

On 9 Sep 44 at approx 1900 hrs, two RCD soldier stopped me in the town of RICCIONE and informed me of a rucus which had occurred up the street. One stated he had seen an Italion run out of the house covered in blood. I suggested they come with me and we would investigate the complaint. Whilst enroute to the scene of the complaint, I came across two Provost on street patrol, L/Cpl Dudley and Harding, No 1 Provost Coy. These two men got into my jeep and we all went to the scene. I walked into the building and I saw a Sgt coming out of one room into what appeared to be the kitchen. I asked him who he was and he wanted to know what authority I had in questioning him. I proved my authority and he then stated he too was a Provost Sgt of his own unit, and later, stated he was from the West Nova Scotia Regt. I then ordered L/Cpls Dudley and Harding to go into the other room and see who was in there. Pte Harding came out with two soldiers who also claimed to be from the West Nova Scotia Regt. Harding stated that there was a women in there and it looked as though she had been raped. I left the two Provost personnel in charge of the soldiers and proceeded into the next room to investigate the alleged rape. I went up to the next landing and found a woman with a sheet wrapped around her. She was frightened and, as she thought I was one of the original soldiers, she ran from me. I convinced her who I was and told her to get dressed and come down below. On going down stairs myself, I found that the two Provost personnel had only one man in custody - three of the soldiers had gone into another room and slipped out one of the many doors. It might be noted here that the two RCD soldiers had disappeared shortly after our entering the building.

Third Witness
For Prosecution Cont'd

Questioned by Officer taking Summary:

Q. Do you recognize either one of the accused persons?
A. Yes, I recognize both - by facial features.

Q. What bearing has Davis on the case?
A. As far as I am concerned he was just there.

Q. What bearing has Salsman on the case.
A. The same.

Q. Did you see either one of the accused persons commit rape?
A. No.

Signed: Geo. E. Parker

The accused declines to cross-examine this witness.

Fourth Witness
for Prosecution

B18520 L/Cpl Harding F, No 1 Cdn Provost Coy, having been duly sworn states:

On 9 Sep 44 at approx 1900 hrs I was on patrol with L/Cpl Dudley of this company. During this patrol a Provost jeep came up driven by Sgt Parker and he asked us to get into the jeep and go up the street to help investigate a complaint. We ended up at Hotel Lido and on entering the hotel, I saw a soldier with three stripes on a denim jacket. Whilst Sgt Parker was interrogating this Sgt, I walked into the next room and found one soldier having intercourse and abother standing there looking on. The girl was stripped of all her clothes and there was blood on her face. She was moaning and crying. I walked over grabbed the soldier that was on the woman and ordered him to get up. I then took these two soldiers out to the next room where Sgt Parker had been interrogating the other Sgt. On entering, I found L/Cpl Dudley checking a fourth soldier. I do not know where he came from. Three soldiers were left in our care, the original Sgt in question was not there at the time. Two of the remaining three soldiers slipped out another entrance - an entrance we had not noticed. The remaining soldier was brought down to "D" Sec HQs No 1 Cdn Provost Coy.

Witness .....

Fourth Witness
for Prosecution Cont'd

Questioned by Officer taking Summary:

Q. Do you recognize Pte Davis R F40981?
A. Yes.

Q. What bearing has he on the case?
A. He was the soldier on top of the woman, in question, in the kitchen.

Q. Do you recognize Sgt Salsman J?
A. I do not recognize him by facial features but by speech and manner.

Q. What bearing has he on the case.
A. He was the Sgt we met after entering the hotel, He was coming out of one of the inner rooms.

Cross-examine by the accused:

Q. When you picked me out on the identification parade did I have my hat on or off.
A. You had your steel helmet on.

~~Thxx~~ Signed: [signature]

The accused declines to further cross-examine the witness.

Fifth Witness
for Prosecution

A22489 L/Cpl Dudley G, No 1 Cdn Provost Coy, having been duly sworn states:

"During patrol duties with L/Cpl Harding, Sgt Parker of this coy came to us in a jeep and asked us to go along with him. We stopped at a hotel. Civilians told us that there were soldiers inside and these civies had a mass of comp;aints to make. When we went in, I saw a Sgt wearing a civilian hat. Sgt Parker stopped him and asked him a few questions. At first the Sgt refused to give his ~~xxx~~ identification. Sgt Parker then showed him his shoulder flashes and convinced the Sgt he was a Provost. The Sgt then stated he was from the West Nova Scotia Regt. Sgt Parker then ordered us to go into the next room. With Pte Harding in the lead, we went in and and I saw one soldier having intercourse. A second soldier was standing watchin. I walked back into where Sgt Parker was to call him. In the meantime Pte Harding was on the way out with these two soldiers. I then started to check a fourth soldier who was carrying a revolver. The Sgt that was originally checked was not in the room and it was found later that he had slipped away. Two of the remaining three soldiers also slipped ~~xxxx~~ out an entrance we did not know of. The other soldier was taken down to the Section HQs for interrogation. On an identification parade held at Sp coy WNSR on 10 Sep 44 I identified Sgt Salsman J F40702 and Pte Davis R F40981 as being concerned in the above mentioned affair.

[signature]

Fifth Witness
for Prosecution Cont'd

Cross-examined by the accused:

Q. Did you pick me out?
A. The first time everyone had hats on I failed to identify you but on removal of hats I picked you out.

Signed: G J Dudley

The accused declines to further cross-examine the witness.

The accused having been duly cautioned as follows:

"Do you wish to make any statement or to give evidence upon Oath? Your are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence that you give will be taken down in writing and may be given in evidence" declines to make any statement or to give evidence upon Oath.

Certified that Rule of Procedure 4 (c) (d) (e) & (f) has been complied with.

Taken down by me in the presence and hearing of the accused this 13th day of September 1944.

In the Field
13 Sep 44.

(Officer taking Summary)

F40981 Pte Davis R R.

1. Celli Tonina, Italian civilian, Riccione, Italy.
2. Dr Jan Franco Oggioni, civilian doctor, Riccione, Italy.
3. Sgt Parker G F, No 1 Cdn Provost Coy
4. B18520 L/Cpl Harding F, No 1 Provost Coy
5. A22489 L/Cpl Dudley G, No 1 Provost Coy.

Nil

Nil

Sgt [illegible]
1st Hard Regt R.C.A.

Pte Davis R.R.

14 Sep 44

F40981 Pte Davis R R.

Pte Davis R.R.

14 Sep 44.

AAA 182

PTE DAVIS TR

JWC.

CHARGE SHEET

M37138 Private Davis, Thomas Roy, Royal Canadian Army Service Corps, on strength of Canadian School of Artillery (Overseas), Canadian Army, England, a soldier of the Canadian Army Overseas, is charged with,

WHEN ON ACTIVE SERVICE,

First Charge

WHEN CONCERNED IN THE CARE OF PUBLIC GOODS, STEALING THE SAME,

A.A. Sec 17.

in that he, at Seaford, Sussex, on the 29th Oct 43, when employed as night duty cook at the Canadian School of Artillery (Overseas) Gunners' Mess, and concerned in the care of men's rations, stole the following articles of food,

7 pounds bacon
5 pounds butter
4 pounds cheese
6 pounds sugar
1½ pounds tea
5 tins milk
2 tins herring
1 tin salmon
6 tins sardines
2 2½-pound tins chopped ham
2 1-pound tins coffee,

of a total value of £2.16.11, the same being public property.

OR IN THE ALTERNATIVE,

WHEN ON ACTIVE SERVICE
GUILTY TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

Second Charge (Alternative)

A.A. Sec 40.

in that he, at Seaford, Sussex, on the 29th Oct 43 when employed as night duty cook at the Canadian School of Artillery (Overseas) Gunners' Mess, and concerned in the care of men's rations, was improperly in possession of the following articles of food,

7 pounds bacon
5 pounds butter
4 pounds cheese
6 pounds sugar
1½ pounds tea
5 tins milk
2 tins herring
1 tin salmon
6 tins sardines
2 2½-pound tins chopped ham
2 1-pound tins coffee,

of a total value of £2.16.11, the same being public property.

[redacted] Maj
Comd., Can School of Arty (O)

4th November, 1943. To be Tried by Field General Court Martial.

[redacted] Brigadier
Commanding 'C' Group, Can Reinforcement Units
(Convening Officer)

Bordon, Hants.
15 Nov 43

2 CARU Form 202

Medical Officer's Cert.
K.R.(Can) para.557

I certify that I have this morning examined No. M.37136.....

Gnr. Davis, T.R. and in my opinion he is fit to ~~unfit~~
(rank) (name)

undergo trial by Court Martial.

Station Jasper Camp, Witley.

Date 16 Nov. 43.

(Sgd).....
(Medical Officer)
No 2 Cdn Arty Reinf Unit
Can Army (Overseas).

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAS/1097 (3862)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-37138	Pte		Thomas Roy	DAVIS	Cdn S of A (O)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 13 Nov 43 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it would be unsuitable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Pl Offr as President, for the reasons I have stated herein.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	T.M. Cooper (Must be named. RP 106.)	1 CARU (Unit.)

MEMBERS.

Captain		3 CARU
Lieutenant (Rank.)	(Named or detailed. RP 106.)	7 Cdn Constr Coy. (Unit.) RCE

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

Lieutenant (Rank.)	R. Livermore (Must be named, if any. RP 106.)	HQ - CWE (Unit.)

On Active Service in the Fd

in England (Country.)

Date 15 Nov 43

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding "C" Gp - Cdn Reinforcement Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (or, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(*a*).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 162 (1) (g) (h).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 788.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

Jmc

Officer under Instruction

Lt. M.A.W. Bosley. 1 C.A.R.U.

D. 3.

1st Witness for Prosecution.

C50044 Sgt. McKibbon W.J. CSA(O) - sworn, states:

I am C50044 Sgt. McKibbon, W.J. - employed as Regt. Police at Cdn School of Artillery (OS). The morning of 29 Oct 43 at 1100 hrs I searched Pte Davis's kit and found in the kit bag the following articles:—

Kit bag marked Exhibit A.

Articles listed in both charges less there mentioned in Certificate, Exhibit B.

Bombadier Lee searched the kit of the accused. I was present. In the kit bag, Exhibit A, these articles of foot were found.

When I told the acc we were going to search his kit, he said "There it is." He was lying in bed, and nodded toward Exhibit A and his other kit. Exhibit A was lying about 3 feet away from the head of his bed on the right of the bed which was in a corner of the room. There were articles of clothing on the kit bag.

Cross-examined

The kit-bag was with the rest of the acc's kit?

Yes sir. The kit-bag was in plain sight.

By the Court — The acc's kit was the only one close to him. The acc. did not say that Ex. A. was not his kit-bag while it was being examined.

Evidence was read to the accused (1)

2nd Witness for the Prosecution.

B15355 L/Bomb Lee W J [CSAO]

Sworn, states.

At 11 00 hrs 29 Oct 43. Sgt Mr. Kibbin and myself searched the kit of the accused whom I identify. We found in the large kit bag, which I recognize, (Exhibit A) — a quantity of food, the goods mentioned in the charge sheet.

The acc's kit was all together alongside of the head of his bed on the right of the bed, the kit bag (Ex A) was about 5 ft from the head of the bed.

I knew it was the acc's kit-bag, because when the Sgt and I told the acc. we were sent to search his kit, the acc. pointed along the wall to his kit-bag and said the kit was along the wall.

Cross examined, witness states —

Ex A was about five feet away from the bed. It was indicated to me by the acc's pointing and by his words.

~~Ad~~ by Capt A Acc did not say anything when we were searching Ex A. or when we finished searching

The evidence was read to the ~~accused~~ witness.

Pres.

2nd Witness for the Prosecution

H100228 Gnr. Beckovitch D, (CSA-O) sworn, states

I am employed as a helper in the C.S.A. (O) Kitchen. I ~~sid~~ identify the accused. I sleep in the same room with him. The kitchen is on the ground floor and there are three flights of stairs to our sleeping quarters. Each man keeps his kit, separate from the others.

On the morning of 29 Oct 43 between 0500 hrs & 0600 hrs I heard someone come into the room. I looked & saw that it was the accused, and I saw that he ~~was bringing in~~ had something in his hand that he put beside his bed. I do not know what it was he was carrying. He then went out of the room.

Cross-examined

I am sure it was the acc. who came into the room. Nobody spoke at that time. The acc. put the lights on when he came in and put them out again when he went out. I cannot say what it was the acc. was carrying. I have been sleeping in the same room as the acc. for about four weeks. I had no reason during that time to think the acc. was taking rations.

by J.A.- The room is about 8'x16'. ~~They had~~ There were three beds in the room at the time. Mine was in the ~~opposite corner from the Sec's bed the door~~ opposite and at the far end of the room from the acc's.

Def. Off - this the Court

On the day in question I do not know who wakened me that morning to go on duty.

The evidence was read to the ~~Accused~~ witness

4th Witness for the Prosecution.

C248 Gnr. Riddle S. CSA(O). - Sworn states -

On the night of 28-29 Oct 43 I was helping in the kitchens of CSA(O) I was in the kitchen with the exception of leaving ~~the kitchen~~ it twice. I am not sure of the first time. The second time was between five and ~~six~~ o'clock. I heard it strike five shortly before I left. I was out of the kitchen at this time approx. twenty-five minutes.

Cross examined by Defence

I have known the accused for him I recognize since he came to the C.S.A. ~~[illegible]~~ I have worked with him in the kitchen a great deal. I ~~have~~ had no reason to suspect the acc. during that time of stealing rations.

Reexamined. - I identify the accused.

By the Court — The acc. was the only man left in the kitchen when I went out between 5 & 6 o'clock.

by J. A. - The night-fireman was in and out of the kitchen during the night to attend to his duties.

By the ~~Court~~ Court — I have seen canned goods similar to those on the table (Exhibit C to J) in our kitchen, as part of the rations.

by the J. A. — I have not seen goods similar on a shop.

~~Def. Off. in the Court~~ -

Evidence was read to the ~~Accused~~ witness

Fifth Witness for the Prosecution.

~~[illegible] Cpl. Elgie~~

K9053. Cpl Elgie. G.H., sworn, states —

On 29 Oct 43 I was Cpl - cook i/c Men's mess at Cdn School of Arty (O.S).

~~The goods on the table may be found in~~

(R) The goods on the table (Exhibit C7) may be found in any army kitchen, part of rations and part of tuppence halfpenny, and It is not possible to identify articles of this nature as there is no special mark on them and they may be found in any army kitchen.

Cross examined.

There is no detailed check made of the contents of the larder when the day - cook comes on duty.

(R) It would be approx 0630 hrs when I went into the kitchen and at a result of ~~some~~ information I received. I

It was first noticed that rations were missing at approx 0700 hrs, by Gnr Beckovitch.

by J.A. — ~~[illegible]~~

The milk ~~cannot~~ be bought in the stores.

(R) The salmon & coffee tinned meat may be. There is no mark to distinguish army ~~[illegible]~~.

Evidence was read to ~~Accused~~ witness.

(R)

D-4

Def. Off. submits that there has been

No case of stealing.

Prosecution submits that the cons. charge has been proven. —

Defence admits articles were in possession of accused but no proof how they got there.

J.A. explains "improper possession". Court are judges of facts — not to take notice of anything said by J.A. except as to legal points — accused to have benefit of any reasonable doubt — he must be proved guilty — innocent till so proved.

[signature] Cooper, Major

-p 7-

JMC

E. - 1.

C50044 Sgt. McKibbon W. J. - CSA(OS) - still under oath, states:—

I have known the accused ~~for~~ since he came to CSA about 2 months ago. I had often talked to him, as the Gt. room and the Gitaken were near together. He did not come under me for duty.

K9053 Bombadier Elgie, G H. - still under oath, states:

~~The Acc. was under~~ under my charge as a cook for approx. 6 or 7 weeks. And carried out his duties very well. I did not have any trouble with him at all.

JWC

Closing Address

~~Pte~~ The Accused was T.O.S. C.S. of A (O) WEX ~~[illegible]~~ 10 Sep 43 and was employed as Cook in Gunners Mess. During which time he showed a keen interest in his work, used initiative and was very resourceful & economical in preparation of meals. ~~[illegible]~~ When the Cpl cook was away on leave Private Davis ~~[illegible]~~ was placed in charge of the Gunners Mess when he did an excellent job both as to preparation of meals and organization, ~~[illegible]~~ very clean about his person and kitchen at all times. Organized the kitchen staff well and had no trouble getting them to work. It was intended to recommend him to be placed in charge with the rank of Cpl. ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ It is contended that the accused would not take the risk of jeopardizing his chances of promotion for the sake of a few rations. He is married & has three children and in considering the sentence ~~the~~ I suggest great consideration should be given to the accused in virtue of the fact that now that the Canadians are in action a soldier in attention is a liability to the Canadian Army.

E. Fleury, Lieut

LIST OF WITNESSES FOR THE PROSECUTION

1.	H100228	Gnr	Bukovich, D.	Cdn School of Arty (O)
2.	C248	Gnr	Riddle, S.	Cdn School of Arty (O)
3.	G7195	L/Bdr	Asprey, E.K.	Cdn School of Arty (O)
4.	B15355	L/Bdr	Lee, W.J.	Cdn School of Arty (O)
5.	F77593	Bdr	Hicks, C.F.	Cdn School of Arty (O)
6.	C50044	Sjt	McKibbon, W.J.	Cdn School of Arty (O)
7.	F15326	Sjt	Allbon, D.	Cdn School of Arty (O)

LIST OF WITNESSES FOR THE DEFENCE

NIL

LIST OF EXHIBITS

Exhibit A	Kit bag containing the goods found in possession of the accused.
Exhibit B	Certificate covering the following articles, 7 pounds bacon 5 pounds butter 4 pounds cheese 8 pounds sugar
Exhibit C	1½ pounds tea
Exhibit D	2 tins herring
Exhibit E	3 tins milk
Exhibit F	2 1-pound tins coffee
Exhibit G	2 2½-pound tins chopped ham
Exhibit H	6 tins sardines
Exhibit I	1 tin salmon
Exhibit J	1 baker's apron in which the bacon was wrapped.

STATEMENT BY THE ACCUSED IN ACCORDANCE WITH R.P. 14 (8)

I, M37138 Pte Davis, T.R. desire to have Capt. C. Stacey, 32 Cdn Recce Regt (Royal Montreal Regiment), if available, represent me at my trial by Field General Court Martial, and if not available to have an officer appointed by the Convening Officer to represent me.

T.R. Davis

M37138 Pte Davis, T.R.

76 Nov 43

Received from the President of the Court
Exhibits A to J
in the G.C.M. of M37138 Pte Davis D.R.
of C. Sqn A. (C).
To hold till further instructions.

J.A. Kennedy Lieut
Prosecuting Officer

CHARGE SHEET

M37138 Private Davis, Thomas Roy, Royal Canadian Army Service Corps, on strength of Canadian School of Artillery (Overseas), Canadian Army, England, a soldier of the Canadian Army Overseas, is charged with,

WHEN ON ACTIVE SERVICE,

First Charge

WHEN CONCERNED IN THE CARE OF PUBLIC GOODS, STEALING

THE SAME,

A.A. Sec 17.

in that he, at Seaford, Sussex, on the 29th Oct 43, when employed as night duty cook at the Canadian School of Artillery (Overseas) Gunners' Mess, and concerned in the care of men's rations, stole the following articles of food,

7 pounds bacon
5 pounds butter
4 pounds cheese
8 pounds sugar
1½ pounds tea
3 tins milk
2 tins herring
1 tin salmon
6 tins sardines
2 2½-pound tins chopped ham
2 1-pound tins coffee,

of a total value of £2.18.11, the same being public property.

OR IN THE ALTERNATIVE,
WHEN ON ACTIVE SERVICE
AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY

Second Charge (Alternative)

DISCIPLINE,

A.A. Sec 40.

in that he, at Seaford, Sussex, on the 29th Oct 43 when employed as night duty cook at the Canadian School of Artillery (Overseas) Gunners' Mess, and concerned in the care of men's rations, was improperly in possession of the following articles of food,

7 pounds bacon
5 pounds butter
4 pounds cheese
8 pounds sugar
1½ pounds tea
3 tins milk
2 tins herring
1 tin salmon
6 tins sardines
2 2½-pound tins chopped ham
2 1-pound tins coffee,

of a total value of £2.18.11, the same being public property.

[signature]
~~(W. ERIC HARRIS) Lt Col., RCA.~~
A/Comd., Cdn School of Arty (O)

To be Tried by Field General Court Martial

4th November, 1943.

Brigadier,
Commanding "C" Group, Cdn Reinforcement Units.
(Commanding Officer)

Bordon, Hants.
15 Nov 43

SUMMARY OF EVIDENCE in the case of M47138 Pte Davis, T.H., Royal Canadian Army Service Corps, on strength of Canadian School of Artillery (Overseas).

By direction of the Commandant the evidence is taken under oath.

First Witness

H100228 Gnr Bukovich, D., RCA, on strength of Canadian School of Artillery (Overseas) having been duly sworn, states:

I am H100228 Gnr Bukovich, D. employed in the kitchen of Cdn School of Arty (O). On the morning of 29 Oct 43 between the hours of 0500 and 0600 Pte Davis brought something into the room but I am not aware of what it was. He did not stay very long and when he left I went back to sleep. When I got up in the morning Cpl Elgie, the cook in charge of the kitchen mentioned to me that some rations were missing. He asked me if I had seen Pte Davis bring anything into the room, and I told him that I had seen Pte Davis bring something into the room and go away again.

Cross examined by the accused:

Question: Do you remember when I came up stairs what colour bundle it was I had and laid down?
Answer: No.

Question: Do you remember me being in my room at midnight and talking to you and Cpl Elgie?
Answer: I remember you talking to Cpl Elgie and me but don't know if it was the night in question.

Bukovich D.
H100228 Gnr Bukovich, D.

Second Witness

C248 Gnr Riddle, S., RCA, on strength of Canadian School of Artillery (Overseas) having been duly sworn, states:

I am C248 Gnr Riddle, S. employed as helper in the Gunners' Mess of Cdn School of Arty (O). On Thursday night I was on the usual job cleaning up and helping the night cook. Pte Davis was night cook that night. I was pretty busy that night and didn't notice much of Pte Davis's activities in the kitchen. I left the kitchen twice that night, the first time I am not sure what the time was. The second time was between 0500 and 0600 and I was away for about 25 minutes. It was possible that Pte Davis could have gone to his room and returned while I was gone. I know it was between 0500 and 0600 because I heard the clock strike shortly before leaving the kitchen. I don't know of anyone else in the kitchen other than the names mentioned. Both times I left the kitchen Pte Davis was in the kitchen and was in the kitchen when I returned. The first time I knew anything of this was when Gnr Bukovich told me he saw Pte Davis in his room earlier in the morning with his kit bag. The night man is responsible for the larder.

Cross examined by the accused:

Question: Who woke the day shift in the morning?
Answer: I am not sure.

Question: Did you see me leave the kitchen any time in the night during your tour of duty?
Answer: No.

(to page 2)

Second Witness (Contd) Question: Did you ever see me take anything?
Answer: No. I never saw you or any cook take anything from the kitchen.

S. Riddle
C248 Gnr Riddle, S.

Third Witness G7195 L/Bdr Asprey, E.K., RCA, on strength of Canadian School of Artillery (Overseas) having been duly sworn, states:

I am G7195 L/Bdr Asprey, E.K. employed as limber gunner with the Cdn School of Arty (O). On the night 28/29 Oct 43 I was commander of the M.T. Guard and between 0500 and 0530 in the morning I took in the tins that they had brought the guards' lunch out in. I saw Pte Davis in the kitchen and he appeared sober to me. I did not speak to him so I could not see if he was drinking or not. I put the dishes down and went out again.

Cross examined by the accused:

Question: Was there anyone else in the kitchen besides me?
Answer: Yes. Gnr Riddle was in the kitchen at that time.

E. K. Asprey
G7195 L/Bdr Asprey, E.K.

Fourth Witness B15355 L/Bdr Lee, W.J., RCA, on strength of Canadian School of Artillery (Overseas) having been duly sworn, states:

I am B15355 L/Bdr Lee, W.J. employed as regimental police at Cdn School of Arty (O). Along with Sjt McKibbon I went to Pte Davis's room and inspected his kit on orders from the Administrative Officer. We found the following articles:

Approximately:
7 pounds bacon
5 pounds butter
4 pounds cheese
8 pounds of sugar
1½ pounds tea
3 tins milk
2 tins herring
1 tin salmon
6 tins sardines
2 2½lb tins chopped ham
2 1-lb tins coffee

Pte Davis claimed he knew nothing about the cheese. To the best of my knowledge it is Government Property.

The accused declined to cross examine this witness.

W. J. Lee.
B15355 L/Bdr Lee, W.J.

(to sheet 3)

Fifth Witness

F77593 Bdr Hicks, C.F., RCA, on strength of Canadian School of Artillery (Overseas) having been duly sworn, states:

I am F77593 Bdr Hicks, C.F. employed as regimental policeman at Cdn School of Arty (O). On the night 28/29 Oct 43 I let Pte Davis into the building. To the best of my knowledge he was sober and properly dressed.

Cross examined by the accused:

Question: Were you in the kitchen any time during your tour of duty?
Answer: Yes.

Question: Did you see me at any time during the night?
Answer: Yes. I was talking to you in the kitchen.

Question: Did you see anyone else in there?
Answer: To the best of my knowledge the night fireman and Gnr Riddle were there.

Question: Were you in the kitchen any time during the morning of the 29 Oct 43?
Answer: No.

Question: What time was it when I reported in to the guard room?
Answer: 2225 hours.

F77593 Bdr Hicks, C.F.

Sixth Witness

C50044 Sjt McKibbon, W.J., RCA, on strength of Canadian School of Artillery (Overseas) having been duly sworn, states:

I am C50044 Sjt McKibbon, W.J. employed as regimental police at Cdn School of Arty (O). On Friday morning at 1100 hours the 29 Oct 43 I was ordered to search the kit of Pte Davis by the Administrative Officer through BSM Henderson. I found Pte Davis in bed, his kit beside the bed. We searched the kit and found the groceries as listed in the kit bag other than the cheese.

Approximately:
7 pounds bacon
5 pounds butter
4 pounds cheese
8 pounds sugar
1½ pounds tea
3 tins milk
2 tins herring
1 tin salmon
6 tins sardines
2 2½-lb tins chopped ham
2 1-lb tins coffee.

The cheese was on top of Pte Davis's pack and he told us he didn't know anything about that. To the best of my knowledge it was Government Property. The kit bag containing the goods did not have Pte Davis's name and number on it, but was indicated by him as being his.

The accused declined to cross examine this witness.

C50044 Sjt McKibbon, W.J.

Seventh Witness

F15326 Sjt Allbon, D., RCA, on strength of Canadian School of Artillery (Overseas) having been duly sworn, states:

I am F15326 Sjt Allbon, D. employed as N.C.O. in charge of Records Office of Cdn School of Arty (O).

Question: Is Cpl Elgie available for questioning?
Answer: Cpl Elgie is not available. He is S.O.S. Cdn School of Arty (O) to No 1 CASCRU and left on 29 Oct 43, authority 408/C&B Wing/1(SCA) dated 25 Oct 43.

The accused declined to cross examine this witness.

F15326 Sjt Allbon, D.

Sixth Witness (Recalled)

C80044 Sjt McKibbon, W.J., RCA, having been recalled and duly sworn, states:

Question: Did you find any other kit bag belonging to Pte Davis?
Answer: No Sir.

I tender in evidence as Exhibit A one kit bag containing the goods found in the accused, Pte Davis's room on the morning of 29 Oct 43. I also tender in evidence as Exhibit B certificate covering articles as follows:

7 pounds bacon
6 pounds butter
4 pounds cheese
8 pounds sugar,

which were returned to the kitchen as being perishable goods and needed to supplement the rations. I tender as

Exhibit C	1½ pounds tea
Exhibit D	2 tins herring
Exhibit E	5 tins milk
Exhibit F	2 1-pound tins coffee
Exhibit G	2 2½-pound tins chopped ham
Exhibit H	6 tins sardines
Exhibit I	1 tin salmon
Exhibit J	1 baker's apron in which the bacon was wrapped.

The only markings on the kit bag are "M56215 Pte Flathers, O.J., Edmonton Regt".

The accused declined to further cross examine this witness.

C80044 Sjt McKibbon, W.J.

First Witness (Recalled)

H100228 Gnr Bukovich, D., RCA, having been recalled and duly sworn, states:

Question: Are you in the same room as Pte Davis?
Answer: Yes Sir.

Question: Did you ever see anything suspicious in there before?
Answer: No Sir.

Question: Is it the usual practice to take foodstuffs from the larder into your rooms?
Answer: No Sir.

The accused declined to further cross examine this witness.

Bukovich D.
H100228 Gnr Bukovich, D.

The accused having been duly cautioned under R.P. 4 (e), gave the following evidence under oath:

I am M37138 Pte Davis, T.R. employed as cook at the Canadian School of Artillery (Overseas). On the night 28/29 Oct 43 I was employed as night cook. On the afternoon of the 28 Oct 43, being payday and M.O's inspection, I asked Cpl Elgie after both parades were over if it would be all right to have time off till about midnight. He replied, "It's all right, go ahead." About 2230 hours of the night of 28 Oct I checked in at the guard room, being slightly under the influence of liquor. I proceeded from the guard room to the kitchen to start my tour of night duty. When I got in the kitchen I made myself a cup of tea. After having the tea and a sandwich I went up stairs to my room to change into my whites. I came back to the kitchen after changing and started roasting the meat for the next day. After I got that in the oven I went into the storeroom to bring out the sausage for morning's breakfast and placing them in the pan ready for the oven for 0530 in the morning. After that job was completed I watched the meat up till about 0030 hours. After the meat being completed and removed from the oven, it was placed in a big pan and put in the storeroom. I then proceeded up stairs to get some laundry I wanted to wash. Getting my laundry from my kit bag I went down stairs and started washing it. When completed it was laid on newspaper above the gas range and in no time was dry. At about 0600 in the morning I went up stairs with my laundry to wake the day shift. I threw the articles that I washed on my bed and went over and woke Gnr Bukovich and Cpl Elgie and immediately after that I went back to the kitchen. After helping serve breakfast which would be about 0730 or 0740 when completed, I went up stairs to my room. I sat down on the bed and reached for my kit bag to put the laundry in that I washed the previous night. Noticing the kit bag that I reached for was very heavy I immediately investigated to see what it contained and saw that there were rations in it. It made me very scared seeing it was a kit bag full of rations. I wanted to report the matter and figured if I did so, that I would be placed on a charge of improper possession. Then I thought of bringing them back to the storeroom. Thinking that over I knew that if I were caught in the storeroom with a kit bag of rations regardless if I were taking them out or not I would be placed on a charge of stealing, so I figured the next best thing for me was for me to wait for the right moment which

(to sheet 6)

would have been the night of 29/30 Oct to replace them in the storeroom. The kit bag containing the rations does not belong to me.

T.R. Davis.
M57138 Pte Davis, T.H.

Certified that R.F. 4 (c), (d), (e), and (f) have been complied with.

Taken down before me in the presence and hearing of the accused this first day of November, 1943, at Seaford College, Seaford, Sussex.

J.A. Kennedy
(J.A. Kennedy) Lt., RCA,
Cdn School of Arty (O).

Approximate values of articles taken in evidence in the case of M37138 Pte Davis, T.R., RCASC, on strength of Cdn School of Arty (O)

	£	s.	d.
7 pounds bacon		14	7
5 pounds butter		8	4
4 pounds cheese		4	4
8 pounds sugar		2	8
1½ pounds tea		4	0
3 tins milk		1	3
2 tins herring		1	8
1 tin salmon		1	0
6 tins sardines		6	0
2 2½-lb tins chopped ham		10	5
2 1-lb tins coffee		4	6
Approximate Cost	£2	18	.11

1 Nov 43.

Exhibit Y

No. M37138 Name Davis , T.R. Sqn., Battery, or Company Corps Edmonton Regt Date of enlistment Mar 25 1940 O.C. Badges Service or Proficiency Pay A.Renton Capt

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	31-8-40	L/Cpl	1	Sec 19 Drunkeness	Cpl Basely L/Cpl Millar	Admonished & reduced to L/Cpl without pay	31-8-40	Capt Creasay	
Aldershot	17-10-40	"		Sec 15(2) Failing to appear at place of parade	aL/Cpl O'Neil	4 days pay			
Aldershot	31-10-40	"		Sec 15(2) Failing to appear at a place of parade	Sjt Williams	7 days C.B.	18-10-40	Capt Creasay	
Aldershot	6-2-41	Pte		Sec ACD para 1845 leaving M/C unattended	Sjt Hurrell	Reduced to Private.	31-10-40	Capt Creasay	
Ashtead	13-8-41	"		WOAS Conduct to the prejudice of Good Order and Military Discipline (Urinate in front of Dukes Head	L/Cpl Palner L/Cpl Jones	Admonished	8-2-41	Capt Creasay	

Continued next page

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Public House, Leatherhead)	Sjt Wallace " Inge L/S West L/S Weleam L/S Phipes Sjt Rush	Reduced to rank of Private	14-9-41	Lieut Cooper	
Field	4-5-42	A/Cpl		AWL from 2359 hours 4 May to 0630 hours 6 May Total(1 day 6 hours 31 min)	Sjt Hockley " Lucker L/Cpl Davis	~~Forf 2 days pay~~ & reverts to L/Cpl with pay (F.R. & I 193)	6 may 42	A. Renton Capt	Forfeit 2 days pay Field 149(1)(a)
Field	10-5-42	L/Cpl		Neglect to obey Regt DO Part I #77 d/14/4/42 rode a pillion without wearing a crash helmet. AA Sec 11	RSM Ramage Pte Whidden	Severe Rep	26 May 42	A. Renton, Capt.	

NM37138 Name Davis T.R. Sqn., Battery, or Company Corp Subsection No 2 Provost Coy Date of enlistment Mar 25 1940 G.C. Badges Service or Proficiency Pay M.F.M. (A.F.B. 175M—7-41 (1210-20) H.Q. 1772-39-1852)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. A.Renton Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18-6-42	L/Cpl		(AASec 24 para 1) Did make away with by pawning, one pair of handcuffs, public property entrusted to his care. Held in close arrest 1000 hrs 27-6-42 to 1600 hrs 6-7-42 (9 days 6 hrs)	L Benjamin (civilian) Cpl McKeag Sjt Lucker	reverts to Pte ~~forf 10 days pay~~ ~~FR&I 149 (1)(c)~~	6-7-42	A. Renton Capt	Forfeits 10 days pay FR&I 149(1)(c)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	27 May 43	Pte		Tried by Field General Court Martial under the following sections of the A.A. Sec 17,18(4),40. Found guilty under AA Sec 17 and not guilty on 2nd and 3rd charges. Confirmed 8 Jun 43 by Maj-General C.R. Stein of the 5 Cdn Armd Div Held under close arrest from 0015 hrs 28 May to 2359 hrs 3 Jun 43	ASM Allan N S/Sgt Green C.H. Pte Belanger G Cpl Rutschka J Pte Bowles G	Forfeits 120 days pay. FR&I 149(1)b 120 days Detention	4 Jun 43	F.G.C.M. Major King Presiding	Forfeits 7 days Pay under FR&I 149 (1) c (1)

TEXT OF CHARGE: A.A. Sec 17 WOAS WHEN CONCERNED IN THE CARE OF PUBLIC PROPERTY FRAUDULENTLY MISAPPLYING THE SAME, in that he when employed as night cook of his Unit and concerned in the care of the men's rations, public property, gave 13 eggs, a portion of said rations, to B0493 Pte Bowles, G. in exchange, for cigarettes, with intent to defraud. Recommended for Summary of Evidence 28 May 43. Remanded for F.G.C.M. 31 May 43 by Officer Commanding.

Released from the DETENTION BARRACK Field on Aug 21 1943, sentence having expired. Remission earned under Rules for Detention Barracks and Military Prisons 40 days.

COMMANDANT'S INITIALS (Sgd)"J.A.L." J.A. Kennedy) Lt., RCA. Offr having charge of original document

CERTIFIED TRUE COPY. 16 Nov 43

No. M37138 Name Davis, T.R. Sqn., Battery, or Company Corps Edmonton Regt Date of enlistment Mar 25 1940 G.C. Badges Service or Employment Pass A. Renton Capt

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with (1) (2)	By whom awarded	Remarks
Aldershot	31-8-40	L/Cpl	1	Sec 19 Drunkeness	Cpl Basely L/Cpl Millar	Admonished & reduced to L/Cpl without pay	31-8-40	Capt Creasay	
Aldershot	17-10-40	"		Sec 15(2) Failing to appear at a place of parade.	L/Cpl O'Neil Sjt Williams	4 days pay 7 days C.B.	18-10-40	Capt Creasay	
Aldershot	31-10-40	"		Sec 15(2) Failing to appear at a place of parade.	Sgt Hurrell	Reduced to Private	31-10-40	Capt Creasay	
Aldershot	6-2-41	Pte		Sec ACD para 1845 leaving M/C unattended	L/Cpl Palner L/Cpl Jones	Admonished	8-2-41	Capt Creasay	
Ashtead	13-8-41			WOAS Conduct to the Prejudice of Good Order and Military Discipline (Urinate in front of Dukes Head					

Continued next page

(P.T.O.)

Where	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Public House, Leatherhead)	Sjt Wallace Sjt Inge L/Sjt West L/Sjt Weleam L/Sjt Phipes Sjt Rush	Reduced to rank of Private	14-9-41	Lieut Cooper	
Field	4-5 42	A/Cpl		AWL from 2359 hours 4 May to 0630 hours 6 May. Total (1 day 6 hours 31 mins)	Sjt Hockley " Lucker L/Cpl Davis	~~Forf 8 days~~ ~~pay and~~ reverts to L/Cpl with pay (~~FRxI 183~~)	6 May 42	A. Renton Capt	Forf 2 days pay under FRSI 183
Field	10-5 42	L/Cpl		Neglect to obey Regt DO Part 1 #77 d/1/4/42 rode a pillion without wearing a crash helmet. AA Sec 11	RSM Ramage Pte Whidden	Severe Rep	26 May 42	A. Renton, Capt	

No. M37138 Name Davis, T.R. Sqn., Battery, or Company Corps Subsection No 2 Provost Coy Date of enlistment Mar 25 1940 G.C. Badges Service or Proficiency Pay M.F. [illegible] (A.F. [illegible]) 175M—7-41 [illegible] H.Q. 1772-39-1868

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. A. Renton Character Capt

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order disposing with trial	By whom awarded	Remarks
Field	18-6-42	L/Cpl		(AA Sec 24 para 1) Did make away with by pawning, one pair of handcuffs, public property entrusted to his care. Held in close arrest, 1000 hrs 27-6-42 to 1600 hrs 6-7-42 (9 days 6 hrs)	L. Benjamin (civilian) Cpl McKeag Sjt Lucker	reverts to Pte. ~~Forf 10 days pay FR&I 149(1)(c)~~	6-7-42	A. Renton, Capt	Forfeits 10 days pay FR&I 149 (1)(c)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
In the Field	27 May 43	Pte		Tried by Field General Court Martial under the following sections of the AA Sec 17,18(4),40. Found guilty under AA Sec 17 and not guilty on 2nd and 3rd charges. Confirmed 8 Jun 43 by Maj-General C.R. Stein of the 5 Cdn Armd Div Held under close arrest from 0015 hrs 28 May to 2359 hrs 3 Jun 43.	ASM Allan M S/Sjt Green C.R. Pte Belanger G Cpl Rutschka J Pte Bowles G	Forfeits 120 days pay. F.R&I 149(1)(b) 120 days detention	6 Jun 43	F.G.C.M. Major King Presiding	Forfeits 7 days pay under FR&I 149(1)(c)1

TEXT OF CHARGE: A.A. Sec 17 WOAS WHEN CONCERNED IN THE CARE OF PUBLIC PROPERTY FRAUDULENTLY MISAPPLYING THE SAME, in that he when employed as night cook of his Unit and concerned in the care of the mens rations, public property, gave 12 eggs, a portion of said rations, to B8493 Pte Bowles, G. in exchange, for cigarettes, with intent to defraud. Recommended for Summary of Evidence 28 May 43. Remanded for F.G.C.M. 31 May 43 by Officer Commanding.

Released from the DETENTION BARRACK on Aug 21 1943, sentence having expired. Remission earned under Rules for Detention Barracks and Military Prisons 40 days.

COMMANDANTS INITIALS (Sgd) "J.A.L."

CERTIFIED TRUE COPY, 16 NOV 43.

(J.A.Kennedy) Lieut., R.C.A.

Offr having charge of original document

No. M37138 Name Davis, T.R. Sqn., Battery, or Company Corps Subsection No 2 Provost Coy Date of enlistment Mar 25 1940 G.C. Badges Service or Proficiency Pay M.F.[illegible]

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. A. Renton Character Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18-6-42	L/Cpl		(AA Sec 24 para 1) Did make away with by pawning, one pair of handcuffs, public property entrusted to his care. Held in close arrest, 1000 hrs 27-6-42 to 1600 hrs 6-7-42 (9 days 6 hrs)	L. Benjamin (civilian) Cpl McKeag Sjt Lucker	reverts to Pte. ~~Forf 10 days pay FR&I 149(1)(c)~~	6-7-42	A. Renton, Capt	Forfeits 10 days pay FR&I 149 (1)(c)

(P.T.O.)

Exhibit X

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M37138	Private	Davis, T.R.	Cdn School of Arty (O)

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. Sec 19	- times	1	times
For	A.A. Sec 15 (2)	- times	2	times
For	Sec ACD para 1845	- times	1	times
For	A.A. Sec 40	- times	1	times
For	A.A. Sec 15 (1)	- times	1	times
For	A.A. Sec 11	- times	1	times
For	A.A. Sec 24 (1)	- times	1	

~~Number of instances of gallantry or distinguished conduct~~ ~~or~~

~~There are no entries in the conduct sheets of the accused~~

~~If the charge is for drunkenness, the entries for drunkenness must be stated separately~~

2. ~~The accused has not been previously convicted~~ ~~or~~

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~or~~

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~[illegible]~~ N.L. days in civil custody, and one days in ~~Air Force~~ military custody, making a total of ~~one~~ Twelve (12) days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 40 yrs 10 mos.

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 25 Mar 40

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (~~or is in possession of or entitled to~~ military military State any air force decoration or reward. military

10. ~~If the accused is a warrant officer: The accused before he was made a warrant officer last held~~ ~~Air Force~~ ~~the regimental rank of~~

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Jack

~~Permanent Force~~ ~~unit~~

~~dated~~ Jack, ~~and in his regiment (or corps), the rank of~~ Jack

~~dated~~ Jack.

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~ Jack

~~Date of promotion~~ Jack

~~In the rank of~~ ~~years~~ Jack

~~In the rank of~~ ~~years~~ Jack

~~In the rank of~~ ~~years~~ Jack

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number M37138 Rank Private Name Davis, T.R. of Cdn School of Arty (O) ~~Regiment~~ Unit Jack

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	4 Jun 43 Field	A.A. Sec 17.	120 days Detention	40 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~[illegible]~~ 6th day of November, 1943.

J.A. Kennedy Lt Adj. Cdn Sch of Arty (O)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked X signed by the president, and annexed to the proceedings.

J.A. Kennedy, Lt. Jack,
A/Adj., Cdn School of ~~Arty~~ (O)

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~(a)~~ (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the first charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~disallowed on the~~ charge(s), ~~and~~ allowed on the first charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (~~are~~) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. No. Do you intend to call witnesses on your behalf? Ans. No. Are they witnesses as to character only? Ans.
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), ~~if any~~, of Not Guilty, and states to the accused that the finding(s) of the Court on the second charge(s), being subject to confirmation, will be promulgated later.(1)
~~OR: The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. YES
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES by my Defending Officer.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to give on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 71(D).
(1. When several accused tried separately see RP 128A. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 183, RP 46-50, 69, 118, 119(A), KR Con 309, 330, 563-566. Overseas NO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see notes on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-37138 Pte DAVIS, Thomas Roy

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. 17	Not Guilty	Not Guilty	Tried on both charges as if the accused had pleaded not guilty thereto.
2nd (Alt) AA 40.	Guilty	Guilty except that the accused was not employed as night Duty Cook and that the articles were not public property and were not of the value of £2/18/11
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which 0 days were spent in hospital. (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo Detention for nine (9) months

(Sgd) R. Livermore Lieut 16 Nov 43 (Sgd) J McCooper, Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

The Deputy Judge Advocate General, Canadian Military Headquarters, having advised that the conviction on the second charge in these proceedings is invalid, I hereby direct that the record of the conviction on the said charge be and the same is hereby removed and the accused relieved from all consequences of his trial thereon.

In the Field
8 Jan 44

J.C. Stewart
(J.C. STEWART) Brigadier,
Comd "C" Group, Cdn Rft Units.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) Pte

(1. AA 57A. Delete if not used.)

(Sgd) J.C. Stewart

Date 19/Nov/43 Commanding Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused. Date. Signature of Offr.

M 37138 Pte Davis, Thomas Roy. 22 Nov 43. [signature] Adj Sgt

M 37138 Pte Davis, Thomas Roy. DJAG Direction Promulgated 17 Jan 43

[signature] Maj RCAMC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AAA-102

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & S/1698 (2864)

Convened by Order of Brigadier J.C. Stewart Comd "C" Gp - CRU dated 15 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M-37138	Pte	Proceedings Reviewed [signature] Capt	Thomas Roy	DAVIS	C&n S of A(O)

Reviewing Officer (J.A.G.) C.M.H.Q.
19 Feb 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(1)) 16 Nov. 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~ Asst., JA, ~~Asst.~~, and Offrs under instr, ~~if any~~ Asst., assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1550 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to as interpreter? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18; MML p 742.)

A7. The President, Members, JA, ~~if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J. M. Cooper	No. 1 C.A.R.U.
Member	Capt.	M. R. Medland	No. 3 C.A.R.U.
Member	Lieut.	~~D. A. Hanton~~ W.T. Boyes	No. 7 Constr. Co. R.C.E.
Judge-Advocate	Lieut.	R. Livermore	H.Q. C.R.U.
Prosecutor	Lieut.	J.A. Kennedy	C.S. of A (O)
Defending Offr	Lieut.	E. Flowry	C.S. of A (O)

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 3.)

A8. The accused before arraignment make(s) (no) (~~a~~) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HH-10
PTE DAVIS T. R.

HH-10 1

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this 2nd day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 5TH CANADIAN ARMOURED DIVISION, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial to reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*I am unable to appoint~~

~~*(1) Three Officers to form the Court.~~

~~*(2) A Field Officer as President.~~

~~*(3) Three Officers having more than one year's service.~~

~~for the following reasons, namely:~~

Proceedings Received for Revision 28 Jun 43

JUDGE ADVOCATE - Capt G.M. Morrison
ADJA 5 Cdn Armd Div

President.

Rank.	Name.	Regiment.
Major	W.D. King	4 Cdn A Tk Regt RCA

Members.

Rank.	Name.	Regiment.
Captain	G.E. Madden	17 Cdn Fd Regt RCA
Lieutenant	R.A. McClenahan	5 Cdn LAA Regt RCA
Lieutenant	P.S. Gibson	17 Cdn Fd Regt RCA

Waiting Member

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

* Signed (C R Stein) Major General
Commanding 5 Cdn Armd Div
Convening Officer.

2

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M37138 Pte Thomas Ray DAVIS, 11 Cdn Inf Bde Wksp RCOC	First Charge Sec 17 AA	Not Guilty	Guilty	Confirmed 8 Jun 43
	Second Charge Alternative Sec 16(4) AA	Not Guilty	Not Guilty	Noted 8 Jun 43
	Third Charge Alternative Sec 40 AA	Not Guilty	Not Guilty	Noted 8 Jun 43
	(See Charge Sheet attached)		To undergo 120 days Detention	Confirmed 8 Jun 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded against or as near as may be to question, if necessary) :—

(Signed) (C B Stein) Maj Gen
Commanding 5 Cdn Armd Div
Convening Officer (c)

(Signed) J.W. Hunting Major R.C.A.
A/Deputy Judge Advocate 11th Cdn Inf Bde Wksp RCOC
E.M. Morrison Capt. Judge Advocate
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

2

Evidence and Charge Sheets (if necessary) to be PINNED here.

55

I certify that the above Court assembled on the Fourth day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—
1. The members of the Court and Judge Advocate
2. The witnesses and Court Shorthand Writer
*(3. ~~The interpreter~~) not
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this Fourth day of June 1943

E.M. Morrison Capt. Judge Advocate

J.W. Hunting Major R.C.A.
President of the Court Martial.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. **C.** Certificate in case of death sentence.

Signed this day of 19

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~

Signed this 8 day of June 1943

(C B Stein) Maj. Gen.
Confirming Officer.

Promulgated and extracts taken in the case of M37138 Gnr Pte Davis T.R. - 11 Cdn Inf Bde Wksp RCOC 5 CDN. ARMD. DIV.

(a) (Dated) 11 June 43. (Signed) J.W. Hunting Capt. Adj. 11 Cdn Inf Bde Wksp RCOC

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Lt Col Fring
Major Kell

CHARGE SHEET

The accused M 37138 Pte. Thomas Ray DAVIS, 11 Cdn Inf Bde Workshop RCOC., 5 Cdn Armd Division, a soldier of the Canadian Army Overseas, is charged with:-

First Charge Sec 17 AA:

WHEN ON ACTIVE SERVICE WHEN CONCERNED IN THE CARE OF PUBLIC PROPERTY, FRAUDULENTLY MISAPPLYING THE SAME,

in that he

In the Field on or about the 27 May 1943, when employed as night cook of his Unit and concerned in the care of the men's rations, public property, gave 13 eggs, a portion of said rations, to B8493 Pte Bowles, G. in exchange for cigarettes, with intent to defraud.

Second Charge (Alternative) Sec 18(4)AA:

WHEN ON ACTIVE SERVICE, STEALING PUBLIC PROPERTY,

in that he

In the Field on or about 27 May 1943, stole from the men's mess kitchen of his Unit 13 eggs, public property.

Third Charge (Alternative) Sec 40 AA:

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

In the Field on or about 27 May 1943, was improperly in possession of 13 eggs, a portion of the rations issued to the men of this Unit.

R G Farrell
(R.G. Farrell) Major,
Officer Commanding,
11 Cdn Inf Bde Workshop.

In the Field
31 May 1943.

To be tried by Field General Court Martial
In the Field
2 Jun 43

[signature]
Maj. Gen.
G.O.C. 5 CDN. ARMD. DIV.

4 Jun 43

5

I certify that I have this morning examined No. M.37138 Pte. DAVIS T.R. of 11 Cdn Infantry Bde Workshop and in my opinion he is fit to undergo trial by court martial.

In the Field
4 Jun 43

Medical Officer

Trial of M37138 Pte Thomas Ray DAVIS, 11 Cdn Inf Bde Wksp RCOC, 5 Cdn Armd Div.

Held in the Field in England this 4th day of June, 1945.

PRESIDENT	Major W.D. King	4 Cdn A Tk Regt RCA
MEMBERS	Captain G.E. Madden	17 Cdn Fd Regt RCA
	Lieut. R.A. McClenahan	5 Cdn LAA Regt RCA
JUDGE ADVOCATE	Captain G.M. Morrison	ADJA 5 Cdn Armd Div
OFFICERS UNDER INSTRUCTION	Lieut. H.S. Sexsmith	5 Cdn LAA Regt RCA
	Lieut. D.H. Matthews	17 Cdn Fd Regt RCA
	Lieut. H.D. Hume	4 Cdn A Tk Regt RCA
	Lieut. G.R. Fowler	4 Cdn A Tk Regt RCA
PROSECUTOR	Captain J.M. Harding	11 Cdn Inf Bde Wksp RCOC
DEFENDING OFFICER	Lieut. G.M. Forbes	17 Cdn Fd Regt RCA

The President produced the Convening Order, Charge Sheet and Summary of Evidence.

The President, in closed Court, reads the Convening Order and the Charge Sheet to the Members, and the Court satisfy themselves that it is properly convened and constituted, that the accused is amenable to Military Law, and that each charge discloses an offence.

The accused is brought before the Court, and at 1400 hours, the Trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

President to accused

Q. 1 Do you object to A57385 Cpl B.W. Henheffer, CMSC, HQ 5 Cdn Armd Div acting as shorthand writer?

A. 1 No, sir.

The shorthand writer is duly sworn.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused.

President to accused

Q. 2 Do you object to be tried by me as President or by any of the officers whose names you have heard read over?

A. 2 No, sir.

The President, Members, Judge Advocate and Officers under Instruction are duly sworn.

The Charge Sheet is signed by the President.

Each charge is read to the accused and he is asked as each char is read whether he pleads guilty or not guilty. He pleads as follows:

First Charge - Not Guilty

Second Charge - Not Guilty

Third Charge - Not Guilty

President to accused

Q. 3 Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A. 3 No, sir.

PROSECUTION

The Prosecutor makes the following opening address:

"In the case before you today, I wish to point out and prove by Pte Bowles who is mentioned in the charge sheet, that he was ordered on the night of the 27 May to shadow the accused. Previously there had been reason to believe that the accused had been mixed up in shortages of rations in the men's mess. It so happened that the accused asked Pte Bowles for some cigarettes and in exchange he was going to give him a dozen eggs. Pte Bowles having orders from his senior NCOs was told to carry on with the deal and the evidence will show that the accused got the cigarettes, proceeded to give Pte Bowles the eggs in exchange and at this point the two NCOs actually saw the cigarettes being turned over and the eggs taken from the crate and given to Pte Bowles. That briefly is the story behind the case."

1st Witness, B19035 S/Sgt Green, C.R. 11 Cdn Inf Bde Wksp, RCOC, having been duly sworn is examined by the Prosecutor.

Q. 4 Will you tell the Court in your own words, what happened on the night of 27 May and the early morning of 28 May?

A. 4 I am a regimental NCO of the 11 Cdn Inf Bde Wksp and any order concerning the regiment comes through the SM and is passed to me. I had several occasions on which I was told that food was missing from the kitchen. I had been called in the CO's office and told by him that I was to check this matter up and find out, if possible, where the food was going and to see who was responsible for it. This happened about three days before the 27 May. I questioned several men of the unit and through asking various questions was led to believe that the accused had something to do with this case. I watched the accused on several occasions. At 1800 hours on the night of 27 May, I ordered Pte Bowles to stand watch for a 12 hour period over the accused who was on night shift and to report to me anything he saw wrong. Pte Bowles came to my room at approximately 2300 hours at which time I was in the kitchen and on returning from the sgts' mess the SM called me in his room and Pte Bowles proceeded to give him some facts. I took from the situation that there was some deal afoot and decided that Pte Bowles would go through to the mess and carry out the deal. Previous to my telling Pte Bowles to carry out the deal, I instructed him as to what he should do. I told Pte Bowles to go the men's mess accompanied by SM Allan, go to the kitchen and give Pte Davis 3 packages of cigarettes for eggs he had been promised previously. Pte Bowles, SM Allan and myself proceeded to the mess together, Pte Bowles and SM Allan going directly in the kitchen of the men's mess and I

A. 4 concealed myself in a washroom adjoining the pantry. I waited some 15 minutes and then Pte Bowles and SM Allan came to me and said that the accused was asleep. I told them to go back and wake him up and I stayed where I was concealed in the washroom. Some few minutes passed and the accused and Pte Bowles came to the larder together. The accused opened the door, turned on the light at which time I beckoned to SM Allan who was standing a few feet from me to come up by my side. The accused took a crate of eggs from under the shelves of the larder and proceeded handing eggs to Pte Bowles. Pte Bowles on completion of this transaction turned and came out of the larder and the accused followed him out. Pte Bowles headed for a door leading outside the mess and when a few feet from the door, I stopped him and asked him what he had in his possession. He said he had nothing. I searched him and found 13 eggs. I turned to the accused and said "What is going on?" and he said "Nothing". At that time the SM and myself made the arrest.

Q. 5 At what time was the arrest made?
A. 5 At 0015 hours on the 28 May.

Cross Examination by the Defending Officer

Q. 6 Who is this Pte Bowles?
A. 6 He is just one of the men in the unit.

Q. 7 He is at the top of your list?
A. 7 No, sir, I figured he was a competent man and gave him the task of shadowing the accused.

Q. 8 How many people did you have detailed?
A. 8 Only one sir.

Q. 9 Were you going to give him reliefs?
A. 9 No, sir.

Q. 10 What were your plans?
A. 10 I just had him posted for this 12 hours shift as the accused was only on during the night.

Q. 11 Where were you when the eggs were taken from the crate?
A. 11 About 1 foot from the door of the larder.

Q. 12 Which door?
A. 12 The door of the larder.

Q. 13 How long did this transaction take?
A. 13 Approximately 3 or 4 minutes.

Q. 14 Was anything said at the time?
A. 14 No, sir.

Q. 15 Nothing at all?
A. 15 No, sir.

Q. 16 He just handed the eggs to Pte Bowles?
A. 16 Yes, sir.

Q. 17 Where was the SM at this time?
A. 17 About 2 feet in front of me.

Q. 18 He was in the larder?
A. 18 No, sir, he was about 6 feet from the larder door itself.

Q. 19 What did you do after you say you found the eggs?
A. 19 I proceeded back to the kitchen itself and found three packages of cigarettes which were later identified by Pte Bowles as the cigarettes he had given to the accused during the transaction.

Re-examination by the Prosecutor

Q. 20 I show you three packages of cigarettes, can you identify them?
A. 20 These are the cigarettes which I picked up in the kitchen and which Pte Bowles gave to the accused.

Q. 21 Did you see these cigarettes being given to the accused?
A. 21 No, sir, I could not see as there was a wall between the two men and myself.

The three packages of cigarettes are produced to the Court, marked Exhibit "A" and attached to the proceedings.

By the Judge Advocate

Q. 22 These are the three packages you picked up in the kitchen?
A. 22 Yes, sir.

Q. 23 If I had three other packages there could you identify them?
A. 23 I don't know.

Q. 24 What did you do with the eggs?
A. 24 I took the eggs, locked them up for the night and the next morning turned them over to the CO.

Q. 25 How long had the accused been on night shift in the kitchen?
A. 25 He had been on for five nights. This was his second last night on that duty.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

2nd Witness, A21270 ASM Allan, N. 11 Cdn Inf Bde Wksp, having been duly sworn is examined by the Prosecutor:

Q. 26 What is your position in the unit?
A. 26 I am Armament SM.

Q. 27 Would you tell the Court what happened on the night of the 27 May which you actually saw and any orders you gave?
A. 27 On the 27th day of May, I had learned previously that rations were short and so S/Sgt Green and myself, with the sanction of the OC of the unit, tried to lay a trap of some description to find out who was taking rations. On the evening in question Pte Bowles met the accused in his quarters and said that he had emptied a carton of cigarettes on his bed and that the accused had offered him some eggs for some cigarettes. I told Pte Bowles to stay in my room and went over to the Sgts' Mess and got S/Sgt Green and then Pte Bowles repeated again what he had told me. Pte Bowles had been given the job of shadowing the accused for that night. He left and Cpl Rutschka, the cook in charge of the kitchen, came in and mentioned about some rations being missing in the kitchen. As a result of the information I received from Pte Bowles and Cpl Rutschka, I gave some instructions to Pte Bowles. I told him to carry out the deal he had made with the accused. Pte Bowles and I went in to the kitchen and S/Sgt Green stayed in the lobby in behind the door of the washroom. I went to the rear of the kitchen and saw Pte Bowles go in a room which is used by the cooks and heard him say "Tom, get up". This was about 2345 hours. He came out and said that he could not wake him up. Pte Bowles and I went to where S/Sgt Green had hidden himself and told him that we could not wake him up. He said "Let's try once more". We took up our positions once again and Pte Bowles once again went to the cooks room and evidently succeeded in waking the accused up. The accused came out and I saw three packages of cigarettes passed from Pte Bowles to the accused. After a few

A. 27 minutes the accused got the keys and went to the larder. I followed them. A half moment later S/Sgt Green beckoned to me and I went in and took up my position alongside S/Sgt Green. I saw the accused hand over some eggs to Pte Bowles. We waited until Pte Bowles came out the mess hall and stopped him and asked him what he was doing with the eggs. I asked the accused what was going on and he said "Noth'ng". I told him he had better come w'th me. I took him back in and then to the guard room.

Q. 28 What time was the arrest made?
A. 28 At 0015 hours.

Q. 29 Where were you when the eggs were passed to Pte Bowles?
A. 29 Immediately alongside S/Sgt Green.

Q. 30 Where was S/Sgt Green?
A. 30 Just outside the larder. The lights were on in the larder.

Cross Examination by the Defending Officer

Q. 31 You were where?
A. 31 Just near the door of the larder.

Q. 32 Where were the cigarettes passed over?
A. 32 There was a stove in the kitchen and the two of them stood by the stove for a few minutes and the cigarettes were passed over then.

Q. 33 Did the accused put them in his pocket?
A. 33 No, he walked over to the cooks room and put them on a table.

Q. 34 Where did he put them?
A. 34 In the cooks room on a table.

Q. 35 Did you see Pte Bowles give these cigarettes to the accused?
A. 35 Yes, sir.

Q. 36 Would you recognize the cigarettes again?
A. 36 I would recognize similar cigarettes.

Q. 37 You did not mark them?
A. 37 No, sir.

Q. 38 What kind were they?
A. 38 Macdonald's Scotch Blends.

Q. 39 They were marked in no way?
A. 39 No, sir. There were three packages handed over.

Q. 40 You say that Pte Bowles was on his way out the door when you stopped him?
A. 40 Yes, sir.

Q. 41 Which door?
A. 41 The door leading outside.

Q. 42 Did he get outside?
A. 42 He was just stepping outside.

Q. 43 The door was open?
A. 43 Yes, sir.

Q. 44 Did he have any eggs in his hands?
A. 44 Yes, sir. I don't know how many. All I know is that there were 13 eggs in his hands and sweater pockets.

Q. 45 You took the eggs from him?
A. 45 S/Sgt Green took the eggs and I placed the accused in custody.

Q. 46 Was there anybody else there when these cigarettes were passed over?

A. 46 There was another person there but I doubt whether he saw any cigarettes turned over. He had his back towards the two of them.

Q. 47 Who was he?
A. 47 Pte Belanger, a cook in the men's kitchen.

No re-examination.

By the Judge Advocate

Q. 48 There was something said about the accused being asleep. Where?
A. 48 On the table. I didn't see him but was just told that he was asleep.

Q. 49 Is that customary for the night cook to sleep there?
A. 49 No, sir.

Q. 50 The table is in which room?
A. 50 The cook's room.

Q. 51 Is that a bed room?
A. 51 No, sir, there is just a table and a couple of chairs in it.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

Plan, not drawn to scale, of Men's Mess, produced to the Court, marked Exhibit "B", signed by the President and attached to the Court.

3rd Witness, B8493 Pte Bowles, G., 11 Cdn Inf Bde Wksp RCOC, having been duly sworn is examined by the Prosecutor:

Q. 52 What is your duty in the unit?
A. 52 I am a fitter.

Q. 53 Will you tell the Court what happened on the night of 27 May and the early morning of 28 May?
A. 53 On the evening of 27 May at 1830 hours, I was called by S/Sgt Green and ordered by him to shadow the accused for 12 hours and I was to tell S/Sgt Green any movements of the accused. I went to work and returned from the shops at 2100 hours and after being in the hut for a few minutes, I took some cigarettes out of my cupboard and emptied them out of the carton. There were about 175 cigarettes in the carton. I threw the carton away and the accused beckoned for me to come over to him and he asked me whether I wanted to make a deal for cigarettes in exchange for eggs. He said "If you do, come over to the kitchen after lights and don't forget". After this I went up to SM Allan's room and reported to him what had happened. He instructed me to stay there for a few minutes and then went and got S/Sgt Green and Cpl Hutschka. From there we went to the kitchen, S/Sgt Green going to the lavatory and SM Allan any I going to the mess hall. I went in the cooks' room to wake the accused up but did not succeed. I went out to see what I was supposed to do. S/Sgt Green decided we should try again so I again went in the cooks' room, S/Sgt Green to the washroom and SM Allan went to the coal bin. I finally woke the accused up and told him I was there for the eggs. He got up in a few minutes and stood by the stove for a few minutes and there I gave him the cigarettes which were three packages of Macdonald's cigarettes. The accused put them in the kitchen behind a little box on the table and then we went to the storeroom where he gave me some eggs. I came out of the storeroom and was met by S/Sgt Green and SM Allan. They asked me what I had in my pockets and found the eggs. They asked the accused what was going on and he said "Nothing". They then put him under arrest.

Q. 54 Do you recognize these cigarettes?
A. 54 Yes, sir, those are the cigarettes the accused gave me.

Q. 55 At what time was the accused arrested?
A. 55 At 0015 hours on the 28 May.

Q. 56 When did you, S/Sgt Green and SM Allen go to the kitchen?
A. 56 About 2345 hours.

Cross Examination by the Defending Officer

Q. 57 Was anyone in the hut when this conversation took place?
A. 57 Yes, sir, there were three men there.

Q. 58 Did they hear what was said?
A. 58 No, sir, I don't think they did for one of them asked me what the accused was talking about.

Q. 59 How many eggs did you expect to get?
A. 59 A dozen.

Q. 60 How many cigarettes did he want?
A. 60 He said three packages.

Q. 61 Did he say that or did you suggest that many?
A. 61 He said bring three packages over to the kitchen.

Q. 62 You did not say anything about "Could you get me something to eat?"?
A. 62 No, sir, I did not.

Q. 63 Where were you when they took the eggs from you?
A. 63 Just coming out of the storeroom door.

Q. 64 Where did you have the eggs?
A. 64 In my sweater pockets and three in my hands.

Q. 65 They stopped you just as you were coming out of the storeroom door?
A. 65 Yes, sir.

Q. 66 You are certain of that?
A. 66 Yes, sir.

Q. 67 Where was the accused?
A. 67 He was in the storeroom just turning the lights out.

Q. 68 While he was in the storeroom with you did he say anything?
A. 68 He told me to be careful.

Q. 69 Did he say anything else?
A. 69 No, sir.

Q. 70 I imagine there would be a little more conversation than this?
A. 70 No, sir, there wasn't. Just what I have said about him telling me that I should be careful.

Q. 71 Would you recognize the eggs if you saw them?
A. 71 Yes, sir, they had an "Eire" stamp on them.

Re-examination by the Prosecutor

Q. 72 When you got the eggs and came out of the storeroom, how far did you go before being stopped?
A. 72 About three paces.

Q. 73 Then what happened?
A. 73 S/Sgt Green and SM Allan came over and stopped me.

By the Judge Advocate

Q. 74 Were you far from the door leading outside?

A. 74 About half way there from the larder.

Q. 75 Where was it decided that you were to get a dozen eggs for the three packages of cigarettes?
A. 75 In the hut beside the accused's bed.

Q. 76 What did he say?
A. 76 He said to me "Do you want to make a deal for some eggs?" I did not say anything then and then he said "If you do, come to the kitchen after lights out and I will give you a dozen eggs".

Q. 77 How did it happen that there were 13 eggs?
A. 77 I don't know, sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

4th Witness, D21514 Pte Belanger, G., 11 Cdn Inf Bde Wksp, RCOC, having been duly sworn is examined by the Prosecutor:

Q. 78 What is your employment in the unit?
A. 78 I am a cook.

Q. 79 In which mess?
A. 79 The men's mess.

Q. 80 Will you tell the Court what happened on the night of 27 May and the early morning of 28 May?
A. 80 The night of 27 May, I came to the kitchen about 6 o'clock had supper and helped Cpl Rutschka to serve supper because he was alone. After supper I helped him to clean up the table and Cpl Rutschka told me to remain in the kitchen until the accused came back. The accused came in the kitchen about 9 o'clock and he said that he would serve the supper to the men.

Q. 81 What time was this?
A. 81 About 9.15.

Q. 82 Then what did you do?
A. 82 I went back to the NAAFI to write letters.

Q. 83 After that what did you do?
A. 83 I came back because the Salvation Army was closing. I went to the kitchen and the accused asked me if I would feed the guards.

Q. 84 What time were the guards to be fed?
A. 84 1015 o'clock.

Q. 85 The accused was in the kitchen at that time?
A. 85 Yes, sir.

Q. 86 Did you feed the guards?
A. 86 Yes, I fed the guard.

Q. 87 What time was it when you had fed the guards?
A. 87 About 1030.

Q. 88 What happened after 10.30?
A. 88 I wanted to cut my liver for breakfast and I came in the pantry and see a crate of eggs all mixed up. At 2330 I came back and made myself a cup of tea. At about 2345 I saw Pte Bowles come in the kitchen.

Q. 89 Where did he come in?
A. 89 At the side door.

Q. 90 Which door is that?
A. 90 The door at the back entrance.

Q. 91 Which room is right inside?
A. 91 The cooks' room.

Q. 92 Where was the accused then?
A. 92 Sleeping on the table in the cooks' room. I heard Pte Bowles try to wake him. He did not wake him up and after a while he came back.

Q. 93 After he came back what happened?
A. 93 This time he woke up the accused and I see them go to the storeroom. About 5 minutes later I saw SM Allan and a few minutes later the accused came back and the SM was with him and a few minutes later they came back to the kitchen and the SM say to me "You take care of these". They were eggs.

Q. 94 What did you do with them?
A. 94 I put them in the pantry.

Q. 95 What time did you see SM Allan and the accused come back in the kitchen?
A. 95 About 12.15.

Q. 96 What time did you see Pte Bowles try to wake the accused?
A. 96 About 2345 hours.

Q. 97 What time did Pte Bowles try to wake the accused the second time?
A. 97 About 5 past 12.

Cross Examination by the Defending Officer

Q. 98 What did the accused do when he woke up?
A. 98 He woke up and came and got the keys.

Q. 99 Where were you at this time?
A. 99 I was having a cup of tea.

Q. 100 Where?
A. 100 Near the stove.

Q. 101 How far away from the stove?
A. 101 About 10 feet from where he was sleeping.

Q. 102 Did you see Pte Bowles wake the accused up?
A. 102 No, sir.

Q. 103 Did you see the accused get up?
A. 103 No, sir.

Q. 104 The first thing you saw him do was get the keys?
A. 104 Yes, sir.

Q. 105 From there where did the accused go?
A. 105 He went to the back with Pte Bowles.

Q. 106 He did not do anything else?
A. 106 No, sir.

Re-examination by the Prosecutor

Q. 107 When he took the keys he went to the back. What did you mean by that?
A. 107 He went to the storeroom.

By the Judge Advocate

Q. 108 You say you were in the same room where the accused was sleeping?
A. 108 No, sir, I was not in the same room.

Q. 109 When Pte Bowles first came to awaken the accused where was he?

A. 109 He was on the table sleeping.

Q. 110 In the same room as you?
A. 110 No, sir.

Q. 111 Where?
A. 111 In the cook's room.

Q. 112 When he got up, where did he go?
A. 112 He came in and stood near the stove.

Q. 113 In the cooks' room?
A. 113 No, sir, in the kitchen.

Q. 114 Did you hear any conversation with Pte Bowles and the accused?
A. 114 No, sir.

Q. 115 Any talk or anything?
A. 115 I heard some talk but I couldn't understand what they were saying.

Q. 116 That is all you heard?
A. 116 Yes, sir.

Q. 117 Did you hear them say anyth'ng about cigarettes?
A. 117 No, sir.

Q. 118 Anything about eggs?
A. 118 No, sir.

Q. 119 They had no conversation about eggs?
A. 119 No, sir, the first time I saw the eggs was when S/Sgt Green came and gave me the eggs and he had cigarettes in his hands.

Q. 120 Did you see S/Sgt Green pick these cigarettes up or where he got them?
A. 120 No, sir.

Q. 121 Did you see S/Sgt Green in the kitchen before this?
A. 121 No, sir.

Q. 122 Were you in the kitchen all the time?
A. 122 Yes, sir. The only one I saw in the kitchen was SM Allan.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

5th W'tness, M28175 Cpl Rutschka, J., 11 Cdn Inf Bde Wksp RCOC, having been duly sworn is examined by the Prosecutor:

Q. 123 What is your position in the unit?
A. 123 I am Cpl cook.

Q. 124 Can you tell the Court what happened on the night of 27 May?
A. 124 Late in the afternoon on 27 May I had an order, given by Capt Schrad, A.L. to check the rations that night before I went off duty. I checked the rations about 7 o'clock.

Q. 125 How many eggs did you have on hand?
A. 125 A half case and two complete layers in the other half.

Q. 126 Where were the eggs?
A. 126 In the larder.

Q. 127 Whereabouts in the larder?
A. 127 On the floor under the shelf.

Q. 128 Did you again go and check eggs that evening?
A. 128 I checked them again about 10.45 o'clock and found three dozen missing.

Q. 129 They were missing sometime between 1900 and 2245 hours?
A. 129 Yes, sir. I proceeded to the sgts' quarters and reported to them that the eggs were missing. I waited around and S/Sgt Green came in about 11.15 and went to SM Allan's room and we made arrangements as to what we were going to do that night. They went down to the kitchen and I stayed in the Sgts' quarters. I remained there until S/Sgt Green came back and said they had arrested the accused.

Q. 130 Did you check your rations when you went back to the kitchen again the following morning?
A. 130 No, sir.

Q. 131 You knew there were three dozen eggs short at 10.45?
A. 131 Yes, sir.

Cross Examination by the Defending Officer

Q. 132 Does anyone ever get anything to eat out of hours in the kitchen?
A. 132 No, sir.

Q. 133 Do the cooks ever have anything to eat out of hours?
A. 133 Yes, sometimes.

Q. 134 You never give anything to anyone who comes in the kitchen out of hours?
A. 134 No, sir.

Q. 135 Did you ever see anyone hand anything out?
A. 135 Not while I was around.

Q. 136 Do you ever take any food out of the mess?
A. 136 No, sir.

Q. 137 Do you remember taking two sandwiches out to your girl friend one day?
A. 137 No, sir.

Q. 138 You are quite sure of that?
A. 138 Yes, sir.

No re-examination.

By the Judge Advocate

Q. 139 When you reported to the sgts' mess, was Pte Bowles there?
A. 139 Yes, sir.

Q. 140 You spoke of some arrangements which they were going to do. What were these arrangements?
A. 140 They were going to go back to the kitchen to see what was going on.

Q. 141 What did they say they were going to do?
A. 141 They were just talking amongst themselves about this deal which the accused had offered to Pte Bowles and if possible to see what was going to take place.

Q. 142 What did Pte Bowles say that offer was?
A. 142 That the accused had offered him a dozen eggs for 3 packages of cigarettes.

Q. 143 When was the last time you saw Pte Belanger that night?
A. 143 At about 9.15 in the evening of 27 May.

Q. 144 At no time later than that?
A. 144 I saw him again around 10.15 but had no conversation with him.

Q. 145 What did you do then?
A. 145 I went back to check rations then.

Q. 146 You did not go back in the kitchen until what time?
A. 146 Until about 10.45.

Q. 147 These eggs were a part of the egg ration?
A. 147 Yes, sir, from NAAFI.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The Prosecution is closed.

The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination or that he may if he wishes, make an unsworn statement upon which he cannot be cross examined.

President to accused

Q. 148 Do you apply to give evidence yourself as a witness?
A. 148 Yes, sir.

Q. 149 Do you intend to call any other witness in your defence?
A. 149 Yes, sir.

Q. 150 Are they witnesses as to character only?
A. 150 Witnesses as to character and facts.

D E F E N C E

The Defending Officer declines to make an opening address.

1st Witness, M37138 Pte Davis, T.R., 11 Cdn Inf Bde Wksp RCOC, having been duly sworn is examined by the Defending Officer:

Q. 151 Will you tell the Court your story of this affair?
A. 151 On the 27 day of May at about 9 o'clock at night, I came to the hut where I was sleeping and changed clothes to prepare for the night shift in the kitchen when Pte Bowles approached me and asked me if there was any chance of me getting him something to eat. I said "I am getting tired of feeding you fellows out of hours, why don't you bother the Cpl cook for a change?". He said that he had been late for supper and had not had very much so I said "You come up and I will see if I can find you something". At about 1130 hours I was on table resting as there was not very much doing. I was preparing to make some cup cakes for the following noon and when Pte Bowles came up to wake me, I ignored him thinking he might go away. In about five minutes he came back and I thought I might just as well get up. He asked me what the chances were of getting something to eat. He threw some cigarettes on the table. I never touched them. I said "Give me a hand to carry some stuff to the kitchen from the storeroom and I will see what I can do for you". I stood by the range to warm up a bit, for three or four minutes and then went to the storeroom and said to him "Carry some eggs to the front end of the kitchen and I will take the liver". I told him to be careful and not to drop them. I intended to use them for the cup cakes. He put the eggs in his sweater pockets and had some in his hands when SM Allan and S/Sgt Green walked in. They asked me what was going on and I said "Nothing". That is a very common expression of mine and use it quite frequently and then they placed me under close arrest.

Cross Examination by the Prosecutor

Q. 152 Your night shift starts at what time?
A. 152 Any time after 6 o'clock. We make arrangements among ourselves.

Q. 153 What time did you arrive there this night?
A. 153 About 9.

Q. 154 That was the first you were in the kitchen?
A. 154 Yes, sir.

Q. 155 Who told you to make cup cakes that night?
A. 155 No one. The Cpl cook leaves it pretty well to the night cook to make pastries.

Q. 156 Did anyone see these cigarettes thrown to you?
A. 156 No, sir.

Q. 157 Were the cigarettes tossed on the table?
A. 157 Yes, sir.

Q. 158 Where was the liver?
A. 158 In the storeroom.

Q. 159 Whereabouts?
A. 159 On the meat block.

Q. 160 Where is this meat block?
A. 160 Right in front of the window.

Q. 161 Did you pick up any liver?
A. 161 No, sir, I did not have a chance to.

Q. 162 Could you identify the cigarettes which were thrown to you?
A. 162 No, sir.

Q. 163 Howmany packages were there?
A. 163 There were three packages thrown to me.

Q. 164 Was there anyone in the hut when you had this conversation with Pte Bowles who might have heard any of the conversation?
A. 164 I could not say.

Q. 165 You did not see anyone in the room?
A. 165 No, sir, but there may have some in there. I wasn't paying any attention to anyone.

Q. 166 Where is your bed in the hut?
A. 166 It is the second bed from the centre of the hut.

Q. 167 How long had you been in there when Pte Bowles came in?
A. 167 About 10 minutes.

Q. 168 You were in the room at least 10 minutes?
A. 168 Around that.

Q. 169 You did not see anyone come or go from that hut?
A. 169 There might have been someone but I was not paying any attention.

Q. 170 Did you see anyone walking around in the hut?
A. 170 I never paid any attention to anyone.

Q. 171 About what time did Pte Bowles come in and see you in the kitchen?
A. 171 Somewhere around 11.30.

Q. 172 You admit giving the eggs to Pte Bowles?
A. 172 Yes, sir, but only to carry them for me.

Q. 173 What were you going to do with these eggs?
A. 173 I was going to make cup cakes.

Q. 174 What are cup cakes?
A. 174 Small cakes something like bran muffins.

Q. 175 That afternoon was the day when the rations came in for the next few days?
A. 175 I don't know, I wasn't there in the afternoon.

Q. 176 You knew though that the rations had come in that afternoon?
A. 176 Yes, sir.

No re-examination.

By the Judge Advocate

Q. 177 What did the men have for supper that night?
A. 177 I don't know, I wasnot there.

Q. 178 What time was the fires in the stoves allowed to go out?
A. 178 There is always a fire in the stove. Sometimes we let one fire go out but we always keep one going to heat water and so on.

Q. 179 Did you give Pte Bowles a dish to carry the eggs?
A. 179 No, sir.

Q. 180 Where did he put them?
A. 180 In his sweater pockets and he had some in his hands.

Q. 181 Was there no dish around?
A. 181 No, sir, not in the larder. There was in the kitchen.

Q. 182 How many cup cakes were you going to make?
A. 182 I was going to make two for each man.

Q. 183 Had you ever made them before?
A. 183 Yes, sir.

Q. 184 Did you use eggs in them?
A. 184 Yes, sir, 15 eggs, 2 pounds of butter and 4 pounds of sugar.

Q. 185 You heard the evidence of Cpl Rutschka about missing some eggs that night. Do you know anything about that?
A. 185 No, sir.

Q. 186 Who has the keys to the room where the eggs are kept?
A. 186 The night cook has the key.

Q. 187 You took the keys over that night at what time?
A. 187 At 9 o'clock.

Q. 188 Who gave them to you?
A. 188 No one gave them to me. They are on a post hanging in the kitchen.

Q. 189 Are they in full view of anyone who comes in there?
A. 189 Yes, sir.

Q. 190 There are quite often men in there for midnight snacks?
A. 190 Yes, sir, they might easily see me get the keys.

Q. 191 Where were you when SM Allan asked you what was going on?
A. 191 In the storeroom.

Q. 192 Right inside?
A. 192 Yes, sir.

Q. 193 Did you see Pte Bowles emptying cigarettes on his bed in the hut?
A. 193 No, sir.

Q. 194 He says that you beckoned for you to come over. Is that true?
A. 194 No, sir.

Q. 195 What was he doing on his bed?
A. 195 He was just sitting on his bed looking stupid.

Q. 196 You mean he was hungry?
A. 196 No, he was a detective for the night and was possibly laying his plans.

Q. 197 Did you have any cigarettes on the 27 May?
A. 197 About two days previous, I had purchased 400 cigarettes from the unit stores. They were American cigarettes.

Q. 198 From whom?
A. 198 From Sgt Lavalle who works in the office.

Q. 199 Did you have these 400 cigarettes in your possession that night?
A. 199 I had them in my hut.

Q. 200 At what time do you finish work in the morning?
A. 200 That depends on the morning shift. They usually come in around 7.

Q. 201 You were going to make the cup cakes on your own?
A. 201 Yes, sir, the Cpl usually leaves that to me.

Q. 202 Is there a different cook on duty in the day time?
A. 202 Yes, sir.

Q. 203 The night cook usually cooks cup cakes and pastry?
A. 203 Yes, sir, he has not the amount of work the day cooks have.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

2nd Witness, H203 L/Sgt Beeston, J., 2 Cdn Armd Regt (LdSH), having been duly sworn is examined by the Defending Officer:

Q. 204 Do you know one M37138 Pte Thomas Ray Davis?
A. 204 I do, sir.

Q. 205 Is he here this afternoon?
A. 205 Yes, sir. (Points to accused).

Q. 206 Will you tell the Court of your relationship with him in the past?
A. 206 For several months the 11 Cdn Inf Bde Wksp was attached to our kitchen for feeding. A short while ago they established their own kitchen. During the time they were attached to us, I had no cause for complaint about the accused. He always did his work well.

Q. 207 Do you know where their kitchen is now?
A. 207 Yes, sir, in the far end of the building where our kitchen is.

Q. 208 You had a joint kitchen before but now they are separate?
A. 208 Yes, sir.

Q. 209 Where is their storeroom?
A. 209 Just adjoining the kitchen.

Q. 210 About how far is it from where they do their cooking is the storeroom?
A. 210 About 70 feet.

Q. 211 What is the custom in the cookhouse of feeding men after hours?
A. 211 Well that is usually left up to the discretion of who ever is in charge of the kitchen. If a man comes in late or if he misses his supper or something of that nature we give him something to eat. Sometimes late at night when we are ahead on our rations we give the late comers a sandwich. When the two kitchens were together we had to stop the late lunches though for there was always too much arguing but since the kitchens are now separate we have again started. We usually give them a sandwich or something.

Q. 212 Even where the man has had his supper?
A. 212 Absolutely.

Q. 213 What is the practice when the men get parcels from home?
A. 213 Usually when they get parcels from home, the men like to have a loaf of bread to make sandwiches in their rooms.

Q. 214 Is it a custom for the men when they get these lunches to sometimes give you something in return.
A. 214 Yes, it is quite customary for them to return a favour and quite often they give us something. They sometimes give us cigarettes of their own accord.

Q. 215 Did you ever have any reason to suspect the accused of stealing rations?
A. 215 No, sir, I was responsible for the rations and had no occasion whatsoever.

Cross Examination by the Prosecutor

Q. 216 Have you anything to do with the Ordnance kitchen?
A. 216 No, sir.

Q. 217 The kitchens have been separate for about 6 weeks?
A. 217 Yes, sir.

Q. 218 You have nothing whatsoever to do with running the Ordnance kitchen?
A. 218 No, sir.

Q. 219 You mention that you sometimes gave lunches to the men. Did you mean men of your own regiment?
A. 219 Yes, sir. I have seen the Ordnance cooks do this as well after they started their separated kitchen.

Q. 220 When the two kitchens were together you sometimes gave lunches to both your men and our men?
A. 220 Yes, but we had to put a stop to it for when we refused some men they became very insulting.

Q. 221 Since the kitchens have separated you have started this practice again?
A. 221 Yes, sir.

No re-examination.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

3rd Witness, H3, A/L/Cpl McCalder, D.R., 2 Cdn Armd Regt (LdSH), having been duly sworn is examined by the Defending Officer:

Q. 222 What is your job in the unit?
A. 222 I am a cook.

Q. 223 Do you know the accused?
A. 223 Yes, sir. (Points to accused)

Q. 224 Can you tell us if you ever have had any dealings with him?
A. 224 I worked with him.

Q. 225 Can you tell the Court anything about his work?
A. 225 He is a willing, efficient worker and does a good job.

Q. 226 Did you ever have any occasion to suspect him of stealing your rations?
A. 226 No, sir.

Q. 227 Is it possible for men to get something to eat after hours in your kitchen?
A. 227 Yes, sir, but we tried to discourage it as much as possible but quite often we would give them sandwiches or whatever we had on hand.

Q. 228 If they had parcels from home, would you give them anything?
A. 228 Yes, sir, we used to give them a loaf of bread or something like that.

Q. 229 You were working with the accused in the kitchen for some time?
A. 229 Yes, sir.

Cross Examination by the Prosecutor

Q. 230 Were you giving rations to just your men or to both your men and the Ordnance men?
A. 230 Mostly to our boys but sometimes we would give lunches to both.

No re-examination.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

4th Witness, Leonard Dyer, Police Constable, Maresfield, having been duly sworn is examined by the Defending Officer.

Q. 231 Do you know M37138 Pte Thomas Ray Davis?
A. 231 Yes, sir. (Points to accused).

Q. 232 Can you tell the Court anything about the accused?
A. 232 When I first came to know the accused he was in the Provost Corps and I never found anything wrong with him. I never saw him try to get rid of any rations. I also knew him when he transferred from the Provost.

Q. 233 How long have you known him?
A. 233 Ever so many months. I could not say exactly.

Q. 234 Do you know of him offering rations to anyone?
A. 234 No, sir.

Q. 235 Would you hear of anything like that?
A. 235 Yes, we work with the Security police in cases like this.

Cross Examination by the Prosecutor

Q. 236 What sort of dealings have you had with the accused?
A. 236 He was on Provost duty at Maresfield at times when I was on duty. He would stop the Army vehicles and I would stop the civilian cars on gasless days.

Q. 237 Is there another town close to Maresfield?
A. 237 Yes, Uckfield.

Q. 238 Would it be possible that these rations could be taken to Uckfield without you knowing?
A. 238 I guess it would but I have never seen him carrying a parcel coming from camp.

Q. 239 You are not there at all times?
A. 239 No, sir.

Q. 240 Is there another policeman around there?
A. 240 Yes, sir, there is another policeman stationed in the next village.

Q. 241 You acquaintanceship has been periodic?
A. 241 Yes, sir, More so when he was in the provost and used to patrol in that area.

Q. 242 Has he ever been to your house?
A. 242 No, sir.

Q. 243 So far as your dealing were with the accused, they were only as to his provost duties?

A. 243 Yes, sir. I met him only once since he transferred.

Q. 244 You are familiar with the accused's movements all the time?
A. 244 No, sir.

Re-examination by the Defending Officer

Q. 245 I believe you told the Court that you were only familiar with the accused while he was on duty. Were there no other times?
A. 245 Yes, I have met him in the pub while not on duty. I met him the first time in the pub where some men were playing crib. That is how I got to know him.

Q. 246 You have seen him in the pub since then?
A. 246 Yes, sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The Defence is closed.

The closing address of the Defending Officer is recorded on a separate sheet, marked "X" and attached to the proceedings.

The closing address of the Prosecutor is recorded on a separate sheet, marked "Y" and attached to the proceedings.

The closing address of the Judge Advocate is recorded on a separate sheet, marked "Z" and attached to the proceedings.

The Court is now closed to consider the finding.

The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' on the second and third charge are pronounced.

Statement of Character and Service and Field Conduct Sheet signed in the manner required by A.A. 163(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, signed by the President and attached to the proceedings.

President to accused

Q. 247 Do you wish to address the Court on the Statements of Character Service and Conduct and in mitigation of punishment?
A. 247 Yes, sir.

The Defending Officer makes the following plea in mitigation of punishment:

"The evidence has brought out the fact that there was a practice which went on in that kitchen of giving out food after hours and unfortunately the accused has been found guilty of giving out food and in turn receiving a gift from one of the men. He saw fit to hand over Army rations and in return received a gift of cigarettes. The Court has seen fit to consider that an offence. The evidence discloses that this practice was also carried on by people with authority in kitchens.

I think for an error of this kind, he should not be punished too severely. I would say that any cook who gives a lunch and in return receives a favour or gift, or a QM who does a favour for a man and in return receives a gift, all are guilty of an offence of a fraudulent nature."

The Court is now closed for consideration of sentence.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 4th day of June, 1943.

Judge Advocate Captain

"X" Gunn.

ADDRESS BY THE DEFENDING OFFICER

It is my opinion that the defence have put forward a plausible explanation of what happened in this case on the night of 27 May. We have in this case a man who is commonly called a "stool pigeon" who tried to set a trap to catch one particular cook.. The only reason they had for setting this trap is that rations were missing and in fact on this very night three dozen eggs were missing between the hours of 7 and 11. The accused was there between the hours of 9 and 11 and it could have been quite possible that the other cook or for that matter, anyone could have taken those keys and stole those three dozen eggs, yet the SM picked on this man to be shadowed.

So far as the cigarettes are concerned, the accused stoutly denies it. He denies making the arrangement mentioned and one question you will have to ask yourselves is "Why were all these people hovering around?". The length of that kitchen is approximately 75 feet and it is quite likely that he could give Pte Bowles these eggs to carry to the kitchen and then to possibly fry him up a couple of eggs as a favour. I hardly think that any intelligent person, who was formerly a provost, would let a dozen eggs go for three packages of cigarettes when he could get at least three or four shillings from civilians. The amount is also quite small.

Another point I note in the evidence. It seems that it is more or less hearsay where he was arrested. One of them claims that he was stopped just as he was coming from the storeroom door, while another stated that he was well outside. Pte Belanger was within 10 feet of the accused when he was awakened and the final time the accused sat up and took notice, picked up the keys and went to the storeroom and all this while nothing was said about cigarettes. Another witness tries to show that they were handed to the accused and were in his possession. Therefore it is my contention that the accused is being charged with an offence which has become a common practice in this kitchen. It has not been proved that the eggs were sold and as one of the witnesses for the defence has said it was quite frequently that they received cigarettes for favours done. It was also pointed out that all late comers were given food.

Now for the technical side of this case. I do not think the trap was laid the way it should have been for it was they would have marked the cigarettes so that they could later have identified them. My contention is that they thought it was just a possibility and there was an excellent opportunity for them to catch someone. If they had anticipated an ending such as this, why were the cigarettes not marked. We have evidence that the cigarettes were put on the table and yet nothing has been said that the accused had them in his possession.

The same remarks apply to the second charge because the necessary ingredients of the offence are, in fact, the same. I feel that all the technical points have been brought out to answer the charge of theft.

The third charge is difinitely not right for he is charged with being in possession of eggs. That is absurd. It could hardly be said that he was in improper possession.

I feel that when you review this evidence and find any reasonable doubt, the decision must be resolved in the favour of the accused for it has been said that it is better for 99 guilty men to go free than for one innocent to be convicted.

"Y"

ADDRESS BY THE PROSECUTOR

The Defending Officer says that the evidence does not disclose any proof that cigarettes were handed to the accused. Pte Bowles in his evidence says they were and this is further substantiated by SM Allan in his evidence. That makes two who actually saw the cigarettes given.

Is it not reasonable to suppose that S/Sgt Green and SM Allan, who were two senior NCOs, would hear that rations were missing and they actually told their CO and it is also reasonable to suppose that the accused who had been night cook for that week, might be suspected and therefore Pte Bowles was ordered to shadow him. How did they know rations were missing? They both said that they had been told by Cpl Rutschka and were sure the accused was mixed up in it. The trap was set. This is hardly the name for it for, even though Pte Bowles was ordered to shadow the accused, the accused made a trap for himself.

The fact that the cigarettes were not marked would also indicate that the two NCOs were not expecting any offer from the accused to drop into any plans which were made so hurriedly and a small point, although a good one, was overlooked.

"2"

ADDRESS BY THE JUDGE ADVOCATE

My function is chiefly to advise you on the matters of law which are involved in this case. Your duty is to deal with the facts of the case and you are the sole judges. You will take your own recollections of what you have heard in evidence and should I express any opinion as to the facts, you are entitled to disregard my opinion for it is not binding.

The first charge is under Sec 17 of the Army Act which reads as follows (reads). The points for you to consider there are whether or not the accused was concerned in the care of public property and it seems quite likely for he was the night cook. However, it is for you to decide whether the night cook is concerned in the care of rations. The other point you have to decide is whether he gave these eggs to Pte Bowles in exchange for cigarettes or otherwise, and if he did so whether he had any fraudulent intent. I would say that as a matter of law, if he did give rations in exchange for cigarettes, that would constitute fraudulent misapplication. That is applying property to other than what he was supposed to do. I would like to read to you para 35 on page 22 of MML, (reads). That, gentlemen, is the definition of fraudulent misapplication. That is the story with regard to this and it is for you to decide. The accused places himself at variance to the story given by Pte Bowles and it is for you to determine who is telling the truth from the circumstances and to determine whether the story which Bowles gives is correct or whether the accused's story is correct.

The second charge is an alternative one under Sec 18(4) of the Army Act. I would like to read to you the definition of theft (reads).

Then you have the third charge under Sec 40 which merely charges the accused as being in improper possession of the eggs.

In connection with alternative charges, the accused, if found guilty at all, can only be found guilty of one of these charges laid in the alternative. There is very little more I have to say apart from telling you that under British justice a man is innocent until proven guilty beyond a reasonable doubt--such a doubt as you would have in conducting your own personal affairs or military actions.

11 CANADIAN INFANTRY BRIGADE WORKSHOP

5 CANADIAN ARMOURED DIVISION

SUMMARY OF EVIDENCE

in the case of

M 37138 Pte. Davis, T.R.

FIRST WITNESS

B 19035 S/Sgt. Green, C.R., Regimental N.C.O.
11 Cdn Inf Bde Workshop having been duly sworn in, states:-

"For some time it has been brought to my attention that rations have been missing from the kitchen. I was ordered by Major R.G. Farrell, O.C. 11 Cdn Inf Bde Wkshop, to take steps to stop this if possible. After questioning different personnel of this Unit I had reason to believe that Pte. Davis, being employed as a cook in this Unit, was mixed up in this stealing. I set a trap for him as follows. I ordered Pte. Bowles to stand a twelve hour guard to watch Pte. Davis in every move he made during his tour of duty. At approximately 2330 hours, Pte. Bowles came to me and said, that he had been asked by Pte. Davis to trade him some eggs for cigarettes. I immediately started the plan which I had previously talked over with ASM. Allan. This occurred on 27 May 1943.

ASM. Allan and myself accompanied Pte. Bowles to the kitchen and arrived there at 2345 hours. I went through one door to the washroom adjoining the pantry so that I could keep watch on any movements he made and ASM. Allan accompanied Pte. Bowles to the men's mess room. After some few minutes, 2345 hours, Pte. Bowles failed to awaken Pte. Davis, who at that time was asleep on the table. We came outside the mess and decided to try again. This time, 2355 hours, Pte. Bowles was successfull in awakening Pte. Davis and accompanied him to the kitchen storeroom. Pte. Davis opened the door and proceeded into the room and took 13 eggs out of a case, which was under the shelf, and handed Pte. Bowles the eggs and who ~~in turn~~ ~~gave~~ Pte. Davis 3 packages of cigarettes. At that time I motioned to ASM. Allan, who was standing a few feet from him and together we made the arrest at 0015 hours."

B 19035 S/Sgt. Green, C.R.

The accused declined to cross examine the witness

SECOND WITNESS

A 21270 ASM. Allan, N., 11 Cdn Inf Bde Wkshop having been duly sworn in, states:-

"On the 27 May 43 I learned that rations had been missing over a period of days and on making enquiries around the Unit, Pte. Davis, being employed as a cook in this Unit, was suspected. So a trap was laid by myself and S/Sgt. Green and we picked Pte. Bowles to watch Pte. Davis on the night of 27 May 43. At 2330 hours Pte. Bowles came up to the Sgts' Quarters and stated to me that Pte. Davis had seen him emptying a carton of cigarettes on his bed and had approached him by saying give me three packages of cigarettes and I will give you a dozen eggs. I then told Pte. Bowles to stay in my room until I came back. I went over to the Sgts' mess looking for S/Sgt. Green.

P.T.O.

SECOND WITNESS (Continued)

I did not see him in the mess but on arrival back at my quarters found S/Sgt. Green together with Cpl. Rutschka in the hall-way of the Sgts'. Quarters S/Sgt. Green and Cpl. Rutschka entered my room and Pte. Bowles repeated his story. Cpl. Rutschka then said: "That is what I have come up to see you about, I checked my eggs in the storeroom before going off duty and I checked them again approximately a half hour ago and found three dozen eggs short." S/Sgt. Green and I then planned to carry out the pre-conceived trap. We then went to the kitchen, S/Sgt. Green entering and concealing himself in the washroom, and I went through the mess hall with Pte. Bowles and entered the coal bin. Then I saw Pte. Bowles go into the room which is used by the 11 Cdn Inf Bde Wkshop cooks. I could not see anything more but heard Pte. Bowles say "Come on Tom, wake up." After about ten minutes I saw Pte. Bowles leave the kitchen. I then went out the door and I met him as he came out. He then stated that he could not wake Pte Davis up. So Pte. Bowles and myself went round to the back of the kitchen and told S/Sgt. Green. We stayed there for about Five or ten minutes deciding what to do and decided to try again. Again entering the kitchen S/Sgt. Green concealed himself in the wash room and I in the coal bin. All the lights were on in the kitchen. Five minutes later Pte. Davis and Pte. Bowles came out of the cooks' room and entered the kitchen where I could see them. They talked for a couple of minutes and then I saw Pte. Bowles put his hand in his sweather pocket and pass over to Pte. Davis three packages of MacDonalds cigarettes. Then after another one or two minutes Davis went over and got a key, what I thought was and which later proved correct the key to the storeroom and I followed them. Pte. Davis went into the storeroom using the key to the door and Pte. Bowles went inside with him. They left the door wide open and the lights on. I then went through the door into the lobby from which the storeroom leads off and saw Pte. Davis remove some eggs from a case under a shelf. We then waited until he had given the eggs to Pte. Bowles who started to put them in the pocket of his sweather and had some in his hands. We waited until Pte. Bowles made to leave the mess hall and go back to quarters when S/Sgt. Green and I stopped them the time was 0015 hours. I then turned around to Pte. Davis and asked him what was going on. He said "Nothing". I then placed Pte. Davis under close arrest and accompanied him to the guard room.

N. Allan

A 21270 ASM. Allan, N.

The accused declined to cross examine the witness.

11 CDN INFANTRY BDE W/SHOP

SUMMARY OF EVIDENCE

in the case of

M.37138 Pte. Davis T.R.

THIRD WITNESS

B.8493 Pte. Bowles G. 11 Cdn Infantry Bde W/Shop, having been duly sworn in, states:-

"On 27 May 45 at 1830 hrs. S/Sgt. Green ordered me to shadow Pte. Davis for 12 hours. I then went to work at the workshop and at 2100 hours returned to my hut. While there I took some cigarettes out of my cupboard. Pte. Davis was there near his bed and he called me over and asked me if I wanted to make a deal with cigarettes for 1 doz. eggs. He told me to come over to the kitchen after lights out. I then reported this to ASM Allen at his quarters. He told me to sit and wait for him in his room and I sat there for 20 minutes and he returned with S/Sgt. Green and Cpl. Rutschka and we then made our plans and proceeded to the kitchen at 2330 hrs. S/Sgt. Green went through the door in the washroom and ASM Allen and myself proceeded through the mess hall. I went to Pte. Davis in the cooks room to waken him but I couldn't wake him up, Pte. Belmmer was in the kitchen at this time. I then went out to see ASM Allen and then we went around and saw S/Sgt. Green and we decided to try again. So we returned to the kitchen S/Sgt. Green going into the washroom. I then woke Pte. Davis up and told him I was there for the eggs that he promised to get. We stayed by the fire for two minutes and I gave him the cigarettes, exhibit "A". He then got the key and we went to the storeroom. He handed me thirteen eggs, exhibit "B", from the box that was sitting on the floor. Then I proceeded to come out of the storeroom when I was met by ASM Allen and S/Sgt. Green, who took the eggs away from me and Pte. Davis was led off to the guard room.

G Bowles Pte

.....

B.8493 Pte. Bowles G.

The packets of cigarettes referred to by the witness and marked exhibit "A" and the eggs referred to by the witness and marked exhibit "B" were produced and identified by the witness as being same.

J.M. Harding Capt.

(J.M.Harding) Capt.

Officer taking Summary of Evidence

The accused cross-examined the witness asking:-

Q. Were you ever in the kitchen at any other night to get something to eat.

A. I was not unless I was on duty which was last Friday 21 May 45 when I worked until 2230 hrs. and was told that we could have tea if we went to the kitchen.

11 CDN INFANTRY BDE W/SHOP

SUMMARY OF EVIDENCE

in the case of

M.37138 Pte. Davis T.H.

FOURTH WITNESS

D.21514 Pte. Belanger G. 11 Cdn Infantry Bde W/Shop, having been duly sworn in, states:-

"On the evening 27 May 43 Cpl. Rutschka the Cpl. Cook and I were in the kitchen at 1800 hrs. Cpl. Rutschka asked me to remain and help Pte. Davis serve 12 men their supper at 2200 hrs. At 2215 hrs. Pte. Davis helped me to serve the meal and after that I went to the NAAFI to write some letters. I then went back to the kitchen at about 2300 hrs. to cut the meat for breakfast which was in the storeroom and as I entered the storeroom I saw a crate of eggs all mixed up. I immediately returned to the kitchen and asked Cpl. Rutschka if he had used any eggs that night. Cpl. Rutschka went to the storeroom to investigate and at this time I noticed Pte. Davis asleep on the table in the cooks room. When Cpl. Rutschka returned from the storeroom five minutes later he told me that there were three dozen eggs missing. He also told me to not wake Pte. Davis and he left the kitchen. At 2345 hrs. I saw Pte. Bowles come into the kitchen. Pte. Bowles did not talk to me but went straight to Pte. Davis and tried to waken him but he did not waken him and Pte. Bowles went out. Some time later he came in again and woke Pte. Davis and I saw Pte. Davis get off the table and walk over to the storeroom with the key in his hand. Five minutes later I saw A/W Allen pass through the kitchen to the pantry. Two minutes after that I saw Pte. Davis and A/W Allen coming back from the pantry and shortly after that S/Sgt. Green with a pan of eggs. S/Sgt. Green after searching there found three packages of cigarettes in the kitchen. He then gave me the eggs to keep with instruction not to let anyone touch them. The Sgt. Maj. and S/Sgt. Green and Pte. Bowles then left the kitchen about 0015 hrs.

G. Belanger

D.21514 Pte. Belanger G.

The accused declined to cross-examine the witness.

11 CDN INFANTRY BDE W/SHOP

SUMMARY OF EVIDENCE

IN THE CASE OF

M.37138 Pte. Davis T.R.

FIFTH WITNESS

M.28175 Cpl. Rutschka J. Cook, 11 Cdn Infantry Bde W/Shop having been duly sworn in, states:-

"When Pte. Belanger reported to me that the eggs had been mixed up on the night of 27 May -3 at 2300 hrs. I went to the pantry to investigate and found that three doz. eggs were missing. I went to the Sgts. Quarters to report the loss to S/Sgt. Green. He was not there at the moment so I had to wait for him, when he arrived, he and I walked down the hallway where we met A/S Allen, who took us to his room he then told us of the bargain that Pte. Davis had made with Pte. Bowles, we then proceeded to set the trap for Pte. Davis. When that was done the three of them left together and I stayed in the Sgts. Quarters till S/Sgt. Green came back again, after the arrest of Pte. Davishad been made, and then we both went up to the kitchen."

.....Cpl. Rutschka.
M.28175 Cpl. Rutschka J.

The accused declined to cross-examine the witness.

The accused was asked. "Do you wish to make any statement or to give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declined to make any statement or given evidence under oath.

I certify that the Rules of Procedure 4, have been complied with.

Taken by me In the Field in the presence and hearing of the accused.

Dated this 28th day of May, 1943.

J.N. Harding Capt.

(J.N. Harding) Capt.,
(Officer taking Summary of Evidence)

List of Exhibits referred to in Summary of Evidence in case of M.37138 Pte. Davis T.R., 11 Cdn Infantry Bde W/Shop RCOC

EXHIBIT "A"

3 Packages of MacDonald Scotch Blend Cigarettes.

EXHIBIT "B"

13 Eggs

(R.C.Farrell) Major
Officer Commanding
11 Cdn Infantry Bde W/Shop

List of Witnesses for prosecution and defense of M.37138 Pte. Davis T.R., 11 Cdn Infantry Bde W/Shop RCOC for trial by Court Martial.

Witnesses for Prosecution

ASM Allen M. WO I	11 Cdn Infantry Bde W/Shop Maresfield Camp, Sussex.
S/Sgt. Green C.R.	11 Cdn Infantry Bde W/Shop Maresfield Camp, Sussex.
Pte. Bowles G.	11 Cdn Infantry Bde W/Shop Maresfield Camp, Sussex.
Pte. Delanger G.	11 Cdn Infantry Bde W/Shop Maresfield Camp, Sussex.
Cpl. Rutschka J.	11 Cdn Infantry Bde W/Shop Maresfield Camp, Sussex.

Witnesses for Defense

NIL.

(R.C.Farrell) Major
Officer Commanding
11 Cdn Infantry Bde W/Shop

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I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court martial.

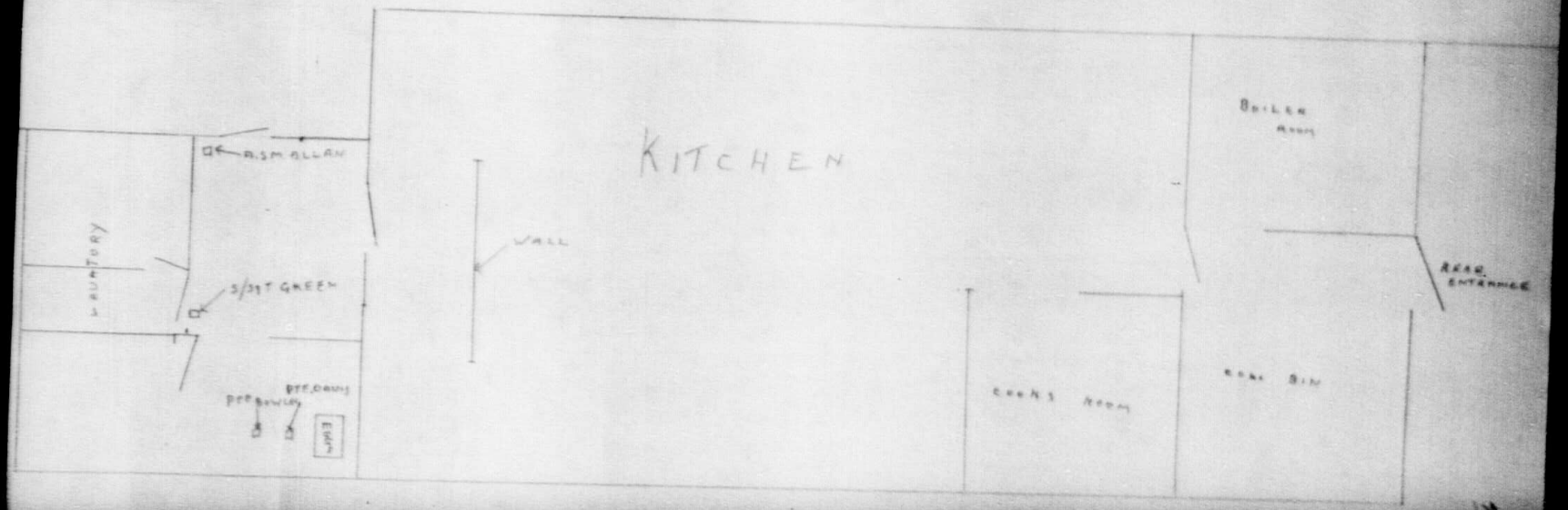
I desire the services of MAJOR D.D. GORDON-CARMICHEAL OF #1 CORU. OR IF NOT AVAILABLE CAPT F.O. CLASSY - 3rd CDN ARM'D RECCE REGT (G G H G)

if he is available.

T. R. Davis

M.37158 Pte. Davis T.R.

Exhibit "B"
[illegible] Major



WEEKLY A.F.V. RETURN. (CUN. ARM'D. UNITS ONLY.)

SHEET II.

Spares indents outstanding on Derby.

SECRET.

Unit.....

Date.....

This return (in duplicate) must accompany the Weekly A.F.V. Return when vehicles are reported unfit owing to undue delay (7 days) in receiving the necessary spares. It will be rendered with the main return direct to:

A.D.O.S. Formation.

Nil returns are NOT required.

Type of A.F.V. and W.D.No.	Unit Indent No. & date	To whom sent.	Derby Control No.	Parts outstanding.	Qty.	Part Nos.	Section Nos.

INCLUDE [illegible] OF A.F.O.R. NATURE ONLY

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No. M37138 Name Davis T.R. Sqn., Battery, or Company Corps Edm Regt. Date of enlistment March 25 1940 G.C. Badges A/Sgt. Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. A. Renton Capt. Character

M.F.M. 6 (A.F.B. 122) 8-39 (1703) 1772-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	31/8/40	L/Cpl	1	Sec. 19 Drunkeness	Cpl.Basely L/Cpl. Miller	Admonished& reduced to L/Cpl without pay		Capt. Creasay	
Aldershot	17/10/40	"		Sec. 15(2) Failing to appear at place of parade	L/Cpl.O'Neil Sgt. Williams	4 days pay 7 days C.B.	18/10/40	Capt. Creasay	
Aldershot	31/10/40	"		Sec. 15(2) Failing to appear at place of parade	Sgt. Hurrell	Reduced to Private	31/10/40	Capt. Creasay	
Aldershot	6/2/41	Pte.		Sec.ACD,163 Para 1845 leaving M/C unattended.	L/Cpl.Panlner L/Cpl. Jones	Admonished	8-2-41	Capt. Creasay	
Ashstead	13/8/41	"	1	WOAS. Conduct Pred of good order &Mil Discipline(Urinate in front of Dukes Head Public House, Leatherhead					

Continue next page

(F.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with title	By whom awarded	Remarks
					Sgt. Wallace Sgt. Inge L/Sgt. West L/S Neleam L/S Phupes Sgt. Rush	Reduced to rank of Pte.	14/9/41	Lieut. Cooper	
Field	4/5/42	L/Cpl.		A.W.L. From 2359 hrs. 4 May to 0630 hrs. 6 May Total (1day 6 hrs. 31 min.)	Sgt.Hockley Sgt.Lucker	Forf. 2 days pay & reverts	6 May 42	A.Renton Capt.	
					L/Cpl. Davis	to L/Cpl. WP F.n.I. 133			
Field	10/5/42	L/Cpl.		Neglect to obey Regt. DO Pt I 777 d/1/4/42, Rode Pillon without wearing a crash helmet AA Sec. 11.	RSM Ramage Pte. Whidden	Severe Rep.	26 May42	A.Renton Capt.	

Certified True Copy
.....
(W.C.Farrell) Major
Officer Commanding
11 Cdn Infantry Bde W/Shop

ARMY/RAAF B.296. 53

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M.37138	Pte.	DAVIS T.R.	11 Cdn Infantry Bde W/S RCOC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

† The conduct sheet(s) mentioned should be produced in court *with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec.19 Drunkeness 31/8/40	times	1 times.
For Sec.15(2) Failing to appear at place of parade	times	2 times.
For Sec.40 Prejudice of good order and Military discipline	times	2 times.
For Sec.15(1) A.W.L.	times	1 times.
Sec.11 Neglecting to obey Regt. DO.		1
For Sec. 24(1) Pawning public property entrusted to him	times	1 times.

Number of instances of gallantry or distinguished conduct, Nil

or

There are no entries in the conduct sheets of the accused. N/A

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence of~~ ~~Sec.17(2) Forfeiting pay&Pens beginning on the 26 day of May 1945~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and - 37 - days in military custody, making a total of - 37 - days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 40 Years

6. The date of his commission specified in his record of service attestation paper is N/A

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 Years

8. The accused is entitled to deferred pay or gratuity in respect of 3 Years service.

9. The accused is entitled to reckon 3 Years service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(or is in process of entitled to (state any military decoration received)~~.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (or corps or department) the rank of N/A dated

(17612) W1.A8642/7/M7 25,000 4/41 A.R.K.W. Ltd. Cp1.470

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Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M.37138 Rank Pte. Name Davis T.R. of 11 Cdn Inf, Bde W/S RCOC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~31~~ 4 day of ~~May~~ June 1943

R.G. Farrell.

(R.G.Farrell) Major
O.C. 11 Cdn Infantry Bde W/Shop RCOC

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years .....

In the rank of ..... years, ...

N/A

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be drawn through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

2 Q-48

Ft Davis T. R.

2nd SCHEDULE. 2m

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M 37138 Pte J. R. Davis.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA II.	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for Six (6) months.

(Sgd) ..... Judge-Advocate, if any. 3 May 45. Date awarded. (Sgd) Thomas Daugallroy President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed.

I ~~direct that the accused be not committed to prison on detention barracks until further orders~~. (1. AA 57A. Delete if not used.)

(Sgd) R. D. Lind Brig

Date 10 May 45. Commanding 3 CBR Gp Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr
M 37138 Pte Thomas Roy DAVIS, 9 CBR Bn.	MAY 11 1945	3

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 100. 56-48

FIELD GENERAL COURT-MARTIAL

CFA68 (To Hdqrs of AFA2) 40-P & S/1699 (45/9) 4/38B

Convened by Order of 3 Bde 9th Lind D.S.O. Com 3 Can Base Rft Gp dated 21 April 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or certified rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M37	Certified true copy of original proceedings herein.		Thomas Roy.	Davis	9 CBR Bn.

PROCEEDINGS OF TRIAL.

Prosecutor: Reviewed ..... Pte J.A.G. Rec'd

Defending Offr: Reviewed ..... Pte J.A.G. Rec'd

The Court was opened at ..... on (date(s)) 3 may 45.

RECORD FORM (A)—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.Z. MacDougall	9 CBR Bn.
Member	Capt	A.M. Forbes	9 CBR Bn.
Member	Lieut	J.W. Rennie	9 CBR Bn.
Judge-Advocate			
Prosecutor	Lieut	R.B. Hunt	9 CBR Bn.
Defending Offr	Lieut	J.D. Balfour	9 CBR Bn.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Col p 3.)

A8. The accused ..... before arraignment makes(s) (no) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed~~ and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 3 CBR 6 VOL 1 P 51

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 2. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No Sir.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E2 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A: initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.~~(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges (built was under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes" see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A), (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 13-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, Ba(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B. and Ex C. respectively.(3)
(*1. AFB 355 or AFB 296. 2. MFM 8. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes. Mitigation of Punishment.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 209, 2123, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(7), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, M-37138 Pte. Thomas Roy, DAVIS, X-4 List RCASC, on strength 9 C.B.R. Bn. a soldier of the Canadian Army Overseas, is charged with;

FIRST CHARGE
AA Sec 11

WHILE ON ACTIVE SERVICE, NEGLECTING TO OBEY COY ORDERS

in that he,

In the Field, in Belgium, at approx. 1450 hrs. on 12 April 1945, left Camp ~~carrying a Gas Cape with a blanket rolled inside same~~ contrary to 30 Coy, 9 CBR Bn, Daily Part 1 order dated 11 Apr 1945, directing that rfts will not leave camp between the hours of Reveille and 1600 hours daily except sunday.

(H.W. RICK) Lieut.-Col.
Commanding,
9 Bn. 3 C.B.R.G.

In the Field,
16 April 1945

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J S H Lind) Brig
Comd 3 Cdn Base Rft Gp

In the Field
21 Apr 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-37138	Pte		Thomas Roy	DAVIS	X-4List RCASC 9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Apr 45 endorsed by me, ~~(or by an offr of my staff for me)~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D C MacDOUGALL	CAC 9 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by 9 CBR Bn	
Capt or Lt	To be detailed by 9 CBR Bn	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by 9 CBR Bn	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 21 Apr 45

J S H Lind (Signed personally. RP 105 fn 2.) Brig (Rank.)

(J S H Lind)

Commanding 3 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 55 (In Lieu of AFA 2) 60-7-8 E/1697 (8148)

(See overleaf for oaths and notes for use on trial.)

D MacDougall 9 CBR prod.

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TÉMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jun 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA*. (*RP* 40 *fn* 10).), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 2, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(*E*), *KR Can* 563(*a*).)

(vii) Summing up by *JA, if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *JA, if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA, if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc*. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*ii*).)

(vi) Summary of Evidence, *if not already an exhibit*.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(6), *RP* 118(*C*), *MML p* 758.)

4. The President or *JA, if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S REPORT

I certify that No. M37138 Pte DAVIS T.R.

of 30 Coy 9 Bn 3 CBRG is in a good state of health,

and fit to undergo Trial by Court martial.

J.G.P.

Th. Palanek Capt
Medical Officer

Station In the field

Date 3 May 45

Dr MacDougall my President

M. F. B. 246
25M—6-41 (792)
H.Q. 1772-39 480

Ex. A. D. MacDougall
President

SUMMARY OF EVIDENCE

In the case of M-37138 Pte. Davis T.R. of 30 Coy., 9 Bn., 3 C.B.R.G. Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

M-44016 BSM. McIntyre E.E. of 64 Coy. 9 Bn. 3 C.B.R.G., having been duly sworn states:-

I am M-44016 BSM McIntyre E.E. of 64 Coy., 9 Bn. 3 C.B.R.G. On 12 April 1945 at approx. 1450 hrs. I was proceeding with my Commanding Officer from Bn. H.Q. to Factory Camp at Quatrecht. At a point approx 400 yds. from Bn H.Q. along the highway towards the Brussels Highway I saw a soldier whom I now recognize as Pte. Davis. He was carrying something inside of a gas cape under his right arm. My C.O. instructed the driver, Gdsmn. Page, to stop and instructed me to check the soldier. We had gone past his position about 100 yds. I got out of the jeep and was going back to check the soldier. He had gone into a Cafe.(No.29) I went in the cafe and asked the soldier for his pass. He did not have one. I told him to step outside which he did. I then asked him what he had under his arm. He told me a blanket which he was taking back to camp. The blanket was rolled inside the gas cape. I told him to proceed over to the Jeep, where in company of Gdsmn. Page he gave me the blanket and gas cape which I marked and now submit as evidence (Exhibit "A") I ordered him to get into the back of the jeep and we proceeded to 9 Bn. Guard Room where I handed him over to the Guard Commander.

Q. When you first saw Pte Davis on the road, in which direction was he proceeding?

A. He was proceeding away from the Camp towards the Brussels Highway Sir!

E.M. McIntyre
M-44016 BSM McIntyre E.E.
64 Coy. 9 Bn. 3 C.B.R.G.

SECOND WITNESS

M-58502 RSM Shields A.B. of 30 Coy. 9 Bn. 3 C.B.R.G. having been duly sworn states:-

At approx. 2100 hrs on the 12 th of April 1945 Capt. Kendall of 30 Coy. gave me a written message to check the bed of Davis. I checked our nominal roll and found only one Davis on strength. This soldier was M-37138 Pte. Davis T.R. I made the check and located the bed by the number and name stamped on a kit bag on the bed. My instructions were to locate Pte. Davis' Bed and let the Coy. Comdr. Know how many blankets were on the bed. There were 3 blankets on the bed. I notified the Coy. Comdr. immediately The bed had apparently been slept in and there was also a uniform which was used as a pillow.

Q. Are you perfectly satisfied that it was Pte Davis bed which you checked ?

A. Only by the fact that it was a double bunk and the kit of Pte. Davis was at the head of the bunk on the floor.

The accused declines to cross-examine the witness.

A.B. Shields
M-58502 RSM AB. SHIELDS

THIRD WITNESS B-81196 Cpl. Hartney J.J. of 30 Coy. 9 Bn. 3 C.B.R.G. having been duly sworn states:

I B-81196 Cpl. Hartney J.J. N.C.O. i/c Daily orders of 30 Coy. on the 11 April 45 did make up and type the Daily Orders and detailed the posting of same on the Coy Order Board on the main floor. I submit a true copy of an extract of these orders as evidence (Exhibit "B"). These orders were posted on our Order Board on the 11 April 1945 where they could be read by Pte. Davis.

The accused declines to cross-examine the witness.

J. Hartney
(B-81196 Cpl. Hartney J.J.)
30 Coy 9 Bn. 3 C.B.R.G.

FOURTH WITNESS D-86785 Gdsm. Page R.E. of 9 Bn. 3 C.B.R.G. having been duly sworn states:

On the 12 April 1945 at approx 1430 hrs. I was driving the Commanding Officer of my unit from Bn. H.Q. to Quatrecht when we noticed the accused, whom I recognize, walking along the road heading toward the main Brussels Highway. He was carrying a gas cape under his arm. The C.O. was suspicious, he then ordered me to proceed on down the road away and then stop. B.S.M. McIntyre who was riding with us then got out and went back and the C.O. had me turn the jeep around and go back where we found the B.S.M. coming out of the Cafe with the accused. He was ordered into the jeep and we drove down to 9 Bn. Guard Room.

Q. Did you see anything else beside the gas-cape under Pte Davis arm?

A. There was a blanket showing from underneath the gas cape.

The accused declines to cross-examine the witness.

Page R.E.
(D-86785 Gdsm. Page R.E.)
9 Bn. 3 C.B.R.G.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement at this time, Sir!

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of 2 pages, was taken down by me in the presence of the accused and that RP 4(c)(d)(e) and (f) have been complied with.

W. Lloyd Worrell Lt
(W. LLOYD WORRELL) Lieut
Officer detailed to take the Summary of Evidence

In the Field,
14 April 1945

SUMMARY OF EVIDENCE

In the case of M-37128 Pte. Davis T.B. of 30 Coy., 9 Bn., 5 C.B.R.C. Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

M-44016 RSM. McIntyre E.E. of 64 Coy. 9 Bn. 5 C.B.R.C., having been duly sworn states:-

I am M-44016 RSM McIntyre E.E. of 64 Coy., 9 Bn. 5 C.B.R.C. On 12 April 1945 at approx. 1430 hrs. I was proceeding with my Commanding Officer from Bn. H.Q. to Factory Camp at Utrecht. At a point ap rox 400 yds. from Bn H.Q. along the Highway towards the Brussels Highway I saw a soldier whom I now recognize as Pte. Davis. He was carrying something inside of a gas cape under his right arm. My C.O. instructed the driver, Gdsmn. Page, to stop and instructed me to check the soldier. We had gone past his position about 100 yds. I got out of the jeep and was going back to check the soldier. He had gone into a Cafe.(No.29) I went in the cafe and asked the soldier for his pass. He did not have one. I told him to step outside which he did. I then asked him what he had under his arm. He told me a blanket which he was taking back to camp. The blanket was rolled inside the gas cape. I told him to proceed over to the Jeep, where in company of Gdsmn. Page he gave me the blanket and gas cape which I marked and now submit as evidence (Exhibit "A") I ordered him to get into the back of the jeep and we proceeded to 9 Bn. Guard Room where I handed him over to the Guard Commander.

Q. When you first saw Pte Davis on the road, in which direction was he proceeding?

A. He was proceeding away from the Camp towards the Brussels Highway Sir!

E.E. McIntyre
M-44016 RSM McIntyre E.E.
64 Coy. 9 Bn. 5 C.B.R.C.

SECOND WITNESS

M-88098 RSM Shields A.E. of 30 Coy. 9 Bn. 5 C.B.R.C. having been duly sworn states:-

At approx. 2100 hrs on the 12 th of April 1945 Capt. Mundell of 30 Coy. gave me a written message to check the bed of Davis. I checked our nominal roll and found only one Davis on strength. This soldier was M-37128 Pte. Davis T.B. I made the check and located the bed by the number and name stamped on a kit bag on the bed. My instructions were to locate Pte. Davis' Bed and let the Coy. Comdr. Know how many blankets were on the bed. There were 3 blankets on the bed. I notified the Coy. Comdr. immediately The bed had apparently been slept in and there was also a uniform which was used as a pillow.

Q. Are you perfectly satisfied that it was Pte Davis bed which you checked ?

A. Only by the fact that it was a double bunk and the kit of Pte. Davis was at the head of the bunk on the floor.

The accused declines to cross-examine the witness.

M-88098 RSM Sh. sworn

SUMMARY OF EVIDENCE

THIRD WITNESS B-81196 Cpl. Hartney J.J. of 30 Coy. 9 Bn. 3 C.B.R.G. having been duly sworn states:

I B-81196 Cpl. Hartney J.J. R.C.O. i/c Daily orders of 30 Coy. on the 11 April 46 did make up and type the Daily Orders and detailed the posting of some on the Coy Order Board on the main floor. I submit a true copy of an extract of these orders as evidence (Exhibit "G"). These orders were posted on our Order Board on the 11 April 1946 where they could be read by Pte. Davis.

The accused declines to cross-examine the witness.

.....
(B-81196 Cpl. Hartney J.J.)
30 Coy 9 Bn. 3 C.B.R.G.

FOURTH WITNESS B-88725 Gdsm. Page R.E. of 9 Bn. 3 C.B.R.G. having been duly sworn states:

On the 11 April 1946 at approx 1430 hrs. I was driving the Commanding Officer of my unit from Bn. H.Q. to Amstrecht when we noticed the accused, whom I recognize, walking along the road leading toward the main Brussels Highway. He was carrying a gas cape under his arm. The C.O. was suspicious, he then ordered me to proceed on down the road away and then stop. R.S.M. McIntyre who was riding with us then got out and went back and the C.O. had me turn the jeep around and go back where we found the R.S.M. coming out of the Cafe with the accused. He was ordered into the jeep and we drove down to 9 Bn. Guard Room.

Q. Did you see anything else beside the gas-cape under Pte Davis arm?

A. There was a blanket showing from underneath the gas cape.

The accused declines to cross-examine the witness.

.....
(B-88725 Gdsm. Page R.E.)
9 Bn. 3 C.B.R.G.

THE ACCUSED HAS CAUTIONED AS FOLLOWS:

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement at this time, Sir!

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of 3 pages, was taken down by me in the presence of the accused and that R.P. 4(c)(d)(e) and (f) have been complied with.

.....
(W. LLOYD RUSSELL) Lieut
Officer detailed to take
the Summary of Evidence

In the Field,
16 April 1946

Certified true copy of Extract of 30 Coy Part I orders
for 11 Apr. 45

DISCIPLINE: All ranks are warned that they will hold themselves available for draft from Reveille until 1800 hrs daily and from Reveille until 1300 hrs on Sundays. Under no circumstances will reinforcement personnel leave barracks area unless detailed to do so during a/m hours. When personnel have been warned for draft they will not leave barracks area at anytime without permission of Coy Comdr or CSM. Strictest disciplinary action will be taken against personnel of 30 Coy disobeying this Order.

EXHIBIT "B"

Plea of Mitigation

in the case of M- 37138 Pte. Davis T.R.

The Accused is 42 years of age and has been in the Army since 25 Mar 40, he came overseas in June 40 with #2 Provost Coy. He went to Italy on 5 Apr. 44 and arrived in Belgium 28 Mar 45.

On the day in question the accused went out to have a drink with Sjt. Poulin and old friend and did not realize that he was going against Coy. orders. As it was only a matter of an hour or so and his unfamiliarity with the rules and regulations he hopes the court will take this into consideration.
He is married and has four children.

Signed J.W. Barfour Lt

DM

The Defending officer does not contend that the order was not published and posted when the accused came or ought to have seen it

A.C. Mac Dougall Maj.
President

Certified true copy of Extract of 30 Coy Part I Orders for 11 Apr. 45

J Hartney

DISCIPLINE: All ranks are warned that they will hold themselves available for draft from Reveille until 1800 hrs daily and from Reveille until 1300 hrs on Sundays. Under NO circumstances will reinforcement personnel leave barracks area unless detailed to do so during a/m hours. When personnel have been warned for draft they will not leave barracks area ~~xxxx~~ at anytime without permission of Coy Comdr or CSM. Strictest disciplinary action will be taken against personnel of 30 Coy disobeying this Order.

A.M.

EXHIBIT B

This is Exhibit "B" referred to in the Summary of Evidence in the case of M 37138 Pte. Davis T.R. taken before me this 14 day of April 1945

Mr Lloyd Morrell A RCA

Plea of Mitigation

in the case of Mr 37138 Pte. Davis S.R.

The Accused is 42 years of age and has been in the Army since 25 Mar 40, he came overseas in June 40 with #2 Provost Coy. He went to Italy on 5 Apr. 44 and arrived in Belgium 28 Mar 45.

On the day in question the accused went out to have a drink with Sjt. Poulin and old friend and did not realize that he was going against Coy. orders. As it was only a matter of an hour or so and his unfamiliarity with the rules and regulations he hopes the court will take this into consideration.
He is married and has four children.

Signed J.W. Darfour Lt

DM

The Defending officer does not contend that the order was not published and posted when the accused came or ought to have seen it

A.C. Mac Dougall Mg.
President

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M-37136	Pte	DAVIS T.R.	9 Bn. 3 C.B.K.G.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	Drunkenness	1 times.
For	AWL (AA Sec 15(1) and (2)	4 times.
For	AA Sec 40	4 times.
For	AA Sec 17 AA Sec 24	2 times. 1

Date of first entry in Field Conduct Sheet 31-8-40

Date of last entry in Field Conduct Sheet 12-10-44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused at the present time is under sentence for~~ ~~imprisoning~~ on the ~~day of~~

4. The accused has been awaiting trial on the present charges for 70 days in civil custody; and for 23 Y days in military custody, *i.e.*, 70 days in open arrest, 23 Y days in close arrest; of which 70 days were spent in hospital.

Ex B.
Bonnie Dougall Mg
Greenhithe

5. The present age of the accused is 42

6. The date of his ~~enlistment~~ attestation ~~calling up for military service~~ is 25 Mar 40

7. The service which the accused is allowed to reckon is 3 yrs 2 yrs 30 days

8. The accused is in possession of CVSM and Clasp

[State the military decorations (if any) held by accused.

~~9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously with distinction, to the present date~~

Date of Promotion.

~~In the substantive rank of~~

~~In the war substantive rank of~~

~~In the acting rank of~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27823) W1.24929-3404 24,000 7/44 A.& E. W. Ltd. Gp.495 Form B.296(W.)(2)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	4 June 43	A.A. Sec 17	120 Days Pay 120 Days Detn FR&I 149(1)b Ffts. 7 Days Pay under FR&I 149(1)c(i)	Earned a remission for 40 days
YX				
FGCM	29 Oct 43	AA Sec 40 (Improperly in possession of mess rations.	273 days detn Ffts 12 Days pay under FR&I 149(1)(c)	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 19. day of Apr. 45. [illegible]

RECEIPT FOR CHARGE SHEET AND SUMMARY OF EVIDENCE (MML. Ch 5 Sec 5 SS 24

I hereby acknowledge that I have this date 17. Apr. 45 194

received from 9 Bn. 3 C-B.R Gp. one copy of Charge Sheet and

Summary of Evidence referring to charge(s) of _____

_____

for which I was remanded for Court-Martial.

T. R. Davis +
(Signature of Accused)

REQUEST FOR DEFENDING OFFICER (MML Ch 5 Sec 5 SS 27)

I hereby request that H. Firth 26 Coy. 9 Bn.

if available, act in my defence. If this officer is not available, I re-

quest that the Commanding Officer of _____ Appoint an Of-
(Unit)

ficer to act on my behalf.

T. R. Davis +
(Signature of Accused)

I hereby certify that Lt. J D Balfour was appointed to

defend M37138 Pte Davis T.R. at his forthcoming trial by Charge-

Martial and that the said Lt. J D Balfour was notified that he was

to act as defending Officer on 19 apr 43

(Date)

[signature]
(Name of Unit)

CAPT. & ADJT.
9 BN. 3 C.B.R. GP.

WHEN PROSECUTING OFFICER [illegible] (MML Ch 5 Sec 5 [illegible])

I hereby certify that I have been duly served that the

prosecutor is an officer [illegible]

T. R. Davis.
(Name of Accused)

RTM

No. M37138 Name DAVIS T.R. | Sqn, Battery, or Company | Corps RCASC | Date of enlistment Mar 25 1940 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc M. Guibbons L.C. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31-8-40	L/Cpl		AA Sec 19 Drunkenness	Cpl Basely L/Cpl Miller	Admonsiehd & reduced to L/Cpl without pay	31-8-40	Capt Creasay	
Field	17-10-40	L/Cpl		Sec 15(2) Failing to appear at a place of parade	L/Cpl O'Neil Sgt Williams	4 Days pay & 7 Days C.B.	18-10-40	Capt Creasay	
Field	31-10-40	L/Cpl		Sec 15(2) Failing to appear at a place of parade	Sgt Hurrell	Reduce to Pte	31-10-40	Capt. Creasay	
Field	13-8-41	Pte		WOAS Conduct to the prejudice of good order and Military Discipline (Urinate in front of Duke's Head Public house, Leatherhead)	Sgt Wallace Sgt Inge L/S West L/S Weleam L/S Phipes Sgt Rush	Reduce to rank of Private	14-9-41	Lieut Cooper	

Ex. "C"
Dennis Dougall May
President

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4-5-42	A/Cpl		AWL from 2359 hrs 4 May to 0630 hrs 6 May 42 Total (1 day 6 hrs 31 mins)	Sgt Hockley Sgt Lucker L/Cpl Davis	Reverts to L/Cpl with pay FR&I 153 Severe Rep	6 May 42 26 May 42	A.Renton Capt A Renton Capt.	Ffts pay FR&I 149)1)a
Field	10-5-42	L/Cpl		Neglect to obey Regt. D.O.Part 1 /77 d/1/4/42 road Pildon without wearing a crash helmet AA Sec 11	RSM Ramage Pte Whidden		6-7-42	A Renton Capt.	Ffts 10 days pay FR&I 149(1)(c)
Field	18-6-42	L/Cpl		AA Sec 24 Para 1, Did make away with by Pawning one pair of hand Cuffs, public Property entrusted to his care. Held in close arrest 1000 hrs 27-6-42 to 1600 hrs 3-7-42 (9 days 6 hours)	L.Benjamin (Civilian) Cpl McKeag Sgt Lucker	Reverts to pte			
Field	27 May 43	Pte		Tried by Field General Court-Martial under the following secions of the AA Sec 17(18(4)40 found guilty under AA Sec 17 and not guiltyon 2nd and 3rd charges Confirmed 8 Jun 43 by Maj/General CR Stein	ASM Allan S/Sgt Green Pte Belanger Cpl Rutsohke Pte Bowles G.	Ffts. 120 Days Pay FR&I 149(1)b 120 days deth.	4 jun 43	FGCM Major King Presiding	Ffts. 7 Days Pay under FR&I 149(1)c(1)

No. M37138 Name Davis T.R | Sqn, Battery, or Company | Corps RCASC | Date of enlistment Mar 25 1940 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/F&S/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Of the 5 Cdn Armd Div. Held under Close Arrest from 0015 hrs 28 May to 2359 hrs 3 June 43		Released from Detention Barrack Aug 21 1943, Earned a remission of 40 days under Rules for Detention Barracks and Military prisons			
TEXT OF CHARGE: A.A. Sec 17 WOAS WHEN CONCERNED IN THE CARE OF PUBLIC PROPERTY, FRAUDULENTLY MISAPPLYING THE SAME, in that he when employed as night cook of his Unit and concerned in the care of the men's rations, public property, gave 13 egs, portion of said rations, to B8493 Pte Bowles, G. in exchange for cigarettes, with intent to defraud, Recommended for Summary of Evidence 28 May 42 for F.G.C.M. 31 May 43 by Officer Commanding.									
Field	29 Oct 43	Pte		AA 40 WOAS in that he while employed in gunners mess was found improperly in possession of mess rations to value of £2-18-11 Close arrest 11 days 12 hrs 19 mins.	Sgt McKibbon Gnr Bukovich	273 days detn.	16 Nov 43	FGCM	Ffts 12 days pay under FR &I 149(1)(c)

Ex. C Armas Dangerous President.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
Field	12-10-44	Pte		AA 40 Conduct to the prejudice of good order and military discipline: in that he at 0915 hrs 12 Oct 44 was found to be in improper possession of a pair of K.D. Troussers the property of A22813 Pte Packwood, M.G.	Lt. Sauve Sgt Nash	28 Days detention	12-10-44	AA Overholt Lieut.Col.	Forfeits 28 days pay FR&I 149(1)(b)

CERTIFIED TRUE EXTRACT FROM THE REGIMENTAL BOOKS HELD IN MY CUSTODY

(CL. NELSON) Capt & Adjt.
9 Cdn. Base Rft. Bn.

W-104.

S/Sgt. DAVIS, W. F.

W-104

Correspondence to be PINNED here.

RECEIVED 15 JAN 1943 Legal Branch Cdn. Corps

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 9th day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Ordnance Services, 1 Cdn.Corps, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

* ~~I am unable to appoint:~~

* ~~(1) Three Officers to form the Court;~~

* ~~(2) A Field Officer as President;~~

* ~~(3) Three Officers having more than one year's service;~~

~~for the following reasons, namely:~~

Proceedings Reviewed

375

President.

Rank.	Name.	Regiment.
Major	W. H. Copeland	1 Cdn.Corps Tps. Supply Co'y.

Members.

Rank.	Name.	Regiment.
Capt.	W.C. Donaldson	9 Cdn.Non-Div.Ord. Wkshop
Lieut.	H.V. Kneen	1 Cdn.Mobile Laundry Colonel

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J.A.F.Townesend)

Commanding D.D.O.S. 1 Cdn.Corps.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-34787 L/Cpl. DAVIS, Wilson, Francis 9 Cdn.Non-Div. Ord. Fd. Pk. R.C.O.C.	Charge No.1 A.A.Sec.40 Charge No.2 A.A.Sec.40 Charge No.3 A.A.Sec.40 (See charge sheet attached)	NOT GUILTY. RP 32. GUILTY	NOT GUILTY. OBJECTION ALLOWED GUILTY Reduced to To be detained 30 days W.H.Copeland Major. 14 JAN 43	I vary the sentence so that it shall be as follows:- To undergo detention for 30 days. Finding and sentence as so varied are confirmed J.O'Bonnell (G.A.F.Townsend) Col., D.D.O.S. 1 Canadian Corps.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*): NO

(*Signed*) J.O'Bonnell (G.A.F.Townsend) Colonel *Commanding* D.D.O.S. 1 Cdn.Corps. *Convening Officer* (*c*)

(*Signed*) W.H.Copeland Major *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14TH day of JANUARY/43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*3. ~~The interpreter~~ N/A
*4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 14TH day of JANUARY 19 43

W.H.Copeland Major.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 270 of 1918 have been complied with.

Signed this [illegible] day of [illegible] 19[illegible]

W.H.C.
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be kept committed to prison until further orders.~~ J.O'B

Signed this 16th day of January 19 43

J.O'Bonnell
(G.A.F.Townsend) Officer Commanding Col., D.D.O.S. 1 Canadian Corps.

Promulgated and extracts taken in the case of C34787 L/Cpl DAVIS WILSON FRANCIS

(*a*) (Dated) 16 JAN 43 (Signed) J.T.Edwards, Lieut

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W1, 45229—9[illegible] [illegible] 1,40 [illegible]

B 2.

CHARGE SHEET.

9 CANADIAN NON/DIVISIONAL ORDNANCE FIELD PARK

The accused C.34787 L/Cpl. Wilson Francis Davis - 1 Canadian Ordnance Reinforcement Unit (10 Canadian Non-Div Ordnance Field Park) attached to 9 Canadian Non-Divisional Ordnance Field Park R.C.O.C. a soldier of the Canadian Army Overseas is charged with While On Active Service:-

FIRST CHARGE
Army Act Section 40. Conduct to the prejudice of good order and military discipline in that he in the Field on or about 16 December 1942 did improperly take and use a Government Vehicle CZ/4204332 and did improperly use Government Petrol for his own purpose, namely to visit the "Gatwick Arms" in Horley and the "Grey Hound Inn" near Gatwick railway station, well knowing he had no authority to do so.

SECOND CHARGE
Army Act Section 40. Conduct to the prejudice of good order and military discipline, in that he in the Field on or about 16 December 1942, when detailed as N.C.O. in charge of Government Vehicle CZ/4204332 did indulge in and partake of alcoholic stimulants whilst on duty.

THIRD CHARGE.
Army Act Section 40. Conduct to the prejudice of good order and military discipline, in that he in the Field on or about 16 December 1942, did improperly leave unattended in a Public Place Government Vehicle CZ/4204332 of which he was detailed as N.C.O. in charge.

In the field.
11 Jan 43.

(W.F.G. Williams) Capt.
Officer Commanding
9 Canadian Non-Divisional
Ordnance Field Park RCOC.

To be Tried by F.G.C.M.

(G.R.F. Townsend) Col.,
D.D.O.S. 1 Canadian Corps.

12 Jan 43

wrp.

B X

MEDICAL CERTIFICATE (K.F. (Can) 067)

I certify I have this morning examined No. C.34787 Hgpl
Wilson FRANCIS DAVIS of 9 Can Res Div Old Field Park
and, in my opinion, he is fit to undergo trial by court-martial.

Station Field
Date 14 Jan 43

F.W.M. Howes Capt RCAMC
Medical Officer

A

Army Form A 9.

WHC

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F.G.C.M. Court-Martial held at 9 Con Non Div. O.F.P.M. R.C.O.C. on the 14 day of JANUARY 1943 by order of COL G.A.F. TOWNESEND D.D.O.S. 1 CON. CORPS

Commanding

dated the 12 day of JANUARY 1943

President. W. H. COPELAN MAJOR.
1 CON C.T. SUP COY
R.C.A.S.C.

Members. CAPT. W. C. DONALDSON.
9. CON NON-DIV. ORD. W/S.
R.C.O.C.

LIEUT H. V. KEEN.
1 CON MOBILE LAUNDRY
R.C.O.C.

Trial of* C.34787 L/CPL WILSON, FRANCIS, DAVIS, ~~Judge Advocate~~ Exc.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ..... is not available to serve owing to~~

WHC

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† CAPT. W. F. G. WILLIAMS.

Counsel‡ or defending officer† CAPT. W. C. DONALDSON.

At 1000 HRS. ~~[illegible]~~ the Trial commences.

The order convening the Court is read, and is marked A1 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NO SIR

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

WHC [illegible]

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Lieut Edwards 9 cdn Non-Div Ord Mt Pk
capt D.H. Norster 9 cdn Non-Div Ord Workshop
Lieut D.G. Cramb 9 cdn Non-Div Ord W/S

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Answer. NOT GUILTY

Are you guilty or not guilty of the second charge against you, which you have heard read? DEFENSE INVOKED R.P. 32. *Question.*

COURT CLOSED TO CONSIDER OBJECTION. *Answer.*

OBJECTION SUSTAINED SECOND CHARGE DISALLOWED WHC

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer. GUILTY

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer. WHC

The accused having pleaded Guilty to THIRD charge, the provisions of Rule of Procedure 35 (B) are here complied with. WHC

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO

The prosecutor makes an opening address [hands in a written address which is read, marked WHC, signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. M15891 A/Sgt. Fraser Hugh. Price

being duly sworn, is examined by the prosecutor.

I arrived at Gatwick Station, at 3 40 hours WHC and started to walk home on passing the Greyhound in I saw a #9 non Hen. Ord. Lorry. I recognize the accused 4/Cpl Lewis I met him in the bar with some other private, Accused was having a drink and I enquired about a ride. We all drank two or three glasses of beer. and we left at closing time approximately 1430 hours, I know the vehicle to be a #9 Cdn Hen-Dev Ord vehicle by the number 69 which I recognized and am familiar with.

Cross examined. Are you sure as to time of arrival. yes ~~I checked it with the railway for~~ Court of Inquiry checked time of train arrival with Railway.

Could it have been more than ten minutes from time of arrival to.

(2)

C2

You arrival at Greyhound Answer I do not think so.

Second Witness A 3#966 Pte Harness Maxwell Edward.
I recognize the accused L/CPL DAVIS
I left on morning of Dec 18 at approximately 1000 hrs to go to Harley to repair chicken coop. I went for nails to the center of town at approximately 1100 hrs and stopped in at Gatwick Arms. Stopped about five minutes and then went back to work untill 1200 hrs when returned to Unit. Returned to Harley after dinner at about 1330 hours. After working a short time we ran short of material and started back for camp at about 1400 hours. We came back through Gatwick and stopped at the Greyhound about 1410 hours I went in hotel about ten minutes after L/CPL DAVIS and Pte CRANLEY. I was only in hotel a few minutes when Sgt Fraser entered. He asked for a ride and he bought a drink which we drank and left close to 1430 hours Did you go to Harley on the afternoon of Dec 18. Yes. Did you make out the work weekly. No and I don't recall who did. Do you remember how many Bus you drank. Only one which Sgt Fraser bought. I was in the Greyhound about ten minutes. Was accused with you yes.

Court adjourned at 1205 Hrs reopened at 1410 hours

W.H. Copeland [illegible]

Cross Examined. Was Gatwick Hotel on your direct route to the work you were doing. Yes.
Did you use the truck to go to the Hotel. No we stopped while passing.
Do you know the roads in this area well.
No. just the main roads.
I have used the road from Horley via Gatwick to Three Bridges before.
Was any suggestion made before you left to visit the Greyhound.
No.

Re Examined. How long have you been driving in this area.
Since July 1942.
You are familiar with the roads in this area.
Yes the main ones.
Is the Gatwick Three Bridges
W.H.C. road any better than the Horley.
W.H.C. Found Hill Road No and you would not use it if you wanted to make time.
No Sir.

Defence Offrs. : Raised the point that no evidence has been produced to substantiate the charge.

As Prosecuting Offrs. has no other evidence to offer in substantiation of this charge and no records can be produced to prove an unauthorized journey. Accused is found not Guilty on First Charge.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No.

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* Yes

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. No The accused in his defence says†

{hands in a written address which is read, marked
signed by the President and attached to the proceedings.}

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

Capt W. F. G. Williams 9 Can Mun. Div
Can. Fld. Pk. R. C. O. C

having been Sworn States

The accused came to my Unit
in February 1942 in Ottawa
As a private Soldier he showed
ability in handling men and
was subsequently promoted to A/L/Cpl.
He later qualified as a Fitter and
was confirmed in the rank of L/Cpl.
Later his appearance deteriated but
his work as a fitter was Satisfactory
but not as a parade ground Soldier

Third Charge. CCI

Defense Offers Plea:

Vehicle was not left for any length of time and was left in charge of driver who later left vehicle. No definite intention but an error in judgement in not making certain that vehicle was properly attended

CC

Proceedings on Plea of Guilty.

* To be struck out if case so goes of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused C-34787 L/CPL DAVIS, WILSON, FRANCIS is found guilty of THIRD CHARGE

†The summary (or abstract) of evidence is read, marked B6 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— NO

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

ATTACHED DEFENDING OFFICER'S PLEA IN MITIGATION.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

Answer. TO CALL WITNESS.

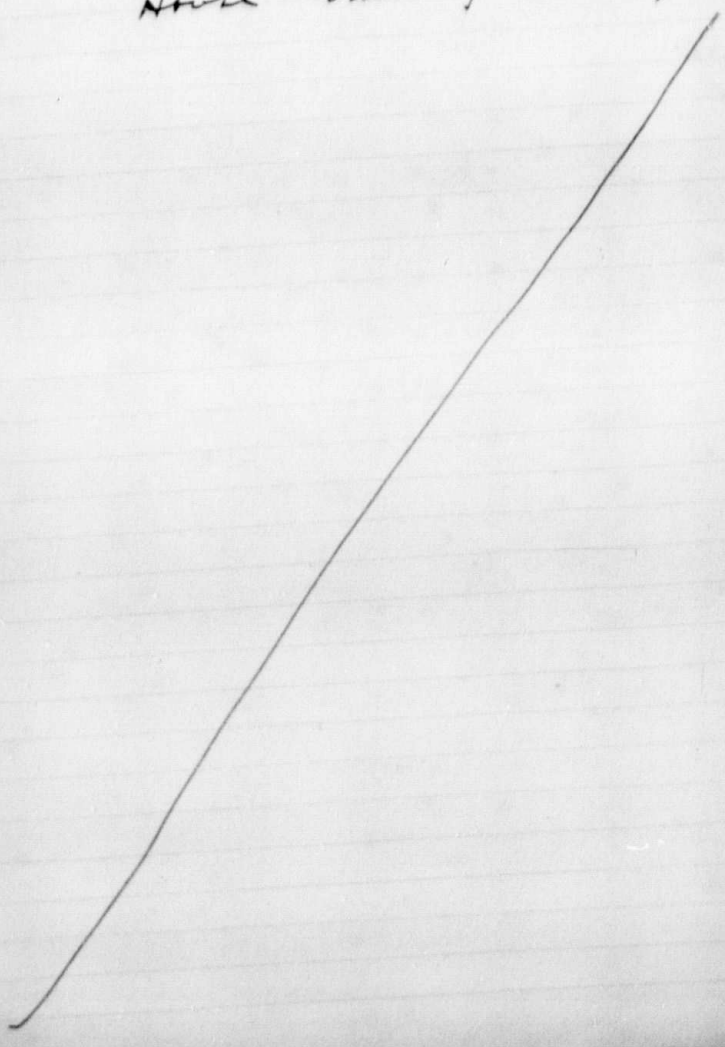
Evidence as to character

CC2

Third Charge. W H Copel Esqr

Prosecutors Addressed the Court.

The accused knew it was wrong to leave vehicle unattended and was derelict in his duties as an N.C.O. is allowing it to be left unattended and to permit personell to enter Public House during working hours



E

W H Copeland Lt

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before* Sentence.

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

CAPT W.F.G. WILLIAMS is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked B 4, B 5, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* YES

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* YES

Cross-examined by the accused.

NO CROSS-EXAMINATION.

[Construction—(1) In respect of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court [illegible] [illegible] to any [illegible] punishment in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* NO

The Court is closed for the consideration of the sentence.

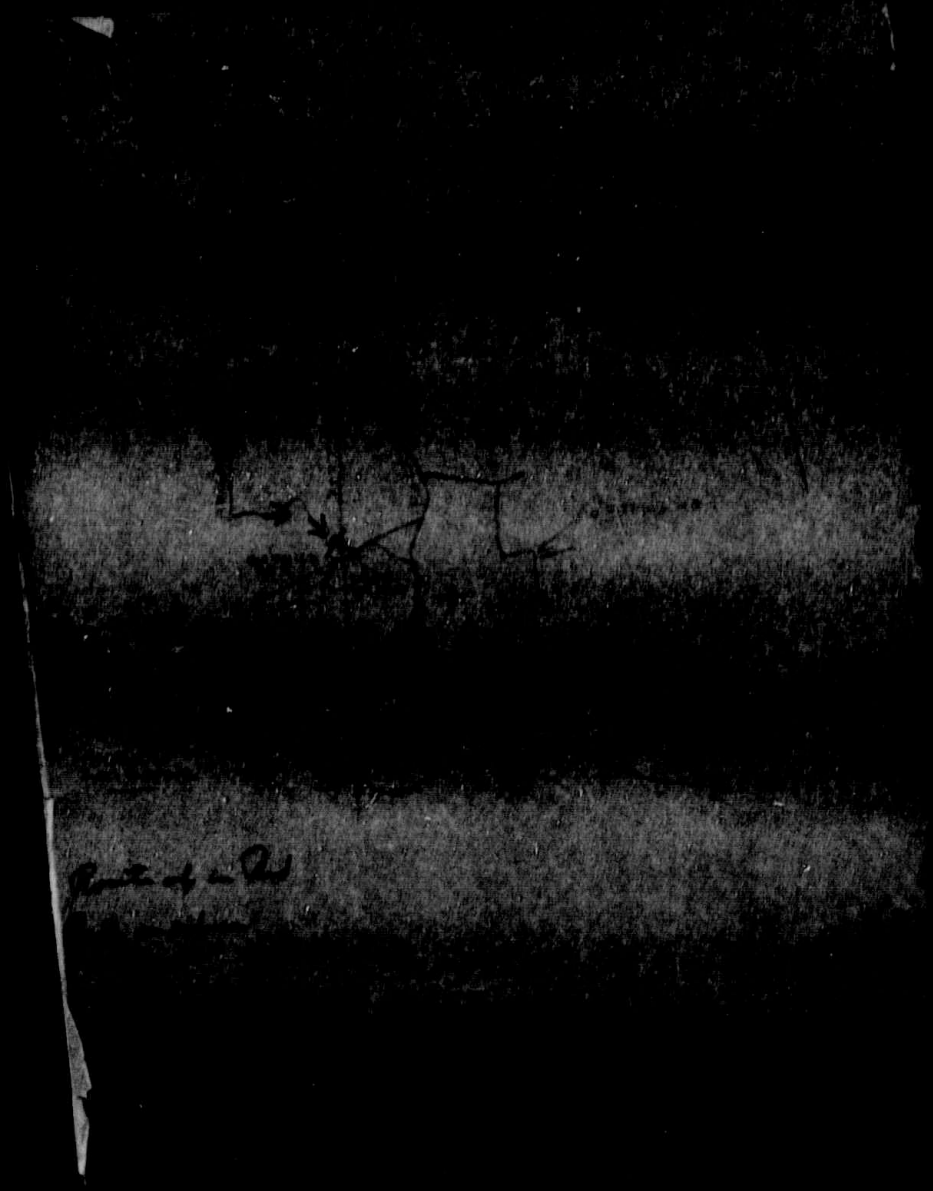
F

Sentence.

The Court sentence the accused C-34787 L/Cpl Sentence.
ON THIRD CHARGE DAVIS, WILSON. FRANCIS

To be reduced to substantive
Rank of Private and 30 days detention

W H Copeland Lieut



9 Jan. 43 B.6
1605 hours.

Summary of Evidence

In the case of No. C.34787 L/Cpl. William Francis Davis No.1 Canadian Ordnance Reinforcement Unit (10 Canadian Non-Divisional Ordnance Field Park) attached 9 Canadian Non-Divisional Ordnance Field Park, R.C.O.C., Canadian Army Overseas, taken down by Captain W.F.G. Williams, Officer Commanding 9 Canadian Non-Divisional Ordnance Field Park at the Field on the 9th day of January 1943.

FIRST WITNESS
for the prosecution

M.15891 A/Sgt. Fraser, Hugh Pryce., 9 Canadian Non-Divisional Ordnance Workshop.

Sworn States

On 18 December 1942 I alighted from a train at Gatwick Airport at 1340 hours. I proceeded towards my unit by way of Pound Hill Road. Passing the Greyhound Inn I saw a W.D. Vehicle of the Field Park in front of the Inn. I went into the bar and there met L/Cpl. Davis, Pte. Harness, and Pte. Cramley. During the time I was in the bar two or three glasses of beer were consumed, one of which I bought for this N.C.O. and two soldiers. We left the Inn at 1430 hours. The vehicle was unattended at the time I first saw it. I saw these soldiers drinking beer while I was in the bar. One of these soldiers was the accused. The vehicle was on the driveway north of the building, near the north-west corner of the building.

The evidence was read to the witness.

H P Fraser

(H.P. Fraser) A/Sgt.
9 Canadian Non-Divisional Ordnance Workshop.

The witness is cross examined by accused.

Question:-
Which part of the building is the North?

Answer:-
The north part of the building is the side facing the main road.

Question:-
You say it was near the west corner?

Answer:-
Yes, near the north-west corner.

Question:-
Exactly what position at the corner was it in?

Answer:-
The vehicle was facing west.

SECOND WITNESS
For the prosecution

No. A.34966 Pte. Harness, Maxwell Edward,
9 Canadian Non-Divisional Ordnance Field Park.

Sworn States.

We left the Field Park on the morning of December 18, 1942 about 1000 hours. Proceeded to Horley to repair chicken coop, arriving at approximately 1030 hours. We commenced working on chicken coop at that time. We worked at chicken coop till 1145 hours. The accused and myself proceeded to a shop in Horley to buy nails. On the way back from the shop we stopped at the Gatwick Arms in Horley. We went in and had one half pint of ale each. We were there approximately five minutes. We were away from the chicken coop about twenty minutes. We then went back to place where we were repairing chicken coop and worked for twenty five minutes, then we returned to camp, arriving about 1210 hours. At 1330 hours L/Cpl. Davis, Pte. Cranley and myself proceeded to Horley arriving at 1345 hours. We then discovered that we needed another sheet of tin for the roof and we started back to the unit at 1350 hours via Gatwick and Three Bridges, arriving at Gatwick at approximately 1410 hours. We then stopped at Greyhound Inn and L/Cpl. Davis and Pte. Cranley went in. I stayed behind with the vehicle for about ten minutes. I got out of the vehicle and went into the toilet and saw L/Cpl. Davis and Pte. Cranley and stopped to find out how long they were going to stay and just then Sgt. Frazer came in and he asked me if he could have a ride with us to Three Bridges. I told him he could. He then bought me a drink, I drank it and then we left for the Unit via Tinsley Lane and Three Bridges at 1430 hours. I drove the vehicle all the way there and back. I parked it at the Greyhound Inn on the driveway facing the road parallel to the building, facing the railway tracks.

The evidence was read back to the witness.

M E Harness

(34966 M.E. Harness) Pte.
9 Canadian Non-Divisional Ordnance Field Park.

The witness is cross examined by the accused.

Question:-

Was the vehicle at the western end or the front of the building?

Answer:-

The vehicle was at the western end near the railway tracks.

9 Jan. 43

THIRD WITNESS
for the prosecution

B.8607 Pte. Cranley, John Edward William,
9 Canadian Non-Divisional Ordnance Field Park.

Sworn States

On 18 December 1942 at approximately 1315 hours I left the park in a vehicle belonging to 9 Canadian Non-Divisional Ordnance Field Park, tactical No. P.6 I was sitting alone in the back. Pte Harness was driving and L/Cpl. Davis was sitting beside the driver. The first stop was in Horley at chicken coop at about 1330 hours, staying about 10 minutes, Some tin and some nails were needed for repairing the roof of the chicken coop so we started back to the unit for them, coming by way of Greyhound Inn at Gatwick, arriving there about 1350 hours. The vehicle stopped on the parking lot about 20 or 30 yards off the road. The vehicle was facing outwards from the pub. I got out. I was with L/Cpl. Davis. We went into the pub. I had half a pint of light ale and the accused had a half pint with me. I don't think I could see the vehicle from where I was in the pub. We were in the pub about 20 minutes. I don't remember what time it was when we left.

The evidence was read to the witness.

J E W Cranley

(B.8607 J.E.W. Cranley) Pte.
9 Canadian Non-Divisional Ordnance Field Park.

Witness is cross examined by accused.

Question:-

Did you look to see if you could see the vehicle from the bar room?

Answer:-

No.

Question:-

Why do you think you couldn't see it?

Answer:-

I didn't take any notice or give it any consideration.

Question:-

Did you see the vehicle from the pub?

Answer:-

No.

Question:-

How far was the vehicle from the building?

Answer:-

About 15 feet.

9 Jan. 43

FOURTH WITNESS
for prosecution

No. C.28705 Sgt. Everett, Perry,
No.1 Canadian Ordnance Reinforcement Unit attached
Royal Canadian Regiment.

Sworn States

On 18 December 1942 I was N.C.O. in charge of Transport for 9 Canadian Non-Divisional Ordnance Field Park to which unit I was attached. On this date at the time of the authorization of this journey I was away from the camp playing hockey for the Royal Canadian Ordnance Corps Troops team at Purley, Surrey. I returned to the camp at approximately 1530 hours and remained there until the following morning. Pte. McGinnis, [redacted] was Transport Clerk whom I had left in charge of work tickets during my absence.

When a work ticket is required the person requiring same applied to me or Transport Clerk for one. A trip number was allotted to the ticket from a series of consecutive numbers. The ticket then being filled in, leaving the column for the signature of the Transport Officer for authorization. Corresponding information regarding the vehicle concerned, the destination, the duty to be performed, and the approximate time of departure, was entered on a sheet which was kept for our own reference. When vehicle left the Park the person on duty at gate entered on a sheet the time of departure, the W.D. Vehicle number, the work ticket number, the destination and driver of the concerned vehicle, completing this entry by recording the time the vehicle entered the Park. According to camp Standing Orders, the sentry or guard on duty at the gate is to assure himself that every driver has a properly authorized work ticket for the trip concerned. If that cannot be produced the vehicle is not allowed to leave the Park. It was found on checking records that the trip in question had been properly authorized by Lieut. G.T. Edwards and a corresponding entry had been made for unit record.

The evidence was read to the witness.

(C.28705 P. Everett) Sgt.
10 Canadian Non-Divisional Ordnance Field Park.

The witness is cross examined by accused.

Question:-

What was the proceedure of work tickets when two trips were necessary to complete the duty?

Answer:-

The same authorization on the work ticket allowed the vehicle to complete the duty provided that it was not necessary for the vehicle to proceed to any other destination before completing the original duty on the same day. If the duty required another day a new entry was made stating the proper date.

10 Jan. 43

FIFTH WITNESS
for prosecution

C.34620 Pte. McGinnis, Frederick Lionel,
9 Canadian Non-Divisional Ordnance Field Park.

Sworn States

On 18 December 1942 I was in charge of making out work tickets being one of my regular duties. I never saw the work ticket but I saw where the trip was registered on the trip file which is a record kept of all trips. As far as I know, when I'm away from my desk, someone makes out a work ticket for their own lorry to be signed by an officer. I can't remember if I saw the accused in the office on this particular morning.

The evidence was read to the witness.

F. L. McGinnis
(C.34620 F.L. McGinnis) Pte.
9 Canadian Non-Divisional Ordnance Field Park.

The accused declines to cross examine witness.

---6---

SIXTH WITNESS
For the Prosecution

D.106897 Pte. Silverman, Moe. 9 Canadian Non-Divisional
Ordnance Field Park R.C.O.C.

Sworn - States.
On 18 Dec. 42 I was on piquet, relieving Pte. Currie, H.R. at the entrance to the Park between 1230 and 1330 hours. I remember L/Cpl. Davis and Pte. Harness leaving in a 15 cwt truck belonging to this unit. There was someone in the back but I did not notice who it was. I saw the Work Ticket in the hand of L/Cpl. Davis who gave me the number. I marked the number and the time they left on the checking "in" and "out" sheet. I wrote down the time and I think it was somewhere around 1300 hours.

The evidence is read to the witness.

M. Silverman

(D.106897 Pte. Silverman, M.)

The accused declines to cross examine the witness.

SEVENTH WITNESS.
For the Prosecution

Lieut. George Thomas Edwards. 9 Canadian Non-Divisional
Ordnance Field Park R. C. O. C.

Sworn - States.
On 18 Dec. 42 I was acting as Transport Officer and also Orderly Officer. L/Cpl. Davis brought me a Work Ticket to be signed for a trip to Horley. Pte. Harness was shown as driver. I signed the Work Ticket and gave it back to him.

The evidence is read to the witness.

G T Edwards

(G.T. Edwards) Lieut.

The accused declines to cross examine the witness.

The accused declines to make a statement.

I certify that the requirements of R.P. 4(c), (D) and (E) have been complied with.

W F G Williams

(W.F.G. Williams) Capt.
Officer Commanding

The Field
11 Jan 43
wrp.

LIST OF WITNESSES

Trial of: C.34787 L/Cpl. Wilson Francis Davis.
No.1 Canadian Ordnance Reinforcement Unit
(10 Canadian Non-Divisional Ordnance Field Park).
Attached 9 Canadian Non-Divisional Ordnance
Field Park.

For Prosecution

M.15891 A/Sgt. Fraser, H.P.
9 Canadian Non-Divisional Ordnance Workshop.

Mrs. Bayley,
Ashbridge,
Tinsley Lane,
Three Bridges,
Worth, Sussex.

Mrs. M.P. Sharmers,
Winsford,
Tinsley Lane,
Three Bridges,
Worth, Sussex.

Mrs. B. Weller,
Lanka,
Tinsley Road,
Gatwick.

A.34966 Pte. Harness, M.E.
9 Canadian Non-Divisional Ordnance Field Park.

B.8607 Pte. Cranley, J.E.W.
9 Canadian Non-Divisional Ordnance Field Park.

C.28705 Sgt. Everett, P.
No1 Canadian Ordnance Reinforcement Unit
Attached, Royal Canadian Regiment.

Lieut. G.T. Edwards,
9 Canadian Non-Divisional Ordnance Field Park.

D.106897 Pte. Silverman, Moe.
9 Canadian Non-Divisional Ordnance Field Park

B6

M.F.M. 6
(A.F.B. 122)
300M—11-40 (8025)
H.Q. 1772-45-18

No. C34787 Name Davis, W.F. Sqn., Battery, or Company Corps C.A.(B)T.C. #31 Date of enlistment 19/11/41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
The Field	26 Oct 42	-	L/Cpl.	- CERTIFIED no entries to date		Capt. O.C. 9 Can. Non-Div. Ord. Fld. Pk. RCOC			
The Field	5 Nov 42	L/Cpl.		A.A.Sec.11 - Neglected to obey CARO 2060 repeated in Part I Order 158, 6 Jul 42, in that he WOAS did drive W.D. Vehicle CL/4216372 at a rate of speed in excess to that laid down in the above-mentioned orders.	L/Cpl. Hein, A. (Severe L/Cpl. Newton, D.H.(Reprimand) #4 Provost Company		10 Nov 42		
The Field	1 Jan 43	L/Cpl.		A.A. Sec.15 (1) - absence without leave, in that he, WOAS did absent himself without leave from 0100 hrs. 1 Jan.43 until					

(Continued on back of page)

(P.T.O.)

Place	Date of offence	Rank	Cases of drinkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				0200 hrs. 1 Jan. 43 (Total absence - 1 hour)	Cpl. Stewart (NCOi/cGuard)	Severely Reprimanded Cease to draw Trades Pay w.e.f.2Jan.43	2 Jan.43 Cancelled 13 Jan 43		

CERTIFIED TRUE COPY

(W.F.G. Williams) Captain.

C.C.9 Cdn. Non-Div. Ord. Fld. Park. RCOC

N.F.B. 355
40/F As 5/43

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C.34787	Lance Corporal	Wilson Francis Davis	1 C.O.R.U. (10 Cdn Non-Div Ord Fld Pk) Att: 9 Cdn Non-Div Ord Fld Pk.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~or Forfeitures~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A.W.L.	2 times	A.W.L.	2 times
For	Neglect Sec. 11 -	1 times	Neglect Sec.11 -	1 times
For	Nil	times	Nil	times
For	Nil	times	Nil	times

~~XXXXX XXXX

[redacted]

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

13th Feb. 1942 Date of promotion.

In the rank of Lance Corporal - 10 months and 23 days

In the rank of Confirmed in rank w.e.f. 1 July 1942.

In the rank of Nil years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of January 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

4Y-9.

mX/S/SgY Davis W F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.34787, Armt/S/Sgt DAVIS,

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Guilty	Guilty	
2nd AA Sec 11	Guilty	Guilty	
3rd ~~AA Sec 15(1)~~ N/A			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of N/K days, of which N/K days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer one hundred & twenty days field punishment No 2 detention one hundred and twenty days Infantry & pay and to be reduced to the ranks.

(Sgd) N/L Judge-Advocate, if any. 26 Jan 45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I vary the sentence so that it shall be as follows.- To be reduced to the ranks and to undergo detention for 120 days. I confirm the findings and sentence of the Court but remit 120 days detention.

29 Jan 45 Sgd (W.J. Murphy) Brig Comd, 1 Cdn Armd Bde Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C 34787 S/Sgt Davis W.F.	31 Jan 45	R. H. Rawson Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 44-9

(FAPO (In lieu of AFAS) 40/P.G. 8/1858 (2664))

FIELD GENERAL COURT-MARTIAL

RECEIVED 2 FEB 1945 JAG BRANCH A.H.Q.

(Convened by Order of Brigadier W.J. Murphy Comdl 1 Cdn Armd Bde dated 15 Jan 45)

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C.34787,	Armt/S/Sgt	WILSON FRANCIS	DAVIS	1 Cdn Armd Tps Wksp RCEME

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 26 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout it on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~ ~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N/O (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 88, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R. MacLeod	1 Cdn Armd Bde Coy (83 Coy) RCASC
Member	Captain	C.F. Hogan	1 Cdn Armd Bde Ord Fd Pk
Member	Captain	J.L. Evans	Hq Sqn 1 Cdn Armd Bde
Judge-Advocate		N/L	
Prosecutor	CAPT	M.F. HILLARY	1 Cdn Tp RCEME
Defending Offr	LT.	E.S. BARTON	1 Cdn Ay Rec Sec

Questions by President: Is the Prosecutor a lawyer? Ans N/O Is the Defending Offr a lawyer? Ans N/O (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused C.34787 Armt/S/Sgt W.F. DAVIS before arraignment makes(s) (no) (1) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB, rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, dismiss and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. H12

Cdn Sec Armd Bde 2 Feb 1945 JAG BRANCH A.H.Q.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N/A (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 25(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes (change) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 80(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(*J*) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(*J*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)
Ans N/A
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(f) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3) and certified documents marked Exhibit D
(1. *MFB* 355 *or AFB* 296. 2. *Misc* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 3.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans Plea for mitigation by defending officer.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*L*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 543-546. *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 58(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C.34787, Armt/S/Sgt DAVIS, W.F., 1 Cdn Tank Troops Wksp, RCEME, a soldier of the Canadian Army Overseas, is charged with:

First Charge
AA Sec 40

When on active service, conduct to the prejudice of good order and military discipline

in that he

In the Field, Italy, on or about 30 Dec 44 improperly used Canadian Government vehicle No. M-5240566 for an unauthorized purpose.

Second Charge
AA Sec 11

When on active service, neglecting to obey Unit Orders

in that he

In the Field, Italy, on or about 30 Dec 44 neglected to check out at the Unit Control Office when removing a vehicle from the unit line, as required by Unit Part 1 Order No. 270, dated 30 Sep 44.

R.W. Ramsay Major,
Officer Commanding,
1 Canadian Tank Troops Workshop, RCEME

In the Field,
8 Jan 45

To be tried by Field General Court Martial.

(W.C. Murphy) Brig,
Comd 1 Cdn Armd Bde

15 Jan 45

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.34787	Armt/S/Sgt		WILSON FRANCIS	DAVIS	1 Cdn Tk Tps Wksp, RCEME

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Jan 45 endorsed by me ~~for by an offr of my staff for cert~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I am appoint as Judge-Advocate thereof the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	R. Macleod (Must be named. RP 106.)	1 Cdn Armd Bde Coy (83 Coy) RCASC (Unit.)

MEMBERS.

Captain	C.F. Hogan	1 Cdn Armd Bde Ord Fd Pk
Captain (Rank.)	J.L. Evans (Named or detailed. RP 106.)	HQ Sqn 1 Cdn Armd Bde (Unit.)

WAITING MEMBER.

(Rank.)	To be detailed by OC 1 Cdn Armd Bde Wksp, RCEME (Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

(Signed personally. RP 105 (n 2.)) (W.C. Murphy) Brigadier (Rank.)

Date 15 Jan 45

Commanding Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 25 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject as RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(E)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by J.A. if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A. if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 404, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or J.A. if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

26 January 1945.

This is to certify that C-34787 Armt/S/Sgt DAVIS , W. F.

is fit / ~~unfit~~ to undergo trial by court martial.

Date 26th Jan. 45

Medical Officer

PLEA FOR MITIGATION OF SENTENCE

There are, I believe, a few considerations, beyond the cold statement of the facts presented in the Summary of Evidence, that should be in the Court's mind when sentence is passed. The first is that this man is a qualified Armament Artificer, the highest trade qualification in the Army - one in fact that is not obtained easily - and that as such he must have a full and thorough knowledge of his trade. The fact that he has been promoted to the rank of Staff Sergeant and has performed his job as such with a clear record for the past year - for the past eight months with the same Workshop - must indicate that he is quite able to do his job.

Offences, I think, may be divided into three classifications:

(1) A deliberate, premeditated crime, such as a theft or a murder.
(2) A deliberate breach of discipline in which the offender imagines that "he can get away with it", or, that at the worst, the probable punishment will be but a fair price for the ends achieved.
(3) An unintentional misdemeancur where the possibility of serious consequences is not realized at the time.

Now, let us review this offence in order to determine it's nature. Type No. 1 we can rule out without question. Type No. 2 I think we can also rule out when we remember that the accused did call at the Control Office immediately before departing with the vehicle. His intention in doing this must have been to sign the vehicle out in accordance with the regulations, as there is no other logical explanation. Surely, had he been intending a deliberate breach of discipline, he would have made all efforts to depart undetected with the jeep. Further, we must remember that his job in the Unit as a Senior N.C.O. involved a certain latitude in the use of Unit vehicles, including jeeps, for purposes of Unit business. It seems a logical conclusion, therefore, that, at the time, the accused had no idea as to the gravity of his offence, or, indeed, that he was committing an offence at all.

If then, our opinions are in concurrence that this was an offence of the third type, I am sure that we will agree that the soldier has already undergone a considerable degree of moral punishment while, during the past three weeks, the preparations for this trial have forcibly demonstrated to him the gravity of his offence.

I am not asking for mercy, gentlemen, but merely for true justice. Surely it would not be in the interests of true justice, nor would it be in the interests of our own cause, to administer further punishment that will render this man incapable of continuing a highly specialized job at which he has proven so proficient, and for which there are all too few men with the proper technical qualifications.

E. L. Barton Lt
(E. S. Barton) Lieut.

Summary of Evidence in the case of
C-34787 Armt/S/Sgt DAVIS, W.F., 1 Cdn Tank Troops Wksp, R.C.E.M.E. Exhibit "A"

The Commanding Officer directs that all evidence be taken on oath.

First Witness for Prosecution.

B-4451-S/Sgt TOMES, E., 1 Cdn Tank Troops Wksp, RCEME, In the Field, having been duly sworn, states:-

On the night of 30 December 1944, I was Orderly Sergeant. Between the hours of 1915 and 1945, I saw a Willys 5 Cwt leave the Control Office with C-34787 Armt/S/Sgt DAVIS, W.F. driving. I entered the Control Office to see if the vehicle had been signed out as per regulations. It had not and B-112795 Cpl. DRYBROUGH, V.J. signed it out. I did not see the jeep or any further sign of it that night. I thought that having seen that the jeep was signed out was sufficient. The jeep I could not identify as to number.

Cross-examination by the Presiding Officer.

Q. Did you see C-34787 Armt/S/Sgt DAVIS, W.F. in the vehicle?

A. Yes, I saw him mount it.

Q. Had he been drinking or not?

A. I am unable to say.

Q. Was Cpl. DRYBROUGH instructed to sign the vehicle out?

A. Yes, I instructed him to sign the vehicle out.

Q. Was S/Sgt DAVIS alone in the vehicle?

A. Yes, but I was unable to stop him before he left.

Q. Are you sure of the identity of the vehicle - that it belonged to this Unit?

A. Yes.

Q. Did you see the vehicle again?

A. Yes, a few days later when it arrived with the breakdown vehicle.

Q. What condition was the vehicle in?

A. In a wrecked condition.

Q. Was the vehicle this Company's vehicle?

A. Yes.

Q. Are you sure that the wrecked vehicle was that taken by the accused?

A. Yes.

The accused declines to cross-examine the witness.

Edward Tomes
(E. Tomes)

Second Witness for Prosecution.

M-62323, Q.M.S. NELSON, O.M., 1 Cdn Tank Troops Wksp, RCEME, In the Field, having been duly sworn, states:-

On the morning of 31 December 1944, at 0730 hour's parade, B-66049, Cpl. BREEN, R.B. informed me that

/Page Two.

Statement of M-62323 Q.M.S., NELSON, O.M. continues:-

Second Witness for Prosecution

C-34787 Armt/S/Sgt DAVIS, W.F. would not be on parade and that he would like to see me in his room. After parade, I proceeded to his room where he reported to me that the previous night, 30 December 1944, he had fallen downstairs and injured his back. He was sent on Sick Parade that morning, 31 December 1944, and on his return was placed under Close Arrest. Later in the morning, B-94412, SM HENSON, E. was consulted and as S/Sgt DAVIS was too ill to be out of bed, the close arrest was changed to Open Arrest.

Cross-examination by the Presiding Officer.

Q. Who made the original examination upon finding of the vehicle?

A. Captain C.D. Orchard, the Company Officer. A repair price was put on the vehicle at the same time.

Q. Was this the jeep belonging to that Company?

A. Yes.

The accused declines to cross-examine the witness.

O.M. Nelson
(O.M. Nelson)

3rd Witness for Prosecution

B-112795 Cpl. DRYBROUGH, V.J., 1 Cdn Tank Troops Wksp, RCEME, In the Field, having been duly sworn, states:-

On the night of 30 December 1944, I was Duty Clerk in the Control Office. At about 1910 hours, C-34787 Armt/S/Sgt DAVIS, W.F. entered and stayed talking to B-57330 Cpl. DENISON, H.A. and myself. He remained for approximately five minutes. Shortly after he had left, I heard a motor start. A few minutes later, B-4451 S/Sgt. TOMES, E., the Orderly Sergeant, entered and asked me if the vehicle that had just left had been signed for. I was instructed to make an entry in the Pool book, which I did, showing that the vehicle had been driven out at 1915 hours.

Cross-examination by the Presiding Officer.

Q. Was the accused alone when he left the Workshop?

A. Yes.

Q. Had he been drinking?

A. Yes, he had been drinking, but he was not drunk.

Q. Did S/Sgt. DAVIS say anything to you about the use of the vehicle?

A. No.

Q. Did you see S/Sgt DAVIS later that night?

A. No.

Q. Who was in charge of the Control Office for the purpose of checking vehicles?

A. I was.

Q. Which vehicle was taken?

A. There was only one vehicle not accounted for and upon verification it turned out to be M-5240568.

Q. Is M-5240568 one of our vehicles?

A. Yes, it is a Canadian vehicle on charge to Tank Company.

/see Page

Cross-examination of B-112795 Cpl. DRYBROUGH, V.J. by accused.

Q. Did I ask you about using the jeep?

A. No.

(V.J. Drybrough)

Fourth Witness for Prosecution.

Captain C.D. Orchard, Company Commander, 1 Cdn Tank Troops Wksp, RCEME, having been duly sworn states:-

On 31 December 1944, it was reported to me as Company Commander of No. 2 Company of 1 Cdn Tank Troops Wksp, RCEME, by M-62323, Q.M.S. NELSON, O.M. that a vehicle had been stolen. On Monday, 1 January 1945, a message was received from the Provost Corps that the missing vehicle was at 8 Port Workshop at Siena. B-66049, Cpl. BREEN, R.B. was despatched to recover the vehicle. He was informed that the Provost would send a complete report regarding the finding of the vehicle. The jeep was examined by myself and an estimate of the cost of repairs was placed at two hundred ($200.00) dollars.

The accused declines to cross-examine the witness.

(C.D. Orchard)

Fifth Witness for Prosecution.

B-66049 Cpl. BREEN, R.B., 1 Cdn Tank Troops Wksp, RCEME, In the Field, having been duly sworn, states:-

About 0730 hours, 31 December 1944, I informed M-62323, Q.M.S. NELSON, O.M. that C-34787 Armt/S/Sgt DAVIS, W.F. wished to see him in his room. Q.M.S. NELSON went to see him. On the morning of 2 January 1945, I was ordered to proceed to 8 Port Workshop at Siena to pick up a vehicle. I went to Siena with K-83543, Cfn. SHOOK, A.P. Upon arrival there, we reported to 111 Provost Company and showed them the signal that had been despatched by them to this Unit. They retained the despatch. They showed us a report regarding the finding of the vehicle abd said that a full report concerning the recovery of the vehicle would be forwarded to this Unit. Upon arrival, we reported to Headquarters handing in all papers including a movement order for the vehicle.

Cross-examination by the Presiding Officer.

Q. Did the vehicle recovered belong to this Unit?

A. Yes.

Q. Was the vehicle you brought back No. M-5240568?

A. Yes.

The accused declines to cross-examine the witness.

(H.B. Breen)

The accused, C-34787, Armt/S/Sgt DAVIS, W.F., 1 Cdn Tank Troops Wksp, RCEME, In the Field, was cautioned as follows:-

Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything, or to give any evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be used in evidence.

/Page Four

Caution to the accused continues:-

After the above caution, the accused declined to make any statement.

I certify that the foregoing Summary of Evidence consisting of four (4) pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

Taken before me, In the Field, this 8th day of January 1945.

Capt.

(W.P. Hillary) Capt.,
1 Canadian Tank Troops Workshop,
R.C.E.M.E. Canadian Army Overseas,
Central Mediterranean Force.

5-4
23 January 1945.

C-34787
Armt/S/Sgt. DAVIS, W.F.
1 Cdn Tank Troops Wksp,
R.C.E.M.E.

RULES OF PROCEDURE

1. Additional evidence is required in connection with the Summary taken against you.

2. Please take notice that under Rules of Procedure 76, I intend to adduce the following evidence from the under mentioned witnesses:-

(i) B-94412 SM HENSON, E. will produce Part I Order No. 270 dated 30 September 1944, which states that "all vehicles will be signed for at the Control Office".

(ii) B-94412 SM HENSON, E. will prove that you were a member of this Unit on 30 September 1944 when Part I Order No. 270 was published and posted.

3. For your information.

/JES

(M.F. Hillary) Capt.,
1 Canadian Tank Troops Workshop, R.C.E.M.E.

PART I ORDERS
By
MAJOR A.J. STETHEM
OFFICER COMMANDING
1 CANADIAN TANK TROOPS WORKSHOP, R.C.E.M.E.

Last Part I Orders Issued - No. 269	30 SEPTEMBER 1944	This Order No. 270

1. DUTIES. For Sunday, 1 October 1944:-

Duty Officer:-	CAPT. HILLARY
Next for Duty:-	CAPT. ORCHARD
Orderly Sergeant:-	Sgt. Smale
Next for Duty:-	Sgt. Scovill
Guard Commander:-	L/Cpl. Wright
Night Guards:-	Cfn. Gardner, C.H.
	Cfn. Golding
	Cfn. Good
	Cfn. Gorth
	Cfn. Graham
	Pte. Gravel
	Cfn. Hammond
	Pte. Hayes
	Pte. Hicks
	Cfn. Holland
	Cfn. Houde
	Pte. Houle
Spare Guards:-	Cfn. Howard
	Cfn. Hudson
	Cfn. Hunter, J.A.

2. ROUTINE. For Sunday, 1 October 1944:-

Reveille	0730 hrs.
Breakfast	0800 hrs.
Lunch	1200 hrs.
Supper	1630 hrs.
Night Guard Mounting	1800 hrs.
Curfew	2230 hrs.

Sunday, 1 Oct 44 will be regarded as a holiday, except for personnel on regt'l duties.

3. PAYBOOKS

Part II Paybooks will be handed to the Pay Clerk, at the Orderly Room, NOT later than 1200 hrs., Mon 2 Oct 44.

4. Q.M. STORES

All K.D.'s with the exception of (1) one pair of longs, will be turned in to the Q.M. Stores before 1200 hrs Mon 2 Oct 44.

5. REQUISITIONING

1. Several instances have occured in which requisitioning has been carried out in an un-authorized manner.
2. The conditions under which articles and materials may be requisitioned are clearly stated in Army Routine Order No. 185 of 1944.
3. Severe disciplinary action will be taken against all concerned if any further cases of illegal requisitioning are reported. O's C units will therefore ensure that both this instruction and the procedure laid down in ARO 185 are brought to the attention of all ranks under their command. (HQ Eighth Army DDME Instruction No.46,14 Sep 44).

PART I ORDERS NO. 270 d/30 SEP 44. - 1 CDN TK TPS WKSP., RCEME

6. TRANSPORT

After 1700 hours each day, and all day if a holiday, all vehicles will use the gate by the Control Office as an exit. All Unit drivers will check out and in at the Control Office with work ticket signed by N.C.O. i/c Transport. The trip will be entered in a book at the Control Office, with time in and out.

This will apply to all unit vehicles, even if moving to billets or an adjoining road for which a work ticket is not normally req'd. All outside vehicles will NOT be allowed out any exit except the one at the Control Office.

Guards will stop all vehicles leaving unit line to see that the above orders are complied with.

/WEB

(A.J. Stethem), Major,
O.C. 1 Cdn Tk Tps Wksp., R.C.E.M.E.

Certified True Copy of
Part I Order No. 270.

(M.F. Hillary) Capt.

Exhibit "B"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
C-34787	Armt/S/Sgt	DAVIS, W.F.	1 Cdn Tank Troops Wksp, R.C.E.M.E.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number or entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times.	times.
For	times.	times.
For	times.	times.
For	times.	times.
For	times.	times.
Number of occasions on which absent without leave		

or

There are no entries in the conduct sheets of the accused. Certified copy of MPM 14 attached.

2. [illegible]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. [illegible]

4. [illegible]

5. The present age of the accused according to his record of service / attestation paper is 29 years, 2 month and 8 days. as at 26 January 1945.

6. The date of his attestation specified in his record of service / attestation paper is 29 August 1941

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 years, 4 months 26 days as at 26 January 1945.

8. [illegible]

9. [illegible]

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. Canadian Volunteer Service Medal and Clasp.

12. [illegible]

[illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C-34787 Rank Armt/S/Sgt Name DAVIS, W.F. of 1 Cdn Tk Tps Wksp, RCEME, Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge or order of the dispensing authority	Punishment remitted
FGCM	Field	14 January 1943	Reduced to ranks.	
		Charges upon which convicted not available [signature] Major Pres.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of January 1945

1 CDN TANK TROOPS SUB-DEPOT JAN 6 1945

[signature] Capt.

12. The accused has served as a non-commissioned officer continuously without reduction to the present date.

			Date of Promotion
In the rank of A/L/Cpl. for 8 mos., 23 days		years	22 April 1942
In the rank of Armt/S/Sgt for 11 mos., 22 days		years	17 January 1944
In the rank of		years	

Instructions—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.

No C-34788 Name DAVIS, W.F. Sqn, Battery or Company | Corps RCEME | Date of enlistment 29-8-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (5438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified no entires while at 8 Bn 2 C.B.R.D. 10-4-44					

Certified True Copy

(W.F. Hillary) Capt.

Exhibit "C"

(P20)

COPY OF M.F.M. 14

Exhibit D.

PART II D.O. NO.	DATE	NATURE AND PARTICULARS
236	20-11-41	Att TC#31 from DD "A" MD#3 eff 20-11-41
245	29-11-41	Cease to be att TC #31 on trans to #9 Det RCOC, Ottawa, eff 30-11-41
228	3-12-41	TOS No. 9 Det RCOC (AF) eff 1-12-41 on trans from CA (A) TC #31, Cornwall.
228	3-12-41	Granted Sub/All. eff 1-12-41
33	12-2-42	SOS No. 9 Det RCOC on posting 10th Non-Div Ord Fd Pk eff 12-2-42
33	12-2-42	Ceases Subs Allce eff 12-2-42
6	14-2-42	TOS on re-posting from No. 9 Det RCOC (CA) eff 13-2-42
17	12-3-42	Qualified as Motor Mechanic, Group "B" eff 30-1-42
24	30-3-42	Granted embarkation leave eff 28-3-42 to 2-4-42 incl.
25	31-3-42	Attached #3 DD for rations and quarters eff 13-2-42
35	22-4-42	Appointed A/L/Cpl with P.& A. eff 13-2-42
35	22-4-42	Qualified as Driver I.C. Class III eff 22-4-42
	14-5-42	SOS (Can) on embarkation eff 2-5-42
	14-5-42	TOS (Overseas) on 3-5-42 - disembarkation 12-5-42
	14-5-42	Attached No. 1 Cdn Base Transist Depot for R and Q 13-5-42
128	27-4-42	Qualified as Fitter M.V. eff 18-5-42
2	18-5-42	Authorized Trades pay as Fitter M.V. Group "B" eff 15-4-42
2	18-5-42	Granted privilege leave 14-5-42 to 21-5-42
7	6-6-42	Ceases to be attached No. 1 Cdn Base Transit Depot for R&Q on proceeding on Comd to 1 CORU wef 29-5-42
5	20-5-42	On Comd for all purposes incl pay to No 1 CORU, Cdn Army (England) to attend Fitter MV Course wef 29-5-42
75	26-5-42	Cease att No. C.B.S.C. fap 29-5-42
11	24-6-42	SOS on att No. 1 CORU fap 13-6-42
158	1-7-42	TOS No. 1 CORU fap 14-6-42
		Reduced to ranks - forf of 30 days pay - sentenced by FGCM w.e.f. 14-1-43
	→	Ceases to be attd 9 Non Div Ord Fd Pk from 1 CORU wef 18-1-43
45	22-2-43	Granted 11 days remission of sentence wef 2-2-43
48	25-2-43	Trade tested and Qualified Fitter MV Group "A" wef 19-2-43
50	27-2-43	Granted T.P. as Fitter MV Group "A" wef 19-2-43
94	15-4-43	Granted Increased T.P. of 2.10 per diem wef 1-1-43
110	4-5-43	SOS 1 CORU to 1 Cdn Army Tk Tps Wksp wef 4-5-43
153	5-5-43	TOS 1 Cdn Tk Tps Wksp from 1 CORU wef 5-5-43
127	24-5-43	TOS 1 CORU from 1 Cdn Tk Tps Wksp wef 14-5-43 (Fitter AFV "A"
135	2-6-43	Proceeded on A.A. Vehicle Course at T.E. REME Arborfield wef 1-6-43

OVER

185	2-8-43	To be A/L/Sgt (AWOP) while on course wef 1-8-43
300	4-12-43	Granted permission to marry wef 2-8-44
19	21-1-44	Attended AA MW AND AA AFV Course at TE RCME from 24-8-43 to 17-1-44 and Qualified wef 17-1-44
25	26-1-44	Granted TF as Armt Art "A" wef 22-1-44
23	26-1-44	SOS X-4 list wef 15-1-44
24	27-1-44	TOS 1 CORU from X-4 list on return from AA (Veh) course at TE RCME Arborfield wef 27-1-44
Y-4	25-1-44	TOS X-4 list from 1 CORU wef 16-1-44
Y-5	31-1-44	SOS X-4 to 1 CORU on return from AA Veh Course wef 26-1-44
33	7-2-44	Married with permission Miss Barabara Elizabeth Amy Gibbard on 5-2-44
44	18-2-44	SOS 1 CORU wef 15-2-44 to draft Hendley Armt Art "A"
44	19-2-44	To be A/Armt/S/Sgt with P&A wef 17-1-44
13	20-4-44	TOS 1 Cdn Tk Tps Wksp from X-4 list Armt Art Veh "A" 17-4-44
20	3-6-44	Transfer HCOC to RCEME remains 1 Cdn Tk Tps Wksp Armt Art Veh "A" wef 15-5-44
21	10-6-44	Confirmed Armt/S/Sgt
40	17-11-44	SOS 1 Cdn Tk Tps Wksp to X-3 list RCEME Armt Art Veh "A" wef 9 Nov 44
41	28-11-44	TOS 1 Cdn Tk Tps Wksp from X-3 list RCEME Armt Art Veh "A" 13 Nov 44

CERTIFIED TRUE COPY

Capt.

FLASH NUMBER TWO

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5 H.-66

Pt Davis W.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 116502 Pte Davis, William Herbert. 48th High.

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15 (1) ~~offence~~	guilty	guilty	~~nine months detention~~
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
to undergo nine month detention

(Sgd) Nil 7 Mar 45 (Sgd) A/Lt-Col 6 May
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:
Finding and Sentence Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) (J D B Smith) Brigadier
Date 8 Apr 45 Commanding Comd 1 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
C 116502 Pte Davis W.H.	10 APR 45	W Mitchell Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5H-66

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFA3) 40/P.S.R./1698 (3864)

Convened by Order of Brigadier J.D.B. Smith Comd 1 Cdn Inf Bde dated 6 Mar 45

ACCUSED.

(Where the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C 116502	Private	William Herbert	DAVIS	48th Highrs

PROCEEDINGS REVIEWED 17 May 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) on (date(s)) 7 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~Alt. if any, and Offrs under instr. if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Amdt ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans Nil~~
~~The Interpreter is sworn (1). Do you object to ..... as shorthand writer? Ans Nil~~
~~The shorthand writer is sworn (1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans ~~Nil~~ (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Alt. if any, and Offrs under instr. if any, are sworn (1).~~ The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R A Dannatt	H & P.E. Regt
Member	Capt	A MacNeil	48th Highlanders
Member	Lieut	C H Edwards	H & P.E. Regt
Judge-Advocate			
Prosecutor	Lieut	J W Mitchell	48th Highlanders
Defending Offr	Lieut	R S Green	48th Highlanders

Questions by President: Is the Prosecutor a lawyer? Ans no. Is the Defending Offr a lawyer? Ans no (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea(s). (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (OB), or as to the jurisdiction of the Court (RP 34, 25(A), 11(B), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea [redacted] in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet: see RP 62; unless several accused to be tried separately see RP 71(C), and use separate copies of CF A8a to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~re-assembles~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 105 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~and JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. nil (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 25(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement.(1) The Court decides (and) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D6.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* AA5. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. nil.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *B* and Ex *C* respectively.(3)
(*1. MFB* 255 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. nil
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to produce on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also by the JA, if any.~~(2)
(*1. When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 142, *RP* 46-50, 69, (1)8, 119(*A*), *KR Con* 308, 326, 363-366, *Overseas BD* 309, 2323, *MML p* 66, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Con* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

App. IV
Major

CHARGE SHEET

The accused, No C116502 Pte William Herbert DAVIS, "A" Coy, 48th Highlanders of Canada, a soldier of the Canadian Army Overseas, C.M.F., is charged with:

1st CHARGE
A.A.Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, ITALY, absented himself without leave from 0700 hours 1 Feb 45 until surrendering himself at 1140 hours 22 Feb 45. TIME ABSENT 21 days, 4 hours, 40 mins.

In the Field, ITALY,
26 February 1945.

(D.A. MACKENZIE) Lt-Col,
Commanding Officer,
48 Highrs

To be tried by Field General Court Martial.

(J D B Smith) Brigadier
Comd 1 Cdn Inf Bde

In the Field
6 Mar 45

App. II
R A Damude Major

CFA95 (In lieu of AFA3)
40/P&S/1607 (2863)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, (ns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 116502	private		William Herbert	DAVIS	48 Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 6 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereof the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R A Damude	MPER

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	A. MacNeil	48 Highrs
Lt.	C H Edwards	MPER

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt.	J M Hunter	48 Highrs

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

J D B Smith (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 6 Mar 45

Commanding (J D B Smith) Brigadier
1 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, *if not already an exhibit.*

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 *after minute* of sentence awarded. (*AA* 52(9), *RP* 118(*C*), *MML p* 759.)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Appx III
Bloomside Major

MEDICAL OFFICERS' CERTIFICATE
(KR (Can) para 557)

I certify that I have this morning examined C-116502 PTE DAVIS WH. of the 48 Highrs and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

(J.E.POLLAK) Capt-RCAMC
R.M.O. 48 Highrs

Date. 7 March 45..

Exhib. A

48TH HIGHLANDERS OF CANADA

Summary of evidence in the case of No[illegible]650 Pte DAVIS W.H., 48th Highlanders of Canada, Canadian Army, CMF.

By Direction of Lt-col D.A.MACKENZIE, Commanding Officer, 48th Highlanders of Canada, all evidence is taken on oath.

1st WITNESS FOR THE PROSECUTION: B108651 L/Sgt CHURCH J.R., "A" Coy, 48th Highlanders of Canada, having been duly sworn states:

"I am Sgt CHURCH of 8 pl, "A" Coy. On the morning of 1 Feb 45 at 0700 hours approx I discovered that Pte MALONEY who had returned from leave the previous night was sleeping in the bed of the accused. I immediately checked the entire platoon and discovered that the accused was not present and that his small pack was missing. If he had returned I would have known it. He did not return."

(B108651 L/Sgt CHURCH J.R.)

The accused declines to cross examine the witness.

2nd WITNESS FOR THE PROSECUTION: Lt W.J.(A) ARMSTRONG, "A" Coy, 48th Highlanders of Canada, having been duly sworn states:

"I am Lt W.J. ARMSTRONG of 8 pl, "A" Coy. On 22 Feb 45 at approx 1140 hours Pte DAVIS W.H. reported to me at Pl HQ 8 Pl. I instructed him to report to Coy HQ with Pte DAVIS W.W. and Pte LUKIENSKI G."

(W.J.(A) ARMSTRONG) Lt

The accused declines to cross examine the witness.

The accused, having been warned according to R.F. 4(e) declines to make a statement.

I certify that Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

Taken down by me in the hearing and presence of the accused, in the Field, ITALY, this 24th day of February 1945.

(J.W.MITCHELL) Lt
Officer taking summary

Lch. B [illegible] Major

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
C 11650 2	PTE	DAVIS W.H.	HQ HIGHLANDERS of CANADA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 671, K.R., Vol. II.

* The numbers herein stated should correspond with the numbers of entries in the conduct sheets, permission being given to the said entries effective in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instructions will be given for drunkenness the entries for drunkenness must be stated separately and dated.

	• Within last 12 months.	•Since Enlistment.
For A.A.Sec. 15(1)	2 times	4 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, nil

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, or

~~The previous conviction of the accused by a court martial or by civil court, which is stated in the Army Form A.B. 64, Part II, and which is not quashed, is the only conviction recorded against him which is liable to be taken into account under section 73 of the Army Act, and a copy thereof is annexed to this statement.~~

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~imprisonment~~ ~~detention~~ ~~penal servitude~~ beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for N.L days in civil custody, and ~~Nil~~ 9 days in military custody, making a total of ~~Nil~~ 9 days, of which N.L days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ record of service ~~paper~~ is 19 yrs

6. The date of his ~~attestation~~ specified in his record of service ~~attestation paper~~ is 15-Dec-43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 2 mths

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 2 Mths service

9. The accused is entitled to reckon 1 yr 2 Mths service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(as to which particulars are required by Army Form B. 199A)~~.

11. ~~If the accused is a warrant officer:~~ The accused before he was made a warrant officer was ~~[illegible]~~

12. ~~[illegible]~~ year

~~and is the recipient of such or equivalent pension.~~ year.

(P 16290) W.13692/144 125,000 8/43 A.S.E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C116502 Rank Pte Name DAVIS W.H. of 40 HIGHRS Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		nil		

Wd

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of February 1945

(W.G. BURKE-ROBERTSON) Capt & Adjt

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19. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years.	
In the rank of	years.	
In the rank of	years.	

Wd

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such courses as are available and the paragraph concerned amended accordingly.)

No C116502 Name DAVIS W.H. Sqn, Battery, or Company | Corps C.I.C. App. C | Date of enlistment 15 Dec 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/156 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc W.T.Pringham Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				First cheet destroyed 31 Dec 44	Date of	last entry 31	Dec 44		
	1943								
Kingston, Ont.	30 Dec	Pte		AWL from 0630 hrs 30 Dec 43 until 0630 hrs 31 Dec 43 (1 day)	Cpl Robertson	Admonished	31Dec43	O.L.Dalgleish Lt	FCP 1 day FR&I
Cornwall, Ont.	14Feb44	Pte		AWL from 0600 hrs 14 Feb 44 until 0515 hrs 29 Feb 44 (Abs: 14 days 23 hrs, 45 mins) A.A. 15(1)	L/Cpl Borton	120 hrs detn	29Feb44	R.Larose Lt-col	FCP 16 day FR&I
Cornwall, Ont.	26Apr44	Pte		AWL from 0600 hrs 26 Apr 44 until 0505 hrs 27 Apr 44 (23 hrs	Cpl Meyers L.	1 days C.B. + C	27Apr44	W.R.Simpson Capt	FCP 1 day FR&I
Camp Ipperwash	8JUL44	Pte		A.A.15(1) AWL from 1200 hrs 8 Jul 44 until 0930 hrs 25 Jul 44 (Absence 16 days, 21 hrs, 30 mins)	Cpl Smithers (Doctry)	28 days Detention	28Jul44	A.Garrod Lt-col	FCP 17 days 149(1)(a) FR&I
					Cost	of apprehension $44.65			

(P.T.O.)

(PTO)

Lch. B [illegible] Major ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank	Name	Regiment (or as the case may be).
C116502	PTE.	DAVIS W H	48TH HIGHLANDERS OF CANADA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

†See para. 671, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given for the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A.Sec. 15(1)	2 times	4 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, nil

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~The previous conviction(s) of the accused by a court martial or by a civil court, standing recorded against him on the conduct sheet, is (are) that specified in the statement annexed to this statement.~~

~~Army Act, section 153 (civil conviction), was brought under section 73 of the Army Act (previous conviction) on the occasion mentioned in this statement.~~

3. The accused is not under sentence at the present time, ~~*or The accused at the present time is under sentence for~~

~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for N.L. days in civil custody, and 4 mos 9 days in military custody, making a total of 4 mos 9 days, of which N.L. days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 19 yrs

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 15-Dec-43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 2 mths

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 2 mths service.

9. The accused is entitled to reckon 1 yr 2 mths service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(or is in possession of or entitled to the following military decoration or award)~~.

11. ~~If the accused is a warrant officer: The amount (nature) of pay made a condition under (not by) the regimental~~

~~rank is:~~

12. ~~(If the accused was reduced to the ranks he was)~~ ~~(from)~~

~~and is at present in receipt of (appointed thereto at)~~ ~~rank~~

(Signed) W. [illegible] A.A.E.W.I.xx. Capt.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C1165G2 Rank Pte Name DAVIS W.H. of 48 HIGHRS Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		nil		

Wd

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of February 1945

(W.G.BURKE-ROBERTSON) Capt & Adjt
Officer i/c Regtl Records

19. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years.	
In the rank of	years.	
In the rank of	years.	

Wd

(Instruction—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such rounds as are available and the paragraphs concerned amended accordingly.)

No C116502 Name DAVIS W.H. Sqn, Battery, or Company | Corps C.I.C. App. e | Date of enlistment 15 Dec 43 | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3458)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc W.T.Pringham Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				First cheet destroyed 31 Dec 44	Date of	last entry 31	Dec 44		
Kingston, Ont.	1943 30 Dec	Pte		AWL from 0630 hrs 30 Dec 43 until 0630 hrs 31 Dec 43 (1 day)	Cpl Robertson	Admonished	31Dec43	O.L.Dalgleish Lt	FOP 1 day FR&I
Cornwall, Ont.	14Feb44	Pte		AWL from 0600 hrs 14 Feb 44 until 0515 hrs 29 Feb 44 (Abs: 14 days 23 hrs, 45 mins) A.A. 15(1)	L/Cpl Borton	120 hrs detn	29Feb44	R.Larose Lt-col	FOP 16 day FR&I
Cornwall, Ont.	26Apr44	Pte		AWL from 0600 hrs 26 Apr 44 until 0505 hrs 27 Apr 44 (23 hrs A.A.15(1)	Cpl Meyers L.	1 days C.B. +	27Apr44	W.R.Simpson Capt	FOP 1 day FR&I
Camp Ipperwash	8JUL44	Pte		AWL from 1200 hrs 8 Jul 44 until 0930 hrs 25 Jul 44 (Absence 16 days, 21 hrs, 30 mins)	Cpl Smithers (Doctry)	28 days Detention	28Jul44	A.Garrod Lt-col	FOP 17 days 149(1)(a) FR&I
					Cost	of apprehension $44.65			

(P.T.O.)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED THAT THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL MFM 6 IN MY CUSTODY

W.G. Burke-Robertson

.....

(W.G.BURKE-ROBERTSON) Captain & Adjutant
Officer i/c Regtl Records

Lieut & Adjutant Major

In the case of No C116502 Pte DAVIS W.H., "A" Coy, 48th Highlanders of Canada, Canadian Army, CMF.

LIST OF WITNESSES

FOR THE PROSECUTION

B108561 L/Sgt CHURCH J.R. 48th Highlanders of Canada

Lt W.J.(A) ARMSTRONG 48th Highlanders of Canada

FOR THE DEFENCE

NIL

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C116502 Pte Davis, William Herbert 48 Highrs

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ "RD" (1)

(1. Insert sentence being served, or delete. If not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

to undergo nine months detention

(Sgd) nil Judge-Advocate, if any. 7 Mar 45 Date awarded. (Sgd) "R A Denude" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and dispersal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.44(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Finding and sentence confirmed

~~I direct that the accused be not committed to (prison) or (detention barracks until further ordered(*)~~ "DDS"

(1. AA 57A. Delete if not used.)

(Sgd) "JDB Smith" [JDB Smith] Brigadier

Date 8 Apr 45 Commanding Coond 1 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
C116502 Pte Davis W H	10 Apr 45	"W N Burton Wheeler" Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

54-66

FIELD GENERAL COURT-MARTIAL

CFA98 (To take place of AFA98 40/P & B/1698 (8144) 4/388

Convened by Order of Brigadier J D H Smith Comd 1 Cdn Inf Bde dated 6 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C116502	Private	William Herberd	DAVIS	48 Highrs

CERTIFIED TRUE COPY
W. B. Bale Maj.
Actg Sec 1 Cdn Inf Bde 21 Aug 45

PROCEEDED WITH AS A FIELD GENERAL COURT-MARTIAL
W. B. Bale Maj.
1 Cdn Inf Bde
HQ 21 Aug 45

7 Aug 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 7 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 28/151

A1. The President, Members, waiting Member, ~~Jr, if any, and Offrs under instr if any~~, assemble, and the "RD" Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnin RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number bearing reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for necns and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 52, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences. "RD"

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused is to be dealt with summarily by the CO.(2)~~ "RD"

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused : Do you object to an interpreter ? Ans~~ "RD"

~~The interpreter is sworn.(1) Do you object to an shorthand writer ? Ans~~ "RD"

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any, are sworn.~~(1) The following are the "RD" ranks, names and units of the offrs comprising the Court, etc :

President	Major	B A DENUDE	RAPE REG
Member	CAPT	A MacNEIL	48 HIGHRS
Member	LIEUT	C H EDWARDS	RAPE REG
Judge-Advocate			
Prosecutor	LIEUT	J W MITCHELL	48 HIGHRS
Defending Offr	LIEUT	R S GREEN	48 HIGHRS

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 2.)

A8. The accused before arraignment make(s) (no) ~~(*)~~ plea "RD" (1)

12May46 jwb

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) "RD" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is cleared and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B "RD"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. 469

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans ..... [5]
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) accordingly. Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.[1]
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. Under B5 such parts only of the Summary of Evidence will be read as relates to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Record Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans..... [1]
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.[1]
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn[3] and you will not be subject to cross-examination.[4] But a statement which could have been made on oath will not differ with the Court the same weight as sworn testimony.[5] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes, addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. AA 54(7) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans .....
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.[3]
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans .....
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.[2]
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Glenmeena AO 309, 2323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

App IV
"R A Damude" Major

CHARGE SHEET

The accused, No C116502 Pte William Herbert DAVIS, "A" Coy, 48th Highlanders of Canada, a soldier of the Canadian Army Overseas, C.M.F, is charged with:

1st CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, ITALY, absented himself without leave from 0700 hours 1 Feb 45 until surrendering himself at 1140 hours 22 Feb 45. TIME ABSENT 21 days, 4 hours, 40 mins.

In the Field, ITALY
26 February 1945

"D A MACKENZIE"
(D A Mackenzie) Lt-Col
Commanding Officer
48 Highrs

To be tried by Field General Court Martial.

"J D B Smith"
(J D B Smith) Brigadier
Comd 1 Cdn Inf Bde

In the Field

6 Mar 45

App II "RA Damude" Major

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C116502	Private		William Herbert	DAVIS	48 Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 6 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". "JDS"

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ "JDS"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "JDS"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ "JDS"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Must be named. RP 106.	Unit.
Major	R A Demude	HPER

MEMBERS.

Rank.	Named or detailed. RP 106.	Unit.
Captain	A MacNeil	48 Highrs
Lt	C H Edwards	HPER

WAITING MEMBER.

Rank.	Named or detailed, if any. RP 106.	Unit.
Lt.	J M Hunter	48 Highrs

JUDGE-ADVOCATE.

Rank.	Must be named, if any. RP 106.	Unit.

On Active Service in the Fd

in Italy (Country.) "J D S Smith" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat 6 Mar 45 (J D B Smith) Brigadier Commanding 1 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 94 (In lieu of AFA 3) 40/F & S/1697 (6143)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 96(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 96(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 42 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions where accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 96(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

App III "R A Damude" Major

MEDICAL OFFICER'S CERTIFICATE (AW(Can) Para 557)

I certify that I have this day examined C116502 Lte Davie W H of the 48 Highrs and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station 7 March 45

Date

"J E Follak" Capt
(J E FOLLAK) Capt RCAMC
RMO 48 Highrs
Medical Officer

Unit

C1[illegible]502 Pte
Da[illegible] W H

App XXX Exh B "R A Damude"
Major

Appeal for Medigation

This man went on AWL while unit was out of line. We realize he has gone this way before. These breaks have come in spells which his youth probably has much to do with. It would be better for him and the Cdn Army if he were allowed to stay with his unit. Thus the defence asks for leniency, this being his first Court Martial, giveing this man little detention so that he may stay with is unit and some other form of punishment instead.

"RAD"

Exhibit "A"
"RA Damude" Majr

48TH HIGHLANDERS OF CANADA

Summary of evidence in the case of C116502 Pte DAVIS W H, 48th Highlanders of Canada, Canadian Army, CMF.

By Direction of Lt-Col D A MACKENZIE Commanding Officer, 48 th Highlanders of Canada, all evidence is taken on oath.

1st WITNESS FOR THE PROSECUTION:

B108651 L/Sgt CHURCH J R, "A" Coy, 48th Highlanders of Canada, having been duly sworn states:

I am Sgt CHURCH of 8 pl, "A" Coy. On the morning of 1 Feb 45 at 0700 hours approx I discovered that Pte MALONEY who had returned from leave the previous night was sleeping in the bed of the accused. I immediately checked the entire platoon and discovered that the accused was not present and that his small pack was missing. If he had returned I would have known it. He did not return.

"J R Church"
(B108651 L/Sgt Church J R)

The accused declines to cross examine the witness.

2nd WITNESS FOR THE PROSECUTION:

Lt W J (A) ARMSTRONG "A" Coy, 48th Highlanders of Canada, having been duly sworn states:

I am Lt W J ARMSTRONG of 8 pl, "A" Coy. On 22 Feb 45 at approx 1140 hours Pte DAVIS W H reported to me at Pl HQ 8 Pl. I instructed him to report to Coy HQ with Pte DAVIS W W and Pte LUKIWSKI G.

"W J ARMSTRONG"
(W J (A) ARMSTRONG) Lt.

The accused declines to cross examine the witness.

The accused, having been warned according to RP 4 (e) declines to make a statement.

I certify that Rules of Procedure 4 c,d,e, and f have been complied with.

Taken down by me in the hearing and presence of the accused, in the Field, ITALY, this 24th day of February 1945.

"J W MITCHELL" Lt
(J W MITCHELL) Lt
Officer taking the summary

Exhibit "B" "R A Damude" Major

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
C116502	Pte	Davis W H	48th Highlanders of Can

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AA Sec 15(1) ..... 4 times

For .... times

For .... times

For .... times

2. ~~[illegible] civil court [illegible]~~ "WBR"

3.* ~~[illegible]~~ "WBR"

~~[illegible]~~ ..... "WBR"

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 9 days in military custody, making a total of 9 days of which nil days were spent in hosp.

5. The present age of the accused is 19 yrs

6. The date of his attestation is 15 Dec 43

7. The service which the accused is allowed to reckon is 1 yr 2 mths

8. ~~[illegible]~~ "WBR"

\# State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date - N/A

SUMMARY OF CONVICTIONS BY A FIELD - GENERAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
NIL				

"WBR"

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27th day of February 1945

"W.G.Burke-Robertson" Capt
(W G BURKE-ROBERTSON) Capt
Officer i/c Regtl Books

AppC

No C116502 Name Davis W H | Sqn, Battery, or Company | Corps CIC | Date of enlistment 15Dec 43 | CC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc W T Pringham Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Appreciating with trial)	By whom awarded	FOP
				First sheet destroyed 31 Dec 44 Date of last entry 31 Dec 44					
Kingston Ont	30Dec43	Pte		AWL from 0630hrs 30Dec43 to 0630 hrs 31Dec43 (1 day)	Cpl Robertson	Admonished	31Dec43	OL Dalgleish Lt/ //Lt-Col	1 day FRI
Cornwall,Ont	14Feb44			AWL fr.0600hrs 14Feb44 to 0515hr 29Feb44(Abs: 14days 23hrs 45 min (AA 15(1))	L/Cpl Borton	120hrs detn	29Feb44	R.Larose	FOP 16day FRI
Cornwall,Ont	26Apr44			AWL fr.0600hrs 26Apr44 to 0505hr 27Apr44(23hrs)	Cpl Meyers L	1 days CB	27Apr44	WR Simpson Capt	FOP L DAY FRI
Camp Ipperwash	8Jul44			AA15(1)AWL fr 1200hrs 8Jul44 to 0930hrs 25Jul44(Abs: 16days,21hr 30 mins)	Cpl Smithers	28 days detn (Doctry) Cost of apprehension $44.65	28Jul44	A Garrod Lt-Col	FOP 17 days 149(1)(a) FRI

CERTIFIED THAT THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL MFM 6 IN MY CUSTODY

"W G BURKE-ROBERTSON"
(W G Burke-Robertson) Captain & Adjutant
Officer i/c Regtl Records

Exhib"C" "R A Damude" Major

(PTO)

Exhibit "B" "R A Damude" Major

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
C116502	Pte	Davis W H	48th Highlanders of Can

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AA Sec 15(1) ..... 8 times

For .... times

For .... times

For .... times

2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the schedule overleaf.~~ "WBR"

3.* ~~The accused at the present time is under sentence for~~ ..... "WBR"

~~beginning on the~~ ..... ~~day of~~ ..... "WBR"

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 9 days in military custody, making a total of 9 days of which nil days were spent in hosp.

5. The present age of the accused is 19 yrs

6. The date of his attestation is 15 Dec 43

7. The service which the accused is allowed to reckon is 1 yr 2 mths

8. ~~The accused is an possession of~~ "WBR"

\# State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date - N/A

Date of Promotion

In the substantive rank of ....

In the war substantive rank of ....

In the acting rank of ....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		NIL		

"WBR"

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27th day of February 1945

"W.G.Burke-Robertson" Capt
(W G BURKE-ROBERTSON) Capt
Officer i/c Regtl Books

AppC

No C116502 Name Davis W H | Sqn, Battery, or Company | Corps CIC | Date of enlistment 15Dec 43 | CC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/FAS/136 (3426)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc W T Pringham Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	FOP
				First sheet destroyed 31 Dec 44 Date of last entry 31 Dec 44					
Kingston Ont	30Dec43	Pte		AWL from 0630hrs 30Dec43 to 0630 hrs 31Dec43 (1 day)	Cpl Robertson	Admonished	31Dec43	OL Dalgleish Lt/ //Lt-Col	L day FRI
Cornwall,Ont	14Feb44			AWL fr.0600hrs 14Feb44 to 0515hr 29Feb44(Abs: 14days 23hrs 45 min (AA 15(1))	L/Cpl Borton	120hrs detn	29Feb44	R.Larose	FOP 16day FRI
Cornwall,Ont	26Apr44			AWL fr.0600hrs 26Apr44 to 0505hr 27Apr44(23hrs)	Cpl Meyers L	1 days CB	27Apr44	WR Simpson Capt	FOP L DAY FRI
Camp Ipperwash	8Jul44			AA15(1)AWL fr 1200hrs 8Jul44 to 0930hrs 25Jul44(Abs: 16days,21hr 30 mins)	Cpl Smithers	28 days detn Cost of apprehension $44.65	28Jul44	A Garrod Lt-Col	FOP 17 days 149(1)(a) FRI

CERTIFIED THAT THIS IS A TRUE AND EXACT COPY OF THE ORIGINAL MFM 6 IN MY CUSTODY

"W G BURKE-ROBERTSON"
(W G Burke-Robertson) Captain & Adjutant
Officer i/c Regtl Records

Exhib"C" "R A Damude" Major

(PTO)

56-22.

Hte. Davis, W.W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 105705 Pte Davis, William Weston, 48 Highlanders

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
AA Sec 15(1)			
1st ~~offence~~	guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1) Nil

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo ninety days detention.

(Sgd) Nil — Judge-Advocate, if any. 7 March 45 — Date awarded. (Sgd) R.B. Dawnside Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and Sentence Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) ~~I~~

(1. AA 57A. Delete if not used.)

(Sgd) J D B Smith

Date 1 Apr 45 — Commanding (J D B Smith) Brigadier Comd 1 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A 105705 Pte Davis, W.W.	10 APR 45	W Mackenzie Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 56-22

FIELD GENERAL COURT-MARTIAL

CPA86 (In Duplicate) 40/P&S/1000-1-44

RECEIVED 9 MAY 1945 JAG BRANCH A.H.Q.

PROCEEDINGS REVIEWED 13 APR 45 Major DJA

Can Sec CMHQ & Bch AHQ 21 Army Gp 24 May 45

By Order of Brigadier J.D.B. Smith Comd 1 Cdn Inf Bde dated 6 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 105705	private	William Weston	DAVIS	48 Highrs

PROCEEDINGS REVIEWED

[signature] REVIEWING OFFICER, JAG BRANCH, A.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Field (at) Italy on (date(s)) 7 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 29|1-

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO etc.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... Ans ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N o.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.B. Dawnside	H & PE Regt
Member	Capt	A. MacNeil	48th Highrs
Member	Lieut	C.H. Edwards	H & PE Regt
Judge-Advocate			
Prosecutor	Lieut	J.W. Mitchell	48th Highrs
Defending Offr	Lieut	R.S. Green	48th Highrs

Questions by President: Is the Prosecutor a lawyer? Ans ~~yes~~ Is the Defending Offr a lawyer? Ans ~~yes~~ (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused ..... before arraignment make(s) (no) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB note and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~adjourned and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 6

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s). He can call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ~~nil~~ .(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty, on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 92(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 145.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 155. 2. RP 40(A), see (D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF RP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Yes - a character witness - Lieut W J Armstrong
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46(D) 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes - Exhibit D. if off.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and each member of the Court, if any, (2)~~.
(1. When several accused tried separately see RP 7(D). One sentence only, consisting of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A)(i), KR Con 308, 335, 343-346, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 44(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see notes on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

App. 19

CHARGE SHEET

The accused, No A109705 Pte William Weston DAVIS, "A" Coy, 48th Highlanders of Canada, a soldier of the Canadain Army Overseas, C.M.F., is charged with:

1st CHARGE
A.A.Sec 15(1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, ITALY, absented himself without leave from 0700 hours 1 Feb 45 until surrendering himself at 1140 hours 22 Feb 45. TIME ABSENT 21 days, 4 hours, 40 mins.

In the Field, ITALY,
26 February 1945.

(D.A. Mackenzie) Lt-Col,
Commanding Officer,
48 Highrs

To be tried By Field General Court Martial.

(J D B Smith) Brigadier
Comd 1 Can Inf Bde

In the Field
6 Mar 45

Appendix II

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50 RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 105705	Private		William Weston	DAVIS	48 Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~[have]~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 6 Mar 45 endorsed by me, ~~[or by an offr of my staff for me]~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ~~[and that it is not practicable to delay the trial for reference to a superior qualified offr.]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereof the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	R A Damude	NPER

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	A MacNeil	48 Highrs
Lt.	[illegible] Edwards	NPER

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt.	J M Hunter	48 Highrs

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.) J D B Smith Brigadier (Rank.)

Date 6 Mar 45

Commanding (J D B Smith) Brigadier
1 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless there unto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (RP 95(C)), any objections (RP 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (RP 95 fn 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (RP 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (RP 60(C), 87(C), 92(C) (D).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (RP 40 fn 10)), or evidence by accused, as to facts or his character or both. (*See* RP 41 fn 2, 46 fn 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See* RP 46 fn 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (RP 86(B)), or to prove previous convictions when accused has called witnesses as to character. (RP 86(C).)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See* RP 40 fns 8-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused charged *jointly see* RP 61.)
(vi) Closing address by Prosecutor. (*See* RP 40 fn 7, 87(C), 92(C) (D). *Prosecutor has no right to address Court on subject of sentence* except *as provided by* RP 46(E), *KR Can* 563(a).)
(vii) Summing up by JA, *if any*. (RP 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can* 557.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of registered books see AA* 163 (1) (g) (k).)
(vi) Summary of Evidence, if not already an exhibit.
(vii) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and note forms part of record of proceedings. (RP 95(D).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 116(C), *MML p* 739.)

3. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

App III

MEDICAL OFFICERS' CERTIFICATE
(KR (Can) para 557)

I certify that I have this morning examined

A-105105 PTE DAVIS L.W.W. of the 48 Highrs and in my opinion

he is fit/~~unfit~~ to undergo trial by Court Martial.

Date. 7/Aug/45...

(J.E.POLLAK) Capt-RCAMC
R.M.O. 48 Highrs

Character Witness

Lt. W. J. Armstrong, 48th Highlanders of Canada, an officer in the Canadian Army on Active Service.

A101705 Pte Davis W. W. was in my platoon and while he was in it he was a good soldier and carried out all his duties in an efficient manner. Pte Davis had come to the 48 Hgh. from the W.N.S.R. and was not entirely happy with the 48 Highlanders because he had been on outpost with his friends in the W.N.S. Regt. Steps were taken to try and get Pte Davis back to the W.N.S.R. He answered to no transfers at the front. He did a good job during his whole period with the Pl. I found Pte Davis to be a clean cut and efficient soldier.

Lt. [illegible]

A105705 Pt
DAVIS W. W.
Exh. E

Appeal for pardon

This man has up to now had a clean sheet. He has by the character witness done a good job with the platoon. In a moment of weakness he left his corp. into were then out street. This is admitted. But of the [illegible]

[illegible]

[illegible]

[illegible]

Exh. A

48TH HIGHLANDERS OF CANADA

Summary of evidence in the case of No A105705 Pte DAVIS W.W., 48th Highlanders of Canada, Canadian Army, CMF.

By direction of Lt-col D.A.MACKENZIE, Commanding Officer, 48th Highlanders of Canada, all evidence is taken on oath.

1st WITNESS FOR THE PROSECUTION: B108561 L/Sgt CHURCH J.R., "A" Coy, 48th Highlanders of Canada, having been duly sworn states:

"I am Sgt CHURCH of 8 pl, "A" Coy. On the morning of 1 Feb 45 at 0700 hours approx I checked the platoon in search of Pte DAVIS W.W. and found that the accused was absent. If he had returned I would have known it. He did not return."

(B108561 L/Sgt CHURCH J.R.)

The accused declines to cross examine the witness.

2nd WITNESS FOR THE PROSECUTION: Lt W.J.(A) ARMSTRONG, "A" Coy, 48th Highlanders of Canada, having been duly sworn states:

"I am Lt ARMSTRONG of 8 pl, "A" Coy. On 22 Feb 45 at approx 1140 hours Pte DAVIS W.W. reported to me at Pl HQ 8 pl. I instructed him to report to Coy HQ with Pte DAVIS W.W. and Pte LUKIWISKI G."

(W.J.(A) ARMSTRONG) Lt

The accused declines to cross examine the witness.

The accused having been warned according to R.P. 4(c) declines to make a statement.

I certify that Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

Taken down by me in the hearing and presence of the accused, in the field, ITALY, this 24th day of February 1945.

(J.W.MITCHELL) Lt
Officer taking summary

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A105705	Pte	DAVIS W.W.	48th HIGHLANDERS of CANADA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheets mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number at service in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is one of drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For NIL	times	NIL times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NIL

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~The previous convictions of the accused by a court martial or a civil court, exclusive of those under section 47 of the Army Act and of cases in which trial under section 73 of the Army Act, or section [illegible] has been dispensed with, are set out in the [illegible]~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and NIL 9 days in military custody, making a total of NIL 9 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ record of service is 20

6. The date of his ~~attestation~~ specified in his ~~attestation paper~~ record of service is 7-JAN-43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr, 1 mth

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 1 mth service.

9. The accused is entitled to reckon 1 yr 1 mth service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~no military decoration or military badge, or is in possession of or entitled to wear any military decoration or medal~~ C.V.I. w Clasp

11. ~~If the accused was warned after the accused before he was tried a warning whereof he said the substance was~~ _____

12. ~~[illegible] case of an officer.~~ The accused holds in the army the rank of NIL and has served as an officer for NIL

~~[illegible]~~ under the regulations governing the case of _____ rank.

(*A2550) W.11402/144 125,000 8/41 A.&E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A105705 Rank Pte Name DAVIS W.W. of 48 HIGHRS Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.*	Punishment remitted.
		nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of February 1945

(W.G.BURKE-ROBERTSON) Capt & Adjt
Officer i/c Regtl Records

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

In the rank of ..... years, ...

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*

No A105709 Name DAVIS W.W. Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 2 Jan 45 | Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc S.D.Smith Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED THAT THIS IS A TRUE AND EXACT COPY OF THE SUPPLEMENTARY MFM 6 IN MY CUSTODY

[signature] .....

(W.G.BURKE-ROBERTSON) Captain & Adjutant
Officer i/c Regtl Records

Exch. D
[signature]

(PTO)

In the case of No A105705 Pte DAVIS W.W., "A" Coy, 48th Highlanders of Canada, Canadian Army, CMF.

LIST OF WITNESSES

FOR THE PROSECUTION

R108561 L/Sgt CHURCH J.R. 48th Highlanders of Canada

Lt W.J.(A) ARMSTRONG 48th Highlanders of Canada

FOR THE DEFENSE

NIL

4J-24
PTE DAVISON JM

13 Sep 45

J.A.G. Rev

Original proceedings despatched
Bomber to DND.

This H.Q. 10/Davidson JM/1

Dated 25 May 45

C.H. Heil Lt
A G Rev a

Received 11 Dec 44 RECORDED AT CMHQ IN AB 160 4 J. 24
JAG Branch, CMHQ.

FIELD GENERAL COURT-MARTIAL

CPA86 (To Reg of AFA32) 4/0 P & S/1658 (2864)

Convened by Order of Brig. I.S.Johnston, DSO ED Comd 11 Cdn Inf Bde dated 15 Nov 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
F.5049	Pte	John Medford	DAVISON	CBH

PROCEEDINGS REVIEWED
"A.M.Wilding-White" Lt. JAG C 2
REVIEWING OFFICER, JAG BRANCH, CMHQ

Certified true copy of original proceedings herein.
Judge Advocate General's Dept
Field Officer
2 Cdn Inf Bde

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 18 [illegible] J.A.G. Rev. 2E-44

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 47, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

"WMWS" A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the Interpreter~~ as interpreter? Ans: ~~the Interpreter (if sworn)~~ Do you object to as shorthand writer? Ans: ~~the shorthand writer is sworn.(1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: No sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 48(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F.S.Walker	Perth
Member	Capt	S.McKinnon	CBH
Member	Capt	J.R.Manley	2 RC
Judge-Advocate	Capt	W.M.M.Shaw	HQ 5 Cdn Armd. Div.
Prosecutor	Lieut	D.R.K.Nelsh	CBH
Defending Offr	Lieut	A.J.E.Mills	CBH

Questions by President: Is the Prosecutor a lawyer? Ans: No Is the Defending Offr a lawyer? Ans: No (2)

(1. RP 26, 27, 105, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 33)

A8. The accused before arraignment makes(s) (no) (~~at~~) plea "NMS" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made to support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in All rank and name of the accused making the plea.)

"NMS" A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused (~~does~~ ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 37, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

"NMS" A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B3/20

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F.5049 Pte John Medford, DAVISON, CBH.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty	Guilty	
2nd	Not guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

"WMWS" At present under sentence ~~for~~ Beginning on ~~date~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer penal servitude for the termof three years.

(Sgd) "W.M.M.Shaw" Capt. Judge-Advocate, if any. 18 Nov 44 Date awarded. (Sgd) "F.S.Walker" Major. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve confirmation of the finding and sentence for superior authority.

Date 21 Nov 44 (Sgd) "I.S.Johnston" Brig Commanding 11 Cdn Inf Bde.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentence.

~~I direct that the (sentence) be carried into effect by the Officer Commanding the Regt or other Service unit of the accused.~~ "NSW" (~~as AA 57A (2) may apply~~)

(Sgd) "Ernest G.Weeks" (E.G.Weeks) Maj-Gen. I/c Administration Canadian Military Headquarters, Confirming Officer.

Date 15 Dec 1945. Commanding

"E.G.Weeks" Maj-Gen. AFAC

12 Dec 44

No illegalities or irregularities such as would warrant withholding confirmation.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
PROMULGATED AND EXTRACTS TAKEN In the Field in Italy	19 Dec 44 (Date)	J.A.Sulcom (Name) Lieut (Rank) Adjutant (Appt) 2 Cdn Reallocation Centre (Unit)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*); *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans _____(4)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No sir.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is [upheld/overruled] on the [illegible] charge(s), and allowed as to the _____ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Do neither. Do you intend to call witnesses on your behalf? Ans Yes, sir. Are they witnesses as to character only? Ans No sir.
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the _____ charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and as to by reason(s) [illegible] and that the proceedings are accordingly terminated. Part I of the Schedule as stated and signed.(2)
(1. *AA 54(3) (b), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? Ans _____(1)
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment (4)? Ans Yes Mr Judge Def Offr.(5)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 1323. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

18 Nov 44

To Confirming Authority:

F.5049 Pte DAVIDSON, J.M., CBH
Field General Court Martial.

The Court recommend that this man be psychologically examined and the results considered when the court is being considered for confirmation.

"F.S.Walker" Major
President.

CHARGE SHEET

Charge Sheet in the case of F.5049 Pte DAVISON, John Medford, "A" Coy Cape Breton Highlanders, C.M.F., is charged with two offences under Sec 12(1)(a) of the Army Act.

FIRST CHARGE
AA SEC 12(1)(a)

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he,

in the Field, at approximately 1830 hrs 5 Oct 44, after being duly warned for duty in the line, absented himself from his Battalion with intent to avoid such front line service and remained absent until surrendering himself to C4931 Sgt Minaker, E.E., 1 Cdn Base Reinforcement Bn., 1 Cdn Base Reinforcement Depot at approximately 2000 hrs 16 Oct 44.

SECOND CHARGE
AA SEC 12(1)(a)

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he,

in the Field, at approximately 0915 hrs 24 Oct 44 after being duly warned, absented himself with intent to avoid battle from a draft which was about to go forward and join the Battalion which was in the line and remained absent until surrendering himself to the Cape Breton Highlanders "X" Echelon Guard Room at approximately 1440 Hrs 29 Oct 44.

"R.H.Somerville" (R.H.Somerville)
Lt-Col.,
Officer Commanding,
Cape Breton Highlanders

Field,
8 Nov 44

To be tried by Field General Court Martial.

"I.S.Johnston"
(I.S.Johnston) Brig
Comd 11 Cdn Inf Bde

In the Field
15 Nov 44

"AMIS"

F.S.W.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/F&S/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.5049	Pte		John Medford	DAVISON	CBH

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 15 Nov 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". "ISJ"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not~~ practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "ISJ"

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Name	Unit.
Major	F.S.WALKER	PERTH

(Must be named. RP 106.)

MEMBERS.

Rank.	Name	Unit.
Capt	S McPINNON	CBH
Capt	J.R.HANDLEY	IRC

(Named or detailed. RP 106.)

WAITING MEMBER.

Rank.	Name	Unit.
Capt	R.L.SIMMONDS	PLF

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

Rank.	Name	Unit.
Capt	W.M.W.SHAW	HQ 5 Cdn Armd Div.

(Must be named, if any. RP 106.)

On Active Service in the Fd

in Italy (Country.) "I.S.Johnston" (Signed personally. RP 105 fn 2.) (I.S.Johnston) Brig., (Rank.)

Date 15 Nov 44 Commanding 11 Cdn Inf Bde.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"WMWS"
F.S.W.

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 90(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(10).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*See RP 95(D).*)

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

The Cape Breton Highlanders.

~~MEDICAL OFFICER'S CERTIFICATE~~

~~M.F. (CAN.) PARA.567~~

I ~~certify that~~ I have this ~~morning~~ date examined

No. . . . . F.5049 Pte Davison, J.M. . . . . .

of . . . . . ---- . . . . . and ~~in my opinion he~~ found him

~~is~~ fit to undergo Trial by Court martial.

"W.Hendilman" Capt.,
Medical Officer

Station . . . . . .

Date . . 18 Nov 44 . . . . . .

~~M.F.B.246~~

"WH&S"

1st WITNESS for the Prosecution

F.64934 Sgt MacDonald, S. CBH., duly sworn states:-

"On 5 Oct 44 was acting pl Sgt 9 Pl. Recognize accused, he was memb of pl on 5 Oct. I warned pl that moving into lines at approx 1900 hrs. Accused was not there at time so I warned him personally when he returned from a leave party at approx 1630 hrs. I told him that we were moving in at 1900 hrs, going frwd, to get his supper and get ready to move off. Called roll at 1830 hrs and accused was absent. I reported to Sgt Maj.

XXM:- Knowing accused I wouldn't saywas suitable for front line anytime. Front line did make his nervous.

Re-Exam:- Nil

Court:- Pl did move off and went into line. Accused was not with Pl on move or in the line. Accused was not with pl until we came out to a rest area some weeks later.

RP 83(B) COMPLIED WITH.

2nd WITNESS for the Prosecution

F.86064 Cpl.Wile, P.E. CBH, duly sworn states:-
SP Coy CBH.

"On 24 Oct 44 I was at X area of CBH. I was gd comdt that date. Was a parade called at 0900 hrs by Pipe Maj Gillis. Was parade for draft personnel going to front. On first parade I had 5 men on the parade, accused, Pte. Davison, (pointing) was one of them. Pipe Maj. told us going to front, explained what it was like and told us had 10 mins to get ready. Parade broken off and in approx 15 minuts parade was called again. 5 prisoners, one being accused, was absent. We searched area but no sign of accused.

XXM:- I was i/c gd broken off and given 10 mins to get ready. Prisoners started to get ready. Not sure if accused did return to gd rm. Everyone broke off on their own. Billets was onebig house, whole draft in ho. Searched ho and area around and incl toilets etc and no sign of accused.

As far as I could see was nothing hindering accused going to front.

RE-EXAM:- Nil.

Court:- Pipe Maj said we would proceed to A Ech and then to front. I went with draft to A Ech and then near BHQ. Accused did not go with us from X area to A Ech. Next saw accused when he was up for office a week or more later.

RP 83(B) COMPLIED WITH.

3rd WITNESS for the Prosecution

F.55000 Pipe Major Gillis, W.B. CBH., duly sworn states:-

"On 24 Oct 44 was CSM of X area of CBH. At 0900 hrs had draft parade and 5 prisoners,called roll. Recognize accused, Davison, he was present . I warned that they would proceed to front that would possibly call at A Ech before going to coy. I told them front static and easy and would like only be in 48 to 72 hrs.

Told draft and prisoners that I was going for Tpt and they had 10 mins to get ready - to pack kit bags etc. I went for Tpt got 2 vehs: placed one for prisoners and gd. On embussing 5 prisoners missing. Accused was one of them. I went into billets, searched the gd rm and area around for approx 100X but could not find him.

XXM:- Accused was on parade. I actually saw him. Made positive of the 5 prisoners.

RE/EXAM:- Nil.

COURT:- Detailed ven 1 hr after draft lef to search for prisoners. Next saw accused at taking of summary. Remained CSM of X area for number of days and accused was not in area during that time.

RP 83(B) COMPLIED WITH

4th WITNESS For the Prosecution

F.54608 CQMS Bellefontaine, D.L. CBH., duly sworn states:-

"On 5 Oct 44 was A/CSM of A Coy CBH., Recognize Davisbn (pointing). On 5 Oct 44 received a report referring to accused. I did not see accused again in the coy until 2 Nov. He did not attend any parades during that time.

XXM:/ NIL.

COURT:- NIL.

RP 93(B) COMPLIED WITH.

5th WITNESS For the Prosecution

F.64679 Cpl MacKay, H.F., CBH., duly sworn, states:-

"On 29 Oct 44 was at X Ech area of CBH. Was gd comd that day. Recognize accused, Davison (pointing). Accused reported into me approx 1440 hrs. Said he had been on loose and was reporting. I placed him in arrest.

XXM:- Was in uniform.

Re-exam :- Nil.

Court:- Nil.

RP 83(B) complied with.

6th WITNESS For the Prosecution

The Prosecutor, duly sworn states:

"I present certificate of surrender under 163 AA (EXH "A") relates to accused Pte Davison there.

XXM:/ Nil.

Court:- CBRD was near Avelleric at time and unit north of Rimini approx 400 miles distance.

RP 83(B) COMPLIED WITH.

PROSECUTION CLOSED.

1st WITNESS for Defence — F.89910 Cpl Beaton, R.J. CBH., duly sworn, states:- A Coy.

"Recognize accused. Have known him since before left England. Have been in action with accused. I was i/c sec, accused in my sec. We went up line and relieved Westmr. Came under shell fire and accused quite nervous. Went into attack and came under sever shell fire, he broke down completely, and I sent him back to a ho to stay. Next saw him when he came up to Pl HQ after getting our objective. Was too nervous for outside so put him on OP in ho. Did job except when shelled - appeared very nervous. During stay for few days he slept little and did not eat regularly. Were relieved and out for short period. When moving in again was last I saw of him until he reported back to Pl. He tried to do his best while with us. No complaint as to his conduct as a soldier.

[redacted]

No Questions.

RP 83(B) COMPLIED WITH.

2nd WITNESS for defence — F.89351 L/Cpl. Campbell J., CBH., duly sworn states:-

"Recognize accused. Have been in same sec with accused. Before went into action knew he was nervous, got up under shell fire on one occasion, we were in a ditch 50X from a ho. He was determined to make a run for ho and I had to hold him. On another occasion ho we were in was hit andhe started to run outside and I had to holdhim, put him in another room and told him to lay down. He never cried but used to shake. He was always a good soldier and did jobs given to Him. Tried his best.

No questions.

RP 83(B) COMPLIED WITH.

1st WITNESS Character — F.84394 Sgt MacDonald, S. CBH., duly sworn states:-

"Accused came to my pl 15 Sep - were in rest - later moved into push on Fiumicino river - I was Pl comd. This was static front. Knew accused nervous, not dependable enugh to put on bren. Put him on OP. Very willing worker, seemed intelligent, but not dependable. He approached me several times asking to be taken out of lines because thought nuisance to Pl. Told him could do nothing until relieved, and he could have interview withCoy Comd. Not suited to front lin e job. When came out had interview with very little satisfaction. He was absent when going in next time.

No Questions.

RP 83(B) COMPLIED WITH.

DEFENCE CLOSED.

Def Offr. in closing:- Court to take into consideration the evidence of last witnesses. Speak highly of accused but due to nervous condition was not suited to front line. Voluntarily surrendered on both occasions. Away very short time. Should not have been in front line.

Pros in closing:- Accused was a front line soldier and facts show guilty. Surrender immaterial because intention at time of leaving is all that concerned with. No doubt accused was warned and then went absent; deserter on both charges. Must have gone with intent to avoid since went immediately after warning.

J.A. sums up:- Functions of court, credibility of witnesses, presumption of innocence, burden on prosn, reasonable doubt, desertion and AWL, AA 56, intent.

Def offr in mitigation

Have clean conduct sheet, having been NCO and reverted to come overseas, and with evidence as to character please consider in sentence.

"W.M.S.Shaw" Capt.

EXHIBIT "A"

CERTIFICATE OF SURRENDER IN ACCORDANCE WITH ARMY ACT SEC 163 (i)(jj)

This is to certify that E.5049 Pte. DAVIDSON, J.M. of the Cape Breton Highlanders (Field Unit) surrendered himself to C.4931 Sgt. Minaker, EE., 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot at Canada Barracks at approximately 2000 hrs, on the 16 Oct 44.

"Vincent McKenna" Lt-col
(VINCENT McKENNA)
Officer Commanding,
1 Cdn Base Rft Bn. 1 C.B.R.D.

17 Oct 44.

EX"A" "WMWS"

Note; ~~Certified true copy of MFM 6 must accompany this form.~~

Substitute for AFB 295
or MFB 355

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

No. F5049 Rank: Pte Name: DAVISON J.M. Unit: CB Highrs

Age: 25 Married or Single: S No of Dependents: NIL.

Date of Attestation: 8 Dec 41

Number of days in Close Arrest awaiting trial: 18

Civil.--- Military 18 days Hospital..... Total 18 days

Dates of appointments, promotions etc., (if any):

L/Cpl	27 Oct 42
A/Cpl	Aug 43
Reverted	Feb 44

Decorations: CVSM & Clasp.

In the Field

Date: 18 Nov 44.

"D.U.Smith" Capt.
Officer i/c Regt'l Books
Cape Breton Highlanders.

EX "G"
WINGS"

Note: Certified true copy of MFM 6 must accompany this form.

MFM 6
(AFB 122)
40/P&S/136 (3488)

Supplementary.

No F5049 Name DAVISON, J.M. Sqn, Battery, or Company | Corps CIC | Date of enlistment 8-12-41 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Certified true copy (No original) "H.B.Boates" Capt.									
							EX "B" "WMWS"		

(PTO)

SUMMARY OF EVIDENCE.

Summary of Evidence in the case of F.5049 Pte Davison, John Medford, a soldier of the Canadian Army, now serving with the Cape Breton Highlanders, charged with two offences under the Army Act Section 12(1)(a).

The Commanding Officer directs that the Evidence be taken on oath:

First Witness F64934 Sgt MacDonald, S, having been duly sworn states:

"I am F64934 Sgt MacDonald, S. of "A" Coy, Cape Breton Highlanders, and was on 5 Oct 44 Platoon Sgt. of No 9 Platoon "A" Coy, Cape Breton Highlanders. F.5049 Pte Davison, J.M. was a member of my Platoon on 5 Oct 44. At approx 1400 hrs 5 Oct 44, I warned by Platoon that they would be going into the line and that the Platoon would fall in at 1830 hrs on 5 Oct 44. The accused was not present when I warned the Platoon they would be moving forward that evening, but I warned him personally to that effect at 1700 hrs 5 Oct 44. At approx 1830 hrs 5 Oct 44, I called the Roll and found F.5049 Pte. Davison, J.M. to be absent, I reported his absence to the CSM.

The accused declines to cross examine the witness.

"S.MacDonald".

Second Witness Capt D.U.Smith having been duly sworn states:-

"I am Capt D.U.Smith, Adjutant of the Cape Breton Highlanders I produce in Evidence, Certificate of Surrender in accordance with Army Act Sec.1o3 (1)(JJ), purporting to have been signed by Lt-col VINCENT McKENNA, Officer Commanding 1 Cdn Base Rft Bn, 1 CBRD, which certifies that F5049 Pte Davison, J.M. of the Cape Breton Highlanders (Field Unit) surrendered himself to 64931 Sgt.Minaker, E.E. 1 Cdn Base Rft Bn, 1 CBRD, at Dunnds Barracks at approx 2000 hrs on 1o Oct 44.

Attached to Summary and marked Exhibit "A".

The accused declines to cross examine the witness.

"D.U.Smith".

3rd Witness F86064 Cpl Wile, P.E. having been duly sworn, states:-

"I am F.86064 Cpl Wile, P.E. now serving with No 4 Platoon, Support Coy., Cape Breton Highlanders, On the 24 Oct 44 I was Guard Commander of the Cape Breton Highlanders "I"X Echelon Guard. At approx. 0900 hrs Pipe Major Gillis called a parade for the Draft which was about to leave for the Unit. I was a member of that Draft. Being Guard Commander I knew that Pte.Davison, J.M. was present on that parade, because I saw that all the accused and/or prisoners in the Guard Room who were on the Draft, attended that parade. After we had fallen in we were broken off and given ten minutes in which we were to get our equipment together and turned in our surplus kit to the Q.M.stores, after which we were to fall in again and move off. When we fell in the second time three of the accused and /or prisoners were missing one of which was Pte.Davison, J.M. Then Pipe Major Gillis and myself searched the billets looking for Pte Davison but could not find him anywhere.

The accused declines to cross examine the witness:

"P.E.Wile".

Fourth Witness F55000 Pipe Major Gillis, W.B. having been duly sworn states:

"I am F55000 Pipe Major Gillis, W.B. now serving with the Cape Breton Highlanders. On the 24 Oct 44, I was acting CSM of "X" Echelon of the Capt Breton Highlanders. At approx 0900 hrs I fell in the Draft which included Cpl.Wile, his guard and the accused and/or prisoners who were to go on that Draft. I called the roll and found everyone present. I then warned them that they were to go to the front and rejoin their unit which was in the line. At approx 0915 hrs 24 Oct 44 I detailed one vehicle to transport the guard and accused and/or prisoners. When I asked Cpl McInnis my Acting Orderly Sgt. to have the guard commander andhis guard and the accused and/or prisoners brought to their vehicle, all the Guard Commander could produce was two of the five, accused and/or prisoners who were on the Draft. I searched the billets and surrounding area with the guard commander but could not find any of the accused or prisoners who were missing, one of which was Pte.Davison, J.M.

The accused declines to cross examine the witness.

"W.B.Gillis".

Fifth Witness. F.54663 Cpl McInnes, J.B. having been duly sworn states:

"I am F.54663 Cpl McInnes, J.B. and was on 24 Oct 44 Acting Orderly Sergeant, of "X" Area of the Cape Breton Highlanders. On 23 Oct 44 the A/CSM of our "X" Echelon, Pipe Major Gillis, told to detail Cpl Wile as Guard Commander, which I did. At approx 0900 hrs on 24 Oct 44 Pipe Major Gillis had a parade of all the Draft who were to leave for the front. The Roll was called and all personnel were present. The parade was broken off and given ten minutes to collect their equipment and turned their surplus kit to the Q.M.Stores. Pipe Major Gillis told to put the accused and prisonersson a vehicle which he had detailed for that purpose. I told the guard commander, Cpl Wile to put his guard, accused or prisoners on that vehicle. Cpl.Wile could produce only two of the five accused and prisoners which had been detailed to proceed on draft. I personally searched the billets and surrounding area but could not find any of the accused and/or prisoners who were missing, one of which was Pte Davison, J.M.

The accused declines to cross examine the witness:

"J.B.McInnis".

Sixth Witness F.64679 Cpl MacKay, H.F. having been duly sworn states:

"I am F.64679 Cpl MacKay, H.F. of No.9 Platoon "A" Coy Cape Breton Highlanders. On 29 Oct 44 I was Guard Commander of the Cape Breton Highlanders "X" Echelon Guard. At 1440 hrs 29 Oct 44, F.5049 Pte Davison, J.M. surrendered himself to me at the Guard Room saying he had been absent without leave, or words to that effect. I placed him under close arrest.

The accused declines to cross examine the witness:

"H.F.MacKay".

Seventh Witness F.5466 C8A/CSM Bellefontaine, D.L. having been duly sworn states:-

"I am F.54608 A/CSM Bellefontaine, D.L. of "A" Coy, Cape Breton Highlanders. At approx 1900 hrs 5 Oct 44 Sgt MacDonald, S. reported to me that F.5049 Pte Davison J.M. was absent. I did not seehim again until he arrived at the Coy area under escort on or about 2 Nov 44, nor was he present for any Coy. Parade during the period 5 Oct 44 to 2 Nov 44.

The accused declines to cross examine the witness:

"D.L.Bellefontaine.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The Accused:

I do not wish to say anything at this time.

"J.M.Davison".

Taken before me, in the presence and hearing of the accused this 3rd day of November, 1944.

"D&M Neish" Lieut.
Officer Taking Summary.

"NEWS".

3 Nov 44.

Officer Commanding
Cape Breton Highlanders.

Defending Officer in the case of F.5049 Pte Davison, J.M.

The accused wishes Lieut Mills, if available, to defend him in his forthcoming trial.

"D&M Neish" Lieut.
Officer Taking Summary.

"NEWS"

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-5049 Pte John Medford DAVISON, CBH

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd	NOT GUILTY	GUILTY	

LRPO V L IZ SRL 22

FROM CANMILITRY 15 NIL

TO CDN G2 E AAI

A10697 RESTRICTED PARA ONE (.) FGCM PROCEEDINGS F55588 PTE BURTON JC SERIAL 2896/1 ENDORSED BY MGA 14 DEC 44 A101638 PTE BELZILE H SERIAL 289 E/1 B 136389 PTE HOMINUK A SERIAL 943/1 F97269 PTE BERTLE 624248 PTE GOODINE JW BOTH SERIAL 357/1 B68454 GNR QUIN H SERIAL 214D/1 ENDORSED BY MGA 15 DEC 44 QUOTE I CONFIRM THE FINDINGS AND SENTENCE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE PARA TWO (.) FGCM PROCEEDINGS F5059 PTE DAVISON JM SERIAL 357/1 F40604 PTE BENNETT AF SERIAL 289/1 ENDORSED BY MGA 15 DEC 44 QUOTE I CONFIM THE FINGS AND SENTENCE UNQUOTE (.) RETURN DAVISON AND BENNETT UK TO SERVE SENTENCES BT 161343 GM K

RD GRL 22 161344 SG K

Direct that the accused be ~~not further tried upon the charge(s) on which the finding(s) was (were) quashed~~ (cf. AA 57A. Delete if not used.)

(Sgd) "E.G. Weeks" Maj-Gen, i/c Adm,

Date 15 Dec 44

Commanding CANADIAN MILITARY HEADQUARTERS
Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F5049 Pte Davison, J.M. C.B.H.	19 Dec 44	K. Dickson Capt Adjutant 2 Can Reinforcement Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

(D.M./Asst)Capt.

Spare copy - [redacted]

FIELD GENERAL COURT-MARTIAL

CPA96 (To Reg of AFA'37 40/P & S/1698 (40/1615 4/38B

Convened by Order of Brig I B Johnston DSO Comd 11 Cdn Inf Bde dated 15 Nov 44

Cdn Sec GHQ 2 Sch AAI

45-24

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109.A As to [redacted] see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.) (b) appmt, A/rank or A/appmt, if any, of accused at time of commitment or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 188 fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F5049	Pte		John Medford	DAVISON	CBH

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ITALY on (*date(s)*) 18 NOV 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MAML pp. 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for notes and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50. RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

"WHEN" A4. The Prosecutor produces a Medical Certificate that accused is [redacted] to undergo trial by court-martial.(1)

(1. KR Con 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to "WHEN" as shorthand writer? Ans NO

The Interpreter is sworn.(1) The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO, Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MAML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F.D. Walker	RCR
Member	Capt	D. McKinnon	CBH
Member	Capt	J.H. Hanley	RCE
Judge-Advocate	Capt	H.H.B. Shaw	HQ 5 Can Armd Div
Prosecutor	Lt	D.R.M. Nelsn	CBH
Defending Offr	Lt	A.J.B. Mills	CBH

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D/ p 2.)

A8. The accused before arraignment makes(s) (no) (a) plea "WHEN"

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 73C, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in A8 rank and name of the accused making the plea.)

"WHEN" A9. The accused is [redacted] arraigned (separately) on all charges in the charge sheet.(1) The accused does [redacted] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

"WHEN" A10. The Court [redacted] considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *2nstrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. no, sir.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

"where"
D2. The Prosecutor makes ~~one~~ (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ charge(s).(2) The Court ~~makes a prima facie case against~~ the accused on the.....charge(s), and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty of the same charge(s).(4)
"where"
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. no neither. Do you intend to call witnesses on your behalf? Ans. yes, sir. Are they witnesses as to character only? Ans. no, sir.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 80(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*c*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
"where" ~~On the Prosecutor not proceeding with evidence on any charge, the President announces that the accused is found Not Guilty of that charge.~~
(1. *AA* 54(3) (*b*). *RP* 43, 120(*A*). 2. *AA* 54(3). *RP* 43, 117. *The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

~~Proceed to comply by reading out the substance of the charge(s) on the charge sheet.~~
"where"
E1. ~~Proceed to comply by reading out the substance of the charge(s) on the charge sheet.~~
xx
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Services(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. ☑ and Ex. ☑ respectively.(3)
(1. *AFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. yes thru def offr.
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried seperately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182. *RP* 46-50. 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 1313, *MML p* 86, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(15), 68(2), *KR Can* 564. 2. *RP* 50. *As to reinstat from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CERTIFIED TRUE COPY

(D.M. Owen) Capt.

Clerk copy - [redacted]

FIELD GENERAL COURT-MARTIAL

CPA96 (To face of AFA83) 40/P & S/1098 (A83) 4/388

Can Sec Orig & 4 Sch Att

Convened by Order of Brig I S Johnston CBE Comd 11 Can Inf Bde dated 15 Nov 44

4J-24

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71. [09.A As to [illegible] of temporary or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F5049	Pte		John Medford	DAVISON	QRn

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ITALY on (*date(s)*) 16 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

"WHERE" A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor states the Court that accused should be tried by court-martial instead of being dealt with summarily by his CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to [redacted] as interpreter? Ans NO

"WHERE" The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO, Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 31, RP 23, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F.D. Walker	Perth
Member	Capt	D. McKinnon	QRn
Member	Capt	J.R. Hanley	RCR
Judge-Advocate	Capt	H.M.H. Shaw	HQ 5 Can Armd Div
Prosecutor	Lt	D.K.M. Neish	QRn
Defending Offr	Lt	A.J.B. Mills	QRn

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) (a) plea "[redacted]"

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

"WHERE" A9. The accused is [redacted] arraigned (separately) on all charges in the charge sheet.(1) The accused does [redacted] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

"WHERE" A10. The Court [redacted] considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*E*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change Your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(D). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO, sir (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

"NIHIL"

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~Sir : Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against~~ the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the "NIHIL" charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is [are] found Not Guilty of the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40(A). See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. NO neither. Do you intend to call witnesses on your behalf ? Ans. YES, SIR. Are they witnesses as to character only ? Ans. NO, SIR.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 108(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

"NIHIL" ~~As the Finding of Not Guilty on the First Charge is an Exception, it is not necessary to announce it.~~
(1. *AA 54(7) (c), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

"NIHIL" E1. ~~I intend to remind the Court that the Accused is entitled to make a statement before sentence is passed, and to call witnesses as to his character, and to address the Court in mitigation of punishment.~~(1)

XX

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. D and Ex. E respectively.(3)
(1. *MFB 355 or MFB 296.* 2. *MEM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES THRU GET OFFF.....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 152, RP 46-50, 68, 118, 119(A), KR Can 308, 330, 563-564, Overseas RO 309, 2323, MML p 96, 732-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564-6. Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.* 2. *RP 50. As to release from arrest by*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-5049 Pte John Medford DAVISON, CMH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

"WARD"
Accused was ~~transferred from~~ received into ~~custody~~ on (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To suffer penal servitude for the term of three years.

(Sgd) "Wm Shaw Capt" — Judge-Advocate, if any.
18 Nov 44 — Date awarded.
(Sgd) "F.B. Walker Major" — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 768)

I reserve confirmation of the finding and sentence for superior Authority.

Date 21 Nov 44 (Sgd) "Jas Johnston Brig" Commanding 11 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

"I confirm the findings and sentence"

~~I direct that the accused be not ... [illegible]~~
(1. AA 57A. Delete if not used.)

(Sgd) "E.C. Weeks" Maj-Gen, i/c A.G.,

Date 15 Dec 44

Commanding CANADIAN MILITARY HEADQUARTERS
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F5049 Pte Davison, J.M., C.S.H.	19 Dec 44	A/Major Asst Adjutant 2 Can Reallocation Centre.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

LRPG V LRIZ SRL 22

FROM CANMILITRY 15 NIL

TO CDN 02 E AAI

A10657 RESTRICTED PARA ONE (.) FGCM PROCEEDINGS F55588 PTE BURTON JG SERIAL 289E/1 ENDORSED BY MGA 14 DEC 44 E101638 PTE BELZILE R SERIAL 289 E/1 B 138389 PTE HOMINUK A SERIAL 943/1 F97269 PTE BEST LS G24248 PTE GOODINE JW BOTH SERIAL 357/1 B88454 GNR QUIN N SERIAL 214D/1 ENDORSED BY MGA 15 DEC 44 QUOTE I CONFIRM THE FINDINGS AND SENTENCE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE PARA TWO (.) FGCM PROCEEDINGS F5059 PTE DAVISON JM SERIAL 357/1 F40604 PTE BENNETT AF SERIAL 289B/1 ENDORSED BY MGA 15 DEC 44 QUOTE I CONFIRM THE FINGS AND SENTENCE UNQUOTE (.) RETURN DAVISON AND BENNETT UK TO SERVE SENTENCES

BT 161343 WM K

RD SRL 22 161344 SG K

18 Nov 44

To
Confirming Authority:

#5049 Pte DAVISON, J.M., CBn
Field General Court Martial

The court recommend that this man be psychologically examined and the results considered when the court is being considered for confirmation.

"F.S. Walker Major-
President.

CHARGE SHEET

Charge sheet in the case of F5049 Pte DAVISON, John Medford "A" Coy Cape Breton Highlanders, C.M.F., is charged with two offences under Sec 12(1)(a) of the Army Act.

First Charge
A.A. Sec 12(1)(a) WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE,

in that he,

in the field, at approximately 1830 hrs 5 Oct 44, after being duly warned for duty in the line, absented himself from his battalion with intent to avoid such front line service and remained absent until surrendering himself to C4931 Sgt Minaker, R.S., 1 Cdn Base Reinforcement Bn., 1 Cdn Base Reinforcement Depot at approximately 2000 hrs 10 Oct. 44.

Second Charge
A.A. Sec 12(1)(a) WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE,

in that he,

in the field, at approximately 0915 hrs 24 Oct 44 after being duly warned, absented himself with intent to avoid battle from a draft which was about to go forward and join the battalion which was in the line and remained absent until surrendering himself to the Cape Breton Highlanders "A" Echelon Guard Room at approximately 1440 hrs 29 Oct 44.

Field
8 Nov 44. "H.B. Somerville" (H.B. Somerville) Lt-Col.,
Officer Commanding,
Cape Breton Highlanders

To be tried by Field General Court Martial.

In the Field
15 Nov 44 "SIGNED"

"FOR" "Hamb Johnston"
(H.B. Johnston) Brig
Comd 11 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F5049	Pte		John Medford	DAVISON	Cdn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 nov 44 endorsed by me, (~~a Field General Court-Martial~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the following reasons attached hereto~~ "As"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	F O WALKER (Must be named. RP 106.)	Fd Cn (Unit.)

MEMBERS.

Capt	D MCKINNON	Cdn
Capt (Rank.)	J K MANDLAI (Named or detailed. RP 106.)	Inf (Unit.)

WAITING MEMBER.

Capt (Rank.)	K L D IMMURLAD (Named or detailed, if any. RP 106.)	PLF (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	H H S ORLAW (Must be named, if any. RP 106.)	HQ 5 Can Armd Bde (Unit.)

On Active Service in the Fd

in Italy (Country.)

"Ian Johnston"
(I S Johnston) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 15 nov 44

Commanding 11 Can Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAMS (To incl of AFAS) AG/P & S/1867 14-9-43)

(See overleaf for oaths and notes for use on trial.)

"MEMO" "FOR"

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (D).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged penally see RP 81.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (D). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)
(vii) Summing up by JA, if any. (*RP 82.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 507.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163* (1) (g) (h).)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

The Cape Breton Highlanders

I have this date examined #5049 Pte DAVISON J.M.
and found him fit to undergo trial by Field General
Court-Martial.

W Mendelman Capt
Signature of Medical Offr
18 Nov 44

"WAWS"

1st Wit) F64934 Sgt MacDonald, S., C.B.H., duly sworn states:-
Pros)

On 5 Oct 44 was acting Pl Sgt 9 Pl. Recognize accd, he was memb of Pl on 5 Oct. I warned Pl that moving into lines at approx 1900 hrs. Accd was not there at time so I warned him personally when he returned from a leave party at approx 1630 hrs. I told him that we were moving in at 1900 hrs, going frwd, to get his supper & get ready to move off. Called roll at 1830 hrs & accd was absent. I reported to Sgt Maj.

A/M:- Knowing accd I wouldn't say was suitable for front lines any time. Front line did make him nervous.

Re-exam:- Nil

Court:- Pl did move off & went into line. Accd was not with Pl on move or in the line. Accd was not with Pl until we came out to a rest area some weeks later.

R.P. 83(B) complied with.

2nd Wit) F86064 Cpl Wiley, P.S., CBH, duly sworn, states:-
Pros)

Sp Coy C.B.H.

On 24 Oct 44 I was at A area of CBH. I was gd comd that date. was a parade called at 0900 hrs by Pipe Maj Gillis. was paraded for draft personnel going to front. On first parade I had 5 men on the parade, accd, Pte Davison, (pointing) was one of them. Pipe Maj told us going to front, explained what it was like & told us had 10 mins to get ready. Parade broken off & in approx 15 mins parade was called again. 3 prisoners, one being accd, was absent. We searched area but no sign of accd.

A/M:- I was i/c gd. Broken off & given 10 mins to get ready. Prisoners started to get ready. Not sure if accd did return to gd rm. Everyone broke off & on their own. Billets was one big house. Whole draft in ho. Searched ho & area around incl toilets etc & no sign of accd.

As far as I could see was nothing hindering accd going to front.

Re-exam:- Nil.

Court:- Pipe Maj sd we would proceed to A Sch & then to front. I went with draft to A Sch & then rear HQs. Accd did not go with us from A Area to A Sch. Next saw accd when he was up for offide a week or more later.

R.P. 83 (B) complied with.

II

2nd Wit) F55000 Pipe Major Gillis, W.B., CBH, duly sworn states:-
Pros)

On 24 Oct 44 was CSM of A Area of CBH. At 0900 Hrs had draft paraded & 5 prisoners. Called roll. Recognize accd, Davison, he was present. I warned that they would proceed to front, that would possibly all at A Sch before going to Coy. Told them front static & easy & would like only be in 48 to 72 hrs.

I told draft & prisoners that I was going for ~~2~~ tpt & they had 10 mins to get ready - to pack kit bags etc. I went for tpt, got 2 vehs - placed one for prisoners & gd. On embussing 3 prisoners missing. Accd one of them. I went into billets, searched gd rm & area around for approx 100 x but could not find him.

A/- Accd was on parade. I actually saw him. Made positive of the 3 prisoners.

Re-exam:- Nil

(II cont'd)

Court:- Detailed veh 1 hr after draft left to search for prisoners. Next saw acsd at taking of summary. Remained CSM of A Area for number of days & acsd was not in area during that time.

R.P. 83 (B) complied with.

4th wit) F54608 CSM Bellefontaine, D.L., CBH, duly sworn, states:-
Prosn)

On 5 Oct 44 was A/CSM of A Coy, CBH. Recognize Davison, (pointing). On 5 Oct 44 received a report referring to acsd. I did not see acsd again in the Coy until 2 nov. Nov. He did not attend any parades during that time.

AAM:- Nil

Court:- Nil

R.P. 83 (B) complied with.

5th wit) F64679 Cpl MacKay, R.F., CBH, duly sworn, states:-
Prosn)

On 29 Oct was at A Zch area of CBH. was Gd Comd that day. Recognize acsd, Davison (pointing). Acsd reported in to me approx 1440 hrs. Sd he had been on loose & was reporting. I placed him in arrest.

AAM:- was in uniform.

Re-exam:- nil

Court:- nil

R.P. 83 (B) complied with.

III

6 wit) The prosecutor, duly sworn, states:-
Pros)

I present certificate of surrender under 163 AA. (Exh "A") relates to acsd Pte Davison there.

AAM:- nil

Court:- ~~Nil~~ CBHQ was near Avellino at time & unit north of Rimini approx 400 miles distance.

R.P. 83 (B) complied with.

~~CBHQ~~ Prosn closed.

1st wit) F89916 Cpl Seaton, R.J., CBH, duly sworn, states:-
Def)

In A Coy. Recognize acsd. Have known him since before left Eng. Have been in action with acsd. I was i/c sec, acsd in my sec. We went up line & relieved Westmr. Came under shell fire & acsd quite nervous. Went into attack & came under severe shell fire, he broke down completely & I sent him back to a ho to stay. Next saw him when he came up to Pl HQ after getting on objective. Was too nervous for outside so put him on OP in ho. Did job except when shedded - appeared very nervous. During stay for few days he slept little & did not eat regularly were relieved & out for short period. When moving in again was last I saw of him until he reported back to Pl. He tried to do his best while with us. No complaint as to his conduct as a soldier.

No question

R.P. 83 (B) complied with.

2 WIT Pros. NEXT PAGE

2nd Wit)
Pros)

F89351 L/Cpl Campbell, J., C.B.H., duly sworn, states:-

Recognize accd. Have been in same sec with accd. Before went into action knew he was nervous. Got up under shell fire on one occasion, we were in a ditch 50 x from a ho. He was determined to make a run for ho & I had to hold him.

On another occasion ho we were in was hit & he started to run outside & I had to hold him put him in another room & told him to lay down. He never cried but used to shake. He was always a good soldier & did jobs given to him. Tried his best.

No questions

R.P. 23 (B) complied with

(III cont'd)

1st wit) R64394 Sgt Macdonald, S., CBH, duly sworn, states:-
character)

Accd came to my Pl 15 Sep - were in rest - later moved into push on Fiumicino river. I was Pl comd. This was static front. Knew accd nervous, not dependable enough to put on bren. Put him

IV

on OP. Very willing worker - seemed intelligent but not dependable. He approached me several times asking to be taken out of lines because thought nuisance to Pl. Told him could do nothing until relieved & he could have interviews with Coy Comd. Not suited to front line job. When came out had interview with very little satisfaction. He was absent when going in next time.

No question

R.P. 83 (B) complied with.
Defence closed.

Def Offr in closing:- Court to take into consideration the evidence of last witnesses. Speak highly of accd but due to nervous condition was not suited to front line. Voluntarily surrendered on both occasions. Away very short time. Should not have been in front line.

Pros in closing:- Accd was a front line soldier & facts show guilty. Surrender immaterial because intention at time of leaving is all that concerned with. No doubt accd was warned & then went absent, deserter on both charges. Must have gone with intent to avoid since went immediately after warning.

J.A. Sums up:- Functions of court, credibility of witnesses, presumption of innocence, burden on prosn, reasonable doubt, desertion & AWL, AA 36, intent.

Def offr in mitigation
Have clean conduct sheet, having been NCO & reverted to Pte overseas & with evidence as to character please consider in sentence.

"W.M.S. Shaw Capt"

Exhibit "A"

CERTIFICATE OF SURRENDER IN ACCORDANCE WITH ARMY ACT SEC 163 (i) (ii)

This is to certify that A5049 Pte. DAVIDSON, J.M. of the Cape Breton Highlanders (Field Unit) surrendered himself to C 4331 Sgt. Minaker, R.A., 1 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot at Canada Barracks at approximately 2000 hrs. on the 16 Oct 44.

"Vincent McKenna" Lt-col.
(VINCENT McKENNA)
Officer Commanding,
1 Cdn Base Rft Bn., 1 C.B.R.D.

17 Oct 44 Exh A
"MMS"

Substitute for AFB 296
or MFB 355

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No F5049 Rank Pte Name Davison, J.M. Unit C.B. Highrs

Age 25 Married or Single S No of Dependents Nil

Date of Attestation 8 Dec 41

Number of days in Close Arrest awaiting trial 18

Civil Military 18 days Hospital Total 18 days

Dates of appointments, promotions etc (if any)

L/Cpl 27 Oct 42
A/Cpl Aug 43
Reverted Feb 44

Decorations C.V.S.M. & Clasp

In the Field

Date 18 Nov 44 "C" "WMWS"

"D.U. Smith Capt"
Officer i/c Regt'l Books

Cape Breton Highlanders
Unit

Note: Certified true copy of MFM 6 must accompany this form.

Supplementary

No F5049 Name DAVISON, J.M. Sqn. Battery or Company | Corps CIC | Date of enlistment 8-12-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Certified	True	Copy	(no	original) "H.B. Bootes Capt"		"B" "WMWS"			

(PTO

SUMMARY OF EVIDENCE

Summary of evidence in the case of F5049 Pte Davison, John Medford, a soldier of the Canadian Army, now serving with the Cape Breton Highlanders, charged with two offences under the Army Act Section 12(1)(a)

The commanding officer directs that the evidence be taken on oath:

First witness F64934 Sgt MacDonald, D. having been duly sworn states:

I am F64934 Sgt MacDonald, D. of "A" Coy Cape Breton Highlanders, and was on 5 Oct 44 Platoon Sgt of No 9 Platoon "A" Coy. Cape Breton Highlanders. F5049 Pte Davison, J.M. was a member of my Platoon on 5 Oct 44 at approx 1400 hrs 5 Oct 44 I warned my Platoon that they would be going into the line and that the Platoon would fall in at 1830 hrs on 5 Oct 44. The accused was not present when I warned the Platoon they would be moving forward that evening, but I warned him personnally to that effect at 1700 hrs 5 Oct 44. At approx 1830 hrs 5 Oct 44, I called the Roll and found F5049 Pte Davison, J.M. to be absent. I reported his absence to the CSM

The accused declines to cross examine the witness:

"D. Macdonald"

Second witness Capt D.U. Smith having been duly sworn states:

I am Capt D.U. Smith, Adjutant of the Cape Breton Highlanders. I produce in evidence, Certificate of Surrender in Accordance with Army Act Sec 163 (1)(jj), purporting to have been signed by Lt-col VINCENT McKENNA, Officer Commanding 1 Cdn Base Rft Bn 1 C.B.H.D., which certifies that F5049 Pte Davison, J.M. of the Cape Breton Highlanders (Field Unit) surrendered himself to C4931 Sgt Minaker, K.E. 1 Cdn Base Rft Bn, 1 C.B.H.D. at Canada Barracks at approx 2000 hrs on 16 Oct. 44.

Attached to Summary and marked exhibit "A"

The accused declines to cross examine the witness:

"Miss" "D.U. Smith"

Third witness

F86064 Cpl Wile, P.E. having been duly sworn states:

I am F86064 Cpl Wile, P.E. now serving with No 4 Platoon, Support Coy, Cape Breton Highlanders, On the 24 Oct 44 I was Guard Commander of the Cape Breton Highlanders "A" Echelon Guard. At approx 0900 hrs Pipe Major Gillis called a parade for the Draft which was about to leave for the Unit. I was a member of that Draft. Being Guard Commander I knew that Pte Davison, J.M. was present on that parade, because I saw that all the accused and/or Prisoners in the Gd Room who were on the Draft, attended that parade. After we had fallen in we were broken off and given ten minutes in which we were to get our equipment together and turned in our surplus kit to the Q.M. stores, after which we were to fall in again and move off. When we fell in the second time three of the accused and/or prisoners were missing one of which was Pte Davison, J.M. Then Pipe Major Gillis and myself searched the billets looking for Pte Davison but could not find him anywhere.

The accused declines to cross examine the witness:

"P E Wile"

Fourth witness

F55000 Pipe Major Gillis, W.B. having been duly sworn states:

I am F55000 Pipe Major Gillis, W.B. now serving with the Cape Breton Highlanders. On the 24 Oct 44 I was acting CSM of "A" Echelon of the Cape Breton Highlanders. At approx 0900 hrs I fell in the Draft which included Cpl Wile, his guard and the accused and/or prisoners who were to go on that Draft. I called the Roll and found everyone present. I then warned them that they were to go to the front and rejoin their unit which was in the line. At approx 0915 hrs 24 Oct 44, I detailed on vehicle to transport the guard and accused and/or prisoners. When I asked Cpl McInnis my Acting Orderly Sgt. to have the guard commander and his guard and the accused and/or prisoners brought to their vehicle, all the Guard Commander could produce was two of the five accused and/or prisoners who were on the Draft. I searched the billets and surrounding area with the guard commander but could not find any of the accused or prisoners who were missing, one of which was Pte Davison, J.M.

The accused declines to cross examine the witness:

"WWB" "W.B. Gillis"

Thirthe witness

F54663 Cpl McInnis, J.B. having been duly sworn states:

I am #54663 Cpl McInnis, J.B. and was on 24 Oct 44 Acting Orderly Sgt. of "A" Area of the Cape Breton Highlanders. On 23 Oct 44 the A/CSM of our "X" Echelon, Pipe Major Gillis, told to detail Cpl Wile as guard commander, which I did. At apprx 0900 hrs on 24 Oct 44 Pipe Major Gillis had a parade of all the Draft who were to leave for the front. The Roll was called and all personnel were present. The parade was broken off and given ten minutes to collect their equipment and turned their surplus kit to the Q.M. Stores. Pipe Major Gillis told to put the accused and prisoners on a vehilce which he had detailed for that purpose. I told the guard commander, Cpl Wile, to put his guard, accused or prisoners on that vehicle. Cpl Wile could produce only two of the five accused and prisoners which had been detailed to proceed on Draft. I personnally searched the billets and surrounding area but could not find any of the accused and/or prisoners who were missing, one of which was Pte Davison, J.M..

The accused declines to cross examine the witne ss:

"J.B. MacInnis"

Fifth witness

F64679 Cpl MacKay, H.F. having been duly sworn states:
I am #64679 Cpl MacKay, H.F. of No 9 Platoon "A" Coy Cape Breton Highlanders. On 29 Oct 44 I was Guard Commander of the Cape Breton Highlanders "X" Echelon Guard. At 1440 hrs 29 Oct 44, #5049 Pte Davison, J.M. surrendered himself to Me at the Guard Room, saying he had been absent with out leave, or words to that effect. I placed him under close arrest.

The accused declines to cross examine the witness:

"H.F. MacKay"

Seventhe witness

#54608 A/CSM Bellefontaine, D.L. having been duly sworn states:
I am #54608 A/CSM Bellefontaine, D.L. of "A" Coy Cape Breton Highlanders. At approx 1900 hrs 5 Oct 44 Sgt MacDonald, S. reported to me that #5049 Pte Davison, J.M. was absent. I did not see him again ~~nor was he present for any Coy parade during~~ until he arrived at the Coy area under escort on or about 2 Nov 44 nor was he present for any Coy Parade during the period 5 Oct 44 to 2 Nov 44.

The accused declines to cross examine the witness:

"D L Bellefontaine"

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused:

I do not wish to say anything at this time.

"J.M. Davison"

Taken before me, in the presence and hearing of the accused this 3rd day of November 1944.

"Undecipherable Lieut"
Officer Taking Summary

"illegible"

---

3 Nov 44

Officer Commanding
Cape Breton Highlanders

Defending officer in the case of R5049 Pte Davison, J.M.

The accused wishes Lieut Mills, if available, to defend him in his forthcoming trial.

"Undecipherable Lieut"
Officer Taking Summary

"illegible"

Gem. H.8

SGT. DAVY J.

Gem A-8

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General ~~and District~~ Courts-Martial.

Proceedings of a General Court-Martial held ~~at~~ in the Field on the 12th day of October, 1943, by order of Major-General E. L. M. Burns, OBE, MC,

Commanding 2 Canadian Division,

dated the 7th day of October, 1943.

President.

Colonel M. V. McQueen, ED, R.C.A.S.C., 1 Cdn Corps

Members.

Lt.-Col. R. H. Sankey, Q.O.R., att R.H.L.I.

Major R. White, Victoria Rifles of C, att R Regt C

Captain A. K. Reid, R.C.R., att R Regt C

Captain E. R. Bennett, R. H. C. (Black Watch)

Major W. B. Rate, DJA, HQ First Cdn Army, Judge Advocate.

Trial of* A-21863 Sgt. Davy, Joseph,
1 Bn, Essex Scottish Regiment.

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that ---------- is not available to serve owing to~~

~~----------, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. W.M.W. Shaw, ADJA, 2 Cdn Div

~~Counsel‡ or~~ defending officer† Lt. G.A.Ponsford, Essex Scottish

At 10:15 o'clock the Trial commences.

The order convening the Court is read, and is marked "X", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. -1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer*-1. No, sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16828/78. 25,000 sets. 6/43. K. & H., Ltd. G687/11. Forms A 9/35.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Major R. Tremblay, R. de Mais.
Captain J.P.Taylor, R.H.C. (Black Watch)

Q.2 - Do you object to Sgt. R.V.Parks acting as shorthand writer?
A.2 - No, sir.

D-36570 A/Sgt. Parks, R.V., HQ First Cdn Army, the shorthand writer, is duly sworn.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the ~~first~~ charge against you, which you have heard read?

Question to the accused.

Not Guilty, sir.

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

Answer.

~~The accused having pleaded Guilty to ..... charge, the provisions of Rule of Procedure 33 (3) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

MEDICAL OFFICER'S REPORT

I certify that No. A21863 Sgt. Davy J.
of Essex Scottish Rif is in a good state of health,
and fit to undergo Trial by Court martial.

R D Thompson
Medical Officer

Station Field

Date 12 Oct 43

M. F. B. 246
25M—6-41 (792)
H.Q. 1173-39 480

[illegible] Col
Pres.
Ev. E. [illegible]
Judge Advocate

5

B 2

[signature] Col.
Pres.

CHARGE SHEET

E. J. B. Bates Major
Judge Advocate

The accused, A 21863, Sgt. JOSEPH Davy, F., of the 1st Bn., Essex Scottish Regiment, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE: Conduct to the prejudice of good order and military discipline
Army Act
Section 40.

in that he

in the field, on the 8 AUG 43 while instructing in track repair drills under fire failed to ensure that proper safety precautions were taken to prevent injury to participants.

In the Field
..20... SEP 43

[signature]
A/Officer Commanding,
Essex Scottish Regiment.

To be tried by General Court Martial:

E L M Burns

In the Field
7 Oct 43

(E L M Burns) Maj-Gen
Comd - 2 Cdn Div

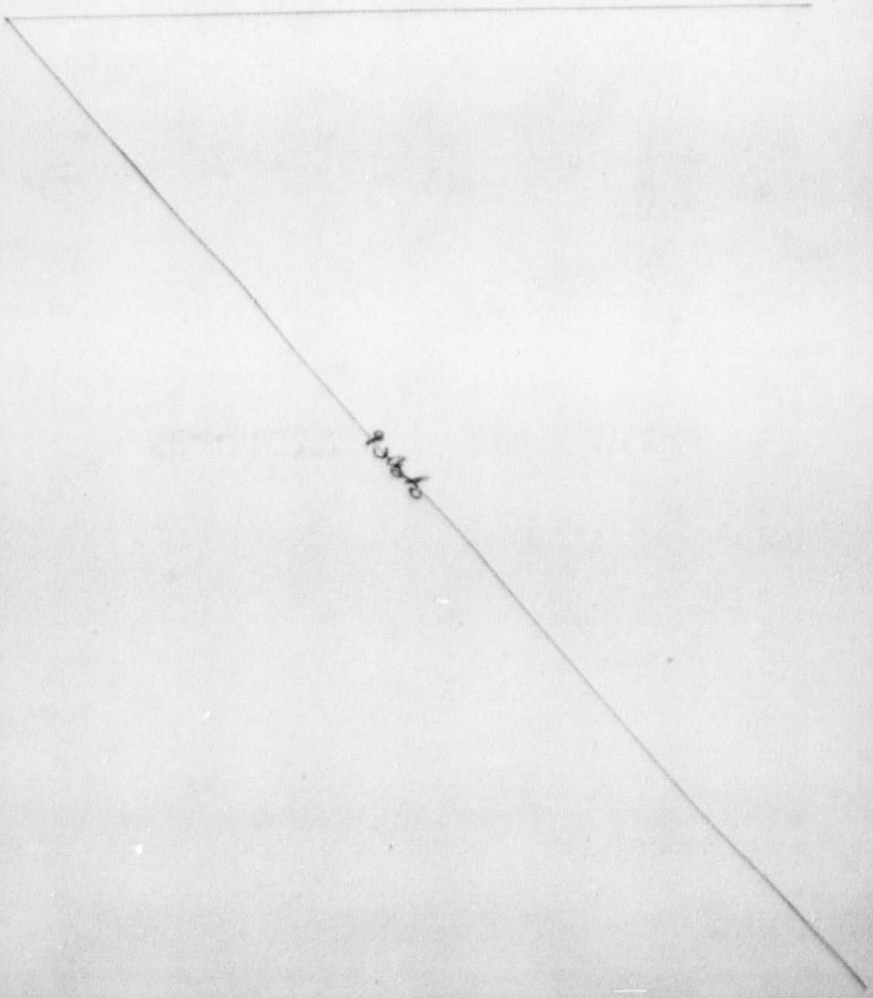
6

I desire to have ...Lieut S. E. Ponsford.....

represent me at my proposed trial by Field General Court Martial, If this officer is NOT available, I then desire to be represented by ..Capt. T Ferris.....

Aar 103. Davy. Jr. SA
X 21863 Sgt. Davy, F.

Robbs



C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question. -3. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. -3. No, sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked ----------, signed by the President, and attached to the proceedings.)~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. A-3175 Sgt. Wellott, E. N., 1 Bn, Essex Scottish R.,

being duly sworn, is examined by the prosecutor.

J.A.

Sgt. Wellott, you as you know are to appear before this Court on a similar charge arising from this same incident. It is my duty to advise you that you need not answer any questions which you think would tend to incriminate you with respect to the charge against you. The Court, however, is the judge as to whether your answer would incriminate you or not. If the Court says you have to answer, you, of course, must answer the question put to you. But you have the right to ask the Court's ruling.

Prosecutor

Q.4 - Would you identify yourself to the Court, giving your number, rank and name and unit, please?
A.4 - A-3175 Sgt. Wellott, E. N., Essex Scottish Regiment.
Q.5 - Do you know Sgt. Davy?
A.5 - Yes, sir.
Q.6 - Is he in this courtroom?
A.6 - Yes, sir.
Q.7 - Can you point him out?
A.7 - Yes (indicating accused).
Q.8 - Do you recall the 8th of August, this year?
A.8 - Yes, sir.
Q.9 - Will you tell the Court your position in the regiment?
A.9 - Platoon Sgt., of the Carrier Platoon.
Q.10 - What is Sgt. Davy's position in the regiment?
A.10 - Section leader in the Carrier Platoon, sir.
Q.11 - Now will you just tell the Court in your own words what arrangements had been made for the afternoon of the 8th of August and what took place on that day?
A.11 - On Friday night, previous to Sunday, we had a discussion in regard to the next two days training, Saturday and Sunday. We discussed track repair drill which came up on Sunday. We decided to do it with live ammunition, the same as we had seen done at C.T.S. Mr. Grandjean, Sgt. Davy and myself had a

few weeks previously concluded a 4 weeks battle drill course at C.T.S. We discussed the area. Mr. Grandjean suggested Newdown and it was agreed on. Mr. Grandjean detailed Sgt. Davy to recce the ground, find out the gun position, etc. We discussed loading the magazines, and decided to use every other round tracer. Someone mentioned he had seen one chap at C.T.S. nearly hit. Mr. Grandjean said we will take a greater safety angle. On Sunday, Mr. Grandjean and Mr. Williams were called to the C.O.'s meeting at lunch time. Mr. Grandjean instructed me and Sgt. Davy to carry on with the instruction. I told Sgt. Davy that he and I would carry on with the afternoon's training. At 1400 hours we proceeded out to Newdown area were the battle drill was to take place. The Platoon assembled. Sgt. Davy gave a lecture on track repair drill. During the lecture he described what the drill was, each man's particular job, where the carriers would be placed and also the position of the bren gun which would be firing at them. He told them live ammuntion would be used and not to do any unnecessary moving about, but there would be room to work round at their job. He went over the particulars of each point a couple of times and we proceeded with the drill. Sgt. Davy placed the gun in position and put the first two sections through. I was signalling with the flag used for firing and watching the clock, keeping time. Sgt. Davy in his lecture mentioned a flag would be used, my own position with the flag, when the flag dropped firing would start.

Q.12 - The gun was placed in position. You had the flag. Who gave instructions detailing the people to jobs in connection with the firing?
A.12 - Sgt. Davy gave the lecture.
Q.13 - Who gave instructions to the gun crew?
A.13 - Sgt. Davy did.
Q.14 - You were time keeped and to work the flag?
A.14 - Yes, sir.
Q.15 - Immediately after the lecture, did Sgt. Davy place the gun himself?
A.15 - Yes, sir.
Q.16 - What happened between the time he placed the gun in position and the first section started going through the drill?
A.16 - The men got into the carriers, drove the carriers out to their respective positions.
Q.17 - And then what happened?
A.17 - They prepared to do their respective jobs. I dropped the flag when I saw everyone was in position.
Q.18 - When was the first burst fired?
A.18 - When I dropped the flag.
Q.19 - Was that the first firing of the day?
A.19 - No, Sgt. Davy fired before the carriers came into position.
Q.20 - Where did he fire?
A.20 - Across the ground to the hill.
Q.21 - When was the next firing?
A.21 - Right after I dropped the flag.
Q.22 - Were the men in position then?
A.22 - Yes, sir.
Q.23 - And the carriers?
A.23 - Yes, sir.
Q.24 - Then Sgt. Davy fired while two sections went through?
A.24 - That is right, sir.
Q.25 - After Sgt. Davy finished firing, what happened?
A.25 - I took over to fire the gun.

Defending Officer

I don't like to object, but this offence says he failed to ensure that proper safety precautions were taken to prevent injury to participants. In the first place, Sgt. Davy was under the Platoon Sgt., was not in charge. It seems to me the question before the Court is whether when Sgt. Davy was firing he placed the gun in position himself and completed preparations for firing.

Prosecutor

I merely wanted to establish the injury and their actions, that is all. Just to place it before the Court.

J.A.

I think we had better hear what happened subsequently, if the evidence of the witness can be given without naming any names.

Prosecutor

That is what I want.

Q.26 - Sgt. Mellott, after Sgt. Davy finished firing over the first two sections and they finished the drill, then what happened? Someone else took the gun. What was he told?
A.26 - The gun was dead on, to take the same aiming mark.
Q.27 - Where was the aiming mark?
A.27 - Beyond the carriers, sir.
Q.28 - Where, on the ground or in the air?
A.28 - A piece of overturned sod made by a tank turn.
Q.29 - Then sombody took over the gun and commenced firing.
A.29 - Yes, sir.
Q.30 - Then what happened?
A.30 - The accident took place.
Q.31 - What accident?
A.31 - One of the drivers of the carriers fell with a bullet in head.
Q.32 - Do you know the name of the driver?
A.32 - Chapman, sir.

J.A.

Q.33 - Sgt. Mellott, when Sgt. Davy turned over the gun, did he definitely point out the firing mark on the ground?
A.33 - He told me to use the same mark.
Q.34 - Did he identify the airiming mark?
A.34 - I think he said 'it was a piece of sod I was firing at'. I can't swear to that, sir.

Prosecutor

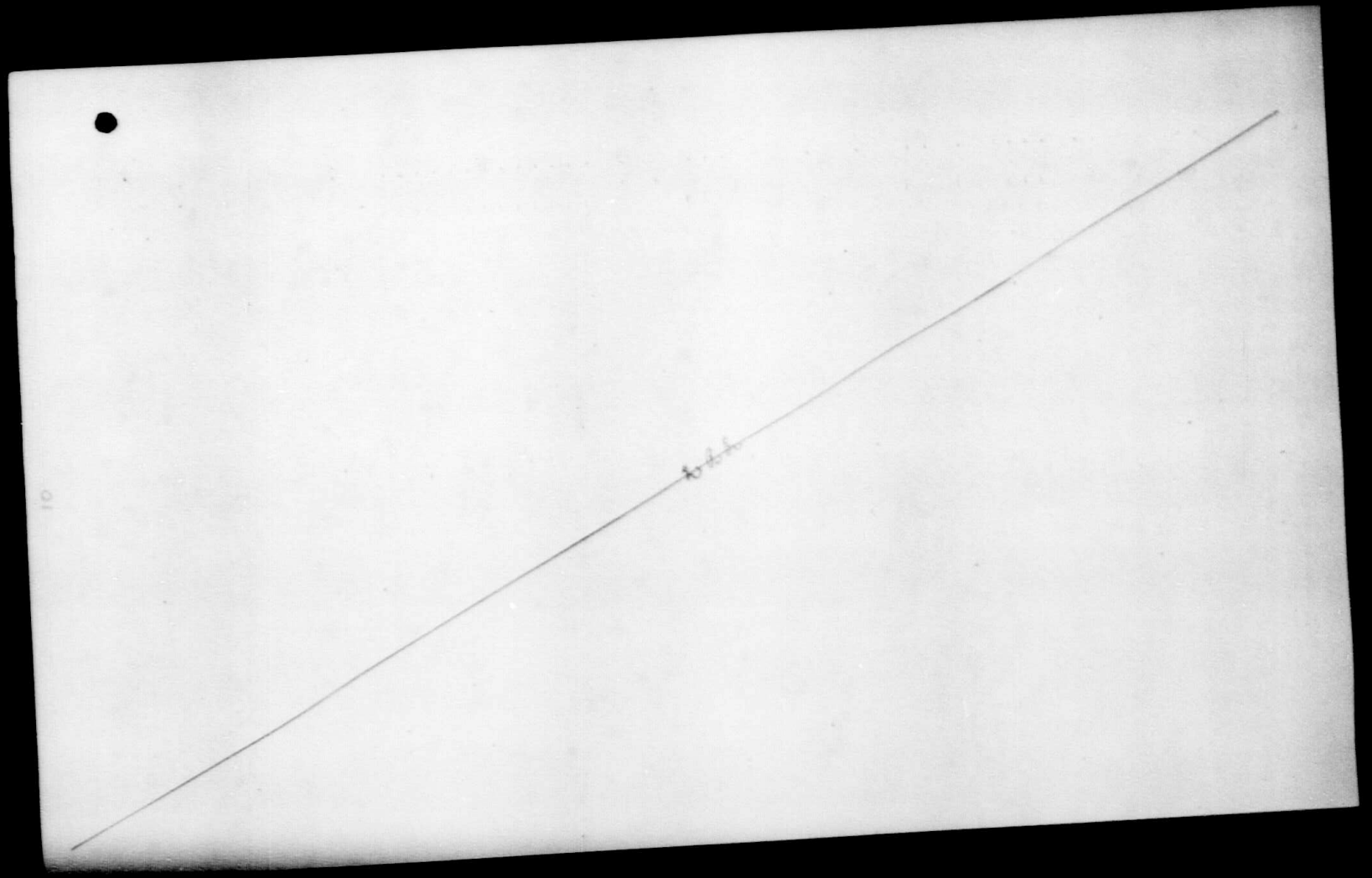
Q.35 - You say Chapman was hit on the head with the bullet. Do you know Sgt. Davy's qualifications regarding battle drill of this type.
A.35 - He had considerable experience. He has done it at the Isle of Wight, on Exercise Stonerforce, at the Bde Battle School and at C.T.S.
Q.36 - What do you know of these experiences?
A.36 - I was with him on two occasions, at Bde Battle School and at C.T.S.
Q.37 - I show you these two pieces of paper. Would you tell the Court what they are, what they represent? Do you recognize what is represented on the papers?
A.37 - Yes, sir.
Q.38 - What is it?
A.38 - A sketch of the position of the carriers and the bren gun at the time of the accident, a front view and a top view.
Q.39 - Which one is this piece of paper?
A.39 - The top view.

The sketch is produced in evidence, signed by the President, marked Exhibit "G" and attached to the Proceedings.

Q.40 - And this piece of paper. Will you tell the Court what that is?
A.40 - Yes, sir, it is a sketch, the front view, at the time of the scene of the accident.

The sketch is produced in evidence, signed by the President, marked Exhibit "H", and attached to the Proceedings

Q.41 - You indicated you were present when preparations for the



firing were actually made?

A.41 - Yes, sir.

Q.42 - Will you tell the Court your opinion of this ground picked for this type of training?

A.42 - I think it was an exceptionally good area, sir.

Q.43 - Will you tell the Court the nature of the type of ground picked?

A.43 - The carriers were in a hollow, and the bren gun was mounted to one side, up on a knoll. Across from the knoll was a slope.

Q.44 - What was the nature of the ground itself?

A.44 - It was sod, sir.

Q.45 - What type of soil?

A.45 - I would say reasonably firm. It wasn't hard, and not exactly soft.

Q.46 - How was the ground where the bullets landed?

A.46 - The same, sir.

Q.47 - When preparations were being made for the firing, how much clearance would you say there was over the carriers?

A.47 - That was determined by Sgt. Davy, sir, before he fired over the carriers. Before the carriers were driven in. When he fired, after the carriers were driven in I was down at the flag and I don't know how much safety angle he used.

Q.48 - From your observations what would you say was the distance the firing passed over the carriers?

A.48 - I don't know what was done, sir.

Q.49 - Before the carriers were in place, did Sgt. Davy fire across this valley?

A.49 - Yes, sir.

Q.50 - What was in the valley when he first fired with the bren?

A.50 - Nothing, sir.

Q.51 - Sgt. Will you look at what I show you and tell the Court what it is?

A.51 - It is a weapon training pamphlet, Small Arms Training, Volume I, Pamphlet No.14 it deals with field firing, battle inoculation.

Q.52 - Have you seen it before?

A.52 - Yes, sir.

Q.53 - Where?

A.53 - Possibly in the Platoon or Coy office. There are numerous pamphlets there. I may have seen it there, sir.

Q.54 - Will you tell the Court what section 2 on p.32 provides with regard to simulating battle conditions?

A.54 - Under this heading, sir, "The Use of Live Ammunition for Simulating Battle Conditions"?

Q.55 - Yes?

A.55 - Yes, sir (reads the section).

The pamphlet is produced in evidence, signed by the President, marked Exhibit "I", and attached to the Proceedings.

Q.56 - Now, Sgt. Mellott, will you just tell the Court what you know about the gun that was being used in this battle drill?

A.56 - I was familiar with all the weapons in the Platoon, sir.

Q.57 - What was Sgt. Davy's knowledge of this gun?

A.57 - He had previously been using this particular gun at C.I.S.

Q.58 - What type of gun was it?

A.58 - A bren gun, Mark I, with extending legs.

Q.59 - At this Drill on Sunday afternoon, what was the overhead margin of safety of the path of the bullets?

A.59 - At that time, I would say 3 or 4 feet.

Q.60 - Where was the firing in relation to the sections, or rather the overhead path of fire relative to the carriers?

A.60 - Overhead fire, sir, right over the carrier driver's head, sir.

Q.61 - How was the bren mounted?

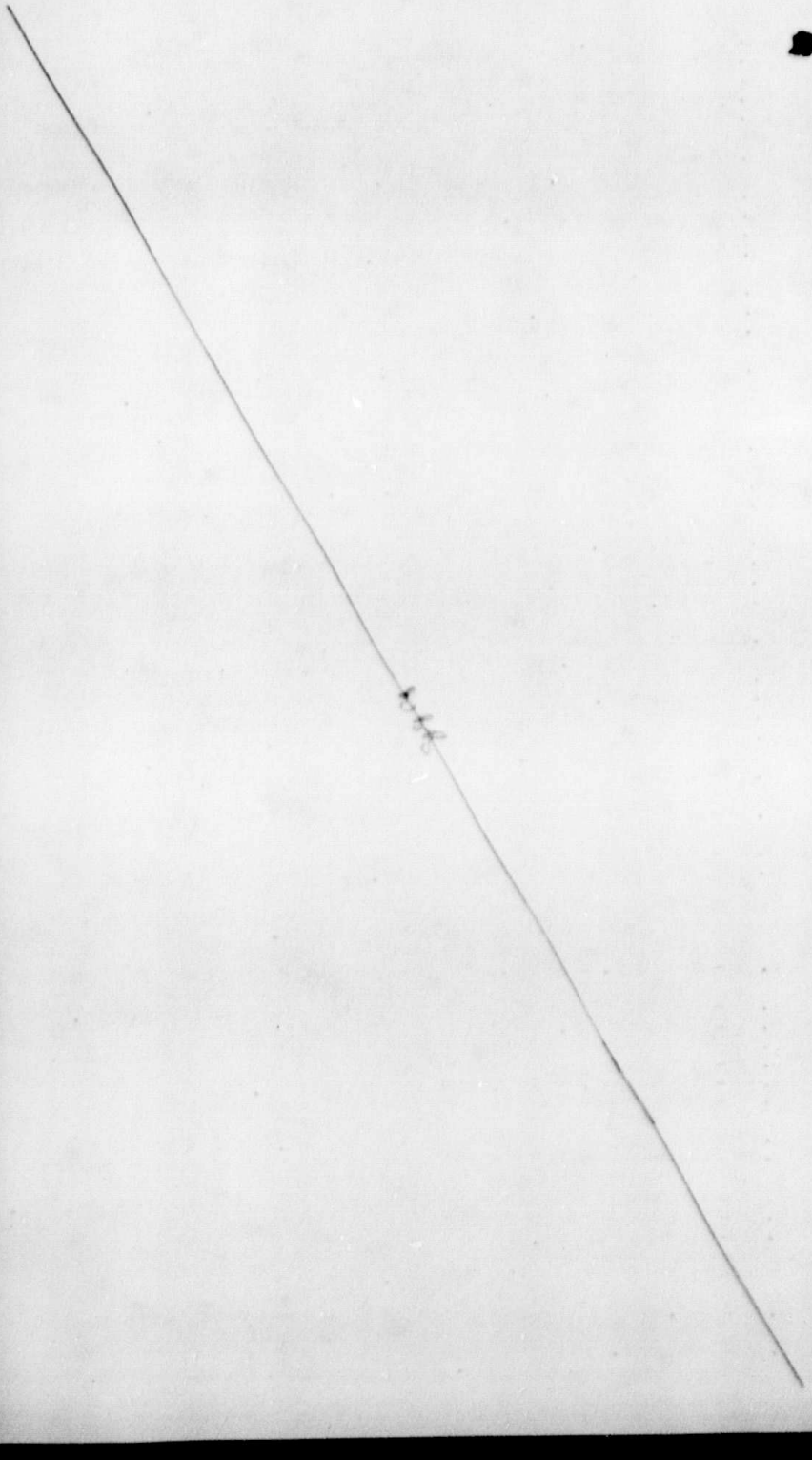
A.61 - On a bipod, sir.

Cross-examined by Defending Officer.

Q.62 - Sgt. Mellott, your opinion as to the margin of safty at the overhead firing was 3 or 4 feet?

A.62 - Yes, sir.

WLL



Q.63 - Subsequently it was ascertained, was it not, that it was considerably more? It was ascertained that the margin of safety was approximately 12 feet?
A.63 - Yes, sir.
Q.64 - What was done on that occasion to ascertain it was 12 feet?
A.64 - An officer at C.T.S., Sgt. Davy and myself went to the scene of the accident. Sgt. Davy stood on top of a truck with his hands over his head. The officer took an aim, and ascertained it was 12 feet.
Q.65 - Before that, you were under the impression the path of fire was 3 or 4 feet over the carrier driver's head?
A.65 - Correct, sir.
Q.66 - When you were firing the bren gun, where was Sgt. Davy?
A.66 - In the position I had been, keeping time and using the flag.
Q.67 - And when Sgt. Davy was at the gun, you had the flag?
A.67 - Yes, sir.

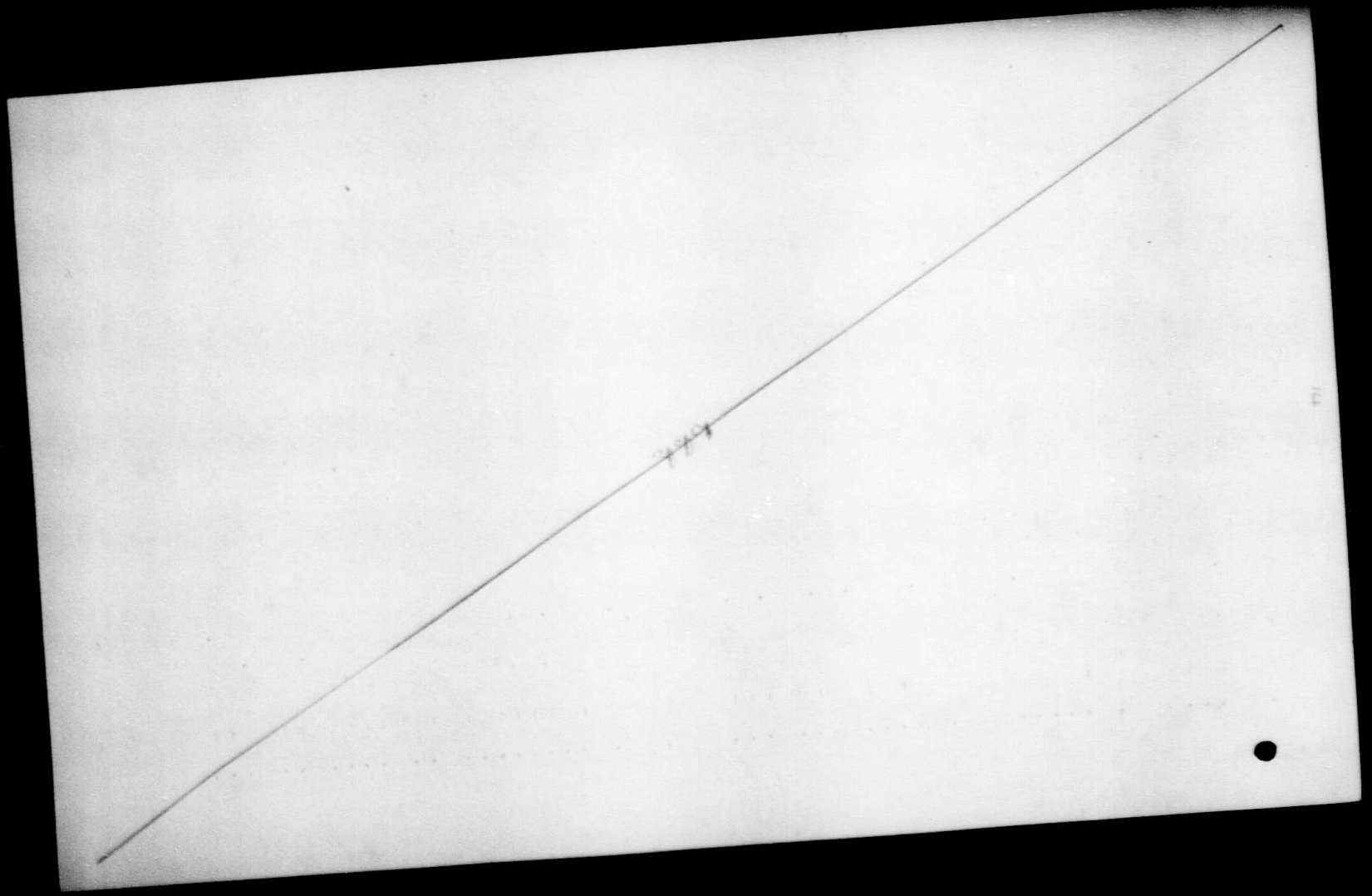
Court

Q.68 - With respect to this test which was made. Was the bren gun in the same position as at the time of the accident?
A.68 - Yes, sir.
Q.69 - How do you know?
A.69 - Well, the ground was covered with empty casings at the spot, sir.
Q.70 - And was the aiming mark still there?
A.70 - Yes, sir.
Q.71 - Was it easily identified?
A.71 - Yes, sir.
Q.72 - Was this truck put in the same position as the carrier had been when the accident happened?
A.72 - Yes, sir.
Q.73 - You were satisfied the line of fire was the same?
A.73 - Yes, sir.

Defending Officer

Q.74 - Was the ground at the aiming mark of a type likely to cause ricochets?
A.74 - No, sir.
Q.75 - When Sgt. Davy was at that meeting Friday night, were any instructions laid down?
A.75 - No, sir.
Q.76 - Did you comprehend everything at that meeting?
A.76 - Yes, sir.
Q.77 - Had the gun been zeroed or not?
A.77 - Yes, sir.
Q.78 - When?
A.78 - A day or so previous to coming to the area, sir.
Q.79 - When it was found the firing passed 12 feet over the carriers, How far were the carriers from the gun?
A.79 - About 35 feet, sir.
Q.80 - What was the angle of fire when Sgt. Davy fired between the carriers?
A.80 - He fired at a point midway between the carriers, sir.
Q.81 - Allowing approximately 20 feet?
A.81 - Yes, that's correct, sir.
Q.82 - At C.T.S. what instructions were received as to angles of fire overhead?
A.82 - I didn't receive any, sir.
Q.83 - Did they lay down any safety angles of fire, or overhead margins for this type of training?
A.83 No, sir.
Q.84 - Was this type of drill carried out under fire at C.T.S.?
A.84 - Yes, sir.

K.R.L.

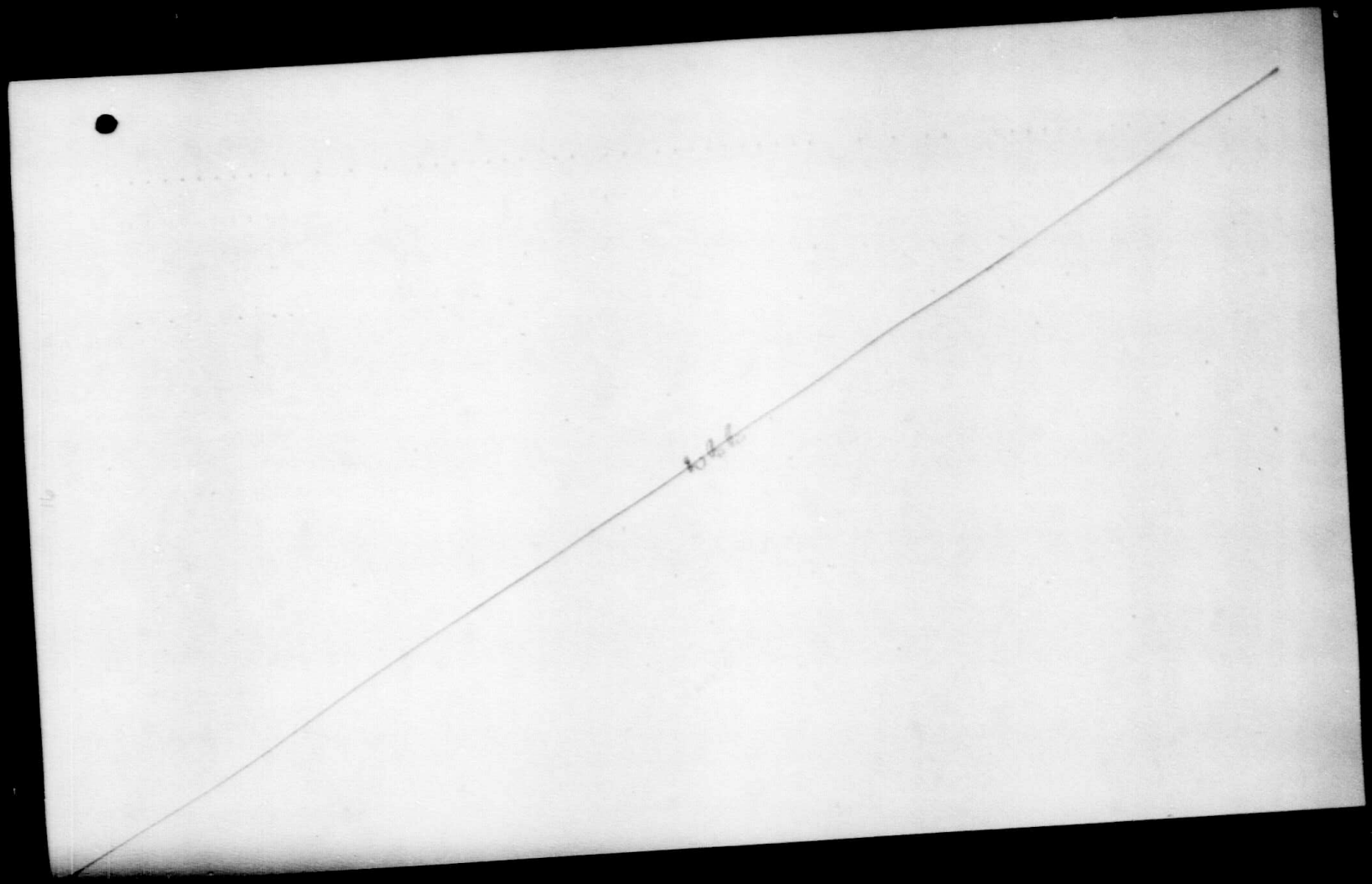


Q.85 - I believe you said Sgt. Davy gave a lecture to the men before this drill?
A.85 - Yes, sir.
Q.86 - You said he went over everything twice?
A.86 - Yes, sir.
Q.87 - In your opinion did he give them every instruction as to safety?
A.87 - In my opinion he did, sir.
Q.88 - You are a qualified instructor at C.T.S.?
A.88 - Yes, sir.
Q.89 - And Sgt. Davy is also?
A.89 - Yes, sir.
Q.90 - When Sgt. Davy handed the gun over to you during the drill what did he say?
A.90 - He said the gun was dead on, and to fire at the same aiming mark as what he had been using, sir.
Q.91 - You are not sure whether he said the aiming mark was this piece of sod or not?
A.91 - No, I'm not sure, but I could see where his bullets were churning up the ground.
Q.92 - So you knew where the point of aim was?
A.92 - Yes, sir.
Q.93 - Did you have any difficulty in finding the aiming mark?
A.93 - No, sir.
Q.94 - The legs of the gun were extended? Of the bipod?
A.94 - Yes, sir.
Q.95 - Sgt. Davy, from where you were standing, could you tell the exact spot on the carrier where the fire was passing overhead?
A.95 - No, sir, I could not.
Q.96 - You don't know if it was over the centre or the right or the left?
A.96 - A bit to the left, I think, sir.
Q.97 - This book of pamphlets containing Exhibit "I". Have you ever seen it before?
A.97 - Yes, sir, it is Mr. Grandjean's book.
Q.98 - Where is it kept?
A.98 - I have seen it in the Platoon office, sir.
Q.99 - Have you read many of the pamphlets in this book?
A.99 - Yes, sir.
Q.100 - What type of pamphlets are they?
A.100 - Weapon training, sir.
Q.101 - And you were Platoon Sgt. on that day, Sunday, 8th August?
A.101 - Yes, sir.
Q.102 - Sgt. Mellott, of your own knowledge, were the safety precautions as laid down in Small Arms Training pamphlets observed except as to the angle of overhead fire in this drill?
A.102 - Yes, and with the exception of the mounting of the gun on tripods, as well. No tripods were available.
Q.103 - Of your own knowledge, the only safety precation not taken was in the angle of overhead fire?
A.103 - Yes, sir.
Q.104 - And in your opinion the reason the exact number of feet laid down in the pamphlet was not adhered to was because of what you had seen afterwards at C.T.S. Battle School?
A.104 - Yes, sir.
Q.105 - How close did the firing come at C.T.S.?
A.105 - About a foot. One chap was nearly hit.
Q.106 - They didn't observe the rules of this pamphlet?
A.106 - No, sir.
Q.107 - What was the general policy adhered to at C.T.S. as far as safety precautions were concerned?
A.108 - It appeared a lot less than the rules, sir.
Q.109 - Do you remember when doing this type of training at C.T.S., firing overhead at carriers, how far was the overhead margin?
A.109 - Maybe a couple of feet.

Re-examined by Prosecutor.

Q.110 - Sgt. Mellott, you said the firing passed directly over the head of the driver?
A.110 - It looked that way to me.

2 2 2



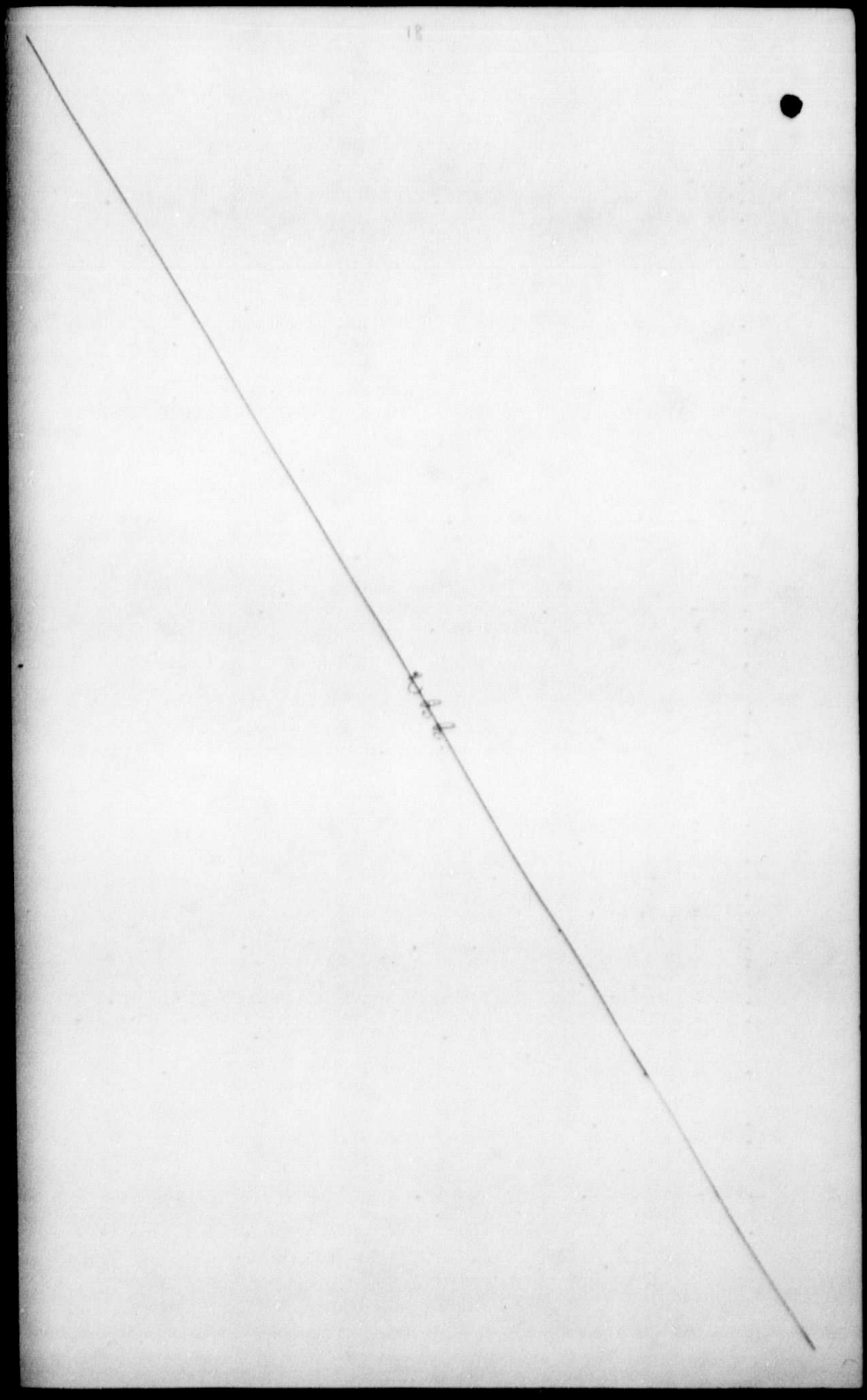
Q.111 - This aiming mark you told the Defending Officer was between the carriers?
A.111 - Yes a point midway between the carriers.
Q.112 - And the overhead mark was this piece of sod turned up?
A.112 - Yes, sir.
Q.113 - How big was it?
A.113 - About 2 or 3 feet long, and the width of a tank track.
Q.114 - Will you tell the Court what preparations were taken at C.T.S. to undertake this type of training?
A.114 - The only thing I could see was giving a lecture telling what would take place, then positions of the carriers and the gun.
Q.115 - What instructions were given with regard to the position of the carriers and the position of the gun?
A.115 - There were no instructions given as regards the drill itself, what we were to do. We just watched them do it.
Q.116 - What did they do?
A.116 - The instructor showed us where he put the carriers and the gun.
Q.117 - In the course of the lecture everybody received, what were the instructions for preparing for battle innoculation at C.T.S.
A.117 - They merely said it was firing with live ammunition over carrier crews at track repair drill.
Q.118 - What were the instructions for preparing a situation of this nature?
A.118 - Just as I have stated. The instructors told us where the carriers would be placed, where the gun was, and what the crew would do repairing tracks.
Q.119 - What preparations did they make at C.T.S. for battle innoculation such as siting the ground, etc.?
A.119 - I don't know. That was done beforehand.
Q.120 - What instructions were received as to the preparations for this type of innoculation?
A.120 - I don't recall any, other than they said there would be firing.

Defending Officer puts the following question through the Court.

Q.121 - What type of shot are you with a bren gun?
A.121 - I am a first class shot, sir.

Court

Q.122 - Who holds the Senior NCO appointment in the Carrier Platoon?
A.122 - I do, sir.
Q.123 - Who is the 2 i/c of the Platoon?
A.123 - Mr. Williams, sir.
Q.124 - You are the Senior NCO?
A.124 - Yes, sir.
Q.125 - What is Sgt. Davy?
A.125 - He is a section Sgt., sir, section leader.
Q.126 - How many sections are there in the Carrier Platoon?
A.126 - Four, sir.
Q.127 - You have four section leaders under you as Platoon Sgt.?
A.127 - Ultimately, when the establishment is completed, yes, sir. We were both made Sgts. at the same time. I have been acting as Platoon Sgt.
Q.128 - Sgt. Davy passed over the gun to the second firer. It would have been possible for the second firer, if he wanted, to increase the margin of safety?
A.128 - Yes, sir.
Q.129 - In respect of the weapon training pamphlets, is it the custom in your platoon to keep these pamphlets on hand before training or do you have to seek them?
A.129 - Both, sir. Sometimes Mr. Grandjean had them on hand, sometimes we asked for them.
Q.130 - Previous to this incident, was this particular pamphlet, Exhibit "I", on hand?
A.130 - No, sir.



Q.131 - Were you beside Sgt. Davy at the time he was firing the gun?
A.131 - No, sir.
Q.132 - Were you in any position to watch the path of the tracers as it originated from the barrel of the gun?
A.132 - No, sir, I saw them going over.
Q.133 - Would it be possible for the next firer to identify the gun position from where the tracers entered the ground if seen from the side, from a lateral position?
A.133 - Will you put that question again?
Q.134 - In another way, if a man watches the tracers from the barrel of the gun to a position close to the carriers, and sees the point of impact, sees the tracers along the line of fire. Would it possible for that man to take the bren gun over and fire it where he saw the bullets enter the ground from the side?
A.134 - I could see the tracers going into that particular site, sir.
Q.135 - Will you describe the particulars of track repair drill?
A.135 - The carriers are in position. The driver remains in the carrier. The gunner takes up the position of firing. The NCO and the observer gets out, break the track, the carrier is moved off; then the driver drives back on the track and we put the track together, sir.
Q.136 - Is it necessary for any member of the crew to work standing on the carrier or take a standing position in the normal course of this drill? Or to reach for a tool?
A.136 - No, sir, the tools are all available.
Q.137 - Was this drill proceeding simultaneously with all three carriers in the section?
A.137 - Yes, sir.
Q.138 - The fire from the bren gun was sometimes directed between the carriers and sometimes overhead?
A.138 - Yes, sir, overhead of the centre carrier only.
Q.139 - The gun was firing at a variety of targets?
A.139 - Yes, sir.
Q.140 - When the first two sections went through the drill, Sgt. Davy was firing the gun and you were on the flag?
A.140 - Yes, sir.
Q.141 - Who took over when the injury occurred?
A.141 - Sgt. Davy.
Q.142 - Was overhead or flank firing taking place when the injury occurred?
A.142 - Overhead, sir.

In the opinion of the Court and Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

Second witness for the Prosecution, A-22591 Cpl. Lang, A., Essex Scottish R., being duly sworn, is examined by the Prosecutor.

Q.143 - Will you identify yourself to the Court, giving your number, rank, name and unit?
A.143 - A-22591 Cpl. Lang A., Essex Scottish.
Q.144 - Do you know Sgt. Davy?
A.144 - Yes, sir.
Q.145 - Is he in this courtroom?
A.145 - Yes, sir.
Q.146 - Can you point him out?
A.146 - Yes, sir (indicating accused), right there.
Q.147 - Cpl. Lang, what is your position in the Regiment?
A.147 - I am a carrier crew commander, sir.
Q.148 - What was your position on the 8th of August, this year?
A.148 - I was a gunner, sir.
Q.149 - You have since received a promotion?
A.149 - Yes, sir.
Q.150 - Do you recall the 8th of August, this year?
A.150 - Yes, sir.
Q.151 - Will you just tell the Court in your own words what happened on that day?
A.151 - We went out to the downs for carrier repair track drill, sir.

Q.A.B.

We had a lecture on what was going to take place by Sgt. Davy. Told us there was going to be live ammunition used. Crew Commanders were told their positions, what everybody was to do, the position of the flag for firing, the sections were to be timed. Had a competition between sections. When the flag dropped get out and start out jobs. A guard was posted for firing. The driver stayed in his vehicle. Myself and another chap got outside, broke the track, carrier drove off then back on track, and we connected the track. We got through and broke off.

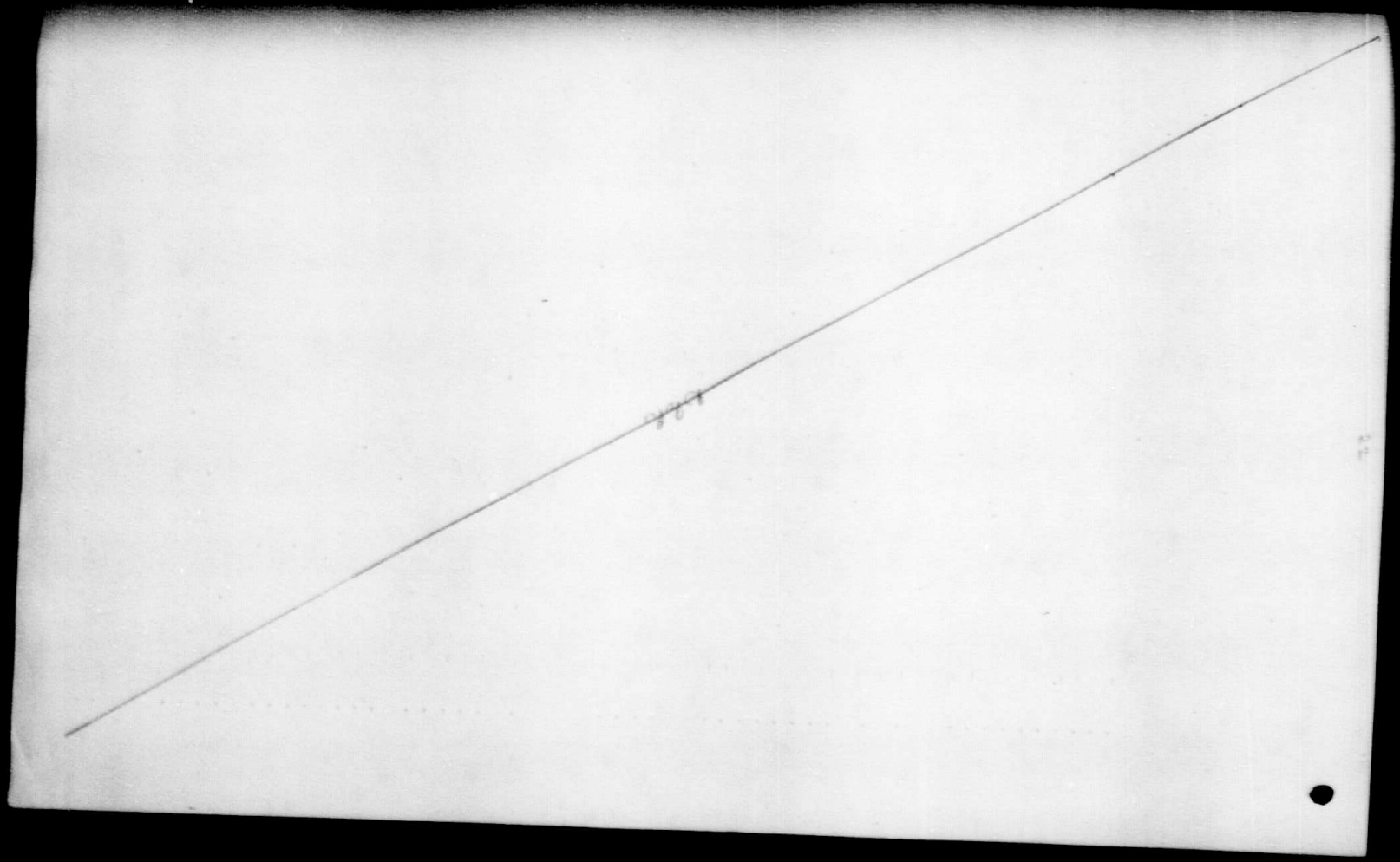
Q.152 - Then what happened?
A.152 - I went up the hill to where the gun was firing.
Q.153 - What type of ground was the gun firing from?
A.153 - I didn't pay much attention. It looked all right to me.
Q.154 - How was the gun fired?
A.154 - From a bipod, sir, just the usual way.
Q.155 - Can you tell the Court how many guns were fired at the drill?
A.155 - Only one, sir.
Q.156 - Where?
A.156 - Up on the hill, sir. The carriers were down in the bottom, [illegible] centre carrier, and in between the others.
Q.157 - What is your opinion of that type of ground for that type of training?
A.157 - In my opinion the position of the gun and the carriers was very good, sir.
Q.158 - Do you know Sgt. Mellott's qualifications for this training?
A.158 - He is a Q.1 small arms instructor, sir.
Q.159 - Where did he qualify?
A.159 - No.3 C.T.S. at Borden, here, sir.
Q.160 - Everything looked all right to you?
A.160 - Yes, it did, sir.
Q.161 - Can you tell the Court what safety precautions should be taken?
A.161 - You should have the gun in a firm position, a target to aim at, sir, in the background, take at least 5 degrees, fire over and around the flanks of your object, sir.
Q.162 - The gun should be in firm ground?
A.162 - Yes, sir, and should be on a tripod, actually.
Q.163 - What about the gun position there?
A.163 - The ground looked o.k. to me. I didn't pay much notice. I didn't go up and actually inspect it.

Cross-examined by Defending Officer.

Q.164 - Cpl. Lang, I think you said Sgt. Davy was firing when you were undergoing the drill. Did you have to stand up?
A.164 - Yes.
Q.165 - Did you notice the tracers?
A.165 - I seen a few, sir.
Q.166 - Did you see the margin of safety?
A.166 - Well, standing up, working around, it didn't seem like they were close, sir.
Q.167 - Did you see the tracers?
A.167 - Just the closeness.
Q.168 - Could you say how far overhead they were?
A.168 - No, sir.
Q.169 - From your experience, were the shots far enough away?
A.169 - Yes, sir.
Q.170 - Did you see the point of impact?
A.170 - When Sgt. Mellott was firing, the bullets, tracers, was going into a piece of sod turned over by a tank track.
Q.171 - Sgt. Davy handed over to Sgt. Mellott. Were you there?
A.171 - Near there, sir.
Q.172 - What did you hear Sgt. Davy say?
A.172 - The gun was firing dead on, sir.

Re-examined by Prosecutor.

Q.173 - You did have occasion to stand up during the drill?
A.173 - Yes, sir.



Q.174 - Where?
A.174 - Breaking the tracks. I had to go back for tools.
Q.175 - You didn't notice the bullets going over your head?
A.175 - I didn't take occasion to look up.
Q.176 - Could you estimate how far they were going over your head?
A.176 - I didn't notice, just tried to get the job done in a hurry.
Q.177 - How high is a carrier?
A.177 - About up to my shoulder, about 5 feet 4 inches, sir.
Q.178 - Which side of the carrier were you, in relation to the bullets?
A.178 - Right in front, sir.
Q.179 - Between the bullets and the carrier?
A.179 - Yes, sir.

Court

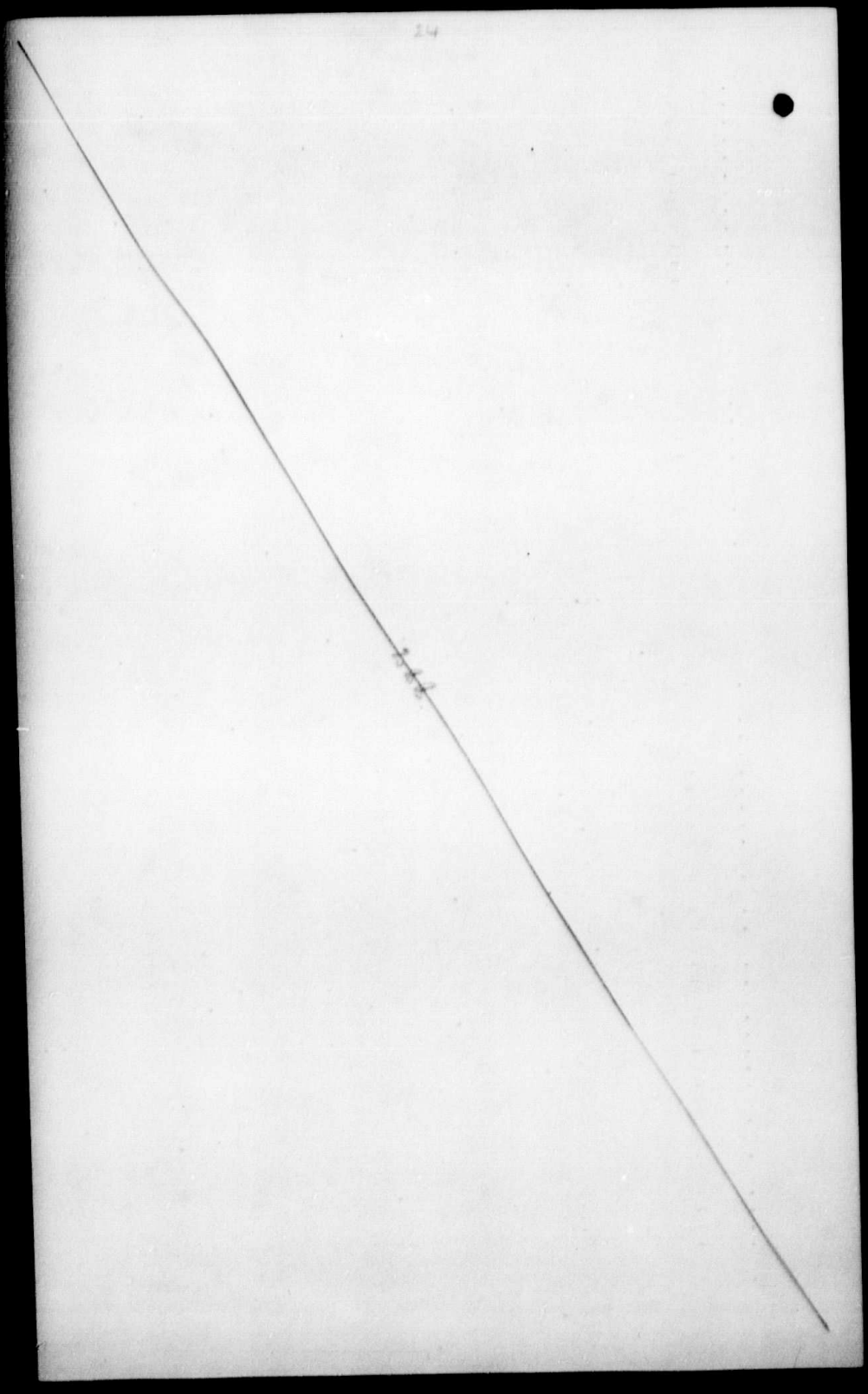
Q.180 - Previous to this particular occasion on the 8th of August, had you ever had similar battle innoculations or track repair drill?
A.180 - Not myself, sir. In certain coys they had.
Q.181 - Ever had battle innoculation?
A.181 - Yes, sir, quite a bit of battle drill, sir.
Q.182 - At this drill, did it seem as though the firing was closer than usual?
A.182 - I think I have had fire come closer than that, sir.
Q.183 - Could you give any estimate of the overhead margin at any time during that drill?
A.183 - Well, it was about 3 or 4 feet, anyway.

In the opinion of the Court and Judge Advocate it is not necessary to comply with R.P. 83(B).

Third witness for the Prosecution, Lieut. E. C. R. MacDonald, Essex Scottish R., being duly sworn, is examined by the Prosecutor.

Q.184 - Will you identify yourself to the Court, please, giving your rank, name and unit?
A.184 - Yes, Lt. E.C.R.MacDonald, Essex Scottish R.
Q.185 - Will you tell the Court your position in the regiment?
A.185 - Weapon training officer.
Q.186 - You are aware of an incident that happened on 8 Aug, this year?
A.186 - Right, sir.
Q.187 - Do you know the location of that incident?
A.187 - Yes, sir.
Q.188 - I show you two pieces of paper. Will you tell the Court what they are, please?
A.188 - They are copies taken from original drawings of the area where the accident occurred.
Q.189 - What do you know about the drawings?
A.189 - The originals were made at the scene of the accident by "I" Section.
Q.190 - How correct are they?
A.190 - The scene is represented properly, I think. Exhibit "C" is the top view, and Exhibit "B", the front view.
Q.191 - I show you a pamphlet. Will you tell the Court what it is?
A.191 - It is a Small Arms Training Pamphlet, Volume I, Pamphlet No.1.
Q.192 - For what?
A.192 - Field firing.
Q.193 - Will you tell the Court, as Weapon Training Officer, whether this is available, and where it may be found?
A.193 - It is available to all officers and NCOs from "I" Section. Practically every NCO can get one if he wants to.
Q.194 - Will you tell the Court, as Weapon Training Officer, your opinion of the nature of the ground for this type of training?
A.194 - I thought it quite suitable.
Q.195 - Was it excellent ground, do you think?
A.195 - Yes, I do.
Q.196 - Was there anything to indicate the position of the carriers and the bren gun when these sketches were compiled?
A.196 - Yes, sir, the tracks of the carriers were there, and the position of the gun was shown by the empty casings and marks of the legs.

bdd.



Q.197 - How did you determine the angles of fire?
A.197 - Well the bren gun was placed in the position from which it was previously fired by Sgt. Davy and Sgt. Mellott.
Q.198 - Who indicated the position to you?
A.198 - Sgt. Davy and Sgt. Mellott.
Q.199 - Did you take another carrier and another gun?
A.199 - Yes, we made almost an exact duplication of the scene at the time of the accident.
Q.200 - Then what did you do?
A.200 - Looked at the safety angles, how high over the carrier the gun would fire.
Q.201 - How did you determine the height over head?
A.201 - Took my sight over the carrier to the point of aim.
Q.202 - What did you estimate the height to be?
A.202 - I can't recall the exact figure but I think it was about 5 feet.
Q.203 - Over what?
A.203 - Over the heads of the men in the carrier.

Defending Officed declines to cross-examine.

Court

Q.204 - Were the men in the carrier sitting down?
A.204 - Yes, at the time the tests were made.
Q.205 - You were Weapon Training Officer at that time?
A.205 - Yes, sir.
Q.206 - Had you seen the ground prior to it being used?
A.206 - No, sir.
Q.207 - What did you think of the ground for this drill?
A.207 - Excellent, sir.
Q.208 - If you had made a recce prior to the drill would you have selected it?
A.208 - Yes, sir, it was very good.
Q.209 - Did you ever see Exhibits "G" and "H" before this?
A.209 - Yes, sir, at the Court of Inquiry.
Q.210 - It has been suggested the overhead margin was 3 feet. Do you recall any discussion about that?
A.210 - Yes, sir, there was quite a bit of discussion about that.
Q.211 - Whose judgment was responsible for that estimate?
A.211 - That of the two Sgts. sir. When we went to look we found the margin was greater.
Q.212 - When was your examination made?
A.212 - Two or 3 days after the accident.

In the opinion of the Court and Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

Prosecutor

Unless the Defence wishes me to call Lt. Grandjean, that is all the evidence I have.

Defending Officer

No, we don't request that.

The Prosecution is closed.

Defending Officer makes the following motion.

I ask for a dismissal of the charge on the ground that the Prosecution has not made a prima facie case against Sgt. Davy. I submit that the charge is (reads from charge sheet). Now, to go back to the evidence, we see there was a meeting with the Platoon Officer preparing for this particular type of training. Sgt. Davy recce'd the ground personally. The ground would not cause ricochets. It was excellent ground in an

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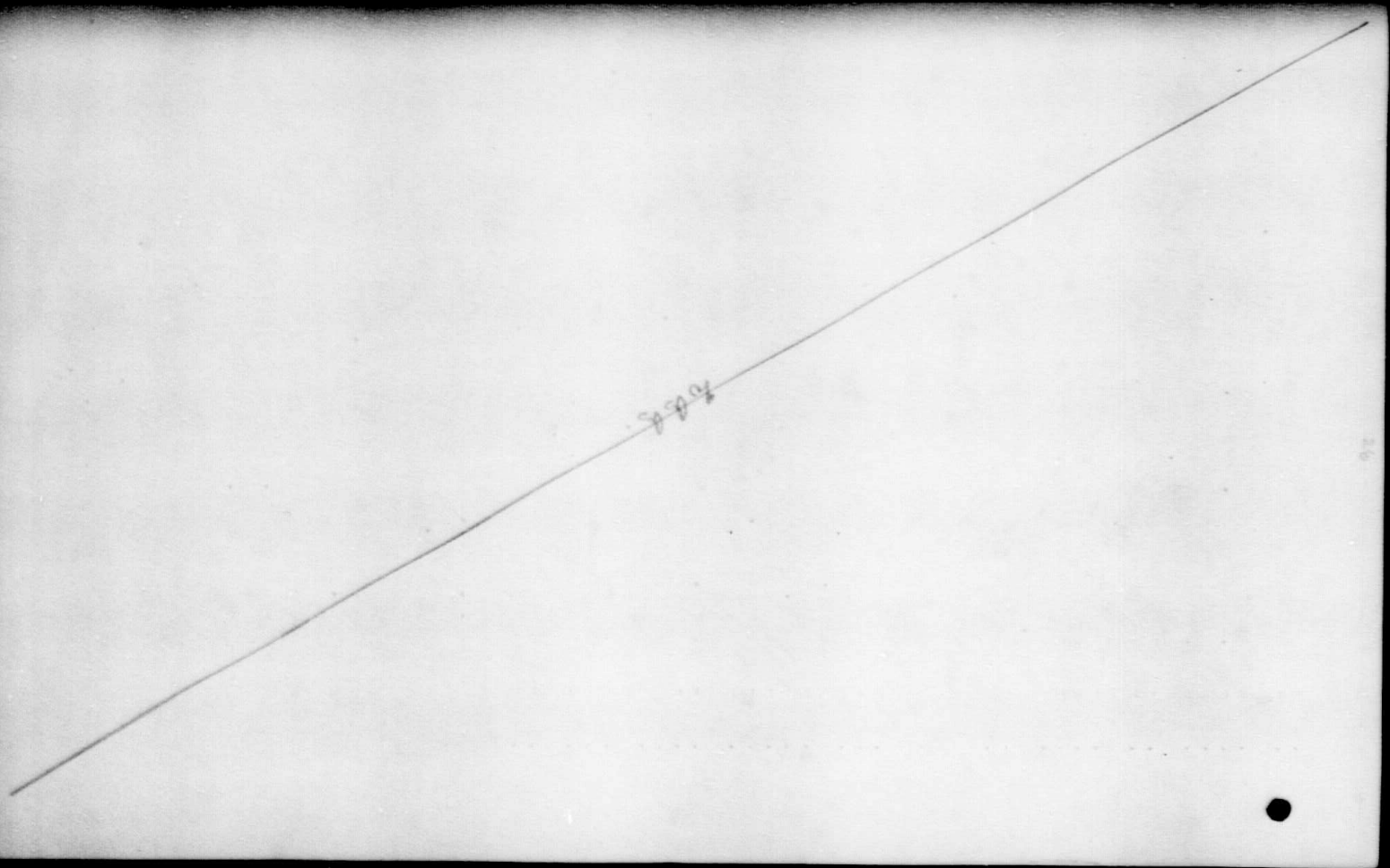


excellent area. The firing was not too close. Cpl. Lang said he had been under closer fire. Sgt. Mellott said the flank firing was halfway between the carriers. Sgt. Davy also gave the men a lecture, told them not to run around unnecessarily or stand up. He went over each point more than once. Noone was injured when Sgt. Davy was firing. Greater safety angles than those laid down at C.T.S. were carried out. When Sgt. Davy turned over the gun to a second firer, he said the gun is dead on. He pointed out the aiming point and said use the same one. He was not the Platoon Sgt. and was not in charge of the drill. He is charged with failing to take proper precautions. The evidence of the Prosecution shows he took every precaution that he could take. No one was hit when he fired. There has not been sufficient evidence put forward to call on him to answer that charge by putting him on his defence.

Prosecutor makes the following reply to the motion of the Defence.

I think the evidence indicates very clearly the accused should be put on his defence. The mere fact that nobody was injured when he was firing is beside the point. I suggest Sgt. Davy did take charge of the drill, recce'd the ground, selected the gun position and that of the carriers. I maintain it is laid down in the pamphlet that overhead fire must allow a safety margin of at least 5 yards. We have evidence that there was at the most 5 feet, and perhaps 3 feet of safety margin when Sgt. Davy fired. He selected the aiming point and turned that aiming mark over to the second firer. He did not take proper precautions in overhead fire so that it was safe.

Defending Officer makes the following reply to the Prosecutor.

I don't question the fact that Sgt. Davy carried out the drill from the start. I am pointing out he was not in charge of the drill. And I submit he did take proper safety precautions because nothing happened.

The Court is closed to consider the motion of the Defence.

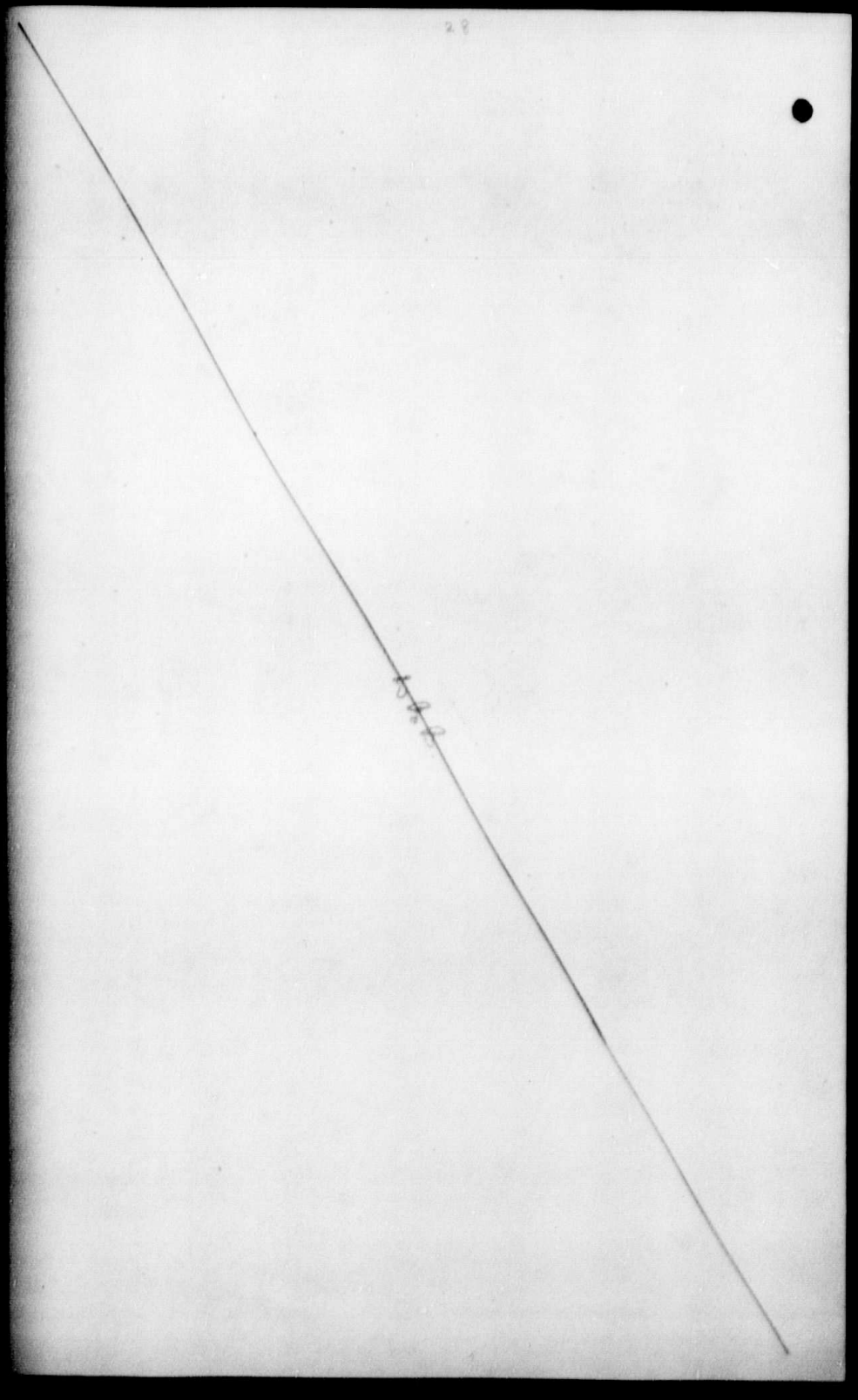
The Court is re-opened and the accused is again brought before it.

J.A.

Sgt. Davy, I have been directed by the Court to inform you that the application made by the Defending Officer on your behalf has been allowed and you are found not guilty of the charge against you ~~is accordingly dismissed~~.

WGB

WGB



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E

Finding.*

**To be struck out except in cases where trial has taken place on a plea of "Not Guilty."*

~~The Court is closed for the consideration of the finding.~~ D.G.S.

The Court find that the accused A. 21863 Sgt. Joseph Davy, Essex Scottish Regiment not guilty of the first charge.

In the Field
12 Oct 43

W. B. Bate Major
Judge Advocate

[signature] Col.
Pres.

Proceedings on Conviction *before Sentence.*

**When the Court is already open this sentence will be struck out.*

Evidence of character, &c.

~~*The Court being re-opened, the accused is again brought before it.~~

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

(Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.*

~~The Court is closed for the consideration of the sentence.~~

Sentence.

The Court sentence the accused

Sentence.

Army Form A 47

COURTS-MARTIAL

Form of Order for the assembly of a General or District Court Martial.

ORDERS BY Maj-Gen E L M Burns, OBE., MC.

Commanding the 2 Canadian Division

A 21863 Sergeant Joseph DAVY, Essex Scottish Regiment. (Place and Date) Field 7 Oct 43

The detail of officers as mentioned below will assemble at 1000 hrs at Essex Scot on the 11 th day of October 1943 for the purpose of trying by a General court-martial the accused person [xxxxxx named in the margin [and such other person or persons as may be brought before them].*

PRESIDENT.

Col. MV McQueen ED - RCASC 1 Cdn Corps is appointed president.†

MEMBERS.

Lt.-Col	A.H. Sankey	Q.O.R. att RHLI
Major	R. White	Victoria Rifles of C att R Regt C
Capt	A.K. Reid	R.C.R. attached R Regt C
Capt	E.R. Bennett	RHC (Black Watch)

Note. The president must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named.

WAITING MEMBERS.

Major R Tremblay	R de Mais
Capt JP Taylor	RHC (Black Watch)

Major W B Bate - HQ First Cdn Army JUDGE-ADVOCATE.

has been [*or where the convening officer has the appointment of a judge-advocate,* is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to AA & QMG 2 Cdn Div

Signed this seventh day of October 1943

(E L M Burns) Maj-Gen
Comd - 2 Cdn Div

* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here: thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," (*or as the case may be*).

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* "In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* "In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." (*See Army Act, s. 48 (2).*)

‡ *The "unit," in the case of Royal Artillery, is a Brigade, where such organisation exists.*

(12460) Wt.30041/2250. 10,000. 11/39. A.& E.W.Ltd. Gp.680. Form A47(a).

List of Witnesses.

TRIAL OF

Exhibit G

Top View

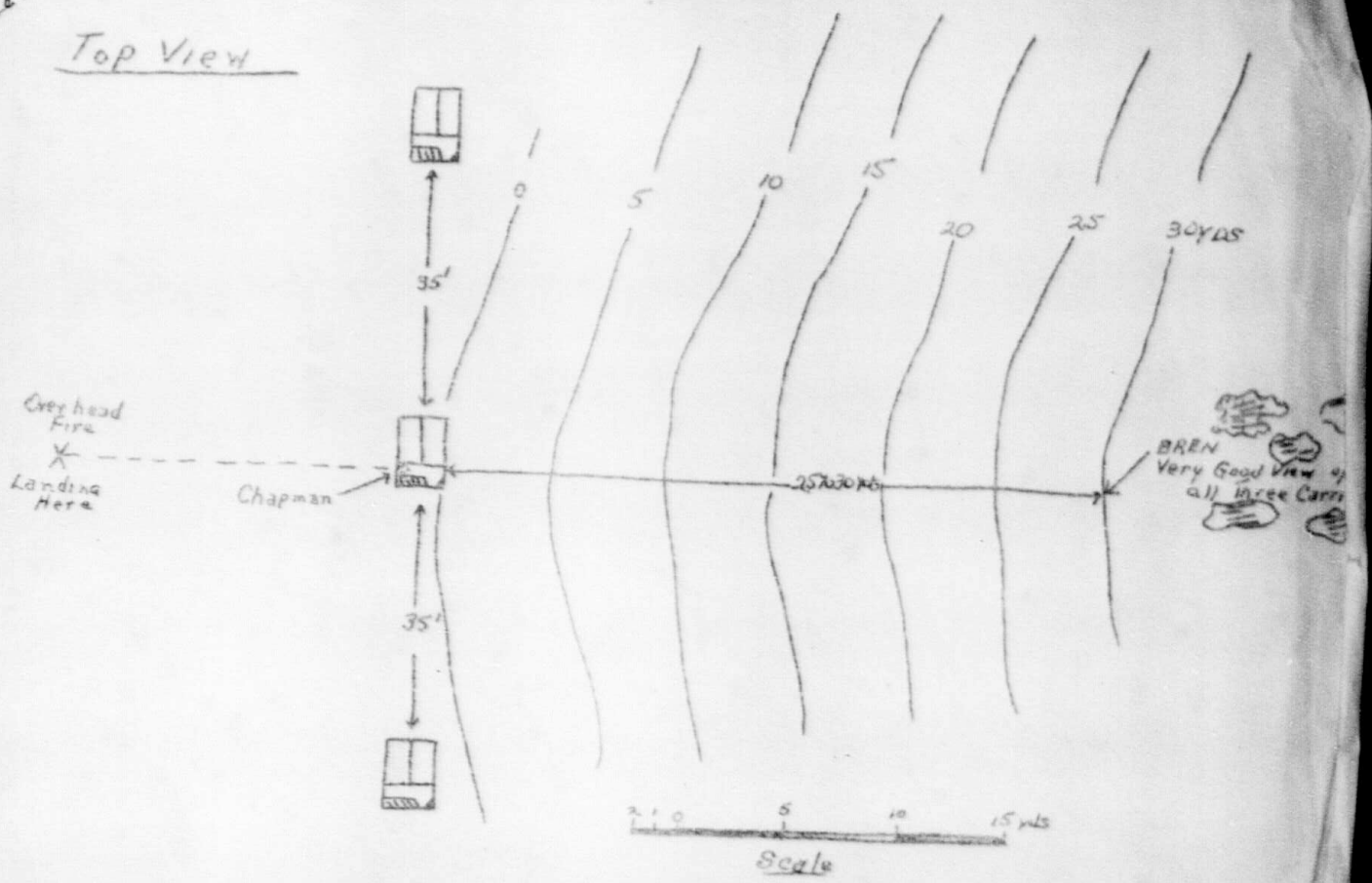


Exhibit
H

[illegible] Pres
Col

W. to Scale maps
Judge Advocate

35

FRONT VIEW

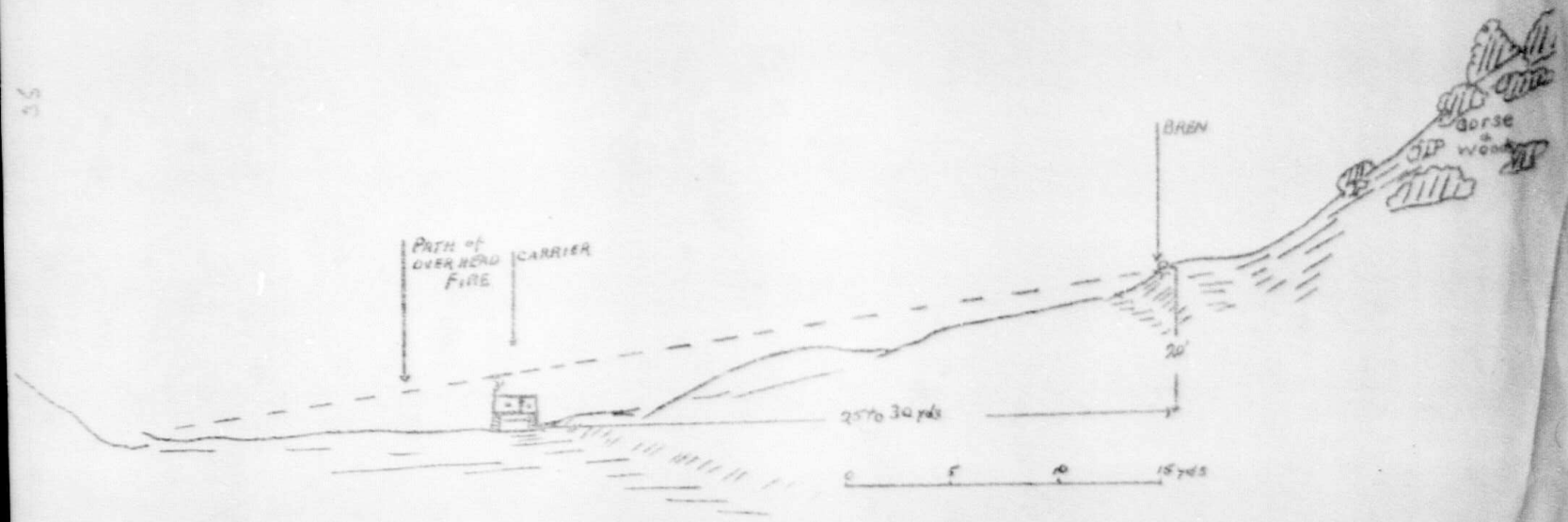


EXHIBIT "I"

Pamphlet:-

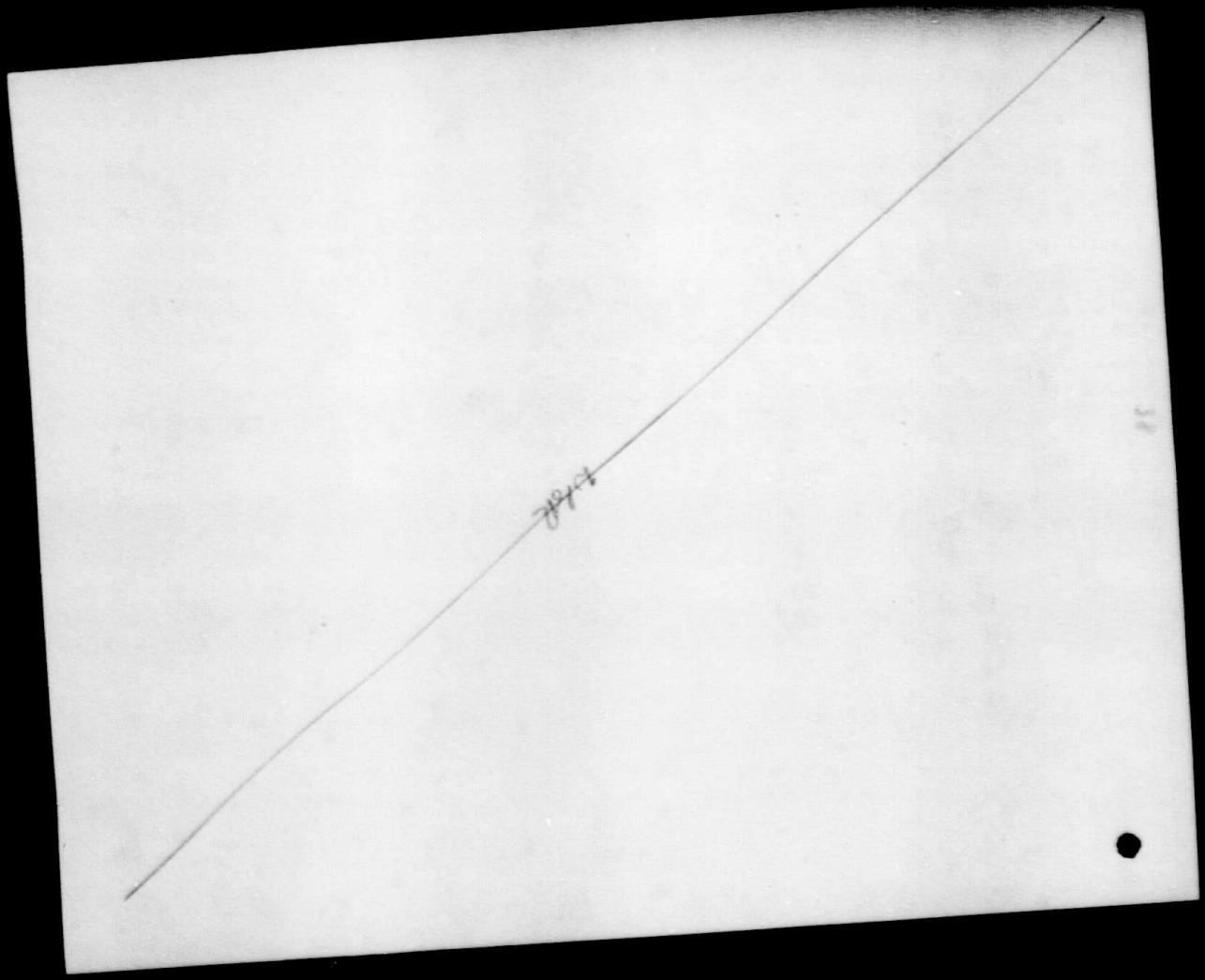
Small Arms Training,
Volume I,
Pamphlet No.1.

Original Exhibit also used as an Exhibit in the case of -

A-3175 Sgt. Mellott, E. N.,
1 Bn, Essex Scottish Regt.

W. B. Bate

(W.B.Bate) Major
Judge Advocate.



Summary of Evidence in the case of A 21863 Sgt Davy J
1st Bn Essex Scottish Regt a soldier of the Canadian Army Overseas.

The accused is informed of his rights
The CO directs that the evidence be taken on oath.

First Witness for the Prosecution
Lieut P.M. Grandjean, 1st Bn Essex Scottish Regt, sworn states:

I am OC No 4 pl 1st Bn Essex Scottish Regt. On or about 1 Aug 43 I took No 4 pl to camp BURPHAM for about two weeks intensive trg. Sgt Mellatt, Sgt Davey, and myself had just finished attending the carrier wing at No 5 CTS from 10 Jun 43 to 17 Jul 43. While at the school we did battle drills under fire, and I would like to say that Sgt Davy and Sgt Mellatt are both senior NCO's, and in my opinion competent instructors in carrier battle drill. On Friday evening Aug 6 Sgt Mellatt, Sgt Davy, Lieut R Williams, my 2 i/c and myself had a meeting at which we discussed the trg for Saturday, Sunday Aug 7 & 8. Included in the syllabus of trg for the pl, which syllabus had been approved by both the CO and 2 i/c of the regt were several periods of track repair drill. Sgt Davy suggested at the meeting that we do the track drill on Sunday Aug 8, and that we use line arms when doing so. He wanted to have it done the same as we had had it done to us at No 5 wing CTS. I am NOT quite positive on this point, but I believe that we agreed to do the drill with line arms. On Saturday evening 7 Aug as I was going into town I went met Lieut Col McDonald, CO Essex Scottish, who advised me that Lieut Williams, and myself were to be present at a meeting at Bn HQ HALNAKER at 1330 hrs Sunday Aug 8. He asked me at the same time if my NCO's could carry on with trg by themselves, and I replied "yes". As both myself, and Lieut Williams were busy all Sunday morning we arrived back at Camp BURPHAM late, and had to rush through lunch to try and get to the CO's meeting at HALNAKER by 1330 hrs. Just before leaving the camp I told Sgt Mellatt, or Sgt Davy, or both to carry on with the trg as laid down for Sunday afternoon. I was in such a hurry that I never thought that they might be using line arms while doing the track drill that afternoon

I may say, however, that prior to proceeding to the tig area on or about 1 Aug 43 I had tried to get a tripod for a bren but had been unable to do so, as none was available. I wished also like to add that I had given no instr for safety precautions on the ground where the drill was to take place because I had not recced the ground personally

Cross Examined by the accused

Q. Do you remember sending me out on an MC one afternoon to recce the ground in question.

A. Well, it is some time ago, and I can't recall that I did, but I believe that I did instruct you to recce the ground.

P.M. Grandjean Lt

Second Witness For The Prosecution

A3175 Sgt Mellat EH, 1st Bn Essex Scottish Regt, sworn, states: I am sec comd to ~~section~~ No 4 pl 1st Bn Essex Scottish. On Sunday afternoon 8 Aug Sgt Davy and myself proceeded to NEW DOWN to do track drill under fire on the instructions of Lieut Grandjean OC No 4 pl. When we arrived at the tig area Sgt Davy got all the men together, and he gave a lecture on track drill repair. At the same time he informed the men, that the drill would be done under fire — that a bren gun would be firing at them, and he told the men to keep down as much as possible, and be careful. He then told them the posn of the bren gun, and the posn of each carrier. He also placed the bren gunner from each individual carrier, acting in their protective role, on the same flank as the bren gun that was to do the firing, in order that they would be out of the line of fire of the bren. It was also laid down that no firing would occur until the flag was dropped, and all men were behind the firing bren gun except those actually engaged in the drill. I acted as time keeper, once the drill started, as we were having a competition between sections to see which could make the best time. Sgt Davy fired the bren during the time the first & second sections went through the drill and as far as I am concerned all normal safety precautions were taken. I have been through numerous innoculations of this nature, and through carrier wing be SCTS and the safety

precautions to me seemed normal & sufficient. The firing was sited in a knoll about 20 feet high – 25 to 30 yds away from the carriers. The firing was about 3 to 3½ feet over the carriers, NOT the carrier drivers and about 15 to 20 feet from the rear of the carriers. After I took the bren over to fire the third section through, the ~~[illegible]~~ same safety precautions were taken as before.

Cross Examined by the Accused

Q. Do you remember asking me how the gun was firing, when you took over the gun to fire the third section

A. Yes, and you replied it was properly zeroed, and dead on – also that I showed use the same angle of fire, and NOT to fire until the flag was dropped, and all personnel behind the gun, ~~[illegible]~~ except those actually engaged in the fire drill.

A 3475 Sgt E H Mellott

Third Witness for the Prosecution

A 22591 L/cpl Lang A 1st Bn Essex Scottish Regt revoser states. I am L/cpl A section No 4 pl 1st Bn Essex Scottish Regt. Sunday afternoon 8 Aug we went to NEW DOWN under Sgt Davy and Sgt Mellott. When we got there Sgt Davy gave us a lecture on track drill, and then told us we were going to do the drill under fire from a bren the firing of which he pointed out to us. He told us to keep down as much as possible during the drill, & to watch ourselves. I then remember him placing the bren gunner from the carriers, on the same flank as the firing bren. I was in number one section when it went through the drill and once during the drill I had to stand up. the fire was nowhere near me. I took up the number two position on the gun when Sgt Mellott went to fire the third section through, and other than a change in the angle of the gun which Sgt Mellott made, to fire where he desired, and in which I helped him there were no other changes different to the conditions under which the firing of numbers 1 & 2 sections took place. I am qualified Q1 Small arms by No 3 CTS and the angle of fire of the gun & position seemed alright to me.

Cross. Examined by the Accused

Under the same conditions, would you be willing to undergo track drill under fire with myself in charge again.

A 1 I certainly would. A-225 [illegible]

L/Cpl. A. Lang.

Fourth Witness for the Prosecution

Lieut. S.B. Mac Donald. 1st Bn Essex Scottish Regt sworn, states:
I am weapon trg offr 1st Bn Essex Scottish Regt. I was a member of the court of Inquiry inquiring into reporting upon the cause of injury to H 41195 Pte Chapman OR 1st Bn Essex Scottish Regt.
My qualifications as WTO are: Hythe Small Arms School. Eastern & South Eastern Command Weapon Trg School. Battle Wing CTS. Bde Battle School Instructor.
I personally examined the ground in question and found that the ground is ideal for simulating battle conditions for trg in track drill under fire.
I produce SAT, Vol 1 Form 1, 1942 and direct attention to Ch III-Sec 17 sub secs 102 2 "~~[illegible]~~ Rules for [illegible] ~~for simulating battle conditions~~" Call as Exhibit "A" hereto.

The accused declines to cross examine.

LT. McDonald S.B.

The accused having been duly cautioned in accordance with RP 4(E) says:

I do not wish to make a statement at this time.
I am going to reserve my defence

[illegible] Sgt. Dwyer J.

The accused does not wish to call any witnesses in his defence at this point.

Certified that RP 4 complied with
In the field
16 Sept 43

S F Sharpe Capt
officer detailed to take the summary.

I deem the remarks of Lt P Ponsford as very defending officer.

In the field
16 Sept 43

A 21863 Sgt. Davy. J.

G.C.M.

JAG BRANCH - REVIEW RECORD

Accused

A. 21863. Sgt. Davey. J.
Essex Scottish

Remarks	Date
Trial in (Country) Eng.	12 Oct.
Charges 40	
Sentence Acquittal	12 Oct.
Rec'd from CR at JAG Branch	12 Nov.
To Bpt Lee for (~~pre~~)(~~post~~) rev	12 Nov.
Recommendations by [signature]	
(1) Pass and record	
(2) Ltr on irregularities.	
(3) Quash charge(s).	
(4)	
Ret'd to JAG Rev 1 by [signature]	12 nov
Passed to R.S.M. Copy fol. 31 to 47 Except 37	12 Nov. 11.45 AM
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record & file Blvd	18 Nov. 93
Instrs completed by	

GCM-A-8

A Army Form A 9.

**Form of Proceedings for General ~~and District~~ Courts-Martial.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

Proceedings of a General Court-Martial held at in the Field on the 12th day of October, 1943, by order of Major-General E. L. M. Burns, CBE, MC, Commanding 2 Canadian Division, dated the 7th day of October, 1943.

President.

Colonel M. V. McQueen, ED, R.C.A.S.C., 1 Cdn Corps

Members.

Lt.-Col. R. H. Sankey, Q.O.R., att R.H.L.I.

Major R. White, Victoria Rifles of C, att R Regt C

Captain A. K. Reid, R.C.R., att R Regt C

Captain E. R. Bennett, R. H. C. (Black Watch)

Major W. B. Bate, DJA, HQ First Cdn Army Judge Advocate.

Trial of* A-21863 Sgt. Davy, Joseph, 1 Bn, Essex Scottish Regiment.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that [illegible] is not available to give evidence.~~

~~[illegible] waiting (number) takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. W.M.W. Shaw, ADJA, 2 Cdn Div

~~Counsel, or~~ defending officer† Lt. G.A.Ponsford, Essex Scottish

At 10:15 o'clock the Trial commences.

The order convening the Court is read, and is marked "X", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. -1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer* -1. No, sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

(1)

Certified true copy of original proceedings herein. W.M.W. Shaw Capt ADJA, 2 Cdn Div 12 Nov 43

Certified true copy W.M.W. Shaw Capt ADJA, 2 Cdn Div 5 Nov 43

J.A.G. Rev. 1

24313

E. P. Ponsford Lt. 12 Nov 43

10

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Major R. Tremblay, R. de Mais.
Captain J.P.Taylor, R.H.C. (Black Watch)

Q.2 - Do you object to Sgt. R.V.Parks acting as shorthand writer?
A.2 - No, sir.
D-36570 A/Sgt. Parks, R.V., HQ First Cdn Army, the shorthand writer, is duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the ~~first~~ charge against you, which you have heard read?

Question to the accused.

No, Guilty, sir.

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure (6) (b) are duly complied with.~~

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

MEDICAL OFFICER'S REPORT

I certify that No. A 21863 Sgt Davy J

of Essex SCOTTISH is in a good state of health,

and fit to undergo Trial by Court martial.

R D Thompson Capt.
Medical Officer

Station Field

Date Oct 12/43

"M & McQueen" Col
Pres

"W. B. Bate" Maj
Judge Advocate

M. F. B. 246
25M—6-41 (792)
H.Q. 1772-39 480

(COPY) "B 2"

"M.V.McQueen" Col
President

CHARGE SHEET

"W.B.Bate" Major
Judge Advocate

The accused, A 21863 Sgt. Joseph Davy, of the 1st Bn, Essex Scottish Regiment, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE
Army Act
Section 40

Conduct to the prejudice of good order and military discipline

in that he

in the Field, on the 8 AUG 43 while instructing in track repair drills under fire failed to ensure that proper safety precautions were taken to prevent injury to participants.

In the Field
29 Sep 43

"J. Ruingay" Major
A/Officer Commanding,
Essex Scottish Regiment.

To be tried by General Court Martial.

In the Field
7 Oct 43

"E.L.M.Burns" Maj-Gen
Comd - 2 Cdn Div.

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R. D. Thompson Capt.
Medical Officer

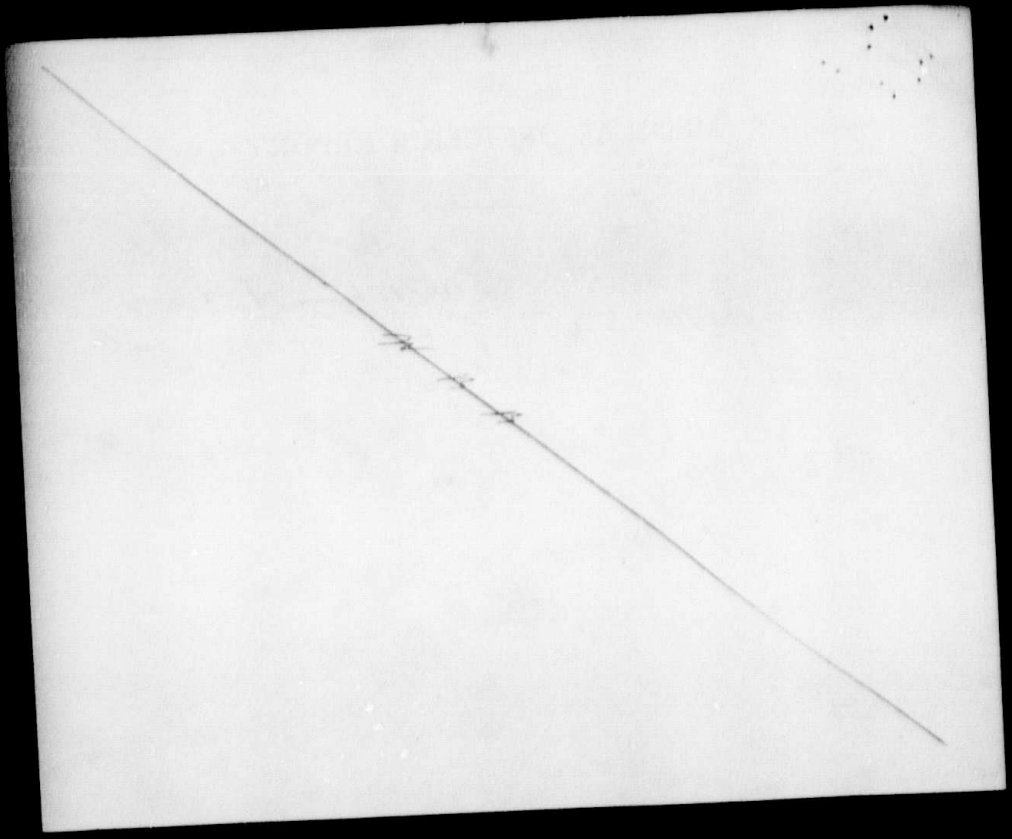
Station Field

Date Oct 12/43

"M. V. McQueen" Col
Pres

"W. B. Bate" maj
Judge Advocate

M. F. B. 246
25M—6-41 (792)
H.Q. 1772-39 480



(COPY) "B 2"

"M.V.McQueen" Col
President

CHARGE SHEET

"W.B.Bate" Major
Judge Advocate

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Essex Scottish Regiment.

To be tried by General Court Martial.

In the Field
7 Oct 43

"E.L.M.Burns" Maj-Gen
Comd - 2 Cdn Div.

I desire to have Lieut S. E. Ponsford represent me at my proposed trial by Field General Court Martial. If this officer is not available I then desire to be represented by Capt. T. Ferris.

A 21863 "Davy J" Sgt

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty.

Question. -3. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. -3. No, sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked ----------, signed by the President, and attached to the proceedings.)~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. A-3175 Sgt. Mellott, E. N., 1 Bn, Essex Scottish R.,

being duly sworn, is examined by the prosecutor.

J.A.

Sgt. Mellott, you as you know are to appear before this Court on a similar charge arising from this same incident. It is my duty to advise you that you need not answer any questions which you think would tend to incriminate you with respect to the charge against you. The Court, however, is the judge as to whether your answer would incriminate you or not. If the Court says you have to answer, you, of course, must answer the question put to you. But you have the right to ask the Court's ruling.

Prosecutor

Q.4 - Would you identify yourself to the Court, giving your number, rank and name and unit, please?
A.4 - A-3175 Sgt. Mellott, E. N., Essex Scottish Regiment.
Q.5 - Do you know Sgt. Davy?
A.5 - Yes, sir.
Q.6 - Is he in this courtroom?
A.6 - Yes, sir.
Q.7 - Can you point him out?
A.7 - Yes (indicating accused).
Q.8 - Do you recall the 8th of August, this year?
A.8 - Yes, sir.
Q.9 - Will you tell the Court your position in the regiment?
A.9 - Platoon Sgt., of the Carrier Platoon.
Q.10 - What is Sgt. Davy's position in the regiment?
A.10 - Section leader in the Carrier Platoon, sir.
Q.11 - Now will you just tell the Court in your own words what arrangements had been made for the afternoon of the 8th of August and what took place on that day?
A.11 - On Friday night, previous to Sunday, we had a discussion in regard to the next two days training, Saturday and Sunday. We discussed track repair drill which came up on Sunday. We decided to do it with live ammunition, the same as we had seen done at C.T.S. Mr. Granijean, Sgt. Davy and myself had a

few weeks previously concluded a 4 weeks battle drill course at C.T.S. We discussed the area. Mr. Grandjean suggested Newdown and it was agreed on. Mr. Grandjean detailed Sgt. Davy to recce the ground, find out the gun position, etc. We discussed loading the magazines, and decided to use every other round tracer. Someone mentioned he had seen one chap at C.T.S. nearly hit. Mr. Grandjean said we will take a greater safety angle. On Sunday, Mr. Grandjean and Mr. Williams were called to the C.O.'s meeting at lunch time. Mr. Grandjean instructed me and Sgt. Davy to carry on with the instruction. I told Sgt. Davy that he and I would carry on with the afternoon's training. At 1400 hours we proceeded out to Newdown area were the battle drill was to take place. The Platoon assemble Sgt. Davy gave a lecture on track repair drill. During the lecture he described what the drill was, each man's particular job, where the carriers would be placed and also the position of the bren gun which would be firing at them. He told them live ammuntion would be used and not to do any unnecessary moving about, but there would be room to work round at their job. He went over the particulars of each point a couple of times and we proceeded with the drill. Sgt. Davy placed the gun in position and put the first two sections through. I was signalling with the flag used for firing and watching the clock, keeping time. Sgt. Davy in his lecture mentioned a flag would be used, my own position with the flag, when the flag dropped firing would start.

Q.12 - The gun was placed in position. You had the flag. Who gave instructions detailing the people to jobs in connection with the firing?

A.12 - Sgt. Davy gave the lecture.

Q.13 - Who gave instructions to the gun crew?

A.13 - Sgt. Davy did.

Q.14 - You were time keeped and to work the flag?

A.14 - Yes, sir.

Q.15 - Immediately after the lecture, did Sgt. Davy place the gun himself?

A.15 - Yes, sir.

Q.16 - What happened between the time he placed the gun in position and the first section started going through the drill?

A.16 - The men got into the carriers, drove the carriers out to their respective positions.

Q.17 - And then what happened?

A.17 - They prepared to do their respective jobs. I dropped the flag when I saw everyone was in position.

Q.18 - When was the first burst fired?

A.18 - When I dropped the flag.

Q.19 - Was that the first firing of the day?

A.19 - No, Sgt. Davy fired before the carriers came into position.

Q.20 - Where did he fire?

A.20 - Across the ground to the hill.

Q.21 - When was the next firing?

A.21 - Right after I dropped the flag.

Q.22 - Were the men in position then?

A.22 - Yes, sir.

Q.23 - And the carriers?

A.23 - Yes, sir.

Q.24 - Then Sgt. Davy fired while two sections went through?

A.24 - That is right, sir.

Q.25 - After Sgt. Davy finished firing, what happened?

A.25 - I took over to fire the gun.

Defending Officer

I don't like to object, but this offence says he failed to ensure that proper safety precautions were taken to prevent injury to participants In the first place, Sgt. Davy was under the Platoon Sgt., was not in charge. It seems to me the question before the Court is whether when Sgt. Davy was firing he placed the gun in position himself and completed preparations for firing.

Prosecutor

I merely wanted to establish the injury and their actions, that is all. Just to place it before the Court.

J.A.

I think we had better hear what happened subsequently, if the evidence of the witness can be given without naming any names.

Prosecutor

That is what I want.

Q.26 - Sgt. Mellott, after Sgt. Davy finished firing over the first two sections and they finished the drill, then what happened? Someone else took the gun. What was he told?
A.26 - The gun was dead on, to take the same aiming mark.
Q.27 - Where was the aiming mark?
A.27 - Beyond the carriers, sir.
Q.28 - Where, on the ground or in the air?
A.28 - A piece of overturned sod made by a tank turn.
Q.29 - Then somboly took over the gun and commenced firing?
A.29 - Yes, sir.
Q.30 - Then what happened?
A.30 - The accident took place.
Q.31 - What accident?
A.31 - One of the drivers of the carriers fell with a bullet in head.
Q.32 - Do you know the name of the driver?
A.32 - Chapman, sir.

J.A.

Q.33 - Sgt. Mellott, when Sgt. Davy turned over the gun, did he definitely point out the firing mark on the ground?
A.33 - He told me to use the same mark.
Q.34 - Did he identify the airiming mark?
A.34 - I think he said it was a piece of sod I was firing at. I can't swear to that, sir.

Prosecutor

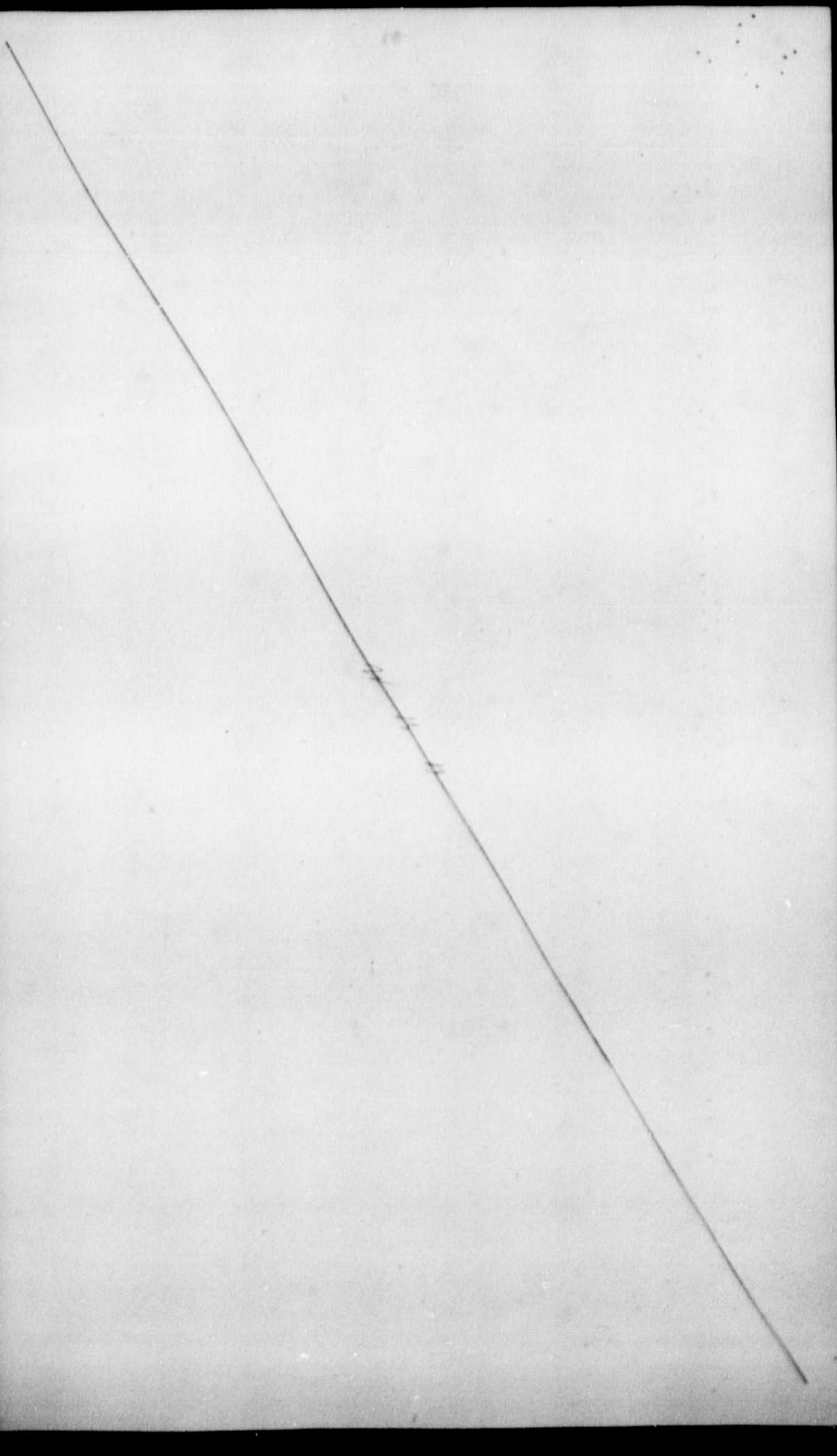
Q.35 - You say Chapman was hit on the head with the bullet. Do you know Sgt. Davy's qualifications regarding battle drill of this type.
A.35 - He had considerable experience. He has done it at the Isle of Wight, on Exercise Simmerforce, at the Bde Battle School and at C.T.S.
Q.36 - What do you know of these experiences?
A.36 - I was with him on two occasions, at Bde Battle School and at C.T.S.
Q.37 - I show you these two pieces of paper. Would you tell the Court what they are, what they represent? Do you recognize what is represented on the papers?
A.37 - Yes, sir.
Q.38 - What is it?
A.38 - A sketch of the position of the carriers and the bren gun at the time of the accident, a front view and a top view.
Q.39 - Which one is this piece of paper?
A.39 - The top view.

The sketch is produced in evidence, signed by the President, marked Exhibit "G" and attached to the Proceedings.

Q.40 - And this piece of paper. Will you tell the Court what that is?
A.40 - Yes, sir, it is a sketch, the front view, at the time of the scene of the accident.

The sketch is produced in evidence, signed by the President, marked Exhibit "H", and attached to the Proceedings

Q.41 - You indicated you were present when preparations for the



firing were actually made?
A.41 - Yes, sir.
Q.42 - Will you tell the Court your opinion of this ground picked for this type of training?
A.42 - I think it was an exceptionally good area, sir.
Q.43 - Will you tell the Court the nature of the type of ground picked?
A.43 - The carriers were in a hollow, and the bren gun was mounted to one side, up on a knoll. Across from the knoll was a slope.
Q.44 - What was the nature of the ground itself?
A.44 - It was sod, sir.
Q.45 - What type of sod?
A.45 - I would say reasonably firm. It wasn't hard, and not exactly soft.
Q.46 - How was the ground where the bullets landed?
A.46 - The same, sir.
Q.47 - When preparations were being made for the firing, how much clearance would you say there was over the carriers?
A.47 - That was determined by Sgt. Davy, sir, before he fired over the carriers. Before the carriers were driven in. When he fired, after the carriers were driven in I was down at the flag and I don't know how much safety angle he used.
Q.48 - From your observations what would you say was the distance the firing passed over the carriers?
A.48 - I don't know what was done, sir.
Q.49 - Before the carriers were in place, did Sgt. Davy fire across this valley?
A.49 - Yes, sir.
Q.50 - What was in the valley when he first fired with the bren?
A.50 - Nothing, sir.
Q.51 - Sgt. Will you look at what I show you and tell the Court what it is?
A.51 - It is a weapon training pamphlet, Small Arms Training, Volume I, Pamphlet No.1; it deals with field firing, battale inoculation.
Q.52 - Have you seen it before?
A.52 - Yes, sir.
Q.53 - Where?
A.53 - Possibly in the Platoon or Coy office. There are numerous pamphlets there. I may have seen it there, sir.
Q.54 - Will you tell the Court what section 2 on p.32 provides with regard to simulating battle conditions?
A.54 - Under this heading, sir, "The Use of Live Ammunition for Simulating Battle Conditions"?
Q.55 - Yes?
A.55 - Yes, sir (reads the section).

The pamphlet is produced in evidence, signed by the President, marked Exhibit "I", and attached to the Proceedings.

Q.56 - Now, Sgt. Mellott, will you just tell the Court what you know about the gun that was being used in this battle drill?
A.56 - I was familiar with all the weapons in the Platoon, sir.
Q.57 - What was Sgt. Davy's knowledge of this gun?
A.57 - He had previously been using this particular gun at C.T.S.
Q.58 - What type of gun was it?
A.58 - A bren gun, Mark I, with extending legs.
Q.59 - At this Drill on Sunday afternoon, what was the overhead margin of safety of the path of the bullets?
A.59 - At that time, I would say 3 or 4 feet.
Q.60 - Where was the firing in relation to the sections, or rather the overhead path of fire relative to the carriers?
A.60 - Overhead fire, sir, right over the carrier driver's head, sir.
Q.61 - How was the bren mounted?
A.61 - On a bipod, sir.

Cross-examined by Defending Officer.

Q.62 - Sgt. Mellott, your opinion as to the margin of safty at the overhead firing was 3 or 4 feet?
A.62 - Yes, sir.

Q.63 - Subsequently it was ascertained, was it not, that it was considerably more? It was ascertained that the margin of safety was approximately 12 feet?
A.63 - Yes, sir.
Q.64 - What was done on that occasion to ascertain it was 12 feet?
A.64 - An officer at C.T.S., Sgt. Davy and myself went to the scene of the accident. Sgt. Davy stood on top of a truck with his hands over his head. The officer took an aim, and ascertained it was 12 feet.
Q.65 - Before that, you were under the impression the path of fire was 3 or 4 feet over the carrier driver's head?
A.65 - Correct, sir.
Q.66 - When you were firing the bren gun, where was Sgt. Davy?
A.66 - In the position I had been, keeping time and using the flag.
Q.67 - And when Sgt. Davy was at the gun, you had the flag?
A.67 - Yes, sir.

Court

Q.68 - With respect to this test which was made. Was the bren gun in the same position as at the time of the accident?
A.68 - Yes, sir.
Q.69 - How do you know?
A.69 - Well, the ground was covered with empty casings at the spot, sir
Q.70 - And was the aiming mark still there?
A.70 - Yes, sir.
Q.71 - Was it easily identified?
A.71 - Yes, sir.
Q.72 - Was this truck put in the same position as the carrier had been when the accident happened?
A.72 - Yes, sir.
Q.73 - You were satisfied the line of fire was the same?
A.73 - Yes, sir.

Defending Officer

Q.74 - Was the ground at the aiming mark of a type likely to cause ricochets?
A.74 - No, sir.
Q.75 - When Sgt. Davy was at that meeting Friday night, were any instructions laid down?
A.75 - No, sir.
Q.76 - Did you comprehend everything at that meeting?
A.76 - Yes, sir.
Q.77 - Had the gun been zeroed or not?
A.77 - Yes, sir.
Q.78 - When?
A.78 - A day or so previous to coming to the area, sir.
Q.79 - When it was found the firing passed 12 feet over the carriers, How far were the carriers from the gun?
A.79 - About 35 feet, sir.
Q.80 - What was the angle of fire when Sgt. Davy fired between the carriers?
A.80 - He fired at a point midway between the carriers, sir.
Q.81 - Allowing approximately 20 feet?
A.81 - Yes, that's correct, sir.
Q.82 - At C.T.S. what instructions were received as to angles of fire overhead?
A.82 - I didn't receive any, sir.
Q.83 - Did they lay down any safety angles of fire, or overhead margins for this type of training?
A.83 No, sir.
Q.84 - Was this type of drill carried out under fire at C.T.S.?
A.84 - Yes, sir.

Q.85 - I believe y u said Sgt. Davy gave a lecture to the men before this drill?
A.85 - Yes, sir.
Q.86 - You said he went over everything twice?
A.86 - Yes, sir.
Q.87 - In your opinion did he give them every instruction as to safety?
A.87 - In my opinion he did, sir.
Q.88 - You are a qualified instructor at C.T.S.?
A.88 - Yes, sir.
Q.89 - And Sgt. Davy is also?
A.89 - Yes, sir.
Q.90 - When Sgt. Davy handed the gun over to you during the drill what did he say?
A.90 - He said the gun was dead on, and to fire at the same aiming mark as what he had been using, sir.
Q.91 - You are not sure whether he said the aiming mark was this piece of sod or not?
A.91 - No, I'm not sure, but I could see where his bullets were churning up the ground.
Q.92 - So you knew where the point of aim was?
A.92 - Yes, sir.
Q.93 - Did you have any difficulty in finding the aiming mark?
A.93 - No, sir.
Q.94 - The legs of the gun were extended? Of the bipod?
A.94 - Yes, sir.
Q.95 - Sgt. Davy, from where you were standing, could you tell the exact spot on the carrier where the fire was passing overhead?
A.95 - No, sir, I could not.
Q.96 - You don't know if it was over the centre or the right or the left?
A.96 - A bit to the left, I think, sir.
Q.97 - This book of pamphlets containing Exhibit "I". Have you ever s en it before?
A.97 - Yes, sir, it is Mr. Grandjean's book.
Q.98 - Where is it kept?
A.98 - I have seen it in the Platoon office, sir.
Q.99 - Have you read many of the pamphlets in this book?
A.99 - Yes, sir.
Q.100 - What type of pamphlets are they?
A.100 - Weapon training, sir.
Q.101 - And you were Platoon Sgt. on that day, Sunday, 8th August?
A.101 - Yes, sir.
Q.102 - Sgt. Mellott, of your own knowledge, were the safety precautions as laid down in Small Arms Training pamphlets observed except as to the angle of overhead fire in this drill?
A.102 - Yes, and with the exception of the mounting of the gun on tripods, as well. No tripods were available.
Q.103 - Of your own knowledge, the only safety precation not taken was in the angle of overhead fire?
A.103 - Yes, sir.
Q.104 - And in your opinion the reason the exact number of feet laid down in the pamphlet was not adhered to was because of what you had seen afterwards at C.T.S. Battle School?
A.104 - Yes, sir.
Q.105 - How close did the firing come at C.T.S.?
A.105 - About a foot. One chap was nearly hit.
Q.106 - They didn't observe the rules of this pamphlet?
A.106 - No, sir.
Q.107 - What was the general policy adhered to at C.T.S. as far as safety precautions were concerned?
A.108 - It appeared a lot less than the rules, sir.
Q.109 - Do you remember when doing this type of training at C.T.S., firing overhead at carriers, how far was the overhead margin?
A.109 - Maybe a couple of feet.

Re-examined by Prosecuter.

Q.110 - Sgt. Mellott, you said the firing passed directly over the head of the driver?
A.110 - It looked that way to me.

#30

Q.111 - This aiming mark you told the Defending Officer was between the carriers?
A.111 - Yes a point midway between the carriers.
Q.112 - And the overhead mark was this piece of sod turned up?
A.112 - Yes, sir.
Q.113 - How big was it?
A.113 - About 2 or 3 feet long, and the width of a tank track.
Q.114 - Will you tell the Court what preparations were taken at C.T.S. to undertake this type of training?
A.114 - The only thing I could see was giving a lecture telling what would take place, then positions of the carriers and the gun.
Q.115 - What instructions were given with regard to the position of the carriers and the position of the gun?
A.115 - There were no instructions given as regards the drill itself, what we were to do. We just watched them do it.
Q.116 - What did they do?
A.116 - The instructor showed us where he put the carriers and the gun.
Q.117 - In the course of the lecture everybody received, what were the instructions for preparing for battle innoculation at C.T.S.
A.117 - They merely said it was firing with live ammunition over carrier crews at track repair drill.
Q.118 - What were the instructions for preparing a situation of this nature?
A.118 - Just as I have stated. The instructors told us where the carriers would be placed, where the gun was, and what the crew would do repairing tracks.
Q.119 - What preparations did they make at C.T.S. for battle innoculation such as siting the ground, etc.?
A.119 - I don't know. That was done beforehand.
Q.120 - What instructions were received as to the preparations for this type of innoculation?
A.120 - I don't recall any, other than they said there would be firing.

Defending Officer puts the following question through the Court.

Q.121 - What type of shot are you with a bren gun?
A.121 - I am a first class shot, sir.

Court

Q.122 - Who holds the Senior NCO appointment in the Carrier Platoon?
A.122 - I do, sir.
Q.123 - Who is the 2 i/c of the Platoon?
A.123 - Mr. Williams, sir.
Q.124 - You are the Senior NCO?
A.124 - Yes, sir.
Q.125 - What is Sgt. Davy?
A.125 - He is a section Sgt., sir, section leader.
Q.126 - How many sections are there in the Carrier Platoon?
A.126 - Four, sir.
Q.127 - You have four section leaders under you as Platoon Sgt.?
A.127 - Ultimately, when the establishment is completed, yes, sir. We were both made Sgts. at the same time. I have been acting as Platoon Sgt.
Q.128 - Sgt. Davy passed over the gun to the second firer. It would have been possible for the second firer, if he wanted, to increase the margin of safety?
A.128 - Yes, sir.
Q.129 - In respect of the weapon training pamphlets, is it the custom in your platoon to keep these pamphlets on hand before training or do you have to seek them?
A.129 - Both, sir. Sometimes Mr. Grandjean had them on hand, sometimes we asked for them.
Q.130 - Previous to this incident, was this particular pamphlet, Exhibit "I", on hand?
A.130 - No, sir.

Q.131 - Were you beside Sgt. Davy at the time he was firing the gun?
A.131 - No, sir.
Q.132 - Were you in any position to watch the path of the tracers as it originated from the barrel of the gun?
A.132 - No, sir, I saw them going over.
Q.133 - Would it be possible for the next firer to identify the gun position from where the tracers entered the ground if seen from the side, from a lateral position?
A.133 - Will you put that question again?
Q.134 - In another way, if a man watches the tracers from the barrel of the gun to a position close to the carriers, and sees the point of impact, sees the tracers along the line of fire. Would it possible for that man to take the bren gun over and fire it where he saw the bullets enter the ground from the side?
A.134 - I could see the tracers going into that particular site, sir.
Q.135 - Will you describe the particulars of track repair drill?
A.135 - The carriers are in position. The driver remains in the carrier. The gunner takes up the position of firing. The NCO and the observer gets out, break the track, the carrier is moved off; then the driver drives back on the track and we put the track together, sir.
Q.136 - Is it necessary for any member of the crew to work standing on the carrier or take a standing position in the normal course of this drill? Or to reach for a tool?
A.136 - No, sir, the tools are all available.
Q.137 - Was this drill proceeding simultaneously with all three carriers in the section?
A.137 - Yes, sir.
Q.138 - The fire from the bren gun was sometimes directed between the carriers and sometimes overhead?
A.138 - Yes, sir, overhead of the centre carrier only.
Q.139 - The gun was firing at a variety of targets?
A.139 - Yes, sir.
Q.140 - When the first two sections went through the drill, Sgt. Davy was firing the gun and you were on the flag?
A.140 - Yes, sir.
Q.141 - Who took over when the injury occurred?
A.141 - Sgt. Davy.
Q.142 - Was overhead or flank firing taking place when the injury occurred?
A.142 - Overhead, sir.

In the opinion of the Court and Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

Second witness for the Prosecution, A-22591 Cpl. Lang, A., Essex Scottish R., being duly sworn, is examined by the Prosecutor.

Q.143 - Will you identify yourself to the Court, giving your number, rank, name and unit?
A.143 - A-22591 Cpl. Lang A., Essex Scottish.
Q.144 - Do you know Sgt. Davy?
A.144 - Yes, sir.
Q.145 - Is he in this courtroom?
A.145 - Yes, sir.
Q.146 - Can you point him out?
A.146 - Yes, sir (indicating accused), right there.
Q.147 - Cpl. Lang, what is your position in the Regiment?
A.147 - I am a carrier crew commander, sir.
Q.148 - What was your position on the 8th of August, this year?
A.148 - I was a gunner, sir.
Q.149 - You have since received a promotion?
A.149 - Yes, sir.
Q.150 - Do you recall the 8th of August, this year?
A.150 - Yes, sir.
Q.151 - Will you just tell the Court in your own words what happened on that day?
A.151 - We went out to the downs for carrier repair track drill, sir.

We had a lecture on what was going to take place by Sgt. Davy. Told us there was going to be live ammunition used. Crew Commanders were told their positions, what everybody was to do, the position of the flag for firing, the sections were to be timed. Had a competition between sections. When the flag dropped get out and start out jobs. A guard was posted for firing. The driver stayed in his vehicle. Myself and another chap got outside, broke the track, carrier drove off then back on track, and we connected the track. We got through and broke off.

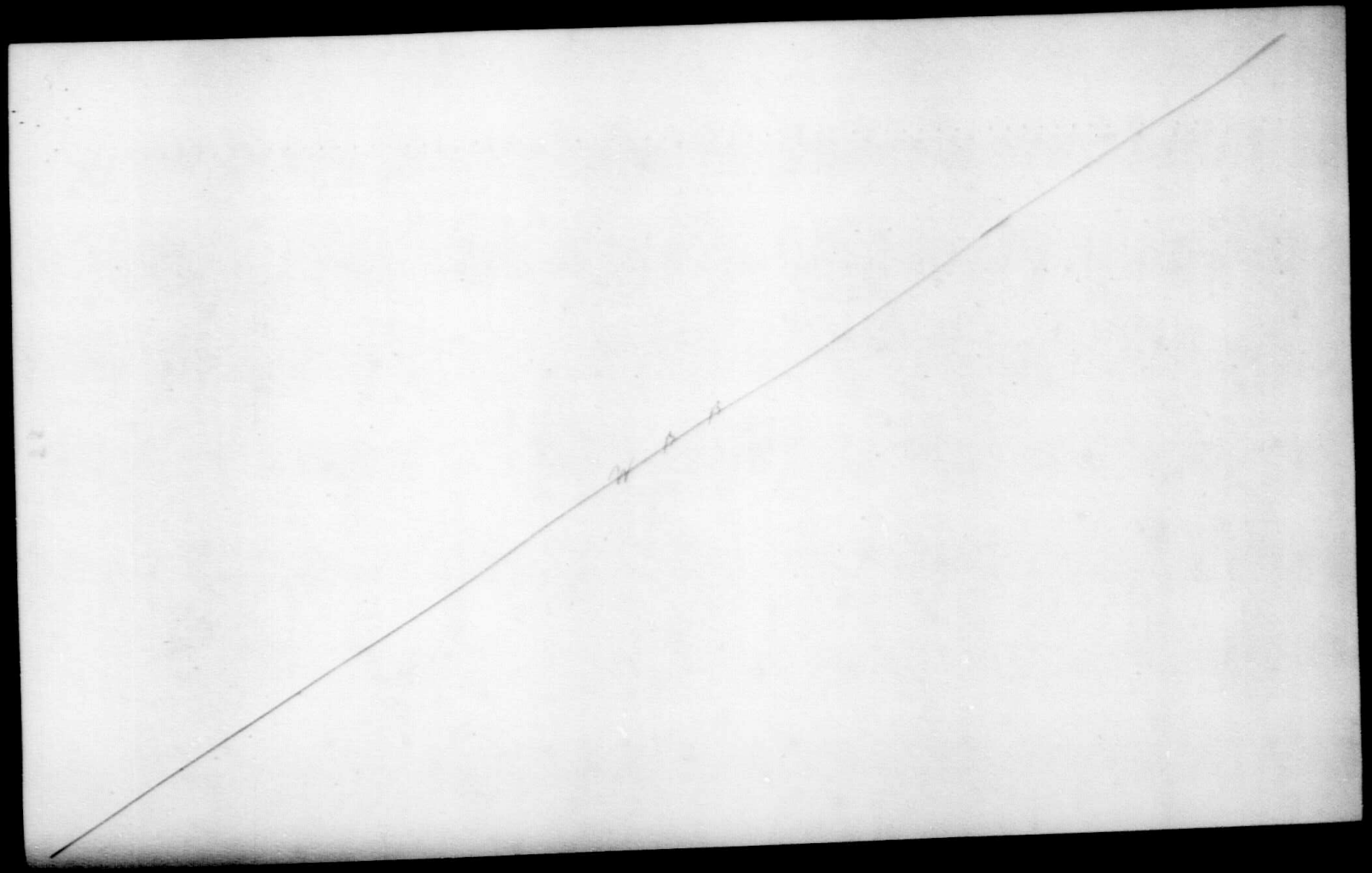
Q.152 - Then what happened?
A.152 - I went up the hill to where the gun was firing.
Q.153 - What type of ground was the gun firing from?
A.153 - I didn't pay much attention. It looked all right to me.
Q.154 - How was the gun fired?
A.154 - From a bipod, sir, just the usual way.
Q.155 - Can you tell the Court how many guns were fired at the drill?
A.155 - Only one, sir.
Q.156 - Where?
A.156 - Up on the hill, sir. The carriers were down in the bottom, and the gun fired over the centre carrier, and in between the others.
Q.157 - What is your opinion of that type of ground for that type of training?
A.157 - In my opinion the position of the gun and the carriers was very good, sir.
Q.158 - Do you know Sgt. Mellott's qualifications for this training?
A.158 - He is a Q.1 small arms instructor, sir.
Q.159 - Where did he qualify?
A.159 - No.3 C.T.S. at Bordon, here, sir.
Q.160 - Everything looked all right to you?
A.160 - Yes, it did, sir.
Q.161 - Can you tell the Court what safety precautions should be taken?
A.161 - You should have the gun in a firm position, a target to aim at, sir, in the background, take at least 5 degrees, fire over and around the flanks of your object, sir.
Q.162 - The gun should be in firm ground?
A.162 - Yes, sir, and should be on a tripod, actually.
Q.163 - What about the gun position there?
A.163 - The ground looked o.k. to me. I didn't pay much notice. I didn't go up and actually inspect it.

Cross-examined by Defending Officer.

Q.164 - Cpl. Lang, I think you said Sgt. Davy was firing when you were undergoing the drill. Did you have to stand up?
A.164 - Yes.
Q.165 - Did you notice the tracers?
A.165 - I seen a few, sir.
Q.166 - Did you see the margin of safety?
A.166 - Well, standing up, working around, it didn't seem like they were close, sir.
Q.167 - Did you see the tracers?
A.167 - Just the closeness.
Q.168 - Could you say how far overhead they were?
A.168 - No, sir.
Q.169 - From your experience, were the shots far enough away?
A.169 - Yes, sir.
Q.170 - Did you see the point of impact?
A.170 - When Sgt. Mellott was firing, the bullets, tracers, was going into a piece of sod turned over by a tank track.
Q.171 - Sgt. Davy handed over to Sgt. Mellott. Were you there?
A.171 - Near there, sir.
Q.172 - What did you hear Sgt. Davy say?
A.172 - The gun was firing dead on, sir.

Re-examined by Prosecutor.

Q.173 - You did have occasion to stand up during the drill?
A.173 - Yes, sir.



Q.174 - Where?
A.174 - Breaking the tracks. I had to go back for tools.
Q.175 - You didn't notice the bullets going over your head?
A.175 - I didn't take occasion to look up.
Q.176 - Could you estimate how far they were going over your head?
A.176 - I didn't notice, just tried to get the job done in a hurry.
Q.177 - How high is a carrier?
A.177 - About up to my shoulder, about 5 feet 4 inches, sir.
Q.178 - Which side of the carrier were you, in relation to the bullets?
A.178 - Right in front, sir.
Q.179 - Between the bullets and the carrier?
A.179 - Yes, sir.

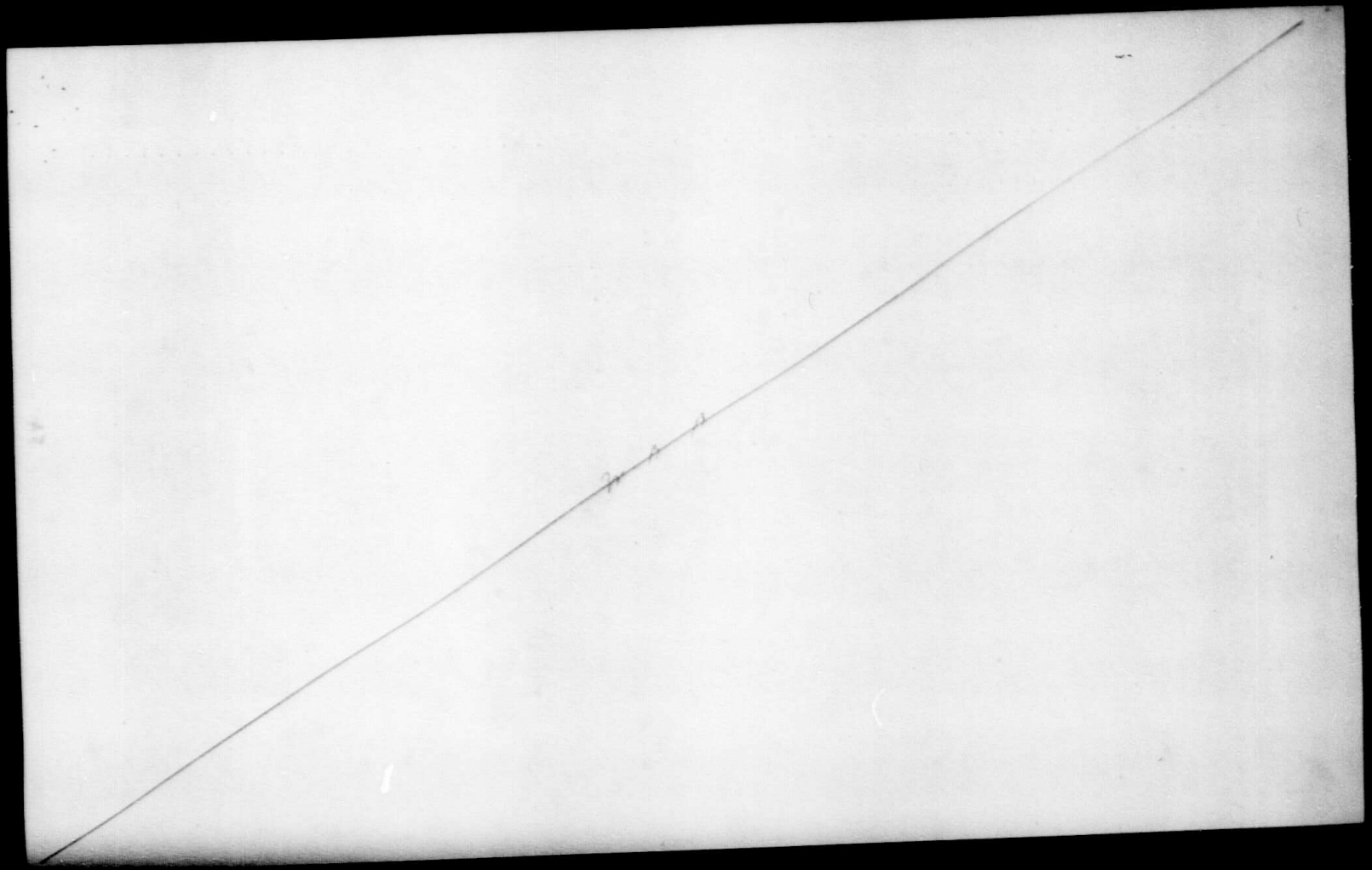
Court

Q.180 - Previous to this particular occasion on the 8th of August, had you ever had similar battle innoculations or track repair drill?
A.180 - Not myself, sir. In certain coys they had.
Q.181 - Ever had battle innoculation?
A.181 - Yes, sir, quite a bit of battle drill, sir.
Q.182 - At this drill, did it seem as though the firing was closer than usual?
A.182 - I think I have had fire come closer than that, sir.
Q.183 - Could you give any estimate of the overhead margin at any time during that drill?
A.183 - Well, it was about 3 or 4 feet, anyway.

In the opinion of the Court and Judge Advocate it is not necessary to comply with R.P. 83(B).

Third witness for the Prosecution, Lieut. E. C. R. MacDonald, Essex Scottish R., being duly sworn, is examined by the Prosecutor.

Q.184 - Will you identify yourself to the Court, please, giving your rank, name and unit?
A.184 - Yes, Lt. E.C.R.MacDonald, Essex Scottish R.
Q.185 - Will you tell the Court your position in the regiment?
A.185 - Weapon training officer.
Q.186 - You are aware of an incident that happened on 8 Aug, this year?
A.186 - Right, sir.
Q.187 - Do you know the location of that incident?
A.187 - Yes, sir.
Q.188 - I show you two pieces of paper. Will you tell the Court what they are, please?
A.188 - They are copies taken from original drawings of the area where the accident occurred.
Q.189 - What do you know about the drawings?
A.189 - The orighals were made at the scene of the accident by "I" Section.
Q.190 - How correct are they?
A.190 - The scene is represented properly, I think. Exhibit "C" is the top view, and Exhibit "B", the front view.
Q.191 - I show you a pamphlet. Will you tell the Court what it is?
A.191 - It is a Small Arms Training Pamphlet, Volume I, Pamphlet No.1.
Q.192 - For what?
A.192 - Field firing.
Q.193 - Will you tell the Court, as Weapon Training Officer, whether this is available, and where it may be found?
A.193 - It is available to all officers and NCOs from "I" Section. Practically every NCO can get one if he wants to.
Q.194 - Will you tell the Court, as Weapon Training Officer, your opinion of the nature of the ground for this type of training?
A.194 - I thought it quite suitable.
Q.195 - Was it excellent ground, do you think?
A.195 - Yes, I do.
Q.196 - Was there anything to indicate the position of the carriers and the bren gun when these sketches were compiled?
A.196 - Yes, sir, the tracks of the carriers were there, and the position of the gun was shown by the empty casings and marks of the legs.



Q.197 - How did you determine the angles of fire?
A.197 - Well the bren gun was placed in the position from which it was previously fired by Sgt. Davy and Sgt. Mellott.
Q.198 - Who indicated the position to you?
A.198 - Sgt. Davy and Sgt. Mellott.
Q.199 - Did you take another carrier and another gun?
A.199 - Yes, we made almost an exact duplication of the scene at the time of the accident.
Q.200 - Then what did you do?
A.200 - Looked at the safety angles, how high over the carrier the gun would fire.
Q.201 - How did you determine the height over head?
A.201 - Took my sight over the carrier to the point of aim.
Q.202 - What did you estimate the height to be?
A.202 - I can't recall the exact figure but I think it was about 5 feet.
Q.203 - Over what?
A.203 - Over the heads of the men in the carrier.

Defending Officed declines to cross-examine.

Court

Q.204 - Were the men in the carrier sitting down?
A.204 - Yes, at the time the tests were made.
Q.205 - You were Weapon Training Officer at that time?
A.205 - Yes, sir.
Q.206 - Had you seen the ground prior to it being used?
A.206 - No, sir.
Q.207 - What did you think of the ground for this drill?
A.207 - Excellent, sir.
Q.208 - If you had made a recce prior to the drill would you have selected it?
A.208 - Yes, sir, it was very good.
Q.209 - Did you ever see Exhibits "G" and "H" before this?
A.209 - Yes, sir, at the Court of Inquiry.
Q.210 - It has been suggested the overhead margin was 3 feet. Do you recall any discussion about that?
A.210 - Yes, sir, there was quite a bit of discussion about that.
Q.211 - Whose judgement was responsible for that estimate?
A.211 - That of the two Sgts, sir. When we went to look we found the margin was greater.
Q.212 - When was your examination made?
A.212 - Two or 3 days after the accident.

In the opinion of the Court and Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

Prosecutor

Unless the Defence wishes me to call Lt. Grandjean, that is all the evidence I have.

Defending Officer

No, we don't request that.

The Prosecution is closed.

Defending Officer makes the following motion.

I ask for a dismissal of the charge on the ground that the Prosecution has not made a prima facie case against Sgt. Davy. I submit that the charge is (reads from charge sheet). Now, to go back to the evidence, we see there was a meeting with the Platoon Officer preparing for this particylar type of training. Sgt. Davy recce'd the ground personally. The ground would not cause ricochets. It was excellent ground in an

excellent area. The firing was not too close. Cpl. Lang said he had been under closer fire. Sgt. Mallott said the flank firing was halfway between the carriers. Sgt. Davy also gave the men a lecture, told them not to run around unnecessarily or stand up. He went over each point more than once. Noone was injured when Sgt. Davy was firing. Greater safety angles than those laid down at C.T.S. were carried out. When Sgt. Davy turned over the gun to a second firer, he said the gun is dead on. He pointed out the aiming point and said use the same one. He was not the Platoon Sgt. and was not in charge of the drill. He is charged with failing to take proper precautions. The evidence of the Prosecution shows he took every precaution that he could take. No one was hit when he fired. There has not been sufficient evidence put forward to call on him to answer that charge by putting him on his defence.

Prosecuter makes the following reply to the motion of the Defence.

I think the evidence indicates very clearly the accused should be put on his defence. The mere fact that nobody was injured when he was firing is beside the point. I suggest Sgt. Davy did take charge of the drill, recce'd the ground, selected the gun position and that of the carriers. I maintain it is laid down in the pamphlet that overhead fire must allow a safety margin of at least 5 yards. We have evidence that there was at the most 5 feet, and perhaps 3 feet of safety margin when Sgt. Davy fired. He selected the aiming point and turned that aiming mark over to the second firer. He did not take proper precautions in overhead fire so that it was safe.

Defending Officer makes the following reply to the Prosecutor.

I don't question the fact that Sgt. Davy carried out the drill from the start. I am pointing out he was not in charge of the drill. And I submit he did take proper safety precautions because nothing happened.

The Court is closed to consider the motion of the Defence.

The Court is re-opened and the accused is again brought before it.

J.A.

Sgt. Davy, I have been directed by the Court to inform you that the application made by the Defending Officer on your behalf has been allowed and you are found not guilty of the charge against you.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused A-21863 Sgt. Joseph Davy, Essex Scottish Regiment, not guilty of the first charge.

In the Field
12 Oct 43

"W.V.McQueen" Col.
President

"W.E.Bate" Major
Judge Advocate

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it.~~

Evidence of character, &c.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

[Instructions.—If by reason of the nature of the service of the accused or a particular corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.*

~~The Court is closed for the consideration of the sentence.~~

F

Sentence.

Sentence.

The Court sentence the accused

X

Army Form A 47

COURTS-MARTIAL

W.B.Bate Major
Judge-Advocate.

Form of Order for the assembly of a General or District Court Martial.

ORDERS BY Maj-Gen E.L.M. Burns, OBE., MC.

Commanding the 2 Canadian Division

A 21863 Sergeant Joseph DAVY, Essex Scottish Regiment.

(Place and Date) Field 7 Oct 43

The detail of officers as mentioned below will assemble at 1000 hrs at Essex Scot on the 11th day of October 1943 for the purpose of trying by a General court-martial the accused person [~~xxxxxx~~] named in the margin [and such other person or persons as may be brought before them].*

PRESIDENT.

Col. MV McQueen ED - RCASC 1 Cdn Corps is appointed president.†

MEMBERS.

Lt.-Col.	R.H. Sankey	Q.O.R. att RHLI
Major	R. White	Victoria Rifles of C att R Regt C
Capt	A.K. Reid	R.C.R. attached R Regt C
Capt	E.R. Bennett	RHC (Black Watch)

NOTE.—The president must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the units to which they belong may alone be named.

WAITING MEMBERS.

Major R Tremblay	R de Mais
Capt JP Taylor	RHC (Black Watch)

Major W B Bate - HQ First Cdn Army JUDGE-ADVOCATE.

has been [*or where the convening officer has the appointment of a judge-advocate,* is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to AA & QMG 2 Cdn Div

Signed this seventh day of October 1943

E.L.M.Burns
(E L M Burns) Maj-Gen
Comd - 2 Cdn Div

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* *Any opinion of the convening officer with respect to the composition of the Court (see Army Act, s. 48 (10) and Rules of Procedure 20 and 21) should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry the following should be added:—*

"In the opinion of the convening officer, other officers are not, having due regard to the public service, available," (*or as the case may be*).

† *Add here, in the case of either a General or District Court-Martial where a captain is appointed president and the officer convening the court is not under the rank of field officer,* " In the opinion of the convening officer a field officer is not, having due regard to the public service, available." *Where it is necessary for an officer under the rank of captain to be appointed president of a District Court-Martial, add,* " In the opinion of the convening officer a field officer or captain is not, having due regard to the public service, available." (*See Army Act, s. 48 (9).*)

‡ *The "unit," in the case of Royal Artillery, is a Brigade, where such organisation exists.*

(12,000) W1,30000/1/42: 10,000 11/42 A.& E.W.Ltd. Gp.679
(12,000) W1,44497/1/42: 40,000 1/43 " " Forms/A47/43

Exhibit "G"

Top View

M.V.McQueen Col.
Pres.
W.B.Bate Major.
Judge-Advocate.

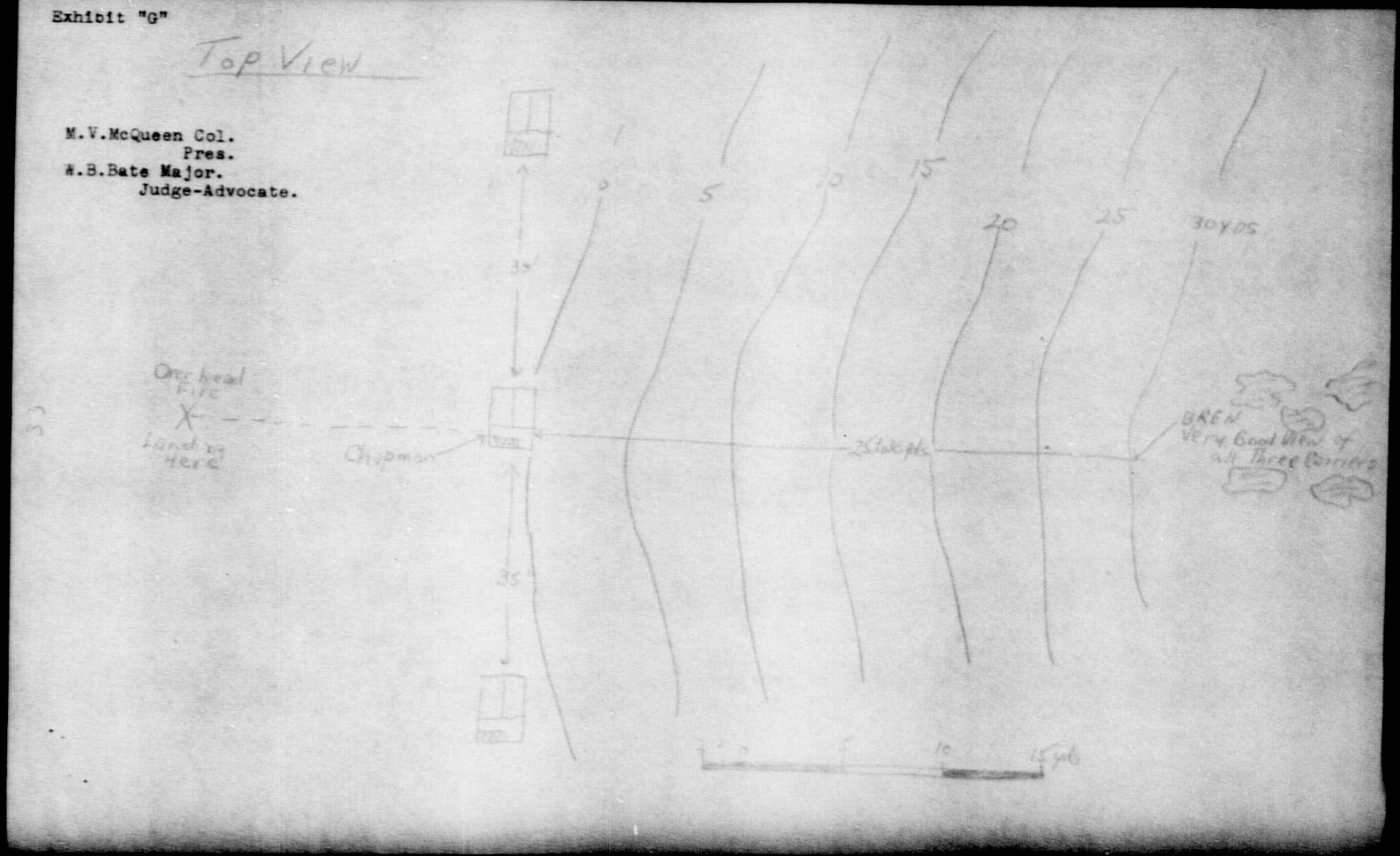


Exhibit "H"

M.V.McQueen Col.
Pres.

W.B.Bate Major.
Judge-Advocate.

FRONT VIEW

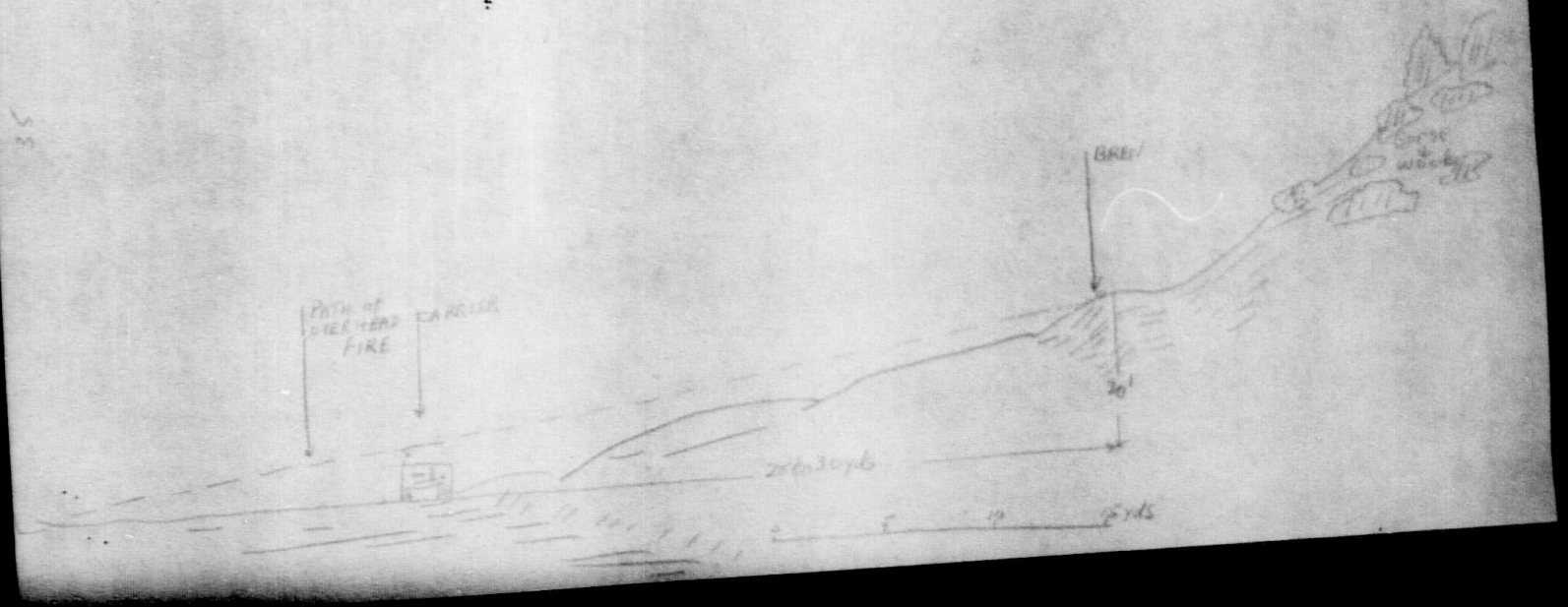


EXHIBIT "I"

Pamphlet:-

Small Arms Training,
Volume I,
Pamphlet No.1.

Original Exhibit also used as an Exhibit in the case of -

A-3175 Sgt. Mellott, E. N.,
1 Bn, Essex Scottish Regt.

W. B. Bate

(W.B.Bate) Major
Judge Advocate.

Summary of Evidence in the case of A21863 Sgt. Davy, J.
1st Essex Scottish Regt. a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The CO directs that the evidence be taken on oath.

First Witness for the Prosecution
Lieut. P.M. Grandjean, 1st Bn. Essec Scottish Regt., sworn states:

I am O.C. No. 4 Pl 1st Bn Essex Scottish Regt. On or about 1 Aug 43 I took No. 4 pl to Camp BURPHAM for about two weeks intensive trg. Sgt. Mellott, Sgt. Davey, and myself had just finished attending the carrier wing at No. 5 CTS from 10 Jun 43 to 17 Jul 43. While at the school we did battle drills under fire, and I would like to say that Sgt. Davy and Sgt Mellott are both carrier N.C.O's, and in my opinion competent instructors in carrier battle drill. On Friday evening Aug 6 Sgt Mellott, Sgt Davy, Lieut. R. Williams, my 2 i/c and myself had a meeting at which we discussed the trg for Saturday, Sunday Aug 7 & 8. Included in the syllabus of trg for the pl, which syllabus had been approved by both the CO and 2 i/c of the regt were several periods of track repair drill. Sgt Davy suggested at the meeting that we do the track drill on Sunday Aug 8, and that we use live amn when doing so. He wanted to have it done the same as we had had it done to us at No. 5 Wing CTS. I am NOT quite positive on this point, but I believe that we agreed to do the drill with live amn. On Saturday evening 7 Aug as I was going into town I met Lt.-Col. MacDonald, CO Essex Scottish, who advised me that Lieut. Williams, and myself were to be present at a meeting at Bn HQ HALMAKER at 1330 hrs Sunday Aug 8. He asked me at the same time if my NCO's could carry on with trg by themselves, and I replied "Yes". As both myself, and Lieut Williams were busy all Sunday morning we arrived back at Camp BURPHAM late, and had to rush through lunch to try and get to the CO's meeting at HALMAKER by 1330 hrs. Just before leaving the Camp I told Sgt. Willott, or Sgt. Davy, or both to carry on with the trg as laid down for Sunday afternoon. I was in such a hurry that I never thought that they might be using live amn while doing the track drill that afternoon. I may say,however, that prior to proceeding to the trg area on or about 1 Aug 43 I had tried to get a tripod for a bren but had been unable to do so, as none was available. I would also like to add that I had given no instrs for safety precautions on the ground when the drill was to take place because I hadn't receed the ground personally.

Cross-examined by the accused.

Q.1. Do you remember sending me out on an M.C. one afternoon to recce the ground in question?

A.1. Well, it is some time ago, and I can't swear that I did, but I believe that I did instruct you to recce the ground.

P.M. Grandjean Lt.

Second Witness for the Prosecution.

A3175 Sgt Mellott E.N., 1st Bn. Essex Scottish Regt., sworn, states:
I am sec comd No. 4 pl 1st Bn. Essex Scottish. On Sunday afternoon 8 Aug Sgt. Davy and myself proceeded to NEW DOWN to do track drill under fire on the instructions of Lieut. Grandjean OC No 4 Pl. When we arrived at the trg area Sgt. Davy got all the men together, and he gave a lecture on track drill repair. At the same time he informed the men, that the drill would be done under fire - that a bren gun would be firing at them, and he told the men to keep down as much as possible, and be careful. He then told them the posn of the bren gun, and the posns of each carrier. He also placed the bren gunner from each individual carrier, acting in their protective role, on the same flank as the bren gun that was to do the firing, in order that they would be out of the line of fire of the bren. It was also laid down that no firing would occur until the flag was dropped and all men were behind the firing bren gun except thoseactually engaged in the drill. I acted as time keeper, once the drill started, as we were having a competition between sections to see which could make the best time. Sgt. Davy fired the bren during the time the first & second sections went through the drill and as far as I am concerned all normal safety precautions were taken. I have been through numerous innoculations of this nature, and through carrier wing No. 5 CTS and the safety precautions to me seemed normal & sufficient. The gun was sited on a knoll about 20 feet high - 25' to 30 yds away from the carriers. The firing was about 3 to 3½ feet over the carriers, NOT the carrier drivers, and about 15 to 20 feet from the rear of the carriers. After I took the bren over to fire the third section through, the same safety precautions were taken as before.

Cross-examined by the accused.

Q.1. Do you remember asking me how the gun was firing, when you took over the gun to fire the third section.

A.1. Yes, and you replied it was properly fused, and dead on - also that I should use the same angle of fire, and NOT to fire until the flag was dropped, and all personnel behimd the gun except those actually engaged in the fire drill.

A.3175 Sgt. E.N. Mellott

Third Witness for the Prosecution.

A22591 L/Cpl Lang, A., 1st Bn Essec Scottish Regt sworn states:
I am L/Cpl A section No. 4 pl 1st Bn. Essex Scottish Regt. Sunday afternoon 8 Aug we went to NEW DOWN under Sgt Davy and Sgt Mellott. When we got there Sgt Davy gave us a lecture on track drill, and then told us we were going to do the drill under fire from a bren, the posn of which he poimted out to us. He told us to keep down as much as possible during the drill & to watch ourselves. I then remember him placing the bren gunners from the carriers, on the same flank as the firing bren. I was in number one section when

EXHIBIT "I"

Pamphlet:-

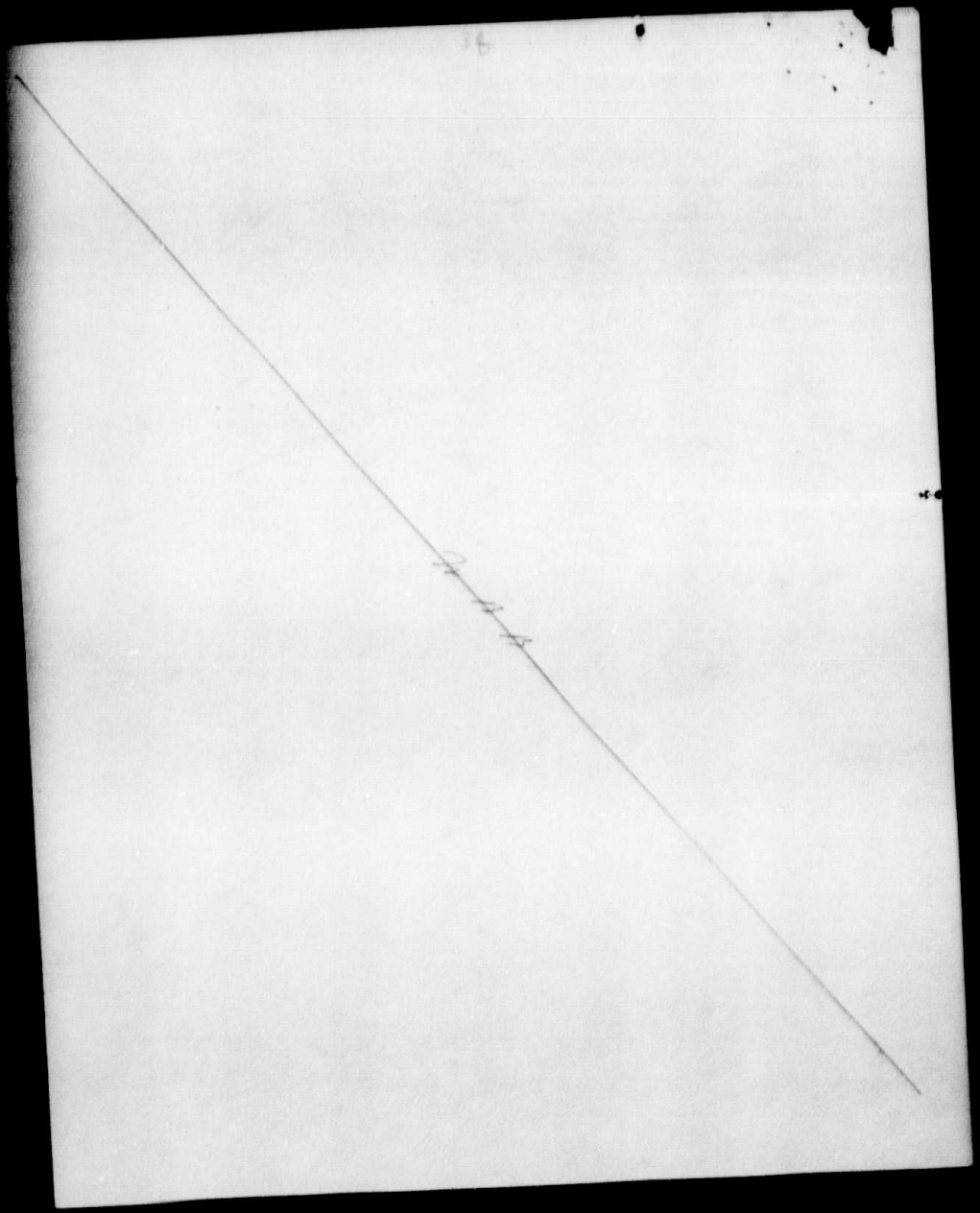
Small Arms Training,
Volume I,
Pamphlet No.1.

Original Exhibit also used as an Exhibit
in the case of -

A-3175 Sgt. Mellott, E. N.,
1 Bn, Essex Scottish Regt.

W. B. Bate

(W.B.Bate) Major
Judge Advocate.



Summary of Evidence in the case of A21863 Sgt. Davy, J.
1st Essex Scottish Regt. a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The CO directs that the evidence be taken on oath.

First Witness for the Prosecution
Lieut. P.M. Grandjean, 1st Bn. Essec Scottish Regt., sworn states:

I am O.C. No. 4 Pl 1st Bn Essex Scottish Regt. On or about 1 Aug 43 I took No. 4 pl to Camp BURPHAM for about two weeks intensive trg. Sgt. Mellott, Sgt. Davey, and myself had just finished attending the carrier wing at No. 5 CTS from 10 Jun 43 to 17 Jul 43. While at the school we did battle drills under fire, and I would like to say that Sgt. Davy and Sgt Mellott are both carrier N.C.O's, and in my opinion competent instructors in carrier battle drill. On Friday evening Aug 6 Sgt Mellott, Sgt Davy, Lieut. R. Williams, my 2 i/c and myself had a meeting at which we discussed the trg for Saturday, Sunday Aug 7 & 8. Included in the syllabus of trg for the pl, which syllabus had been approved by both the CO and 2 i/c of the regt were several periods of track repair drill. Sgt Davy suggested at the meeting that we do the track drill on Sunday Aug 8, and that we use live amn when doing so. He wanted to have it done the same as we had had it done to us at No. 5 Wing CTS. I am NOT quite positive on this point, but I believe that we agreed to do the drill with live amn. On Saturday evening 7 Aug as I was going into town I met Lt.-Col. MacDonald, CO Essex Scottish, who advised me that Lieut. Williams, and myself were to be present at a meeting at Bn HQ HALMAKER at 1330 hrs Sunday Aug 8. He asked me at the same time if my NCO's could carry on with trg by themselves, and I replied "Yes". As both myself, and Lieut Williams were busy all Sunday morning we arrived back at Camp BURPHAM late, and had to rush through lunch to try and get to the CO's meeting at HALMAKER by 1330 hrs. Just before leaving the Camp I told Sgt. Willett, or Sgt. Davy, or both to carry on with the trg as laid down for Sunday afternoon. I was in such a hurry that I never thought that they might be using live amn while doing the track drill that afternoon. I may say,however, that prior to proceeding to the trg area on or about 1 Aug 43 I had tried to get a tripod for a bren but had been unable to do so, as none was available. I would also like to add that I had given no instrs for safety precautions on the ground when the drill was to take place because I hadn't reced the ground personally.

Cross-examined by the accused.

Q.1. Do you remember sending me out on an M.C. one afternoon to recce the ground in question?

A.1. Well, it is some time ago, and I can't swear that I did, but I believe that I did instruct you to recce the ground.

P.M. Grandjean Lt.

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Cross-examined by the accused.

Q.1. Do you remember asking me how the gun was firing, when you took over the gun to fire the third section.

A.1. Yes, and you replied it was properly fused, and dead on - also that I should use the same angle of fire, and NOT to fire until the flag was dropped, and all personnel behind the gun except those actually engaged in the fire drill.

A.3175 Sgt. E.N. Mellott

Third Witness for the Prosecution.

A22591 L/Cpl Lang, A., 1st Bn Essec Scottish Regt sworn states:
I am L/Cpl A section No. 4 pl 1st Bn. Essex Scottish Regt. Sunday afternoon 8 Aug we went to NEW DOWN under Sgt Davy and Sgt Mellott. When we got there Sgt Davy gave us a lecture on track drill, and then told us we were going to do the drill under fire from a bren, the posn of which he pointed out to us. He told us to keep down as much as possible during the drill & to watch ourselves. I then remember him placing the bren gunners from the carriers, on the same flank as the firing bren. I was in number one section when

it went through the drill, and once during the drill I had to stand up; the fire was nowhere near me. I took up the number two ???? as the gun when Sgt Mellott went to fire the third section through, and other than a change in the angle of the gun which Sgt Mellott made, to fire where he desired, and in which I helped him there were no other changes different to the conditions under which the firing of number 1 & 2 sections took place. I am qualified Ql Small Arms by No. 3 CTS and the angle of fire of the gun & position seemed alright to me.

Cross-examined by the accused.

Q.1. Under the same conditions, would you be willing to undergo track drill under fire with myself in charge again.

A.1. I certainly would.

A-22541 L/Cpl. A. Lang.

Fourth Witness for the Prosecution.

Lieut. G.B. MacDonald, 1st Bn. Essex Scottish Regt sworn, states:
I am weapon trg offr 1st Bn Essex Scottish Regt. I was a member of the court of inquiry inquiring into & reporting upon the cause of injury to H40698 Pte. Chafina, OR 1st Bn Essex Scottish Regt.
My qualifications as WTO are: Hyth Small Arms School, Eastern & South-Eastern Comd Weapon Trg School, Battle Wing CTS. Bde Battle School Instructor. I personally examined the ground in question and found that the ground is ideal for simulating battle conditions for trg in track drill under fire. I produce SAT Vol I Pam 1 1942 and direct attention to Ch III Sec 17 sub secs 1 & 2 "Rules for fd firing" (Attd Exhibit "A" hereto.

The accused declines to cross-examine.

Lt. McDonald, S.B.

The accused having been duly cautioned in accordance with R.P.4(E) says:

I do not wish to make a statement at this time.
I am going to reserve my defence.

A21863 Sgt. Davy J.

The accused does not wish to call any witnesses in his defence at this point.

Certified that R.P.4 complied with

In the field
16 Sep 43.

S.F.Sharpe Capt.
Officer detailed to take the Summary.

45

I desire the services of Lt P Ponsford as my defending officer.

A21863 Sgt Davy, J.

In the field

16 Sep 43.

78 D. Pte Dams. A.E.

ADJ (46)

Correspondence to be PINNED here.

HEADQUARTERS
24 OCT 1941
2nd CDN INF BDE

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this twenty - fifth day of September, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 2 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

—for the following reasons, namely:—]

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	R.P. CLARK [redacted]	P.P.C.L.I.

Members.

Rank.	Name.	Regiment.
Capt	A.A. Gilchrist	Edmn R
Lieut	M.J. Egan RPE	P.P.C.L.I.
~~Waiting Members~~ Lieut	F.H. Bennel	Semforth of C

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed (Arthur E. Potts) Brig
Comd 2 Cdn Inf Bde

Commanding *Convening Officer.*

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K52555 Private DAWS A.E. Seaforth of C	1st Charge Section 41 A.A. Committing a civil offence, that is to say stealing.	NOT Guilty	Guilty. Sixty Days Detention	Remitted to 30 days O.H.P.
	2nd Charge Section 10(2) A.A. Striking a person in whose custody he was placed.	NOT Guilty	Guilty. Recommendation to mercy see attached letter.	
	4th Charge Section 40 A.A. Conduct to the prejudice of good order and military discipline.	NOT Guilty	NOT Guilty	
	3rd Charge Section 10(3) A.A. Resisting an escort whose duty it was to have him in charge.	Withdrawn (see proceedings)		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No

(Signed) Arthur E Potts (Arthur E. Potts) Brig
Commanding 2 Cdn Inf Bde
Convening Officer (e)

(Signed) R P Clark Maj
PPCLI
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Ninth day of October, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~
*~~(4. The officers under instruction)~~
were duly sworn.

* Omit if not applicable.

Signed this tenth day of October 1941

R P Clark Maj
President of the Court Martial.

C. Certificate in case of death sentences

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 14 day of Oct 1941

Arthur E Potts
Confirming Officer.

Promulgated and extracts taken in the case of K52555 Pte Daws A.E. Seaforth of C

(a) (Dated) 18 Oct 41 (Signed) [signature]
D.G. [illegible] The Seaforth Highlanders of Canada

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

4

CHARGE SHEET

The Accused, No. K52555 Pte. Daws, A.E., The Seaforth Highlanders of Canada, a soldier of the Canadian Army (Overseas) is charged with, while on active service,

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING,

1st charge Section 41 Army Act. — in that he, at London on 18 Aug 41 stole a bag containing copper coins to the value of five shillings, the property of St. Martin's Canteen.

STRIKING A PERSON IN WHOSE CUSTODY HE WAS PLACED,

2nd charge Section 10(2) Army Act. — in that he, at London, on 18 Aug 41 when placed under arrest did strike the escort a blow.

RESISTING AN ESCORT WHOSE DUTY IT WAS TO HAVE HIM IN CHARGE,

Withdrawn (see proceedings) RTC

3rd charge Section 10(3) Army Act. — in that he, at London, on 18 Aug 41 while under escort of Sgt. Ongley, A.G., C.M.P., and L/Cpl. Ley, J., C.M.P., resisted the escort by kicking and struggling.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

4th charge Section 40 Army Act. — in that he, at London, on 18 Aug 41, when told by Sgt. Ongley, A.G., C.M.P., that he was under suspicion of having stolen a bag of money said "Search me you cock-sucking bastard" or words to that effect.

Remanded for Court Martial 24 Sept '41

[signature] Lt.-Col.
O.C. The Seaforth Highlanders of Canada

To be tried by Field General Court Martial

Arthur B Potts
Brigadier,
Comdg. 2 Cdn. Inf. Bde.

R P Clark Maj
PPCLI
President

10/10/41

Headquarter's
2 Cdn Inf Bde.

Although R.P. 46 and 46(1) state that consideration should be given to the length of time the accused has spent in confinement awaiting trial, the Court upon recommendation of higher authority decided to award a sentence without taking this consideration. It is therefore strongly recommended by the Court that the fifty-two days already spent in confinement by the prisoner be remitted from the sentence by the Confirming Officer.

(R.P. Clark) Major,
President.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD ON THE NINTH DAY OF OCTOBER 1941

Trial of No. K52555 Pte Daws.A.E. Seaforth Highlanders of Canada.

Prosecutor:- Lieut. J.E.T. McMullen. S.H.of C.

Defending Officer:- Lieut. T.C.B. Vance. S.H. of C.

At 0930 hrs the trial commenced.

1. The order convening the court was read in the presence of the accused.

2. (1). Question:to the accused:- "Do you object to be tried by the President or any members of the Court whose names you have heard read over?"

A. 1. "No"

The President and members were duly sworn.

The accused was ~~xxxxxxxxx~~ arraigned upon each charge in the charge sheet. He was called upon by his number, rank, name and description.

Q.(2) "Are you guilty or not guilty of the first charge which you have heard read?"

A.(2) "Not Guilty".

Q.(3) "Are you guilty or not guilty of the second charge which you have heard read?"

A.(3) "Not Guilty".

Q.(4). "Are you guilty or not guilty of the third charge which you have heard read?"

A.(4) The accused objects to the charge(R.P.32) on the ground that the offenses set out in charges two and three constitute a single transaction, cotrary to ~~xxx~~ R.P.3(3).

The Court was closed to consider their decision.

On the suggestion of the court and with the consent of the prosecutor the third charge was withdrawn.

The Court was reopened and the above decision was made known to the accused.

The Court proceeded to the Trial.

Q.(5). "Are you guilty or not guilty of the fourth charge against you which you have heard read?"

A.(5) "Not Guilty".

The answer of the accused to each charge was entered on page 2 of A.F.A. 3.

The Prosecutor made no opening address.

R.R. Clark Maj
PPCLI
President

The Prosecutor proceeds to call witnesses.

First witness for prosecution. 7684890 Sgt. Ongley.A.G. of the Corps of Military Police, being duly sworn, was examined by the ~~xxx~~ Prosecutor.

"I am 7684890 Sgt. Ongley.A.G. of the C.M.P. stationed at C.L.R.D. Great Scotland Yard."

Q. (1). "Do you recognize the accused in the room?"

A. (1). "I do". (Hepoints him out)

The President of the Court read the evidence of Sgt.Ongley as recorded in the Summary of Evidence.

Sgt.Ongley stated the evidence as read to be correct. He said that he did not see the accused in the canteen previous to the arrest. The other soldier who accompanied the accused endeavoured to intervene in the arrest but desisted on seeing the M.P. were determined, and returned quietly to the canteen. He ~~xxxxxxxxxxxx~~ remonstrated there with the accused and told him to keep quiet and not to talk. On approaching the soldiers Sgt.Ongley heard a voice say; "Why did you take it?", or words to that effect. He stated that he had handed the bag of coins to Mr.Gibson because he had seen him in the canteen before and assumed he was entitled to receive it. Mr Cotgrove identified the bag in Sgt.Ongley's presence. The latter did not count the money and did not see anyone else doing so. Sgt Ongley stated he can claim a knowledge when a man is drunk as about seventeen thousand persons had passed through his hands and a fair proportion had been drunks. This man was not. This conclusion was borne out he said by the following actions of the accused. Cpl.Smith asked for a cigarette, Cpl. Ley offered him one but Pte Daws intervened and suggested he have one of his; also he asked permission to attend to the toilet and walked there of his own accord without assistance.

On first approaching the accused Sgt.Ongley noticed that he placed his right hand in the right trouser pocket and then quickley placed both hands above his head. Suspecting that he was trying to hide something Sgt. Ongley grasped his right hand and found in it a bag which contained coins.

The name and number of accused was learned when L/Cpl. Ley asked for them in accordance with duty routine.

Mr Cotgrove identified the ~~xxxxxxxx~~ accused as having been in the canteen before by saying; that this was the man who stole the coins, or words to that effect. There appeared to Sgt.Ongley to be no doubt in Mr.Cotgrove's mind that Pte.Daws not Cpl. Smith had stolen the ~~xxxxx~~ bag.

The witness was cross-examined by the Defending Officer.

He said that when he approached the two Canadian soldiers he stood in front of them, explained who he was, and said they were under suspicion of stealing the bag and gave them the customary warning and told them they were beingdetained.

The bag of money was about five inches by four and one half inches and could be concealed in a closed hand, and although he was watching the accused closely he did not see the bag, although he saw him put his hands up.

He doubted that the voice could have come from anyone else as he was close enough to see him though it was on a busy thoroughfare.

The accused became violent when he saw he was being taken into custody.

R P Clark Maj
PPCLI
President

Mr Cotgrove was a timid man which would account for his being not definite in his identification of the accused according to the Summary of Evidence. Although the witness has handled about 20000 cases since this one he was certain he could remember the details, as he had had considerable experience in this.

He was five to seven yards from the men before he saw them, as they were standing near the light of a traffic island, he recognized them as soldiers by the outline of their clothing.

Sgt.Ongley stated that he had given his evidence twice before and it was based on notes taken at the time to which he had last referred on the morning of the trial.

Rule of Procedeure 83(B) has been complied with.

Second Witness for Prosecution.

2658784 L/Cpl.Ley.J.P., C.M.P., C.L.R.D., Whitehall, being duly sworn was examined by the prosecution.

"I am 2658784 L/Cpl.Ley.J.P. of the C.M.P. stationed at C.L.R.D. Great Scotland Yard".

L/Cpl.Ley identified the accused as Pte Lewis.

The President read out the evidence of L/Cpl.Ley as contained in the Summary of Evidence, to which L/Cpl.Ley answered questions.

He then stated that the canteen was a long narrow room with tables at both sides and down the centre. He was sitting at the first table from the passage on the right hand side about six feet away from a cash desk and three feet away from a table and saw the accused standing between the table and the cash desk and mentioned his presence casually to Sgt. Ongley. He did not see the two men leaving the canteen, nor did he recognize the accused in the street later, but did recognize him when he was returned to the canteen.

In his opinion the man was not drunk because he gave his name and number clearly; and acted as described by Sgt.Ongley. When in the lavatory he asked to wash his face with L/Cpl.Ley's handkerchief and said; "I'll get straightened up. I don't want to get you fellows into trouble"; or words to that effect. He was able to stand without support.

The witness was cross-examined by the Defending Officer.

Q.(1)"What was the attitude of Cpl.Smith?"

A.(1) "He was amazed and could not understand why we detained him. He told the accused to be quiet that everything would be all right".

After hesitation L/Cpl.Ley said that when he approached the men he heard a voice say; "You should not have done it"; or words to that effect. He said the voice came from the vicinity of the two men, but agreed voice could have come from someone else in the vicinity, though he was not sure that there was anyone else thereabouts.

He replied that he had talked over the evidence with Sgt.Ongley the day before the trial.

He said that there were not many soldiers about as it was fairly late and fairly quiet.

He answered that it was necessary to be about four feet away from the men before you could see them properly.

R C Clarkson
PPCLI President

When told that Mr.Cotgrove in his statement for the Summary of Evidence had said he could not definitely identify Pte.Daws as being the soldier who had taken the bag, although he himself had said in his statements that the accused was idnetified by Mr.Cotgrove when brought back to the Canteen, he said that civilian witnesses were frequently unreliable and quickly forgot events.

Asked to describe what occurred an their approaching the men, he gave the following evidence:-

Sgt.Ongley and he approached the two men and told them they were under suspicion of having taken money from St.Martin's Canteen. The accused then made the reply stated and raised his hands in the air. Sgt. ongley got hold of his hand and found the bag of coins. Mr Gibson had come up in the meantime and received the bag. Sgt.Ongley then ordered him to assist in apprehending the accused. They went to take hold of him and he then hit Sgt.Ongley on the side of the head, swung around and kicked L/Cpl.Ley on the shin. The struggling commenced after they went to lay hands on him.

It was while they went to apply the No.1 Police Hold that L/Cpl.Ley was kicked.

At the request of the Court L/Cpl.Ley demonstrated, with the Defending Officer as a subject, the No.1 Police Hold

Rule of Procedeure 83(b) has been complied with.

At 1600 o'clock the Court adjourned until 1030 o'clock tenth day of October 1941, when civilian witnesses should be available.

On the tenth day of October 1941 at 1030 the Court reassemble pursuant to adjournment; present the same members as on the ninth day of October 1941.

3rd Witness for Prosecution.

Mr.Cotgrove being duly sworn stated:
"I am Mr.S.F.Cotgrove of 1 Adelaide Street, London, engaged as shelter Warden at St.Martins In the Field. I was on duty on the night of the eighteenth of August 1941".

The statement made by Mr.Cotgrove in the Summary of Evidence was read over and he agreed that it was correct.

He then described the incidents which occurred.

He said he was standing some yards from the entrance inside the Canteen when two soldiers entered. One of them stood by the small desk, put his hand on it, then put his hand into his pocket, hesitated for a minute, turned to the entrance then went out.

The soldier indicated as having been found in possession of the bag by the C.A.P. resembled in general appearance and build and uniform this man whom he had seen acting as described.

The soldiers were noisy and under the influence of drink, but were not completely drunk.

The witness was cross-examined by the Defending Officer.

He stated that the bag of money was the usual Banker's size and could be grasped in the hand. All of it could not be contained in a closed fist. He agreed it was just something blue, the colour of the bag, which he saw and assumed it to be the copper bag, that he was some distance from the soldier, and that there were a few other people passing between.

Rule of Procedeure 83(B) was complied with.

The Case for the Prosecution was closed.

D C Clark Maj
PPCLI
President

DEFENCE

The accused was informed of his rights in accordance with R.P.40(a) and M.M.L. Page 644(n2).

The accused was asked the following questions:-

Q.(1)"Do you wish to give evedence as a witness?"

A.(1) "Yes".

Q.(2) "Do you intend to call any other witnesses on your behalf?"

A.(2) "Yes".

Q.(3) "Are they witnesses as to character only"?

A.(3) "No".

(The procedeure set out in R.P.40 was then followed.)

Accused.

Pte Daws having been duly sworn stated:-
"I am K52555 Pte Daws.A.E. of The Seaforth Highlanders of Canada"Regiment".

Questioned as to what he recollected of the occurrences on the evening of the eighteenth of August he said that he remembered nothing after leaving the "Silver Grill" until he found himself sitting in a straight backed chair with his hands locked behind him and being beaten on the face with a wet towel. When he asked why this was being done, he was told that it was to wipe the blood off his face. The Canadian Military Pilice then arrived and took him to Henrietta Street.

Asked how long he had been drinking and how much, he said that after landing in London he went to "Meronne's Bar" at about 1730 hrs and had about three or four pints of beer and about four double scotches. Then they went to the "Beaver Club" for supper and then to the "Silver Grill" where they met a Scotsman who proceeded to buy them double rums for the rest of the evening.

He stated that he was paid on a Saturday and then went on guard, and on the Monday received a further £1-10-0d with which to go on leave, thus being paid twice within a few days.

The witness was cross-examined by the prosecutor.

He stated that it was his first "bender" for a long time. He said his memory of what happens when he has been drinking is very short, and agreed that anything might have happened.

Asked who was in the party at the "Silver Grill" with him he said, Cpl.Tuffs, Cpl.Smith, Pte.Walker, Pte.Stevenson, a [redacted] and many of his friends.

The conversation as he remembered was average, concerning what each of the party was doing, where they were going on leave and so on.

He stated that he had £4-10-0d when he went on leave and £2-19-0d when he returned.

The blood on his face he assumed must have been from the way the Military Police had handled him, but does not think they knocked him out.

The witness was re-examined by the Defending Officer and stated in reply to questions that the Cameronian was buying drinks for the large party, also that one of the party was the owner of the brewery which supplied the beer to the"Silver Grill". This man later became sick and was taken home.

[signature] Maj
PPCLI Prosecutor

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He stated that he was asked by Canadian Military Police why he had not "knocked the blocks off" the Provosts for marking him up as they had.

R.P. 83(B) was complied with.

1st Witness for Defence.

K52862 Cpl.Smith.M.A. having been duly sworn states:-

"I am K52862 Cpl.Smith.M.A. of the Seaforth Highlanders of Canada".

Cpl.Smith recognized the accused as Pte.Daws.

The President read out the statement of Cpl.Smith in the Summary of Evidence and Cpl.Smith stated it to be correct.

He said that the last time he remembered Daws he was intoxicated with rum and scotches as indicated in his actions and the way he stumbled about. Daws he said had some money in bills but could not say exactly how much.

The witness was cross-examined by the Prosecutor.

He stated in reply to questions that his opinion that Pte Daws was drunk was based on the amount of liquor he had drank in comparison with his own(Cpl.Smith) degree of intoxication, and the fact that Pte Daws was stumbling about after moving over to the "Silver Grill".
He stated that when he was accosted by the C.M.P. he was just walking down the street to the best of his knowledge.

R.P. 83(B) was complied with.

2nd Witness for Defence.

K52711 Pte Stevenson.T.A. Seaforth Highlanders of Canada having been duly sworn stated:-

"I am K52711 Pte.Stevenson.T.A. of the Seaforth Highlanders of Canada".

He said he knew Pte.Daws and was with him on the night of the eighteenth of August 1941.

His chronicle of events was, that they arrived in London between 1630 and 1700 hrs and after supper at the "Beaver Club" had gone to "Neronne's Bar" where they drank Scotch Ale and Scotch Whiskey. They left there at about 2000hrs and went to the "Silver Grill" where they drank rum and beer for the rest of the evening.
The accused had more to drink than the witness as the party he was in was setting up double rums for him. At one time the accused fell off a stool before the bar and knocked over a table with glasses and bottles on it. He was also attempting to sing but could not articulate clearly, as is frequent with drunken persons.
A sergent of the Black Watch came in with the owner of a brewery and commenced to buy drinks all round. As it was getting close to the time for his train he,(Pte Stevenson) left and that was the last he saw of Pte.Daws.
Asked whether he saw Pte.Daws with money, he said that the accused pulled out paper money several times.

The witness was cross-examined by the Prosecutor.

He stated that in his opinion the accused ~~was~~ was fairly drunk, and that he left the grill at twenty minutes to eleven.

R.P. 83(B) was complied with.

[signature]
[illegible] President

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3rd Witness for Defence.

K52259 Pte.Walker.J. Seaforth Highlanders of Canada having been duly sworn stated:-

"I am K52259 Pte.Walker.J. of the Seaforth Highlanders of Canada, I know the accused and was with him on the night of the eighteenth of August 1941".

In reply to questions he said that he left Pte.Daws in the grill room at almost fifteen minutes to eleven, and that the accused was then drunk. This he illustrated by saying that the accused staggered and knocked over a table and fell over backwards when he went to get a high stool. He also said that he twice saw the accused pay for drinks with £1 notes.

The witness was cross-examined by the Prosecutor.

He said on cross- examination that he had been drinking rum and beer and was feeling pretty happy, but was sober enough to leave in time for his train.

Question by the Court to 3rd witness for defence:-

Q.(1). "Would you say that the accused had had more to drink than you had"?

A.(1). "Yes".

R.P.83(B) was complied with.

4th Witness for Defence.

Major.G.S.Gibson of the Seaforth Highlanders of Canada having been duly sworn stated:-

"I am Major.G.S.Gibson, Company Commander of"D" Company, of the Seaforth Highlanders of Canada, to which Pte.Daws belonged".

Questioned he said that he had known accused since September of 1937 and that he was employed as a Company runner.

Regarding his character witness made the following statement:-

Ever since I have known him I have always found him to be a trustworthy and efficient soldier, and in his capacity as runner he has had occasion to get in a capacity of trust and always has shown attention to his duties, and has never violated the trust reposed in him. I wish Pte.Daws back in my Company.

The Prosecutor declined to cross-examine the witness.

Rule 83(B)was complied with.

5th Witness for Defence.

K52741 Acting Sergeant Major R.M.Black of the Seaforth Highlanders of Canada, having been duly sworn stated:-

"I am K52741 Acting Sergeant Major R.M.Black of the Seaforth Highlanders of Canada, acting Sergeant Major of "D" Company of the Seaforth Highlanders of Canada. I have known Pte Daws since June 1941, and since knowing him I have found him trustworthy, capable and efficient in the discharge of his duties. I have never had any trouble with him, and in personal matters I have always found him honest and straight forward."

The Prosecutor declined to cross-examine the witness. R.P.83(B) was complied with,.

President

The Defending Officer made a closing address, which is ~~attached as page~~ printed below of the Proceedings.

The Prosecutor made a reply, which is attached as page of the Proceedings.

The Court was closed for the consideration of the finding.

FINDING.

The Court find that the accused K52555 Pte.Daws.A.E., Seaforth Highlanders of Canada, is NOT GUILTY of the fourth charge, but is GUILTY of the first and second charges.

The finding of NOT GUILTY on the fourth charge was read in open court.

The Defending Officer made the following plea in mitgation of sentence:-

The character of the accused was excellent as shown in the statement of the witness who said he was trustworthy and efficient. Also his Company Commander had stated that he wished to have Pte.Daws back in his Company.

The circumstances under which the offences were committed should be taken into consideration, in that the accused had been drinking heavily. Also their was provocation due to the apparently unnecessary force employed by the Military Police in detaining the man.

In addition Pte.Daws had already been in custody for 52 days as shown by the certificate produced (Appendix 14)

SENTENCE.

The Court sentence the accused K52555 Pte.Daws.A.E., of the Seaforth Highlanders of Canada to SIXTY DAYS DETENTION.

R P Clark Maj
PPCLI President

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SEAFORTH OF CANADA.

M.F.M. 6 (A.F.B. 122) (Form 8-33-1783) H.Q. 1773-45-18

No. K-52555 Name DAWS A.E. Sqn. Battery or Company D Corps Date of enlistment 9/39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. G.S. GIBSON MAJOR Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
MORVAL BKS	1606	PTE		SEC 15 AA 2130 HRS 16 JUNE 40 — 0930 HRS 18 JUNE 40	L/cpl PINSON J	7 DAYS C.B. 2 DAYS PAY	1906	COY CMDR	
WOTTON PARK	2906	"		SEC 40 AA OFFENSIVE LANGUAGE TO AN NCO	P.S.M. MURDOCK	5 HRS PACK DRILL	0160	COY CMDR	
					CQ TR S HUGHES				
IN THE FIELD	4 NOV 40	"		SEC 15 AA 0930 HRS 3 NOV 40 — 1700 HRS 4 NOV 40	SGT. RICHARDSON	3 DAYS C.B.	11 NOV 40	COY CMDR	
IN THE FIELD	30 DEC 40	"		SEC 40 AA WAS INSOLIENT TO AN NCO.	SGT RICHARDSON	7 DAYS C.B.	31 DEC 40	COY CMDR	
IN THE FIELD	3 JUN. 41	"		SEC. 40 AA WOAS FAILED TO ARISE AT REVEILLE	L/SGT. McKAY	2 DAYS C.B.	6 JUNE 41	COY CMDR	

Certified true copy #2

[signature] Major

[signature] PPCLI President

(P.T.O.)

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED.

(a) The accused has been in confinement awaiting trial on the present charges for ✓ days in Civil Custody and 52 days in Military Custody making a total of 52 days of which 41 days were spent in hospital.

(b) The present age of the accused according to his attestation paper is 31.

(c) The date of his attestation specified in his attestation paper is 8/19.1939.

(d) The accused is in possession of, or entitled to no military decoration or military reward.

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

~~24 Sep 41.~~ pre
10 Oct 41

[signature]
Adjutant The Seaforth Highlanders of Canada

R P Clark Maj
PPCLI
President

15

Oct. 41.

Seaforth of C.

MEDICAL CERTIFICATE.

I hereby certify that I have this day examined K52555 Pte Daws, A.E. and find him fit to undergo trial by court-martial.

Thomas L. Torrence

Med. Officer Capt. Torrence.
THE SEAFORTH HIGHLANDERS OF CANADA

R P Clark Maj
PPCLI Pres.

15(A)

10 Oct 41

This is to certify that K52555, Pte. Daws, A.E. has been examined by me and he is capable of undergoing trial at a Court Martial.

Certified Correct.

Thomas L. Torrance

T.L. Torrance, Capt.
M O. The Seaforth Highlanders of C"nada.

R P Clark
Maj

1 b

ARMY FORM B 116.

THE SEAFORTH HIGHLANDERS OF CANADA *REGIMENT.*

STATION IN THE FIELD Date 24 Sep 1941

Application for a FIELD GENERAL *Court-Martial.*

SIR,

I have the honour to submit Four charges against No. K52555 Pte. Daws, A.E. of the Unit under my command, and request you will obtain the sanction of G.O.C., 1 Cdn. Div. that a Fd General Court-Martial may be assembled for his trial at In the Field

The Case was investigated by (a) Capt. A.S. Campbell, (b) Lt.Col. C.C. Ferrie, E.D., (c) Lieut. J.E.T. McMullen.

The accused is now at In custody His General Character is (c) Good

I enclose the following documents (d) :—

1. One Charge Sheet (in duplicate) (e).
2. Summary of Evidence, original (f) and one copy.
3. Original Exhibits (g).
4. List of witnesses for the prosecution (with their present stations or addresses) (g).
5.
6.
7. Statement as to character and regimental and company, etc., conduct sheets of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (h). [R.P. 14 (B)].

I have the honour to be,
Sir,
Your obedient Servant,

Signature of Commanding Officer [signature]
O.C. THE SEAFORTH HIGHLANDERS OF CANADA

To 2 Cdn. Inf. Bde.

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. K52555 Pte. Daws, A.E., Seaforth of C. Regiment is fit to undergo trial by Court-Martial.

Signature of the Medical Officer [signature]
M.O. Seaforth of C.

(a) Here insert name of :—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (3) (iii)).
(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges ; otherwise to be struck out [R.P. 19 (3) (iii)].
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President ; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 86 (2) the fact should be recorded at the top of this form.

[signature] Pte

SUMMARY OF EVIDENCE

In the case of K 52555 Pte. DAWS, A. E. SEAFORTH HIGHLANDERS OF CANADA

First Witness

Mr. S. F. COTGROVE of 1 ADELAIDE ST., LONDON, W.C. 1. having been duly warned states:-

" On the 18 Aug. 41. I was on duty as Shelter Warden at St.MARTINS IN THE FIELD. At approximately 10 P.M. I was standing outside the entrance to the canteen when two soldiers went into the canteen. They were making a noise and appeared to have been drinking. I saw one of the soldiers who was standing by a roll-top desk place his left hand on the desk and then put it in his pocket. I noticed in his hand something which appeared to be blue. Knowing that the copper money was kept in blue bags I thought that he might have taken one of these bags which were sometimes kept on the roll-top desk. The two soldiers then left the canteen and I went in and asked the Superintendant if a copper bag had been left on the desk. As a result of what the Superintendant told me, I followed the soldiers to the foot of the stairway leading out to the street. I there met Mr. GIBSON and told him to follow them which he did. I returned to the canteen and told Sgt. ONGLEY and L/Cpl. LEY of the C. M. P. what had occurred. They left the canteen in search of the soldiers and later returned with two soldiers. I had not had ~~the~~ an opportunity of having a close look at the soldiers but from the similarity of their dress and build I was reasonably certain that the soldiers brought in by the C. M. P. were the same two whom I had seen enter the canteen as above stated. Shortly after the soldiers left in the company of the C. M. P. I cannot definitely swear that the accused whom I now see was the soldier whom I saw standing by the roll-top desk as above stated. I can only say that his face is familiar to me."

The accused declines to cross-examine this witness.

.....S. F. Cotgrove.....
S. F. COTGROVE.

Second Witness

7684890 Sgt. ONGLEY, A. C. CORPS OF MILITARY POLICE having been duly warned states:-

" On the 18 Aug. 41. I was having , in company with L/Cpl. LEY, refreshments in ST.MARTINS CANTEEN, ST. MARTINS-in-the-FIELD, when at 23.05 hours I was approached by Mr. COTGROVE, who ascertained that we were military policeman. As a result of what Mr. COTGROVE had to say I left the canteen with L/Cpl. Ley in search of two Canadian Soldiers who had recently been in the canteen, and at the top of the stairs at the entrance to the canteen we were met by a Mr. GIBSON who had endeavoured to follow the two Canadian soldiers, but who had lost them in the black-out. I went in the direction of Charing Cross Road but could not see them but heard voices in arguement coming from the direction of ADELAIDE PLACE. On proceeding in that direction with L/Cpl. Ley, I came upon two soldiers, one of whom I now recognize as the accused. I told them who I was and explained to them that they were under suspicion of having taken a bag of money outof St. MARTINS CANTEEN. I then gave them the customary warning. Pte. DAWS, whom I now recognize as the accused said," Search me you Cock Sucking Bastard". I then ordered them both to accompany me to St.MARTINS CANTEEN which they refused to do. I then instructed L/Cpl. LEY to assist me in taking Pte. DAWS into custody. Upon taking hold of Pte. DAWS' right hand I discovered it contained a dark coloured bag of coins. I took this from him and handed it to Mr. GIBSON. The accused then struck me a blow and started to struggle violently. In doing so he kicked L/Cpl. LEY on the shin. His actions necessitated the use of force to restrain him. Together with L/Cpl. LEY, I took Pte. DAWS to St. MARTINS CANTEEN and Pte. DAWS and Cpl. SMITH were then identified both by Mr.GIBSON and Mr. COTGROVE. The accused was pointed out by Mr. COTGROVE as the man who had taken the bag. The accused then stated," If I have done wrong I cantake it," and used obscene language.

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used obscene language./
I then communicated with the Canadian Provost Corps and the accused and Cpl. SMITH were subsequently escorted to C. M. P. Headquarters. It was apparent from the breath of the accused and Cpl. SMITH that they had both been drinking. I would say they were not drunk but were under the influence of liquor. The accused was able to reason and argue and appeared to be in complete possession of his faculties. He was not staggering in any way.

The accused declines to cross-examine this witness.

A. G. Ongley
7684890 ONGLEY, A. G. Sgt. C.M.Police

Third Witness

8658734 L/Cpl. LEY, J. CORPS OF MILITARY POLICE having been duly warned states:-

" On 18 Aug. 41. at 23.05 hrs. I was sitting with Sgt. ONGLEY in the canteen in St. Martins-in-the-Field, when we were approached by a canteen warden whom I now know to be Mr. COTGROVE and were asked if we were military policemen. As a result of what Mr. COTGROVE told us we left the canteen in search of two soldiers. At the exit we met Mr. GIBSON. As a result of what Mr. GIBSON told us we went in the direction of Charring Cross Road. As it was dark we were unable to locate the soldiers. We then heard from the direction of ADELAIDE PLACE voices raised in argument and we approached and saw two soldiers one of whom I now recognize as the accused. We told the soldiers that they were under suspicion of having taken a bag of money from St. MARTINS CANTEEN. Pte. DAWS said, " Search me you Cock Sucking Bastard ". The accused was holding a bag of money in his right hand which was taken from him by Sgt. ONGLEY who handed it to Mr. GIBSON, who had come up in the meantime. Sgt. ONGLEY then cautioned the accused and ordered me to assist in apprehending him. Pte. DAWS commenced to struggle and struck a blow at Sgt. ONGLEY. He was extremely violent while I was holding him and kicked me on the left shin. Sgt. ONG and myself escorted the accused to St. MARTINS CANTEEN where Pte. DAWS and Cpl. SMITH were identified by Mr. GIBSON and Mr. COTGRO Mr. COTGROVE pointed to the accused and said," That is the man w took the bag". Pte. DAWS said," If I have done wrong I can take He continued to be abusive. At 23.20 hrs. the Canadian Police c and took the accused into custody. The breath of the accused s of liquor. He was not drunk but was under the influence of liquor. He was able to stand and answer questions intelligently. For example he was able to give me his name and number when I asked for it."

The accused declines to cross-examine this witness.

J. Ley
8658734 LEY, J. L/Cpl. C. M. Police.

Fourth Witness

K 528562 Cpl. SMITH, M. A. SEAFORTH HIGHLANDERS of CANADA having been duly warned states:-

"I arrived in LONDON at about 16.30 hrs. on 18 Aug. 41. in the company of Pte. DAWS, A. E., whom I now recognize as the accused, Pte. WALKER, J. and Pte. STEPHENSON, all of 'D' Coy., Seaforth Highlanders of Canada. The four of us went straight to the Beaver Club where we had something to eat but no drinks. At about 17.30 hrs. we all proceeded to NEROUNE'S BAR in TRAFALGAR SQUARE where we remained until approximately 20.00 hrs. While there we consumed a quantity of Scotch Ale and Scotch Whiskey. We then went to the SILVER GRILL on the STRAND where we continued drinking. Our drinks here consisted principally of Rum. My next recollection is of Pte. DAWS and myself being accosted on the street by two Military Policemen. One of them took hold of my arm, felt my stripes and said, "It is alright Corporal", or words to that effect. A civilian came up and I heard one of the policeman ask him to stay with me which he did. I heard a scuffle but it was too dark for me to see what was going on. The next thing I remember is being in St. MARTINS CANTEEN with the policemen, Pte. DAWS and a civilian.

Pte. DAWS and a civilian./
Later the Canadian Military Police ame and took us to their Headquarters. I have no recollection of going into St. MARTINS CANTEEN after leaving the SILVER GRILL nor do I remember any conversation or anything that took place in the CANTEEN when taken there by the policemen. I admit I was intoxicated which is the reason I can remember so little of what happened.

The accused declines to cross-examine this witness.

M. A. Smith
K 52862 SMITH, M. A. Cpl. Seaforths of Canada.

Sec. 4 (c), (d) and (e) of Rules of Procedure complied with.

The accused declines to make any statement or to give evidence upon oath pursuant to Sec. 4,(e) of the Rules of Procedure.

Taken down by me in the presence and hearing of the accused at the Office of the Canadian Military Police, 30 Henrietta St., London, on the 19th day of September, 1941.

J. E. T. McMullen Lt.
McMullen, J. E. T. Lieut.

R P Clark Maj
PPCLI Pres

Further Summary of Evidence in the case of K52555 Pte. Daws, A.E., The Seaforth Highlanders of Canada.

Fifth Witness

The following is a statement of Mr. A.K. Gibson, of No. 1 Adelaide Street, London, W.C. 1, given in writing and signed by him, which said statement has been read to the accused and is included in this Summary of Evidence. The accused has waived his right to demand that the witness attend for cross-examination:-

"Mr. S.F. Cotgrove approached me with the request that I follow two soldiers who were leaving the canteen. It being assumed that they had stolen a bag of coins from the canteen. I followed them up the stairs to the street but lost them in the darkness. I was then approached by Sergeant Ongley, C.M.P., who asked me in what direction the soldiers had proceeded. I told him that I thought that they had gone off in the direction of St. Martin's Lane, he then ran off in the direction indicated by me, however, hearing shouts and sounds of a disturbance coming from the direction of Adelaide Place, I went there and found Sergeant Ongley and Cpl. Ley struggling with a soldier. Sergeant Ongley having ascertained who I was handed to me the bag of coins with the request that I should endeavour to accompany the other soldier to the canteen as he was having difficulty in securing the soldier who was struggling violently, whom I recognised as being one of the soldiers I had been requested to follow."

I hereby certify that in my opinion the attendance of the above-mentioned witness cannot be readily procured having regard to the expense and loss of time involved.

J.E.T. McMullen, Lt.
J.E.T. McMullen, Lieut.
Seaforth of C.

R P Clark Maj
PPCLI Pres

56-117

Pte. Dews, A.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K52555 Pte ALBERT EDWARD DAWS

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn b.)

~~At present under sentence for~~ ..... beginning on (date) ..... R.B. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Automatic forfeiture of pay 17 days
Field Punishment } 62 days
with forfeiture of pay }

(Sgd) ..... 3rd Mar 45 (Sgd) R Bowman Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567 577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: A confirm the finding and vary the sentence so that it shall read as follows: "To suffer Field Punishment for a Period of 62 days and to forfeit all ordinary Pay for a period of 62 days", and a confirm the sentence as so Varied.

~~I direct that the accused be not recommended for release on demobilization leave/be retained further ordering.~~ (1. AA 57A. Delete if not used.)

(Sgd) C.E.F. Jones Colonel

Date 17 Mar 45 Commanding 1 Canadian Forestry Group?
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date	Signature of Offr.
Pte. Daws, A.E. K 52555	20 Mar 45	J.S. Pebbles, Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 5C-117

CONVENED 1945 MAR 1 CMHQ

FIELD GENERAL COURT-MARTIAL

CFAAF (To lieu of AFAA) 40/P&B/1068 (144) 4/38B

Convened by Order of COLONEL C.E.F. JONES Comd 1 CDN FORESTRY GROUP dated 24 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.
K52555	Pte		ALBERT EDWARD	DAWS

PROCEEDINGS REVIEWED
C.W. Urquhart Capt
17 Apr 45

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) NW BELGIUM on (date(s)) 2 March 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) R.B. amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 46, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1630 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) R.B.

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~an Interpreter~~? Ans R.B.

The Interpreter is sworn.(1) Do you object to Sgt A.C. Martin as ~~Shorthand writer~~ recorder? Ans No

The ~~Shorthand writer~~ is sworn.(1)

(1. ~~CCofA 45~~ RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major R Bowman	1 Cdn C F C
Member	Capt G.M. Thomas	H.Q. 1 C F G.
Member	Lt. C.H. Smeeth	Y4A List attchd 1 C.F.G.
~~Judge-Advocate~~	Capt G.E. Curtis R.M.P.	1 C.F.D.
Prosecutor	Lt. L.V.E. Mercer	16 Cdn C F C.
Defending Offr		

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment, when RP 89 (B) and fn 2 were not followed. See Dir p 2.)

A8. The accused K52555 Pte Albert Edward Daws before arraignment makes(s) (no) ~~a~~ plea(s). R.B.

(1. If a special plea is made for separate trial as one or more charges (RP 62(F), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. R.B.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A Fwd p 12

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 2, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(E). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. ~~The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ .....charge(s).(2) The Court ~~is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the~~ .....charge(s), ~~and allowed on the charge(s), and that, accordingly~~, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, ~~make a statement, or do neither~~ ? RB.
Ans. Yes as a witness. YES. Do you intend to call witnesses on your behalf ?
Ans. No. Are they witnesses as to character only ? Ans. NO
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The~~ President announces the finding(s), if any, of Not Guilty, and states to the accused that the ~~finding(s)~~ of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2) RB.
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded ~~by using~~ Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : ~~Do you wish to give evidence yourself or to call any witnesses as to your character~~ ?(1) RB.
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 183(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D. and Ex C. respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(2), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-52, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 109, 1323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 4(1)(b), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), (d)(i), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RB

CHARGE SHEET

The accused, No.K52555 Pte Albert Edward Daws, No.16 Company, Canadian Forestry Corps, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 2230 hours 22 December 44 until reporting to No.16 Company, Canadian Forestry Corps Detachment, at 1530 hours 8 January 45. (Absent 16 days, and 17 hours).

(M. MacLaggan) Major,
O.C., No.16 Company,
Canadian Forestry Corps,
Canadian Army, (Overseas).

In the Field
9 Jan 45.

Remanded for summary of evidence.

(M. MacLaggan) Major,
O.C., No.16 Company,
Canadian Forestry Corps,
Canadian Army, (Overseas).

In the Field
13 Jan 45.

Remanded for Field General Court Martial.

(C.A.WILLIAMS) Lt.-col.,
O.C. H.Q., 8 Cdn. Forestry District (B)
Canadian Army Overseas.

In the Field
13 Feb. 45.

In the Field
23 Feb 45

To be Tried By Field General Court Martial.

(C.E.F. JONES) Colonel
Commander
No.1 Canadian Forestry Group
Canadian Army Overseas

RB.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K-52555	Pte	-	ALBERT EDWARD	DAW3	16 COY CPC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 25 Feb 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ C.E.O.K.
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. C.E.O.K.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ C.E.O.K.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	R. BONNAR (Must be named. RP 106.)	NO.1 COY CPC (Unit.)

MEMBERS.

CAPT	G.M. THOMAS	
LIEUT (Rank.)	E.H. SMEETH (Named or detailed. RP 106.)	HQ 1 CDN FORESTRY GP
		X-4A LIST CPC (ATT ~~Hq~~ 1 CPG)

WAITING MEMBER.

Major	H.J. DOHERTY	
Lieut (Rank.)	L.A. SCHOFIELD (Named or detailed, if any. RP 106.)	No.14 Coy CPC
		No.25 Coy CPC (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 24 Feb 45

C.E.O.K. Jones (Signed personally. RP 106(2))

(C.E.F. JONES) Colonel (Rank.)

Commanding 1 Canadian Forestry Group

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

W/38A CFA 96, (Re Item of AFA 2) 40/P & E/1047 (6143)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn 10*).), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on *new* matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, *if any.* (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any.* RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then joined by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 123 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 *after* minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 709.*)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

RB

MEDICAL OFFICER'S REPORT

I certify that No. K-52555 Pte. Daws, A.E.
of 16th Coy., CFC is in a GOOD state of health,
and FIT to undergo Trial by Court martial.

G. Rademacher
Medical Officer Maj RAMC.

Station In the Field

Date 2 March, 1945.

M. F. B. 246

K.B.

I certify that I have this day examined

K.52555 Pte. Daws, A.E.

and in my opinion he is fit to undergo trial by Court Martial.

Capt.

Date 5 March, 1945.

EVIDENCE
re
FIELD GENERAL COURT MARTIAL
2 and 3 March, 1945
on charge against
K 52555 Private Albert Edward Daws
No.16 Company, Canadian Forestry Corps

FIRST WITNESS FOR THE PROSECUTION. L 50164 CSM Thomson, S., Company Sergeant Major, No.16 Company, Canadian Forestry Corps, Cdn. Army Overseas, having been duly sworn, states:-

EXAMINED BY PROSECUTOR:

Q.1 Do you recognize the accused?
A.1 I do. (Witness indicates accused)

Q.2 The accused is charged with absenting himself without leave for a period of 16 days and 17 hours on 22 December 44. Can you tell the Court what you know of this matter?
A.2 Sir, No.16 Company, Canadian Forestry Corps moved into billets at Westerloo on 22 December 44 arriving there shortly before noon. Just after we arrived I was notified that all personnel were confined to their billet area as an alert was in force at that time. The Company were in turn notified of this in a general way. That evening I instructed the Orderly Sergeant, Sgt Lemelin, and the Orderly Corporal, Cpl Paulson, to take a tattoo roll call of the Company at 2230 hours. At Reveille the following morning Cpl Paulson informed me that the accused had been absent from his quarters when a tattoo roll call was taken. At approximately 0800 hours 23 December 44 a parade of the Company was called and I personally called the roll. The accused failed to answer his name. I made a search through the billets but could find no trace of him and reported his absence to the Commanding Officer.

Q.3 Will you describe, please, what you mean when you said the order was passed to the Company in a general way?
A.3 No special parade was called to notify the Company that they were confined to their billet area. I notified the Orderly Sergeant, & the Orderly Corporal, also several other N.C.Os. whose names I cannot now remember and instructed them to pass the information through the various rooms in which Other Rank personnel were quartered.

Q.4 How and when did the Company move to their new location?
A.4 There were several movements, Sir, On 23 December 44 a small detachment left Westerloo for Spa also on 23 December another detachment left for Heeze in Holland, then on 24 December the balance of the Company left for Milheeze, Holland.

Q.5 Did you see Pte Daws on any one of these detachments?
A.5 No, Sir, I did not.

Q.6 Would you have known if he had been on them?
A.6 I think I would, Sir, as I looked on him as an absentee and was therefore keeping my eye open for him.

Q.7 When was the last time you saw Pte Daws?
A.7 On 22 December after our arrival at Westerloo. I can't state any definite time.

Q.8 But you noticed that he was there?
A.8 Yes, I saw him after we arrived at Westerloo.

Page TWO follows.....

CROSS-EXAMINED BY OFFICER FOR THE DEFENCE:-

Q.9 Sergeant Major is it possible that the accused did not hear the C.B. order on 22 December?
A.9 Yes, Sir, that is possible.

Q.10 What type of duty does Pte Daws usually carry on in the Company?
A.10 He was usually engaged in camp fatigue and guard duties.

Q.11 Is his work usually satisfactory?
A.11 Yes, Sir, I never had any particular trouble with him.

Q.12 Do you know of any reason why he would have left had he known of the C.B. order?
A.12 No, Sir, I know of no reason.
R.P. (83 (B) complied with.

SECOND WITNESS FOR THE PROSECUTION. G 48247 Pte Paulson, G.E., No.16 Company, Canadian Forestry Corps, Cdn. Army Overseas, having been duly sworn, states:-

EXAMINED BY PROSECUTION:

Q.13 Do you recognize the accused?
A.13 Yes, Sir. (Witness indicates accused)

Q.14 What were your duties on 22 December 44?
A.14 I was Orderly Corporal, Sir.

Q.15 Will you describe what your actions were on that day?
A.15 I took tattoo at 2230 hours and Pte Daws was not in his bed or around. I reported to C.S.M. Thomson the following morning.

Q.16 Did you make inquiries or make a search?
A.16 Yes, Sir, I looked all around the billets and couldn't find him around anywhere.

Q.17 Where was the Company at this time?
A.17 At Headquarters, Westerloo.

Officer for Defence declines to cross-examine witness.
R.P. 83(B) complied with.

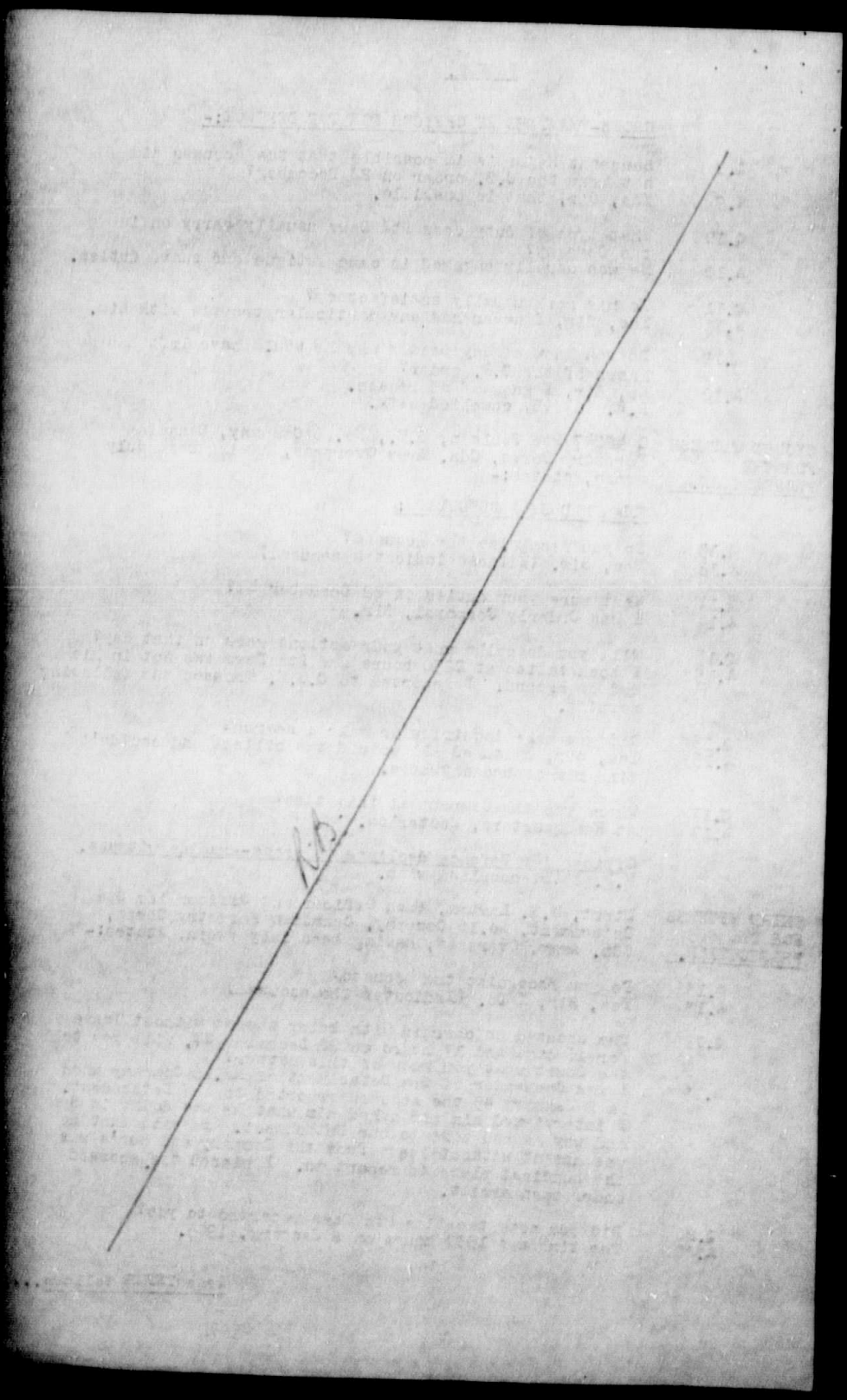
THIRD WITNESS FOR THE PROSECUTION. Lieut, W.R. Lawton, Bush Officer and Officer i/c Spa Detachment, No.16 Company, Canadian Forestry Corps, Cdn. Army, Overseas, having been duly sworn, states:-

Q.18 Do you recognize the accused?
A.18 Yes, Sir, I Do. (Indicates the accused)

Q.19 The accused is charged with being absent without leave for 16 days and 17 hours on 22 December 44, will you tell the Court what you know of this matter?
A.19 I was Commander of Spa Detachment of No.16 Company when on 8 January 45 the accused reported to the Detachment. I interviewed him and asked him what he was doing in Spa and why he had come to our Detachment. He said that he was absent without leave from the Company and our's was the handiest place to report in. I placed the accused under open arrest.

Q.20 Did you note the time Pte Daws reported to you?
A.20 The time was 1530 hours on 8 January, 1945.

Page THREE follows....



Q.21 Did you report to the Officer Commanding that Pte Daws had returned?

A.21 Yes.

Officer for Defence declines to cross-examine witness.
R.P. 83(B) complied with.
Prosecutor declines to make any statement.
Officer for Defence declines to make any statement.

Court adjourns at 1730 hrs 2 Mar 45; re-opens 0940 hrs 3 Mar 45.

The accused expresses the desire to give evidence on his own behalf on oath.

FIRST WITNESS FOR THE DEFENCE

K 52555 Private Daws, A.E., No.16 Company, Canadian Forestry Corps, Cdn. Army Overseas, having been duly sworn, states:-

EXAMINED BY OFFICER FOR DEFENCE

Q.22 Will you tell the Court in your own words as you think it is necessary as to your movements and actions from the time No.16 Company moved from Spa to Louvain and to Westerloo?

A.22 When we received word that we were moving I went to the C.S.M. to ask him if I could remain here as a rear party. He told me to see the Adjutant. I saw the Adjutant and stated to him that I would like to remain here. He said that he would speak to the Major. As we were talking the Major came along and the Adjutant then told the Major what I had said. The Major told me there would be no rear party but if there was one I would be one of the ones to stay. Shortly after we left for Louvain. We were in Louvain a day or two. A rear party was sent to Spa and I was not among them. I was quite fed up about this time and I started to drink quite heavily. The following morning we were given orders that we were moving. I was speaking to some workmen at the brewery where we were stationed and one of them gave me half a bottle of cognac. We then proceeded to Westerloo.

Q.23 Did you move your kit from the Company vehicle to the quarters when you arrived?

A.23 Yes, Sir, I took it right upstaire.

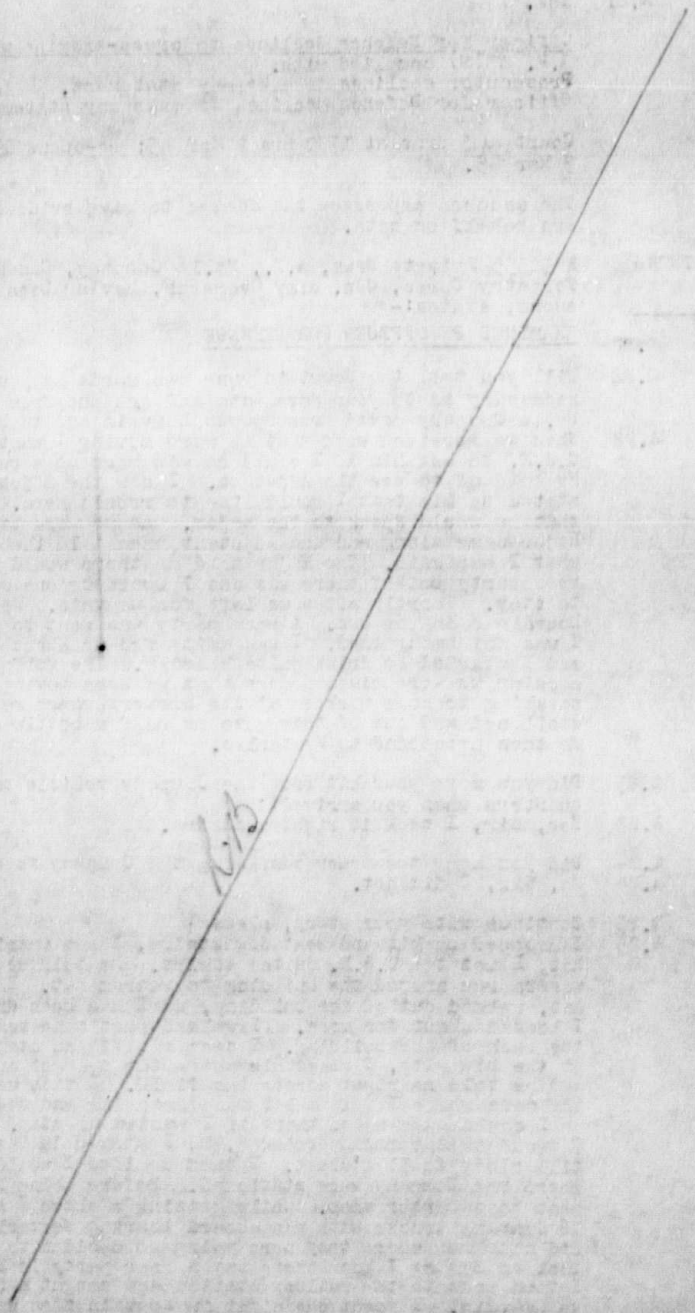
Q.24 Did you hear the order confining the Company to barracks?

A.24 No, Sir, I did not.

Q.25 Continue with your story, please?

A.25 I dropped my kit and went downstairs, I was wearing no hat, I met the C.S.M. on the stairs. He told me if I was to run around the building to wear a hat. I got my hat, walked out of the building, as I had been drinking I looked about for more. I walked past some tents at the back of the building. I seen a civilian standing at the big gate, I asked him where the nearest cafe was and he told me right across the field. I then went to the cafe where I done a lot more drinking and they told me I could have a bed there if I wanted to stay. I awoke next morning around 9.30, I stayed in the cafe till close to 11 o'clock. I then decided I would go back where the Company were stationed. Before going back I went to a barber shop. While getting a shave I seen 16 Company trucks with men aboard leaving Westerloo. I did not know where they were going so decided to come back to Spa as I knew there was a rear party in Spa. I then went to the railway station and caught a freight to Louvain. I spent one night in Louvain then proceeded to Leige where I spent one night.

Page FOUR follows...


N.B.

Then I went to Verviers where I got an ammo truck and went to Malmedy or just outside Malmedy where I tried to join the American 12th Field Artillery. They would not let me go into action with them. I stayed there two days and a Colonel sent me back. I came back through Spa to Verviers where I tried to join an Infantry unit in Verviers. I spoke to a Captain there and told him that I was from a non-combat unit but would like to go into action. I lied to him as I told him we had nothing to do at the present time. He said that he would try to do what he could for me, so I waited around for several days. Then I realized I was away a long time. I came back to Spa and reported to Lieut Lawton.

Cross-examined by Officer for the Prosecution:

Q.26 You say you tried to get back to Spa in your statement, to the Detachment there and yet later in your statement you say you tried to join an Artillery unit and when that failed an Infantry unit. You also came back from Malmedy to Verviers passing through Spa. Did you not try to contact the Detachment at Spa?

A.26 Sir, when I left Westerloo my idea was that I would see action in Spa. When I reached Verviers I found out the enemy was no where near Spa at the time and as I am well acquainted with quite a number of boys in the 12th Field Artillery I thought I would join them.

Q.27 In other words you made no attempt to rejoin your unit at Spa?

A.27 Not right at the present time, Sir.

The Defence is closed.
(R.P. 83(B) complied with.

CLOSING ADDRESS BY PROSECUTOR

The Prosecution respectfully submits that the evidence brought out at th is trial has established an absence without leave of 16 days, 17 hours as shown on the charge. The accused is an experienced soldier and his actions while being absent without leave have only shown him as having little or no regard for military order and discipline and that his efforts to rejoin his unit were certainly not good.

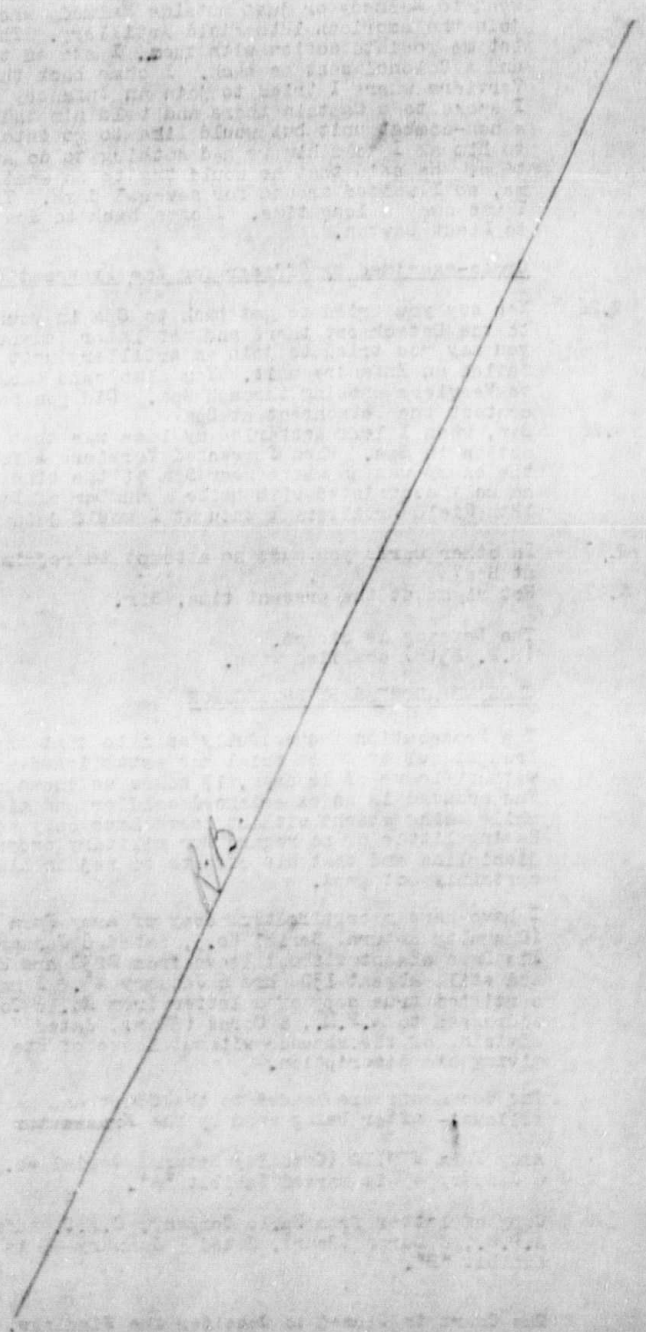
I have here a certified true copy of Army Form W3011A (Casualty Return) Serial No.3, dated 6 January 45 showing Pte Daws absent without leave from 2230 hrs 22 December 44 and still absent 1500 hrs 6 January 45. I have also a certified true copy of a letter from No.16 Company, C.F.C. addressed to A.P.M., 8 Corps (REar), dated 7 January 45, advising of the absence without leave of Pte Daws and giving his description.

The documents are handed to the Court and marked as follows:- after being read by the President:-

Army Form W3011A (Casualty Return) Serial No.3, dated 6 January 45 is marked Exhibit "A".

Copy of letter from No.16 Company, C.F.C. addressed to A.P.M., 8 Corps (Rear), dated 7 January 45 is marked Exhibit "B".

The Court is Closed to Consider the Findings.



FINDING

The Court being re-opened, the Accused is again brought before it.

By consent of the Accused, the Prosecutor handed to the Defence MFB. 296 - Statement of Character and Particulars of the Accused, and MFM 6 - Conduct Sheet, which in turn were handed to the Court.

AFB 296 submitted to the Court, examined and marked as Exhibit "C".

MFM 6 submitted to the Court, examined and marked as Exhibit "D".

The Defending Officer makes the following Plea in Mitigation of Sentence:-

"President, Sir and Gentlemen:

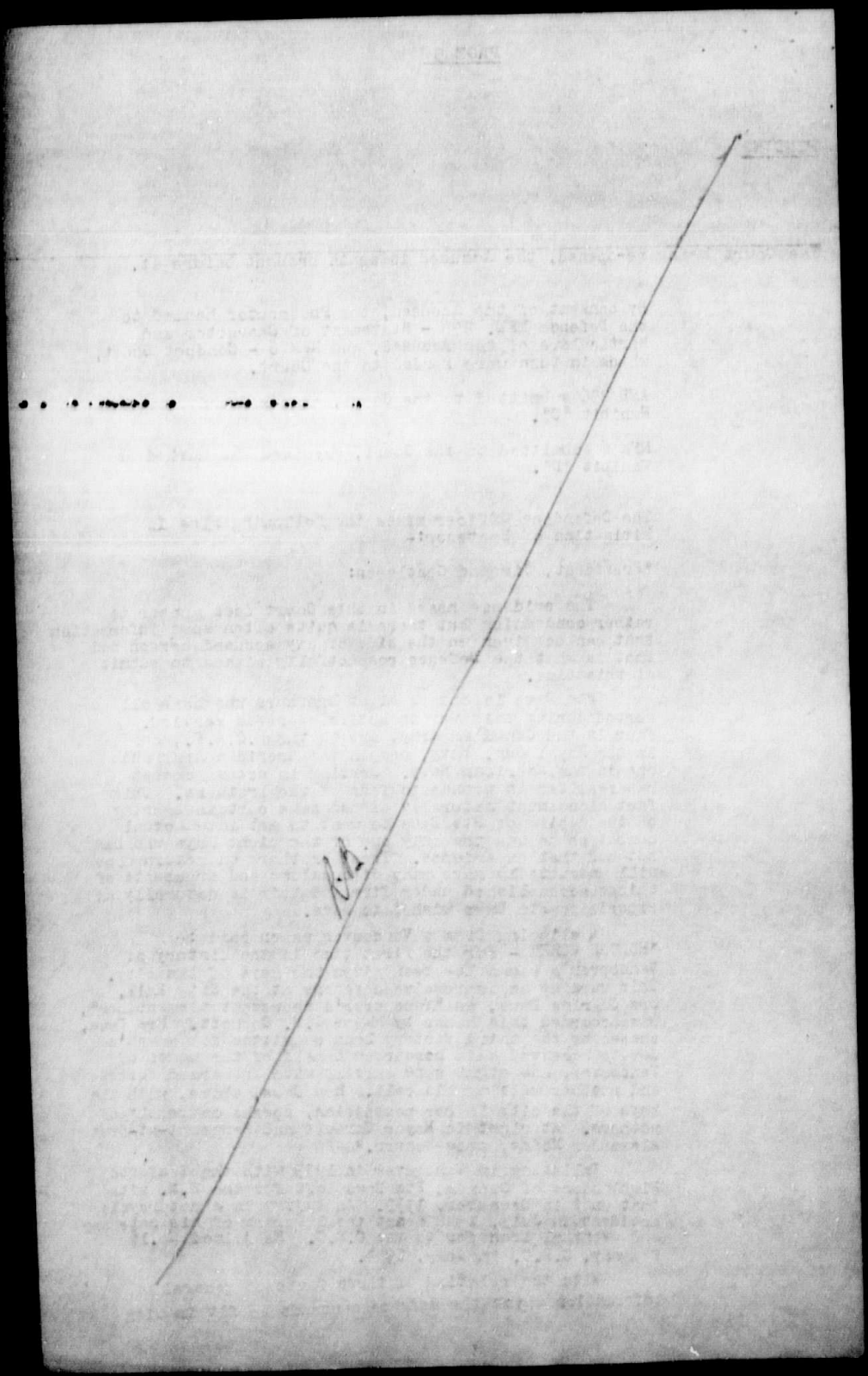
The evidence heard in this Court does appear as rather condemning but there is quite often some information that can be given on the side of any accused person and that is what the Defence respectfully wishes to submit at this time.

Pte Daws is one of eight brothers who have all served during this war on active overseas service. Four in the Canadian Army, one in the R.C.A.F., one in the Royal Cdn. Navy, one in the American Army and one in the American Navy. Serving in actual combat has resulted in wounds to four of the brothers. This fact alone must naturally of had some certain bearing on the desire of Pte Daws to want to get into actual combat as he was the only one of the eight boys who had not had that experience. These brothers on return home will undoubtedly have many discussions and arguments of things accomplished under fire and this is naturally an experience Pte Daws wished to have.

A clipping from a Vancouver paper reads:- "HONORS WOMEN - For the first time in the history of Vancouver a woman has been given the keys of the city. This morning an impressive ceremony at the City Hall, Mrs Charles Daws, as "Vancouver's representative mother", was accorded this honor by Mayor J.W. Cornett. Mrs Daws, chosen by the third Victory Loan committee for women's day to received this honour on behalf of the women of Vancouver, has eight sons serving with the armed forces and another waiting his call. Mrs Daws, above, with the keys of the city in her possession, speaks on behalf of mothers. At right is Mayor Cornett and Sergeant-at-arms Alexander McKay, mace-bearer."

Enlisting in Vancouver in 1939 with the Seaforth Highlanders of Canada, Pte Daws left for the U.K. with that unit in December, 1939. An injury in a motorcycle accident in July, 1942 meant the lowering of his category and eventual transfer to the C.F.C. He joined No.18 Company, C.F.C. in July, 1944.

With the relating of these facts of general information which the defence contends do fit in with

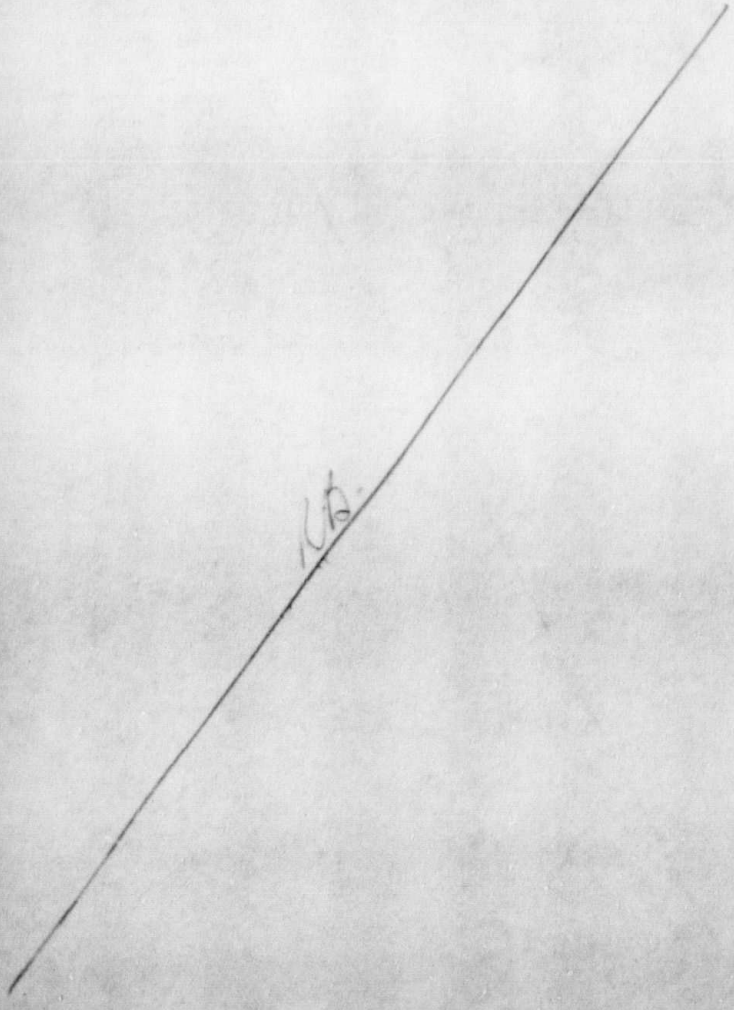


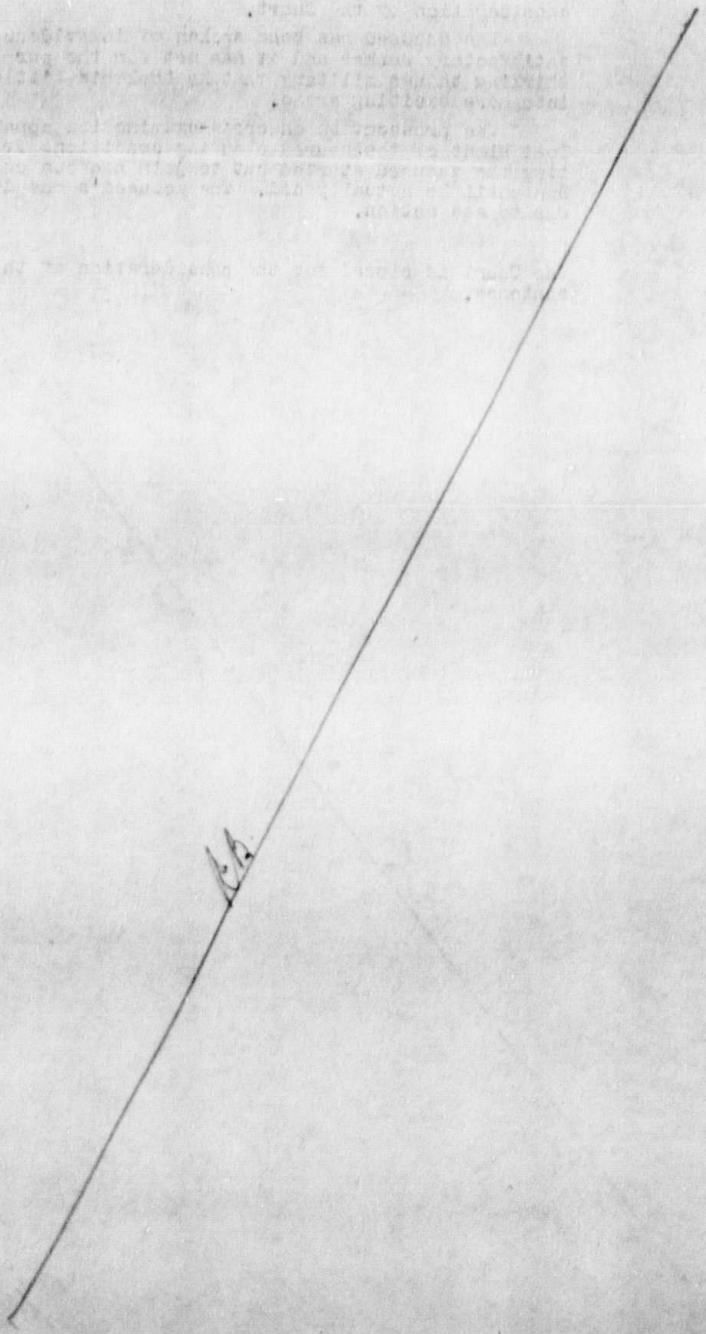
the actions of the accused and together with his own evidence it is hoped they will be given sympathetic consideration by the Court.

The accused has been spoken of in evidence as a satisfactory worker and it was not for the purpose of shirking things military that he took his little excursion into more exciting areas.

The prosecution on cross-examination apparently lost sight of the hourly changing conditions from the time the accused started out to join his own unit at Spa until he actually did. The accused's one desire was to see action.

The Court is closed for the consideration of the sentence.





SENTENCE. The Court sentence the accused, K 52555 Private DAWS, Albert Edward, to:

SIGNED AT_____THIS_____DAY OF_____1945.

R. Bonnar PRESIDENT

(R. BONNAR) Major
OFFICER COMMANDING
NO. 1 COMPANY
CDN. FORESTRY CORPS
CDN. ARMY OVERSEAS.

COPY EXHIBIT "B" (Margin for filing purposes) CERTIFIED TRUE COPY .....Lieut.16 Coy CFC

Army Form W.3011A.

Serial No. 3

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Number of sheets to this return Page 1 and last

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
E 39482	Pte	Lagace, E.	CFC	Casualty Return No. 75, d/28 Nov 44, shows m/n att. to Hq.1CFG from 1 Nov 44 to 25 Nov 44 - Amended to read: "30 Oct 44 to 25 Nov 44".		
D 126480	Pte	Mayer, W.F.	CFC	T.O.S. from X-3 list CFC on disch from hosp. W.E.F. 6 Jan 45.(Auth: EA2/1711, d/26 Sep 44)		
M 60032	Pte	Sprowl, C.E.	CFC	TO.S. from X-3 List CFC on disch from hosp. wef 5 Jan 45. (Auth: EA2/1711, d/26 Sep 44)		
K 52555	Pte	Daws, A.E.	CFC	AWL from 2230 hrs 22 Dec 44, still absent 1500 hrs 6 Jan 45.		
E 38160	Pte	Dempsey, G.	CFC	SOS to X-3 List CFC on dem. to No.9 F.D.S.(Br.)		
E 41483	Pte	Willett, A.	CFC	wef 4 Jan 45.		

(Date) 6 January 45

Signed: L.V.E. Mercer Lt. & Adj
(Signature and appointment of Officer)

No. 16 Coy., Cdn. Forestry Corps (Unit)
HQ, 1 Cdn. Forestry Group.
(Bde., Divn., Area, etc., with which unit is serving)

(COPY) Ex "B" RB.

No.16 Company, Canadian Forestry Corps
CANADIAN ARMY OVERSEAS

File: 16/5-4

7 Jan 45.

EXHIBIT "C"

A.P.M.,
8 Corps (REAR).

Absent Without Leave
R52555 Pte Daws, A.E.
No.16 Coy., CFC.

1. The m/n soldier has been absent without leave since 2230 hrs 22 Dec 44 from his unit. He was dressed in Canadian battledress and his description is as follows:

Age - 34
Height - 5'7"
Weight - 140 lbs
Hair - Light brown
Complexion & eyes - Fair (clean shaven)

2. Would you, please, be on the lookout for this man and if apprehended, may this unit be advised, please.

(Signed) M. MacLaggan, Major,
O.C., No.16 Company,
Cdn. Forestry Corps.

/ACM.

CERTIFIED TRUE COPY

L.V.E. Mercer

(L.V.E. Mercer) Lt. & Adjt.,
No.16 Coy., Cdn. Forestry Corps.

Exhibit "C" R.B.

In lieu of Army Form B.296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or as the case may be)
K 52555	Pte	DAWS, A.E.	No.16 Company, C.F.C.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For	Offence under Sec 41, Sec 10, Sec 40 A.A.	One Times
For	A.W.L. A.A.15(1)	Two Times
For		Times
For		Times

Date of first entry in Field Conduct Sheet 16 August, 1941

Date of last entry in Field Conduct Sheet 20 October, 1944

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleal.

3. ~~The accused at the present time is under sentence for~~ ..... ~~beginning on the~~ ..... ~~day of~~ .....

4. The accused has been awaiting trail on the present charges for NIL days in civil custody; and for 54 days in military custody, i.e. 26 days in open arrest, 28 days in close arrest of which 10 days were spent in hospital.

5. The present age of the accused is 34 years

6. The date of his attestation ~~calling up for military service~~ is 19 September 1939.

7. The service which the accused is allowed to reckon is 5 years, 4 months And 20 days.

8. The accused is in possession of Nil

9. (If the accused is a Warrant Officer or N.C.O.). The accused has served continuously, without reduction, to the present date-

	Date of Promotion.
In the substantive rank of	
In the war subst. rank of	
In the acting rank of	

INSTRUCTION:- In any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

In lieu of Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
Field General Court Martial	In the Field 14 Oct 41	WOAS, Sec 41, Sec 10, Sec 40 A.A.	30 days detention	Nil

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed: this .....2nd..... day of .March 1945

L. S. Mercer Lieut.,
Officer i/c Records,
No.16 Company, C.F.C.

Exhibit "D"

No K 52555 Name DAWS, A.E. Sqn, Battery, or Company 16 Corps C.F.C. Date of enlistment 19 Sep 39 Badges RB Service or Proficiency Pay

MFM 6 (AFB 122) 40/PAY/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Pte					14 Oct 41		H.Vicars Capt.
In the Field	18 Aug 41			WOAS Sec 41 Sec 10 Sec 40 A.A.		30 days Detention		F.C.C.M.	Forf 74 days pay. RW.Hel
Witley	30/10/42			WOAS, AWL from 2200 hrs 30/10/42 until 2130 hrs 1/11/42 (1 day, 23 hrs and 30 min) AA Sec 15(1)	Cpl Maloney	4 days F.P. 4 days pay	2/11/42	C.C.Ferrie Lt-Col	1 days pay FR&I 149(1)
XXXXX	22xMxxxx43			XXXX XX XxxxXX, failing xx xixx xx		28 days F.P. Forf 36 days pay.	Major M. MacLaggan		Forf 28 days pay FR&I 149(2). For 8 days pay 149(1)(a).
Field	20 Oct 44			AWL 7 days, 18 hrs A.A.15(1)	CSM Thomson S.				

CERTIFIED TRUE COPY (M. MacLaggan) Major, O.C., No.16 Company, C.F.C.

(PTO)

Exhibit "D"

RB

No K 52555 Name DAWS, A.E. Sqn, Battery, or Company 16 Corps C.F.C. Date of enlistment 19 Sep 39 Badges Service or Proficiency Pay

MFM 6 (AFB 122) 40/P&S/156 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	18 Aug 41	Pte		WOAS Sec 41 Sec 10 Sec 40 A.A.		30 days Detention	14 Oct 41	F.G.C.M.	H.Vicars Capt. Forf 74 days pay. RW.Heise
Witley	30/10/42			WOAS, AWL from 2200 hrs 30/10/42 until 2130 hrs 1/11/42 (1 day, 23 hrs and 30 min) AA Sec 15(1)	Cpl Maloney	4 days F.P. 4 days pay	2/11/42	C.C.Ferrie Lt-Col	1 days pay FR&I 149(1)(a
~~XXXXX~~	~~22xMarx43~~			~~XXXX XX XxxxXX, failing to rise at~~					
Field	20 Oct 44			AWL 7 days, 18 hrs A.A.15(1)	CSM Thomson S.	28 days F.P. Forf 36 days pay.	Major M. MacLaggan		Forf 28 days pay FR&I 149(2). Forf 8 days pay 149(1)(a).

CERTIFIED TRUE COPY

M. Laggan

(M. MacLaggan) Major, O.C., No.16 Company, C.F.C.

(PTO)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of K 52555 Private Daws, Albert Edward of No.16 Company, Canadian Forestry Corps, C.A.O., charged with absenting himself without leave from 2230 hours 22 December 44 to 1530 hours 8 January 45.(Absent 16 days, 17 hours) A.A.15(1).

The Commanding Officer does not direct or the accused demand, that the evidence be taken on oath.

First Witness L50184 C.S.M. Thomson, S., No.16 Company, Canadian Forestry Corps, states:-

I am Company Sgt Major of No.16 Company, Canadian Forestry Corps. On 22 December 44, the Company, then in billets at Headquarters, 1 Canadian Forestry Group, was confined to barracks on orders of the Officer Commanding. I instructed the Orderly Sgt and Orderly Corporal to make a bed check of the Company at 2230 hours. This they did, and reported that Pte Daws was absent. The whole company had been ordered confined to barracks on our arrival at Group H.Q. which was about midday on 22 December 44. There had been a warning issued that it was believed that there might be German Parachutists in the vicinity and the whole camp was confined to barracks. The following morning, I personally, called the roll of the Company and Pte. Daws failed to answer his name. I reported his absence to the Officer Commanding. The accused was still absent when the Company left Headquarters in two sections on the mornings of 23 and 24 December 44.

Q.1 Do you know if Pte Daws heard the order that the Company was confined to barracks?

A.1 No, I can't be sure of that as the order was passed to the Company in a general way.

The accused declines to cross-examine this witness.

.....

Second Witness G48247 ~~Cpl~~ Pte Paulson, G.E., No.16 Company, Canadian Forestry Corps, states:-

On 22 December 44, I was detailed by C.S.M. Thomson as Orderly Corporal and, at 2230 hours, was instructed to make a bed check of the Company by Sgt Lemelin, the Orderly Sgt. This I did and found that Pte Daws was not present in his quarters. I also made a search of the camp area and inquired if anyone had seen him. I could not find him and he had not been seen by any of his room-mates since late afternoon. I reported his absence to the Orderly Sgt and C.S.M.

The accused declines to cross-examine this witness.

G.E. Paulson.....

G.E. Paulson

Third Witness — Lieut. W.R. Lawton, No.16 Company, Canadian Forestry Corps, states:-

I was officer in charge the Spa Detachment of No.16 Company, and, on 6 January 45, at 1530 hours, Pte. Daws reported to me. I asked him where he had been and he replied "I have been absent without leave". I placed him under open arrest and he has remained so.

The accused declines to cross-examine this witness.

W.R. Lawton
W.R. Lawton

Fourth Witness — B20157 Sgt Martin, A.C., No.16 Company, Canadian Forestry Corps, states:-

I am the Orderly Room Sergeant of No.16 Company, Canadian Forestry Corps. I was instructed to send a letter to Headquarters, 1 Canadian Forestry Group, referring to the absence of Pte. Daws. I hereby submit certified true copy of this letter in confirmation. On 6 January 45 I submitted a Casualty Return (Army Form W.3011A) showing Pte Daws absent without leave from 2230 hours 22 December 44 and still absent 1500 hours 6 January 45. I hereby submit certified true copy of Casualty Return Serial No.3 in confirmation. On 7 January 45 I addressed and mailed a letter to A.P.M., 8 Corps (Rear) advising of the absence without leave of Pte Daws of this Unit, giving his description and requesting that they be on the lookout for him. I hereby submit certified true copy of this letter in confirmation.

Certified true copy of letter file 16/5-4, dated 31 December 44 and addressed to Headquarters, 1 Canadian Forestry Group, is submitted and to be known as exhibit "A".

Fourth Witness (Cont'd)

Certified copy of Casualty Return (Army Form W.3011A) Serial No.3, dated 6 January 45 is hereby submitted and to be known as exhibit "B".

Certified true copy of letter file 16/5-4, dated 7 January 45 and addressed to A.P.M., 8 Corps (Rear), is submitted and to be known as exhibit "C".

The accused declines to cross-examine this witness.

A.C. Martin

A.C. Martin

The accused was cautioned as follows:-

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused elected to make a statement (not on oath) as follows:-

The accused, K52555 Pte Daws, A.E., No.16 Company, Canadian Forestry Corps States:-

I wished to go up to the front line, Sir. I got up there but was chased back.

A.E. Daws

A.E. Daws

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that RP 4 (C),(D),(E) and (F) have been complied with.

(L.V.E. Mercer) Lieut.,
Adjutant, No.16 Company,
Canadian Forestry Corps,
Canadian Army, (Overseas).

In the Field
28 Jan 45.

LIST OF EXHIBITS

not submitted RR.

1. Certified true copy of letter to Headquarters, 1 Cdn. Forestry Group file 16/5-4, dated 31 Dec 44 and known as Exhibit "A".

2. Certified true copy of Casualty Return No.3, dated 6 January 45 and known as Exhibit "A". RR.

3. Certified true copy of letter to A.P.M., 8 Corps (Rear), dated 7 January 45 and known as Exhibit "B" RR.

(L.V.E. Mercer) Lieut.,
No.16 Coy., C.F.C.

LIST OF WITNESSES

1. L50184 C.S.M. Thomson, S.,
   No.16 Company,
   Canadian Forestry Corps,
   Canadian Army, (Overseas).

2. G42247 Cpl Paulson, G.E.,
   No.16 Company,
   Canadian Forestry Corps,
   Canadian Army, (Overseas).

3. Lieut. W.R. Lawton,
   No.16 Company,
   Canadian Forestry Corps,
   Canadian Army, (Overseas).

4. B20157 Sgt. Martin, A.C.,
   No.16 Company,
   Canadian Forestry Corps,
   Canadian Army, (Overseas).

(L.V.E. Mercer) Lieut.,
No.16 Company, C.F.C.

HH·24
GNR DAWES J.E.

HH-24

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Twelfth day of June, 19 43. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of RCA 4 Cdn Armd Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable ~~to delay the trial for reference to a superior qualified officer~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [~~I am unable to appoint:—~~

~~*(1.) Three Officers to form the Court.~~

~~*(2.) A Field Officer as President.~~

~~for the following reasons, namely:—~~]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Maj	J H MOORE	15 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt	K M JOHNSON	Hq RCA 4 Cdn Armd Div
Capt	G W COFFEY	15 Cdn Fd Regt
Lt	Waiting Member M A McDOWELL	15 Cdn Fd Regt

Judge Advocate
Maj W A D GUNN
ADJA 4 Cdn Armd Div

*Signed (W C HYDE) Brig
Commanding RCA 4 Cdn Armd Div
Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L 100304 Gnr Dawes, J.E. 8 Cdn LAA Regt	First Charge Stealing property belonging to a person subject to military law (AA Sec 18(4)). (See charge sheet attached)	Guilty	Guilty. To undergo detention for 90 days.	
	Second charge (alternative) Conduct to the prejudice etc etc (AA Sec 40) (See charge sheet attached)	Withdrawn	signed out in the field this 14th day of June 1943 J. Hulme Maj President W. C. Hyde Brig Judge Advocate	Confirmed. 21 June '43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [signature] (W C HYDE) Brig (Signed) [signature]

Commanding RCA 4 Cdn Armd Div
Convening Officer (c)

[signature] Gunner Wright Judge Advocate President

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th. day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The Interpreter)~~ shorthand writer and judge advocate.
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 14th day of June 1943.

[signature]

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

[signature]

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 21 day of June 1943

[signature]

Confirming Officer. (W. C. HYDE) Brig CRA 6 CDN ARMD DIV

Promulgated and extracts taken in the case of L 100304 Gnr Dawes J.E. 101 LAA Bty 8 Cdn LAA Lyt Rgt

(a) (Dated) 25 June 43 (Signed) [signature] 8th Cdn L.A.A. Regt R.C.A. (C.A.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

CHARGE SHEET

The accused, L100304 Gnr Dawes, John Edward, 101 LAA Bty, 8 Cdn LAA Regt RCA, a soldier of the Cdn Army Overseas, is charged with:-

First Charge
Sec 18 (4) AA

WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

In that he

in the field, on or about 23 May 43, stole a cigarette case, 2 prs of socks, 1 ration bag, 1 shirt, 1 towel and 1 handkerchief, the property of Lt G.B.Hamilton, RHQ, 8 Cdn LAA Regt RCA, a person subject to Military Law.

2nd Charge
Alternative
Sec 40 AA

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE AND GOOD ORDER AND MILITARY DISCIPLINE

In that he

in the field, between 22 May 43 and 4 Jun 43, was improperly in possession of a cigarette case, 2 prs of socks, 1 ration bag, 1 shirt, 1 towel and 1 handkerchief, the property of Lt G.B.Hamilton, RHQ, 8 Cdn LAA Regt RCA.

In the Field
4 Jun 43

E.W. Cormack.

(E.W.Cormack) Lt-Col RCA
Commanding Officer
8 Cdn LAA Regt RCA

Approval pursuant to K.R. Cas 540 & Orders RO 2223 WVS [illegible] 2 Jun 43 ADJA 4 CDN ARMD DIV

To be tried by F.G.C.M.

Field, 9 June 43.

G.B. Hyde Brig.
CRA 4 Cdn Armd Div

[illegible]

MEDICAL OFFICER'S REPORT

I certify that I have this morning examined No. L100304 Gnr Dawes, John Edward of 101 LAA Bty RCA and he is in a good state of health, and fit to undergo Trial by Court martial.

G. L. Watson Capt
Medical Officer
(G.L.Watson) Capt RCAMC

Station In the Field

Date 14 Jun 43

M. F. B. 246
25M—9-41 (1743)
H.Q. 1772-09 486

Med. Wost

PROCEEDINGS OF TRIAL

Accused L100304 Gnr. (Number) John Edward DAVIS (Rank) (Christian Names) 101 LAA Bty. (Surname) 8 Cdn LAA Regt RCA (Unit)

Held in the Field in England (Country) on 14 Jun 43

President Maj J.H. Moore (Rank) (Name) 18 Cdn Fd Regt RCA (Unit)

Members Capt R M Johnson (HQ RCA 4 Cdn Armd Div) Capt G W Coffey (18 Cdn Fd Regt RCA)

Judge-Advocate (if any) Maj W A D Gunn ADJA 4 Cdn Armd Div

Prosecuting Officer Lt D J Lynn 8 Cdn LAA Regt

Defending Officer Lt F J Morgan 8 Cdn LAA Regt

(The following procedure must be actually carried out)

The President produces the Convening Order, Charge Sheet(1) and Summary of Evidence. (Rs.P. 17(E); 22(A)).

The President, in closed Court (A.P. 22 fn 1), reads the Convening Order and the Charge Sheet(1) to the Members, and the Court satisfy themselves that it is properly convened (A.A.48; R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.108)

The accused is (are) brought before the Court, and at 0925 hours the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is (are) fit to undergo trial by Court-Martial. The certificate is initialled by the President, and attached to the proceedings.

President to accused
Do you object to N.A. as interpreter? Ans N.A.
Do you object to #60527 Sgt Roberts G.H. as shorthand writer? Ans No.

The names of the President and Members of the Court are read to the accused (R.P.110)

President to accused
Do you object to be tried by me as President or by any of the officers whose names you have heard read over? Ans No

The President, Members, Judge-Advocate, Officers Under Instruction, ~~interpreter~~ and shorthand writer are duly sworn. (R.P.26-27).

The Charge Sheet(1) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (not) elected trial by Court-Martial (A.A.46(8))

President to accused
Do you wish to make any special pleas before arraignment, that is to say, before you plead guilty or not guilty? Ans. No (If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.30 R.P.57); record such plea and evidence (if any) on separate sheet(s) to be initialled by President and attached to the proceedings.)

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	Second Charge	Third Charge	Fourth Charge
Guilty	Withdrawn		

(For procedure on alternative charges, see R.P.37 fn 2.) Further proceedings are recorded on pages hereto attached.

PAGE "A"

(For Use When Accused Pleads Guilty to All Charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President, ascertaining that accused understands the nature of the charge(s) (fn 3) and his plea ther to, explaining the difference in procedure by that plea (R.P.37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead "not guilty" thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge(s) (R.P.37(B) Ans. No
(Statement, if any, not on oath, is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon.)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such Summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment?(R.P.37(C)) Ans. No
(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto.)
(No cross-examination).

5. President to accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C)) Ans. Yes
(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached).

6. Lieut. (Rank) D.J. (Christian Names) LYNN (Surname) 8 CDN L.A.A. REGT R.C.A. (Unit) sworn, produces Statement of Character and Service, and Field Conduct Sheet, duly certified by the Officer having custody of the Regimental Books. The said documents are read, marked " X " and " Y ", initialled by the President and attached to the proceedings. (R.P.46)

7. President to accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)) Ans. Yes (made by defending officer and attached hereto)
No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto.)

8. The Court is now closed to consider sentence (Record on p.3.) The provisions of Overseas R.O. 3262 complied with. (Punishments, A.A. 44, K.R.(Can) 563-566; one sentence only awarded, R.P.48; jurisdiction of F.G.C.M. R.P. 116)

The sentence is not announced to the accused by the Court.

[signature]
(Signature of President)
WOZ [illegible]
Judge Advocate

H/Capt. A.S. McConnell, Padre, 8 Cdn LAA Regt RCA having been duly sworn states:-

"I have known the accused for the past 15 months both in Canada and in England. I found him always a hard working man in his capacity. He has acted in the capacity of batman for some time. To the best of my knowledge with any personal dealings that I have had with him he has acted honestly. IK feel possibly that his present predicament is brought on by, shall we say, just a personal weakness, we'll assume conditions, shall we say in England may have suggested to him that possibly there were things that he could get that he might not be found out in. He has pleaded guilty and I feel possibly that he has learned his own lesson at the present time and I only make it a plea that taking into consideration the personal weakness that this Court give him due consideration. That is about all that I could say on his behalf now but I do feel that the man possibly right now realizes just what he has done and has been fairly severely punished by his own condition.

Address by Lt F J Morgan, 8 Cdn LAA Regt RCA, Defending Officer

"I would just like to say a few words that might help the Court in settling the sentence. First of all I would like to point out from the evidence this is the first matter of this type that the accused has ever been brought up on. I can say personnally that I have known the accused since he came to this Regiment because he came to my troop over in Canada and after about two months in the Troop he became batman for the Battery Captain at that time, and he served as batman for approximately 8 months and during that time, most of which he was batman for the Battery Captain who is now Major McKay, and I know Major McKay was very pleased with the man and the relationship between Major McKay and the accused was such that he was very lenient and very good to the accused, in the sense that he gave him quite a bit of money and a few clothes and things like that. That was the relationship that existed and he was not strict with him and perhaps not as strict as he might have been at some times. That condition went on for several months and the accused Gnr. Dawes acted in the Officers' Mess and any officer in the regiment would say that Dawes the accused was extremely hard working, I think that Mr Lynn would agree to that. But later, about 3 months or so ago Maj McKay left the regiment and the problem arose as to what would become of Dawes, the accused, so he kept batting for other officers and I think that when he started batting for other people he found that perhaps they were not quite as liberal with him as Maj McKay had been. The opportunities of a batman, although he is in a position of truct are numerous, in that a lot of batmen are in the habit of using bits of their officer's equipment, also the accessability of officers clothing. I would say this is more than temptation to batmen, I think that batmen start using it without deliberate intention to steal in some cases. I do not think that the person deliberately steals something for the purpose of getting money, I think it best described as petty pilfering of these articles and small articles of equipment and of very little value. The accused has been 11 days in close arrest I know that personally from interviews that I have had with him that he has gone through a lot of strain and stress going through this for the first time and he realizes what he has done and he has a family over in Canada, a wife and three children and he feels extremely sorry of their hearing of this matter with respect to the consequences of their hearing about it. I personally think that the accused and any lesson that anyone else might learn will be learned from a lenient sentence from this Court. And I will say that from personal experience my opinion was always high of him. And in view of the fact that the accessability that a batman has to officers' kits, and that this is the first charge of this kind, and that he is an extremely hard worker I ask that you would be as lenient as possible with him.

OFFICERS ATTENDING FOR INSTRUCTION. Duly sworn [illegible]

Lt T M Mitchell	5 Cdn A Tk Regt RCA
Lt J P Claxton	5 Cdn A Tk Regt RCA
Lt M.A. McDowell	15 Cdn Fd Regt RCA

[illegible]

Summary of evidence in the case of L100304 Gnr Dawes, J. E., 8 Cdn LAA Regt RCA, Cdn Army Overseas, charged with (1) stealing property belonging to a person subject to Military Law, in that he stole a cigarette case, the property of Lt G.B.Hamilton, 8 Cdn LAA Regt RCA, a person subject to Military Law. (2) Conduct to the prejudice of good order and military discipline in that he was improperly in possession of articles of kit, the property of Lt G.B.Hamilton.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

B91773 Gnr (A/Bdr) Smith, W. G., RHQ, 8 Cdn LAA Regt RCA, having been duly sworn, states:

On 23 May 43, at 2215 hrs, I was in the company of the accused. On the way home he dropped a cigarette case. I picked it up and put it in my pocket and the following day when I looked at it I saw that it was the property of Lt G.B.Hamilton and I returned it to him in a few days.

B91773 Gnr A/Bdr Smith W.G.

"The cigarette case referred to by the witness, produced, marked Exhibit "A", signed by me and att hereto."

Signature of offr taking summary

The accused declines to cross-examine the witness.

Second Witness

B15576 Gnr Wilson, R. C., 102 Bty, 8 Cdn LAA Regt RCA, having been duly sworn, states:

On 23 May 43, at 2215 hrs, I was coming home with Gnr. (A/Bdr.) Smith, W. G. in the company of the accused. Gnr Dawes in getting a cigarette out of a case dropped the case on the ground. As the accused did not notice it fall gnr Smith picked it up. In a few days Gnr Smith turned the case over to Lieut G.B. Hamilton whose initials were on the case.

The accused declines to cross-examine the witness.

B15576 Gnr Wilson R.C.
Sig. of Witness

Third Witness

Lieut Hamilton, G.B., R.H.Q., 8 Cdn LAA Regt RCA, having been duly sworn, states:

From the time that I was posted to RHQ of this Regt, approx 3 Mar 43, Gnr Dawes, whom I recognize as the accused, was my batman until he was sent back to general duties by his Bty Comdr, About the 31st April 43. Gnr Dawes during this time had access to my kit and was in the practise of sending out my laundry. During this time there appeared to be a shortage of shirts, towels and hdkfs from my kit. I mentioned the shortage of shirts to Gnr Dawes and he informed me that my laundry had returned one shirt short and that he was endeavouring to get this from the laundry. I asked him a week later if he had gotten my shirt and he said No, but that he was still trying. This specific instance did not come to my attention again but I continually had the feeling that several articles were missing from my kit. On Sunday, 30 May 43, my cigarette case was given to me by Gnr (A/Bdr)Smith, W.G. and he told me that the accused had let this drop from his possession a few days before.

Third Witness (continued)

I asked Maj R.J.Hegan, OC 101 Bty, if a kit inspection of the accused might be made to determine whether any articles of my clothing were in his possession. I was present at the kit inspection at 1100 hrs, 3 Jun 43, and an examination of the kit disclosed two pair of socks which I know to be mine and one ration bag which I know to be mine, and the accused was wearing at the time of the inspection one of my shirts. Amongst other articles found in the lines occupied by the accused there was a towel and one handkerchief which belongs to me.

Accused declines to cross-examine witness.

Signature of third witness

"The shirt, two pairs of socks and ration bag referred to by the witness produced marked exhibit "B", signed by me and att hereto".

Sign of officer taking summary

Fourth Witness

H35396 BSM Elrick, R., 70 Bty, 8 Cdn LAA Regt RCA, having been duly sworn, states:

I was, on Thursday, 3 Jun 43, A/RSM for the 8 Cdn LAA Regt RCA. At approx 1030 hrs, 3 Jun 43, I was ordered by the Adjt to attend a kit inspection of L100304 Gnr Dawes, J.E. with whom I am well acquainted. In the quarters of Gnr Dawes at 1100 hrs, 3 Jun 43, Gnr Dawes was ordered that his kit would be inspected immediately. He proceeded to turn out his kit, I saw one khaki shirt and one ration bag with the name Hamilton on each of these articles. Gnr Dawes admitted to me that these articles were the property of Lt G.B.Hamilton. Also, during the inspection I found 21 other articles which Gnr Dawes admitted to me were not his property. Some of these articles bore Regtl Numbers and names which are not Gnr Dawes. I placed Gnr Dawes under close arrest.

Accused declines to cross-examine witness.

Signature of fourth witness

"The 21 other articles referred to by the fourth witness produced, marked exhibit "C", signed by me and att hereto".

Sign of offr taking summary

Fifth Witness

H75010 Sgt Robertson, B.A., 101 LAA Bty, 8 Cdn LAA Regt RCA, having been duly sworn, states:

On 3 Jun 43 at approx 1030 hrs, I was present at the request of Maj R.J.Hegan, OC 101 Bty, at a kit inspection of the accused. I assisted in checking his kit for articles not the property of the accused. I saw one khaki dress shirt which he was wearing with the name Hamilton on the inside of the collar. I also saw one handkerchief with the name G. "Ham" on it.

Accused declines to cross-examine witness.

H75010 Sgt Robertson B.A.

Signature of fifth witness

Sixth Witness

H35442 Sgt Gallaher, J.B., 101 Bty, 8 Cdn LAA Regt RCA, having been duly sworn, states:

On 3 Jun 43, Maj Hegan, OC 101 Bty, informed me that there would be a kit inspection of Gnr Dawes, J.E. whom I recognize as the accused. I went over with Maj Hegan, Lt G.B.Hamilton, BSM Elrick, Sgt Robertson. Gnr Dawes' equipment was all turned out on the table and we proceeded to examine the different articles. Lt Hamilton asked to see the shirt which Gnr Dawes was wearing. I saw Lt Hamilton's name on the inside of the collar. Gnr Dawes stated to Maj Hegan that he had no laundry being washed. I went over to the soyer stove in front of HHQ and found several articles there that belonged to the accused. On going through the washing I found one towel, one handkerchief, both of which have been identified to belong to Lt G.B.Hamilton.

Accused declines to cross-examine witness.

H35442 Sgt Gallaher J.B.
Signature of sixth witness

The accused was warned as follows: Do you wish to make any statement, or give evidence upon oath? You are not obliged to say anything or give evidence unle ss you wish to do so but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

The accused "I have nothing to say at this time".

H 16304 Gnr J E Dawes
Signature of accused

The accused declined to call any witnesses in his own behalf.

I hereby certify that Rules of Procedure 4 has been complied with.

Taken by me in the Field in the presence and hearing of the accused, this 5th day of June 1943.

D J Lynn

(D.J.Lynn) Lieut RCA

No. L 100304 Name DAWES, J.E. Sqn., Battery, or Company 101 Bty Corps 8 Cdn LAA Regt Date of enlistment 14 Apr 42 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 500M—11-40 (8025) H.Q. 1772-43-18

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. (E.W. Cormack) Lt-Col RCA Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed, 14-10-42 [illegible] Certified no entries.					
				CERTIFIED TRUE COPY [signature] (G.B.Hamilton) Lt RCA A/Adjt 8 Cdn LAA Regt RCA					

(P.T.O.)

M.F.B. 355
12M—8-40 (6435-6)
H.Q. 1772-39-658

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L100304	Gnr	DAWES, John Edward	8 Cdn LAA Regt RCA

1. The following is a fair and true summary of the entries in the Regimental [redacted] Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	No Entry	times	No Entry	times
For		times		times
For		times		times
For		times		times

[redacted]

or

There are no entries in the conduct sheets of the accused.

[redacted]

2. The accused has not been previously convicted

or

[redacted]

3. The accused is not under sentence at the present time

or

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for [redacted] 11 days in military custody, making a total of [redacted] 11 days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 24 years 8 months

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 14 April 1942

7. The service which the accused is allowed to reckon towards discharge is 2 years 30 days

8. The accused is entitled to reckon 2 years 30 days service for the purpose of determining his pension, etc.

9. [redacted]

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of N/A Permanent Force dated N/A, and in his regiment (or corps), the rank of N/A unit dated N/A

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of N/A years. N/A Date of promotion.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, Air Force Act, and of cases in which trial has been dispensed with of accused. Number Rank Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14th day of June 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

List of exhibits

1 cigarette case
2 prs socks
1 ration bag
1 towel
1 handkerchief

The a/m exhibits are the more important ones, we also have the 21 articles referred to in the Summary of Evidence. They are composed of other handkerchiefs, a shirt, brushes, pistol lanyard, etc.

I desire the Convening Officer to detail an Officer to represent me at my forthcoming trial by Field General Court-martial.

I desire the services of Lieut Morgan F.S.L.A.A if he is available.

J. E. Dawes
(Signature of accused)

Date 7 June 43

II-108

MS. DAWSON A.M.

K38538 SQMS Dawson A.M.
28 Cdn Armd Regt.

II-108

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-fifth day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 4 Cdn Armd Bde, 4 Cdn Armd Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [redacted]

Proceedings Reviewed

Reviewing Officer

21 Feb 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

Waiting Member

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	A.W. Leslie	HQ Sqn 4 Cdn Armd Bde.

Members.

Rank.	Name.	Regiment.
Capt	T.S.G. McMurtry	12 Cdn Lt Fd Amb
Capt	C.J. Delaney	4 Cdn Armd Bde Coy RCASC
Lieut	H.V. Pritchard	21 Cdn Armd Regt

Judge-Advocate
Maj W.A.D. Gunn
ADJA, 4 Cdn Armd Div.

*Signed (J.D.B. Smith) Brig.
Commanding 4 Cdn Armd Bde.
Convening Officer.

Maj Leslie
President
HQ Sqn 4 Cdn Armd Bde
Wd [illegible]
Judge Advocate

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K38538 SQMS Dawson A.M. 28 Cdn Armd Regt	**First Charge** Drunkenness AA Sec 19	NOT GUILTY	GUILTY	
	Second Charge Conduct to the Prejudice of Good Order and Military Discipline AA Sec 40 (see Charge Sheet attached)	NOT GUILTY	GUILTY	Finding and Sentence Confirmed. J.D. Smith Brig 4 Can Armd Bde 7 Jul 43
			TO BE REDUCED TO THE RANK OF CORPORAL. Signed at in the field this 28th day of June 1943. H.W. Leslie Major President. W.V. Gruny Major Judge Advocate	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) J.D. Smith (J.D.B. Smith) Brig, Commanding 4 Cdn Armd Bde. Convening Officer (e)

(Signed) "NO" H.W. Leslie Major HQ Sqn 4 Cdn Armd Bde President. W.V. Gruny Major Judge Advocate

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28th day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) SHORT HAND WRITER + JUDGE ADVOCATE
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 28th day of June 1943

H.W. Leslie Major
President of the Court Martial.
W.V. Gruny Major Judge Advocate

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 7th day of July 1943.

J.D. Smith Brig
Confirming Officer.

Promulgated and extracts taken in the case of Name K38538 SQMS Dawson AM Unit 28 Cdn Armd Regt ACA

(a) (Dated) 30 Jun & 5 Jul 43 (Signed) Name Unit Cdn Barnes Pte

OFFICER COMMANDING

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused K-38538 S.Q.M.S. Dawson, Angus McIver, H.Q. Sqn, 28 Cdn Armd Regt, a soldier in the Canadian Army Overseas is charged with when on active service:-

First Charge
Sec 19
Army Act

Drunkenness
in that he
in the Field on 5 Jun 43 at the Holloway Cafe, Minehead was drunk.

Second Charge
Sec 40
Army Act

Conduct to the Prejudice of Good
Order and Military Discipline
in that he
in the Field on 5 Jun 43 at the Holloway Cafe, Minehead did improperly conduct himself, to wit by bumping into patrons and chairs, and by loud and noisy talk, saying, "Now look at that. we come in first and yet this officer takes the first table and he came in after we did".

Remanded to Field General Court-martial.

In the Field
23 Jun 43

Chas Bailey
Commanding
28 Cdn Armd Regt

To be tried by Field General Court Martial.

In the Field,
25 Jun 43

J D Smith
(J.D.B. Smith) Brig,
Comd 4 Cdn Armd Bde.

Leslie Major
HQ Sqn 4 Cdn Armd Bde
President
Wm Gunn Major
Judge Advocate

28 June 43

This is to certify that I have today examined K38538 S.Q.M.S. Dawson, A.M., 28 Cdn Armd Recce Regt (B.C.R.), and find him fit to undergo trial by Field General Court Martial.

(J.K. Kelly) Capt, RCAMC
Medical Officer
29 Cdn Armd Recce Regt (S Alta R)

J. Leslie Major President
HQ 5th Cdn Armd Bde
Wolfgram Major
Judge Advocate

PAGE I

Record of Proceedings of a Field General Court Martial

Held in the Field in England (Country) on 28 June 43. (Date) to try

Accused K38535 SQMS Dawson Angus A.M. 28 Cdn Armd Regt. (Number) (Rank) (Christian Names) (Surname) (Unit)

	Rank	Name	Unit
President	Major	A.W. Leslie HQ Sgn.	4 Cdn Armd Bde
Member	Capt.	T.S.G. McMurtry	12 Cdn Lt Fd Amb RCAMC
Member	Capt.	C.J. Delaney	4 Cdn Armd Bde Coy RCASC
Judge Advocate (if any)	Major	W.A.D. Gunn	HQ 4 Cdn Armd Div
Officers Under Instruction (if any)	Capt.	E.J. Grovelle	Lake Sup Regt
	Lt.	J.J. Boles	21 Cdn Armd Regt
	Lt.	J.T. Scudemore	28 Cdn Armd Regt
	Lt.	H.B. Pritchard	21 Cdn Armd Regt
Prosecuting Officer	Capt.	D.E. Harker	28 Cdn Armd Regt

Lawyer? Ans No

Defending Officer Lieut. A.J.F. Johnson HQ 4 Cdn Armd Bde

Lawyer? Ans Yes

(The following procedure must actually be carried out)

1. The President produces the Convening Order, Charge Sheet(~~s~~) and Summary of Evidence. (Rs.P.17(E), 22(A)). WOD7

   (If a waiting member substituted, record is on separate sheet, initialled by the President and attached hereto). (For form of record see M.M.L. p.742 top).

2. The President, in closed court (R.P.22, fn 1) reads the Convening Order and the Charge Sheet(~~s~~) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted (A.A.49: Rs.P.106, 107), that the accused is (~~are~~) amenable to Military Law, and that each charge discloses an offence (Rs.P.23, 108). WOD7

3. The accused is (~~are~~) brought before the Court and at ~~1000~~ 1400 hours the trial commences.

4. The Prosecuting Officer produces a Medical Certificate under K.R.(Can) 557 (See CMHQ Circular Letter 173) that the accused has (~~have~~) this day been examined and is (~~are~~) fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings. WOD7 JA

(Over)

5. President to accused:

Q - Do you object to N/A. as interpreter?
A - N/A.

WW57 ~~The interpreter is duly sworn~~. (Form of oath on Page "D").

Q - Do you object to [illegible] Sgt. Elliott. F.W. as shorthand writer?
A - No Sir.

The shorthand writer is duly sworn. (Form of oath on Page "D").

6. The Convening Order is read in the hearing of the accused. The names of the President and Members of the Court are read to the accused and they severally answer to their names (R.P.25).

7. President to accused:

Q - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A - No Sir.

(If objection is made it is recorded on separate sheet, initialled by the President and attached hereto. (R.P.25). (For form of record see M.M.L. p. 742 Variation).

8. The President, Members, Judge-Advocate and Officers under Instruction are duly sworn (Rs.P.26, 27). (Forms of oath on page "D").

WW57 9. The Charge Sheet(s) is (are) signed by the President.

10. The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130; R.P.57), such pleas and evidence (if any) are recorded on separate sheet(s), initialled by the President and attached hereto). (For form of record see M.M.L. p. 744, 745, Variations).

11. Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	Not Guilty	Fifth Charge	
Second Charge	Not Guilty	Sixth Charge	
Third Charge		Seventh Charge	
Fourth Charge		Eighth Charge	

(For procedure on alternative charges, see R.P. 37(A) and fn. 2). (For form of record see M.M.L. p. 744 Instructions).

Further proceedings are recorded on pages hereto attached.

PAGE 'B'

(For use when accused pleads "Not Guilty" to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. The accused is asked the question set out below the Schedule on p.2 of A.F.A.3 and his answer there recorded. (R.P.39(A)).

2. The Prosecutor's opening address (if any) (R.P.39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.

(See RECORD OF EVIDENCE on Page 'D')

3. The Prosecution is closed.

(If submission is made by Defence that no prima facie case has been established, such submission, Prosecutor's reply and decision of the Court are recorded on separate sheet, initialled by the President and attached hereto). (Rs.P.40, fn 1; 70, fn 1).

4. The accused is informed that he may, if he wishes give evidence but if he does so he will be liable to cross-examination (R.P.40, fn 2) or that he may, if he wishes, make an unsworn statement upon which he can not be cross-examined. (R.P.40(D) (ii) (a)).

5. President to accused:

Q - Do you apply to give evidence yourself as a witness?
A - No sir.
Q - Do you intend to call any other witness in your defence?
A - Yes sir.
Q - Is he a witness as to character only?
A - No sir.

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of same see Rs.P.40,41,42).

8. The Court is closed to consider the finding(s). (Rs.P.43,44,117).

9. The finding(s) of the Court ~~is~~ (are) recorded on p.2 of A.F.A.3.

10. The Court being re-opened, the accused is again brought before it.

11.(A) ~~(If finding(s) "Not Guilty" on all charges)~~

~~The finding(s) is (are) announced and the accused is released.~~

~~O R~~

(B) ~~(If finding(s) "Not Guilty" on one or more charge(s) and finding(s) "Guilty" on one or more charge(s)).~~

~~The finding(s) of "Not Guilty" are announced and the President states "The finding(s) of the Court on the ____, ____, ____, ____, ____, ____ charge(s) being subject to confirmation, will be promulgated later".~~

O R

(C) (If finding(s) "Guilty" on all charges).

The President announces "The finding(s) of the Court being subject to confirmation, will be promulgated later".

(Over)

12. Statement of Character and Service (A.F.B.296 or M.F.B.355) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163 (1) (h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, marked "X" and "Y", signed by the President and attached to the proceedings. (R.P.46; Overseas R.O.3131).

13. President to accused:

Q - Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)).

A - Yes

(Address (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

14. The President announces:

" The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

15. The Court is closed to consider the sentence.

16. The sentence is recorded, dated and signed by the President (R.P.50) on p.2 of A.F.A.3.

(Punishments, A.A.44; M.M.L. p.130-134; K.R.(Can)563-566; Overseas R.Os.309,2323).
(One sentence is awarded in respect of all offences, R.P.48).
(For form of sentence see M.M.L.p.756-759).

17.

A W Leslie Major
(Signature of President)
Wt Lt Prince Wayne
Judge Advocate

(2 Cdn Corps 15-6-43)

Opening address of the Prosecuting Officer

Before going on to substantiate the charges which have beem read out I propose to place before the court a very brief outline of the facts as they emerged on the summary of evidence and as they will emerge from the testimony. Onthe 5th of June two officers from our Regt Capt Lewis and Lieut Curtiss and an officer from the Ordnance were having coffee in the Halloway Cafe, that is a small cafe in Mindhead and about 2 15 hrs the accused and SQMS Miller came in and took up a position some 8 or 10 ft away. They were at first quite quiet, but I wish to prove that their speech and actions proved to these officers that they had been drinking heavily. A few minutes later another officer of the 28 ArmD Regt came in, Lt Stevens, with a friend. He looked around for a table and noticed one in the far corner which was about to be vacated by RQMS Davis and he went over to the far side of the cafe and sat down. I wish to prove that the accused then said "Come on, follow me", to SQMS Miller. They then both pushed their way through the centre of the cafe, jostling the patrons and bumping into tables as they went through, The accused then turned and addressing the public in general said "Now look at that, we came in first, yet this officer takes our table, and he came in after we did". Lt Stevens, as the evidence will show, to avoide embarassment, then moved with his friend. Capt Lewis noticing that the attention of the people was being riveted on the accused, went across to speak to him and advised him to leave the cafe, saying, that he was not in a condition to be there. SQMS Miller immediately agreed. The accused, however, did not finally saying, no, to which Capt Lewis said yes you will. The accused asked him if it was an order and when told it was said he could see no reason why he should. In his own evidence on the summary he states he cannot recall any of this. Capt Lewis then told SQMS Miller to take him out and later enlisted the help of RQMS Davis and eventually they left. About 30 minutes later theaccused was back again in the cafe and finished his meal. Finally the accused has stated in his defence that he had been drinking for 3½ hrs and he had no recollection of the affair.

First Witness for the Prosecution

Capt C.M. Lewis 28 Cdn Armd Regt, having been duly sworn is examined by the Prosecuting Officer.

Q.1 Will you tell the court in your own words the exact events whichm took place on the evening of 5 Jun 43 in the Halloway Cafe?

A.1 On the evening of the 5th of June at approximately 1950 hrs I went to the Halloway Cafe accompanied by Capt Hodgson and Mr Curtiss, and shortly after we were seated SQMS Dawson accompanied by SQMS Miller came in. They were not noisy, but they weaved around and finally came to a standing posistion in the front part of the cafe up against a table at the front and bothered the patrons at that end of the cafe. Shortly after they came Lt Stevens came in and he proceeded to the back end of the cafe. Just after he had gone by, SQMS Dawson said in the loud voice "Come on, follow me"and he and SQMS Miller proceeded to the back end of the cafe. I turned to see what was going on and saw Lt Stevens was seated and SQMS Dawsom went up to the table and said again in a loud voice "Now look at that, we came in first, yet this officer sits and he came in after us". At that point I decided the situation had gone far enough and went over to the two quartermasters and suggested they return to their quarters. SQMS Miller agreed and said very good sir. SQMS Dawson argued about it and finally said is that an order sir and I said yes, you can now consider it an order and you willleave the cafe immediately. In reply to this he said I see no reason why I amould so I told him he was under arrest and told SQMS Miller he was in charge of SQMS DAwson and they were to leave immediately. I then turned to go back to my table and I noticed RQMS Davis and went over and said will you see that these two quartermasters get outof the cafe immediately and then sat down. There was some argument where SQMS Miller and Dawson were standing, only one phrase of which I overheard, and that was, "no, I am your prisoner, you get me out of here"., and then RQMS Davis came up to them and they all left the cafe together. Some 30 minutes later SQMS Dawson came back into the

WTS1

cafe through the kitchen entrance and sat down and almost immediately food was placed before him. The cafe was very nearly empty and as he was quiet and the food had been placed before him, I thought it best to leave him alone to eat his meal.

Cross examined by the Defence

Q.2 You state, that when SQMS Dawson and Miller came into the cafe they were quiet but weaving around, did you at that time request them to leave the cafe?

A.2 No.

Q.3 Did you consider them at that time sufficiently drunk, or under the influence of liquor, to warrant or justify you to put them under arrest?

A.3 I considered them certainly in a state in which they should not have been in the cafe, but as they were quiet I preferred to let them remain rather than create a scene.

Q.4 You did not actually think of having them get out or placing them under arrest?

A.4 Not at that time.

Q.5 You say they moved from the end of the cafe to the other and bothered the patrons, what do you mean by that?

A.5 The door by which you enter is facing the rear and is in the right hand corner. Down the right wall are tables and along the front as well and all of the cafe is quite closely packed with tables and their is a main way through the tables from the front of the cafe to the rear. The two SQMS when they came in took up a posistion by the table at the front of the cafe out of the regular passage and leaning against tables of the patrons at the front end, and they moved from there to the table which SQMS Dawson apparently noticed Mr Stevens was sitting down at, and while they were doing that, that is moving down through the tables they bumped into tables and chairs of the patrons in the cafe.

Q.6 How close were the tables and chairs together?

A.6 The main alleyway was opposite the main door and on the left of the alleyway there were a number of small tables very closely packed and closely placed and instead of them coming down the main alleyway they came down through these closely packed tables.

Q.7 They had to more or less squeeze their way through?

A.7 There is room to get through, the waitresses get through, but they could not do it without bumping into the patrons.

Q.8 Could a man walk straight through or would he have to turn sideways?

A.8 He could walk straight through.

Q.9 When SQMS Dawson and Miller reached the table you state you heard SQMS Dawson say, "Now look at that, we came in first, yet this officer sits down, yet he came in after us. Are you sure these are the exact words?

A.9 I made no copy but these are certainly in effect themselves the words he used.

Q.10 You asked SQMS Dawson and Miller to leave and you say SQMS Dawson refused to do so, and after what apparently what you call some argument, you ordered him to leave and placed him under arrest, do you think when you gave him that order he was sober enough to recognize you as an officer and capable of understanding and executing the order you gave him?

A.10 From the argument and from my observations I would say definitely yes.

Q.11 At that time you did not consider putting him under arrest until he refused to leave the cafe?

A.11 No

Q.12 Did you consider at the time that SQMS Miller was capable of looking after SQMS Dawson as a prisoner?

A.12 That was my opinion, yes he was quite ready to do as I suggested and agreed to do as I suggested.

Q.13 I am correct in assuming that both men at that time were sober enough to understand orders and were capable of carrying them out?

A.13 That is correct.

Q.14 When you saw SQMS Dawson in the cafe the second time did he indicate in any manner that he was drunk in a manner which would lead anyone to assume he would be difficult or would make trouble?

A.14 No he came in very quietly and was quiet when he sat down, that is why we left him there.

Wit

Q.15 You state you entered the cafe around 1950 hrs?
A.15 Approximately yes.
Q.16 SQMS Dawson and Miller entered shortly after?
A.16 That is right.

Re-examined by the Prosecutor

Q.17 What were the actions of the accused which lead you to ask him to leave the cafe?
A.17 The loud remarks by SQMS Dawson and the clumsy way in which they went from the front end of the cafe to the table.
Q.18 You say SQMS Dawson was capable of executing an order, was he fit for military duty?
A.18 I would have said no.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the provisions of R.P.83(b)

THE WITNESS WITHDRAWS

Second Witness for the Prosecution

Lieut H.N. Curtiss, 28 Cdn Armd Regt, having been duly sworn is examined by the Prosecuting Officer

Q.1 Will you identify yourself to the court?
A.1 I am Lieut H.N. Curtiss, Tech Adjt, 28 Cdn Armd Regt.
Q.2 Will you tell the court in your own words what happened on the evening of 5 Jun 43 in the Halloway Cafe subsequent to the entry of SQMS Dawson?
A.2 Approximately 2200 hrs 5 Jun 43 I was seated in the Cafe with Capt Lewis and Capt Hodgson when SQMS Dawson came into the cafe in company with another SQMS. They were both quiet but obviously drunk, very unsteady on their feet. They were looking around for a table to sit down and wandered around the room jostling peoples elbows and finally came to rest at one side of the room. Lt Stevens and a lady friend had in the meantime walked over to a table at the far end of the room from where the two SQMS were standing. Mr. Stevens spoke to RQMS Davis and shortly after this the RQMS got up and walked away, and at this point Lt Stevens and the lady sat down at the table. Quarters Dawson weaved his way to that part of the room and said in a loud voice "look at that, we were in here first and yet this officer gets seated first". Lt Stevens and lady friend got up on their feet, I did not hear anything that was said, and they moved away from there and left the table to SQMS Dawson and his friend. In the meantime Capt Lewis noticed the disturbance and got up and went over to talk to Quarters Dawson. I did not hear what was said, for it was at the far end of the room from where I was sitting. Shortly after Capt Lewis came back and sat down. At this point I noticed the other SQMS take hold of SQMS Dawson's arm to lead him out of the cafe and I heard him say "no, I won't go". RQMS Davis who had been paying his bill came over and the three of them walked out together. Approximately half an hour later SQMS Dawson came back into the cafe alone and sat down quietly, and food was brought to him immediately and at that point we left.
Q.3 You mentioned he was obviously drunk, will you state why you make this statement?
A.3 As I mentioned in my evidence, he was unsteady on his feet and weaving around as he stood.

Cross-examined by the Defence

Q.4 When SQMS Dawson and Miller reached the table which Mr. Stevens was at with his friend, was Mr. Stevens alone or was the friend with him?
A.4 They were both there together, they were in the act of sitting down.
Q.5 You stated he said "There look at that, we were in here first and yet this officer gets seated first", are you sure they are the exact words?
A.5 I could not say they were exact, there may be a word or two left out.
Q.6 Did you hear SQMS Miller say anything?
A.6 I heard nothing that SQMS Miller said.
Q.7 Did you consider SQMS Dawson sufficiently sober to understand an order and that he was capable of carrying it out?
A.7 I believe he was.

Q.8 Did you consider that SQMS Miller was capable of understanding and carrying out an order?
A.8 I believe so.
Q.9 When SQMS Dawson returned to the cafe did he appear to be very drunk?
A.9 I would not say exceptionally drunk, he was orderly and quiet.

Re-examined by the Prosecutor

Q.10 You told the defence that the accused was capable of executing an order, was he fit for military duty?
A.10 Possibly not.

Third Witness for the Prosecution

Capt R.H. Hodgson, 4 Cdn Armd Bde Wkshp RCOC having been duly sworn is examined by the Prosecuting Officer

Q.1 Will you identify yourself to the court?
A.1 I am Capt R.H. Hodgson, 4 Cdn Armd Bde Wkshp, 4 Cdn Armd Div.
Q.2 Do you recognize the accused as an N.C.O. you saw in a cafe in Mindhead?
A.2 No sir.
Q.3 You don't remember the accused as an N.C.O. you saw, and who was subsequently present at a summary of evidence?
A.3 I don't remember his face at all.

Cross-examined by the Defence

Q.4 Were you in the Halloway Cafe with Capt Lewis and Lt Curtiss on the night of 5 Jun 43?
A.4 I was there with them on several occasions.
Q.5 Can you recall at any time you were there a disturbance being created by two N.C.Os?
A.5 I did not observe any disturbance.
Q.6 Did you hear any disturbance?
A.6 I heard a sort of rumbling in the background.
Q.7 Did you hear anyone say words to this effect "Now look at that, we were in here first yet that officer gets seated first"?
A.7 No sir.
Q.8 While you were there do you remember Capt Lewis getting up from the table and left for a short time?
A.8 Yes sir.
Q.9 Do you recall some time later when an N.C.O. came into the cafe and Capt Lewis remarked "There he is, back again to flaunt authority"?
A.9 Yes sir.

Re-examined by the Prosecutor

Q.10 I realize this all happened a long time ago, but you just spoke of a rumble in the background, and in the testimony of evidence you expanded on this statement, could you be more specific now in the matter of the rumble in the background?
A.10 I was seated at a table facing the door, on my left was Capt Lewis, Capt Lewis left to speak to two N.C.Os, I could not see nor hear what went on.

Fourth Witness for the Prosecution

Lieut L.D. Stevens, 28 Cdn Armd Regt, having been duly sworn is examined by the Prosecuting Officer

Q.1 Will you identify yourself to the court?
A.1 I am Lieut L.D. Stevens, of the 28 Cdn Armd Regt, BCR.
Q.2 Will you tell the court in your own words the facts that took place on the evening of 5 June in the Halloway Cafe in Mindhead?
A.2 I entered the cafe about 2200 hrs along with a friend. As I entered I saw SQMS Dawson and Miller standing at a table, and I also saw in the far corner RQMS Davis who appeared to be just finishing a cup of

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coffee. I walked over to his table and spoke to him. After RQMS Davis had left his table my friend and myself sat down. Just as we sat down we noticed another friend at another table who spoke to us, so we proceeded to get up and go over and carry on a conversation with this other party. As I was getting up I noticed SQMS Dawson coming towards the table at which I had been sitting.

Q.3. When you came into the cafe and saw SQMS Dawson standing there did you notice anything about him or did you just walk by?

A.3 When I saw him it appeared to me that he had expected to get the table at least that is what I suppose, I cannot say definitely on that point, but I thought he was waiting for the table he was leaning against, and when I saw him approaching the table, my friend carried on to the other table and I approached SQMS Dawson and told him that he was in the cafe before I was and he was quite welcome to the table, and I then walked over to carry on a conversation with the party at the other table.

Q.4 When you gave up your table to the two SQMS why did you do so, why did you move away to another part of the cafe?

A.4 I move away because it was not important to me that I have a table immediately and I realized that they had been waiting for a table and were not waiting for the one they were standing beside, and I thought it would be the thing to let them have it.

Q.5 Can you remember anything either one said to you?

A.5 Yes, when I offered the table they said it was quite allright that I could carry on.

Cross examined by the Defence

Q.6 When SQMS Dawson and Miller reached your table was your friend there with you or had she already left?

A.6 My friend was not with me then.

Q.7 Did you hear SQMS Dawson say "Now look at that, we were here first but that officer gets a seat before us"?

A.7 No, things were happening so fast I was not paying attention to them I was concerned with something in another part of the room at the time.

Q.8 Did you notice that SQMS Miller and Dawson were creating quite a disturbance or anything you could describe as bad conduct or annoyance to the other patrons?

A.8 No I saw SQMS Dawson when I first came in and subsequently when he was walking over towards my table, the rest of the time my back was towards them.

Q.9 Would you say that at any time after they had reached you that the attention of everyone in thecafe was directed towards them?

A.9 As it happened my back was towards them from then on and when I went to the other table my back was towards them and apparently that was where they were, and shortly after that I left.

Q.10 Did you leave before or after the accused and the other SQMS?

A.10 They were still in the building when I left.

Q.11 Where were they?

A.11 At that time I believe they were in the hallway or open doorway, I am not quite sure.

Q.12 Do you remember any conversation between them or disturbance between them and Capt Lewis?

A.12 No I could not say what was going on between Capt Lewis and SQMS Dawson.

Q.13 Did you see SQMS Dawson at any time later in the evening?

A.13 As it happened I did, but I don't know exactly what time it was I saw him.

Q.14 Did you speak to him?

A.14 He asked me the way home and I directed him.

Q.15 Did he appear capable of getting home?

A.15 He was able to walk but he was not sure of the direction.

Q.16 At what time were you in the Halloway Cafe?

A.16 At approximately 2200 hrs.

Re-examined by the Prosecutor

Q.17 When the accused asked you the way home where were you then?

A.17 I was on my way down the main street of Mindhead.

Q.18 In what direction was he going?

A.18 He was going away from the barracks.

Q.19 How far was he away from quarters?

A.19 I would say about two blocks from his own quarters.

Exhibit "X"

ADJOURNMENT

At 1430 o'clock, P.M. the Court adjourns until 1700 o'clock P.M., or so soon thereafter as the case may be heard, on the 28th day of June A.D.1943

On the 28th day of June 1943, at 1730 o'clock P.M., the Court reassemble, pursuant to adjournment; present the same members as on the 28th day of June, 1943.

~~[illegible]~~

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Court questions the witness

Q.20 Was SQMS Dawson alone at that time?
A.20 Yes sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the Provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Fifth Witness for the Prosecution

K 37361 SQMS Miller, D., 28 Cdn Armd Regt having been duly sworn is examined by the Prosecutor.

Q.1 Will you identify yourself to the court?
A.1 I am K 37361 SQMS Miller, D., C Sqn 28 Cdn Armd Regt, BCR.
Q.2 What time did you finish duty on Saturday 5 Jun 43?
A.2 At approximately 1700 hrs sir.
Q.3 Will you tell the court in your own words the facts of what happened the rest of that day?
A.3 I had some supper and shortly after 1700 hrs in company with SQMS Dawson went to the Queens Head Hotel in Mindhead and stayed there drinking till I think about 2100 hrs, and from there we went to a hotel on the avenue, I don't know the name of the hotel. At approximately 2200 hrs we went to the restaurant near the Queens Head Hotel I don't think we were in therevery long, I have some recollection of SQMS Dawson speaking to Capt Lewis there and Capt Lewis turned to me and I remember him saying something to the effect, he is your prisoner.
Q.4 What time did you go in to the Queens Head Hotel?
A.4 That would be about 1800 hrs sir, or shortly afterwards.
Q.5 The accused and yourself were there and were drinking quite heavily?
A.5 We had been drinking sir.

Cross-examined by the Defence

Q.6 Do you recall why you went into the restaurant?
A.6 We went in with the intention of getting a meal sir.
Q.7 Did you go straight from the last place you were in to the cafe?
A.7 Yes sir.
Q.8 Can you tell me how long it took you to get from the last pub to the cafe?
A.8 I don't think it would be more than five minutes sir.
Q.9 Did you have any trouble with the other patrons or proprietor of the hotel in which you were drinking just prior to going over to the cafe?
A.9 No sir.

In the opinion of the court and the Judge Advocate it is not necessary to comply with the Provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

The Court is adjourned pursuant to adjournment attached Exhibit "X"

Sixth Witness for the Prosecution

Major J.N.B. Pattulo, 28 Cdn Armd Regt having been duly sworn is examined by the Prosecutor

Q.1 Will you indentify yourself to the court?
A.1 I am Major Neil Pattulo, 28 Cdn Armd Regt.
Q.2 Were you detailed to take a summary of evidence in the case of SQMS Dawson?
A.2 I was.
Q.3 At the conclusion of the summary did you take his statement and did you warn him?
A.3 I did.
Q.4 What were the exact words by which you warned him?
A.4 I read them out of the Manual of Military Law, which are as follows, "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you may say or any evidence you give will be taken down in writing and may be given in evidence."

Q.5 What did the accused say?
A.5 He desired to give evidence on oath, which he did and which he signed. WSD
Q.6 Did you say anything further to him?
A.6 I told him he did not have to make a statement on oath and advised him not to do so, but he said he wished to give his evidence on oath.

Statement by the Defence

I wish to point out that when SQMS Dawson made this statement he was charged under another section of the Army Act, namely section 9, disobeying a lawful command. He was not charged with drunkenness at the time and also the statement was made voluntarily at a time when he was charged on grounds other than the two he is charged with at present. For these reasons I would like to submit that the sta tement is not admissable even though any statement made by the accused at the summary regardless of the charge is admissable for the Prosecution providing he was duly warned. Court rules the statement is inadmissable. WSD

Motion by the Defence that no Prima Facie case has been established.

I wish to submit that a Prima facie case has not been made by the Prosecution and therefore the accused must be acquitted by the court. The accused is charged with drunkenness and conduct to the prejudice of good order and military discipline. With regard to the charge of drunkenness, the first thing I would like to point out to the court is that a man may be charged with drunkenness when on duty and when not on duty. If he is charged with drunkenness when on duty, then there are no degrees of drunkenness, he is either fit for duty or not fit for duty. If he is not fit for duty then he is clearly guilty of drunkenness. If he is drunk when not on duty it is my understanding that that does not apply. There may be many degrees of drunkenness and in these circumstances it is incumbent on the Prosecution to prove by allegation certain circumstances which indicate that the man was drunk and prove that these were in fact true. In this connection the Prosecution has the accused's own statement that they were drinking beer, but I submit that they have not established beyond any reasonable doubt that SQMS Dawson was so under the influence of liquor that he was incapable of conducting himself properly or was incapable of understanding what he was doing, in fact a witness for the Prosecution has stated that he saw the accused in the cafe and did not consider it necessary then to request him to leave or to place him under arrest. He also stated that the accused was capable of understanding and executing an order. This was corroberated by another witness, Mr. Curtiss. We have also discovered from the evidence of Capt Lewis and Mr Curtiss that the accused was in the cafe, or they saw him there about half an hour later, sitting quietly at a table eating a meal. With respect to his conduct while in the cafe these two charges are very closely interwoven and the only circumstances, and the court must remember, that it is incumbent to have the Prosecution who allege, to prove circumstances which prove that the man was actually guilty of being drunk, and the only circumstances which the Prosecution have brought forward to indicate the accused was drunk are first, that he was in the cafe, he was noisy, and he bumped into the patrons and tables. You will have noted that Capt Lewis and Mr. Curtiss have stated that he was noisy and talked in a loud voice and alleged that he said things in a loud voice, on the other hand Capt Hodgeon, who was sitting at the same table did not hear these specific things he is alleged to have said, nor did he notice that SQMS Dawson and Miller were causing any undue concern in the room. I think also it was brought out in the cross-examination that the tables and chairs were close together and anyone trying to walk between them would have the greatest difficulty in doing so without bumping into someone, apart from that they simply state he bumped into the chairs and people, and I don't think the court is justified in drawing the conclusion that there were any objections by anyone there. You will also have noted, that Mr. Stevens who was in the room was not concerned with what the accused and his friend were doing. I suggest that they were not creating anything like a disturbance and certainly as is shown, they did not attract the attention of the whole room. The last point I have to make with regard to drunkenness, the

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opinion of any witness is not sufficient evidence that a man is drunk. It is not evidence at all, the witness must establish a certain mode of conduct, certain conduct to support the charge, and as I think I have pointed out, they have failed to do so. There is one other point, conduct to the prejudice of good order and military discipline. First of all I would like to remind the court that the Prosecution must not only establish that the particulars in the charge, or rather prove them, but they must also establish that these particulars are an offence under section 40 of the Army Act and that they are prejudicial to both good order and military discipline. I have already spoken of the accused's conduct in the cafe, the question of bumping into the patrons and chairs and also his loud noisy talk. It is set out in the charge,"did improperly conduct himself, to wit by bumping into tables and chairs, and by loud and noisy talk". The charge indicates that the accused was acting improperly and that he was insolent and truculent when speaking to an officer. Now that has certainly not been proved or established by the Prosecution, in the first place the witnesses are not at all sure what he did say. The charge has one variation of the words said, Capt Lewis states that the accused said "Now look at that, we came in first, yet this officer sits and he came in after us". which is not the wording of the charge. Mr. Curtiss states he said "Look at that, we were in here first, and yet this officer gets seated first". I am not suggesting that it means that the wording is slightly different, but if they are unsure of what he did actually say, I think the court may infer he may not have been referring to an officer at all in his statement, and although he may have said it it was not in any way insolent or one that anyone could take objection to. It may have been rude, but I don't think that is grounds for establishing a charge under section 40 of the Army Act. Besides, Mr. Stevens, to whom the remark is alleged to have been addressed, does not remember hearing it and Capt Hodgson, who was sitting at the table with Capt Lewis and Mr. Curtiss did not hear it. One last thing with regard to that statement, Sec 40 reads as follows" Words spoken "of and concerning" a superior must only be made the subject of a charge under this section where the speaker used them with a guilty intent". They must be insubordinate. I submit that the Prosecution has not established that the accused used these words with a guilty intent. There is one other matter I have not dealt with and that is the statement of the accused which has been submitted in evidence. The accused states that he was drinking beer for three and a half hours in at least two public houses and he goes on to say he does not remember speaking to Capt Lewis or RQMS Davis or does not recall having any concern with anyone in the cafe. Now with regard to that statement the position there in my mind is that the court must infer that the accused was so under the influence of liquor that he was incapable of conducting himself, and as I have already pointed out, two of the witnesses for the Prosecution have admitted that he was capable of conducting himself properly and of understanding and executing an order, in other words that statement of the accused does not establish a degree of drunkenness. For these reasons I submit that the Prosecution has not presented a Prima Facie case and the accused must be acquitted.

Reply to the motion by the Prosecutor

Sir, I won't keep you long, at least two witnesses have stated without equivocation of any sort that the accused was noisy, that he was walking unsteadily, and he was attracting a great deal of unfavorable attention, and although he was capable of executing an order he was not capable of military duty, and I therefore submit that the charge has been proved. With regard to the second charge I submit that the actions of the accused in the cafe are detrimental to military discipline in the highest degree. There is a point raised by the defence, that is the difference in the wording. I submit that this does not matter, the substance of the remarks is precisely the same.

The Court is closed to consider the motion

The court is re-opened and the motion has been disallowed.

First Witness for the Defence

B 5289 Sgt Cairns, D.W., No 6 Cdn Dental Coy attached to 28 Cdn Armd Regt having been duly sworn is examined by the Defending Officer.

Q.1 Will you identify yourself to the court?
A.1 I am Sgt Cairns, D.W. No. 6 Cdn Dental Coy attached to the 28 Cdn Armd Regt.
Q.2 Were you at any time on the evening of the 5 June 43 in Mindhead drinkin with SQMS Dawson and SQMS Miller?
A.2 Yes sir, I was drinking with them from about 2000 hrs until 2130 or 2145 hrs on the night of June 5th.
Q.3 Where was that?
A.3 It was in the Queens Head Public house and later in the evening at Herringtons, I believe that is the name.
Q.4 Do you know where they went when they left you?
A.4 I left them.
Q.5 About what time?
A.5 About 2130 or 2145 hrs sir.
Q.6 When you were with them at this second public house or hotel, did you consider that they were drunk and causing any disturbance or trouble in the hotel?
A.6 I would definitely say they were not drunk, they were both happy and perhaps talking a little more than usual.
Q.7 Were they capable of getting around?
A.7 Yes sir, we were standing all the time and they were allright, perhaps I would not have noticed if they were if they had been sitting.

The Prosecution declines to cross examine.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the Provisions of R.F. 83(b)

THE WITNESS WITHDRAWS

Second Witness for the Defence

K 37270 RQMS Davis, R.H. 28 Cdn Armd Regt having been duly sworn is examined by the Defending Officer.

Q.1 Will you identify yourself to the court?
A.1 I am K 37270 RQMS Davis R.H., Regt'l Quartermaster Sgt of the 28 Cdn Armd Regt.
Q.2 Were you in the Halloway cafe on the evening of 5 June 43?
A.2 Yes sir, I was.
Q.3 Did you see SQMS Dawson and Miller enter the cafe while you were there?
A.3 No sir, I did not see them enter.
Q.4 Did you see them in the cafe at any time?
A.4 Yes sir.
Q.5 Were you there when they entered the cafe?
A.5 Yes sir, I was there.
Q.6 Did you hear SQMS Dawson say in a loud voice "Come on follow me"?
A.6 No sir.
Q.7 Did you hear SQMS Dawson say "Now look at that, we came in first but that officer gets seated first and he came in after we did"?
A.7 No sir.
Q.8 In the cafe how close were the tables and chairs together?
A.8 They were very close together, it was hard to get by two tables, you had to squeeze yourself to get forward.
Q.9 Did you have to turn yourself sideways?
A.9 That is right sir.
Q.10 While SQMS Dawson and Miller were there did you notice if they were causing concern to anyone or attracting the attention of everyone there?
A.10 Yes sir, SQMS Dawson attracted my attention and I turned around to see if he was there.
Q.11 Was that before or after Capt Lewis went over and spoke to him?
A.11 That was before sir.

Q.12 Did you see Capt Lewis speaking to SQMS Dawson and SQMS Miller?
A.12 No I did not sir.

Cross-examined by the Prosecution

Q.13 Just what did SQMS Dawson do in order to attract your attention?
A.13 I heard his voice sir.
Q.14 Can you tellthe court as much as you remember of what he was saying?
A.14 No sir, I cannot, I just heard his voice behind me.
Q.15 My information is that SQMS Dawson speaking in a loud voice attracted the attention of everyone in the cafe, does he normally speak in a loud voice?
A.15 No sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with the Provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Closing address of the Defending Officer

Sir, I have very little to add to what I have already said, and I presume that the submission I made will be considered by the Court when making its finding. The only two points I brought out in the witnesses for the defence are that a few minutes before the accused and his friend arrived at the cafe they were drinking in a Pub close by, and at that time Sgt Cairns, a witness considered that they were not greatly under the influence of liquor, and although they had been drinking for some time they were not objectionable to any of the patrons in the Pub in which they were drinking and they could handle themselves allright. The second point is that the cafe was very crowded, and the accused and his friend and one of the other witnesses had to wait for a table. The cafe was not only full and crowded but the tables were rather closely packed and anyone would have difficulty in getting between the tables and chairs. You will also notice that RQMS Davis, who was present when this alleged trouble took place, he did not hear any of the statements the accused is alleged to have made. That is all I can add to what I have already stated, except I would like to remind the court that it is incumbent upon the Prosecution to definitely establish the circumstances which indicate or prove that the accused was guilty of drunkenness and I think they have failed to do so for the reasons I have stated in making the submission in this case. The court should also notice that the accused is charged not only with drunkenness but under Sec 40 of the Army Act, which is I presume, considered to be a lesser offence and I submit they should very carefully consider the alleged particulars of facts in that charge, and I donot, for the reasons I have already given believe these have been conclusively proven by the Prosecution.

Closing Address by the Prosecution

Sir the Defence has maintained that the Prosecution has not established a case of drunkenness. I do not agree, I think the symptons as brought out by the witnesses, to wit, the unsteady walk and loud speach, and the attraction of unfavorable attention have proven this point. The witnesses you have heard have fallen into two categories, there have been two who have stated these things very definitely and without any equivocation. There have been others who have not heard and have not seen, but who have done nothing to discredit or give us reason to suppose that the witnesses who made these definite statements were not telling the truth. As regards the second charge, conduct to the prejudice of good order and military discipline, the first witness to that has been Capt Lewis and again I maintain that nothing has been said by any witness to disparage what he has said. In a lesser degree other witnesses have borne out part if not all of it. I still maintain that the case has been established.

Summing up by the Judge Advocate

In order to obtain a conviction the particular charge brought must be proved. If it is not proved an acquittal will follow. Allegations which are not essential to constitute the offence and which may be omitted without affecting the validity of the charge, do not require proof, and may be rejected as surplusage.

Each charge should be divided into two parts:
(1) The statement of the offence.
(2) The statement of the particulars of the act, neglect or ommission constituting the offence.
The particulars should state such circumstances respecting the alleged offence as will enable the accused to know every act, neglect or ommission which it is intended to be proved against him as constituting the offence.

In considering the question of the burden of proof, regard must be had to two rules, first that every man is presumed to be innocent until he is proved guilty and second, that he who alleges a fact must prove it, whether the allegation is couched in affirmative or negative terms. Therefore, the prosecution must give evidence showing the commission of the offence, and connecting the accused with it. On this being done the prosecution will have proved a prima facie case. Then the presumption of fact shifts to the accused and the accused must give a reasonable explanation in satisfaction of the charge.

Here today in this particular case there are two charges facing the accused:

(1) Drunkenness
(2) Conduct to the prejudice of good order and mil discipline.

With respect to the drunkenness I would like to draw this to your attention, (reads Para 45 Page 25 of M.M.L.). I also want to draw to your attention an extract which I obtained from the Soldiers Guide. "There are many tests of drunkenness. In mil law the tendency is to consider whether the accused was fit to perform his duty. If the accused was at the time off duty, the test is whether he would have been capable of performing his duty, if he be called upon to do so. It may be said that this is a hypothetical question and as such is very difficult to answer. The Court can only make up its mind on the evidence as a whole; it will presumably require somewhat stronger evidence of drunkenness when the accused was off duty than when he was on duty.

You have the evidence before you and it is from the evidence which you have here that you come to the conclusion as to whether the accused was in fact unfit for duty on the night of 5 Jun 43. You being reasonable men are in a position to decide from the circumstances which have been proved here today as to whether or not in your opinion the accused was fit or unfit for duty. I am not going over the evidence it is just as fresh in your mind as it is in mine.

With reference to the second charge, conduct to the prejudice of good order and military discipline, the questions to be considered are, first, have the facts alleged in the particulars of the charge been proved in evidence, second, if they have, then do such facts amount to conduct to the prejudice of both good order and military discipline. You in your deliberation, Mr. President and Gentlemen, must satisfy yourselves that the particulars outlined in the second charge have been proved and if you satisfy yourselves on that point, then you must come to the conclusion that, are they conduct to the prejudice of both good order and military discipline. This is a matter which you as reasonable men, plus your Regt'l knowledge and experience must bring to your aid in the finding.

The court must remember the principle of English law that the accused is presumed to be innocent until he is proved to be guilty, and that the burden of proof rests upon the prosecution. Unless, therefore, the guilt of the accused has been established beyond reasonable doubt, the accused must be acquitted, as the prosecution has failed to sustain adequately the burden of proving his guilt. Such a doubt would be one that reasonable men would have, it is more than mere suspicion. In other words the Court must be satisfied not only that the circumstances proved were consistent with the guilt of the accused but that also they were inconsistent with any other rational conclusion.
Is there anything further you wish me to say Mr. Defending Officer
No sir.
And You Mr. Prosecutor
No sir.

The Court is closed to consider the finding

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The Court is re-opened

Capt D.E. Harker 28 Cdn Armd Regt having been duly sworn is examined by the Defending Officer

Q.1 Will you identify yourself to the court?
A.1 I am Capt D.E. Harker Adjt 28 Cdn Armd Regt.
Q.2 How long have you known the accused?
A.2 Ever since he enlisted three years ago.
Q.3 Has the accused ever been an N.C.O. under you in the Regt?
A.3 He was SQMS of HQ Sqn of which I was a section commander.
Q.4 Can you give the court a statement inregard to his character and as to how he discharged his duties while with the Regt?
A.4 In regard to his character he has had no charges on his conduct sheet all the time he served with the Regt and in regard to his duties I found him to be diligent and conscientious.
Q.5 Have you ever known SQMS Dawson to have been in any trouble or to cause you any concern in that way at all?
A.5 No sir.

Plea in Mitigation by Defence

I would merely like to point out, and as probably the court is well aware of, that it is in their power to reprimand the accused and in the case of the drunkenness to fine him an amount not exceeding £5-0-0 or the equivalent of $16.00. In view of the accused's very good conduct I think the court would be well justified in making the punishment a light one.

App 'A'

The Accused was warned as follows:

H W Leslie Major
HQ Sqn 4 Cdn Armd Bde
President

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The Accused: I desire to give evidence under oath.

The Accused.

K38538 SQMS Dawson, A. H. 28 Cdn. Armd. Regt. (BCR), sworn, states: I was on the 5th Jun 43 SQMS "HQ" Sqn, 28 Cdn Armd Regt (BCR). On the evening in question I in company with SQMS Millar had been to at least two public houses in Minehead and had been drinking beer for three and a half hours. At closing time SQMS Millar and I went to a cafe and we stood looking for a table. I saw Captain Lewis and RQMS Davis but do not recall having been in conversation with either of them or with anyone. I have no recollection of having been placed under arrest or of returning to the cafe, or of ordering a meal. I did not actually know that I was under arrest until informed the following morning by a brother N.C.O.

[signature]
Signature of Accused.

The Accused declined to call witnesses in his own behalf.

I certify that R. P. 4, has been complied with.
Taken by me in the Field in the presence and hearing of the Accused, this 7th day of June 1943.

[signature]

(J. N. B. Pattullo) Major,
Officer taking Summary.

Summary of Evidence in the case of K-38538 SQMS Dawson, A.M., 28 Canadian Armoured Regiment, Canadian Army Overseas, charged with Drunkenness.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness

Captain C.W. Lewis, 28 Cdn Armd Regt, having been duly sworn, states:

I was on 5 June 43 and still am Acting Officer Commanding Headquarters Squadron, 28 Cdn Armd Regt. When K-38538 SQMS Dawson, A.M. entered the cafe in company with K-37361 SQMS Miller, D., he was not noisy but was objectionable in moving around and bumping into patrons. The N.C.O's t en moved to the front of the cafe to wait for a vacant table. Lieutenant L.D. Stevens and friend moved to the rear of the cafe and just as they got there a table was vacated and Lieutenant Stevens and friend sat down. SQMS Dawson turned to SQMS Miller and in a loud slurred voice said "Come on, follow me", and they made their way through the centre of the cafe, continually jostling chairs and causing unnecessary concern among the patrons. They reached the corner where Lieutenant Stevens and friend were sitting. SQMS Dawson said, in a loud voice and with hand motions, "Now look at that, we came in first and yet this officer takes the first table and he came in after we did". At this point I went across the cafe to SQMS Dawson, and I said, "I suggest you go home to your quarters", SQMS Miller said, "Very good Sir", but SQMS Dawson began to argue. I pointed out that he was in no condition to be in the cafe and that they should return to their quarters. SQMS Dawson then asked me if that was an order. I said, "Yes, you will leave the cafe immediately", at which SQMS Dawson said, "I see no reason why I should". I told him that he was in close arrest. I told SQMS Miller that SQMS Dawson was in his charge and that they were to return to their quarters immediately. I then returned to my table and told K-37270 SQMS Davis, .M. who was just leaving the cafe to take SQMS Dawson out with him. Then I heard some arguing in the corner the only part of which could be overheard was SQMS Dawson saying, "No, I am your prisoner, how you get me out of here". At this point SQMS Davis came to SQMS Miller's assistance and they left the cafe.

In about thirty minutes when the cafe was nearly empty of patrons SQMS Dawson re-entered the cafe through the kitchen door, sat down at a table and food was almost immediately placed before him. As he was quite and the cafe was nearly empty and he had his food before him, I thought it best to let him eat and we ourselves left the cafe. In my opinion SQMS Dawson was under the influence of liquor, he could not stand straight or walk straight, but he was quite capable of understanding my order to leave the cafe and return to his quarters and he was capable of executing it.

Cross examined by accused:

Q. Do you consider that SQMS Miller was more sober than I and was in a fit condition to take me home?

A. Yes, at that time I did definately think SQMS Miller was sober enough to do as I said.

Q. Why was SQMS Davis not put in charge of me rather than SQMS Miller?

A. I had already given the order to SQMS Miller and then asked SQMS Davis to assist him, having no intention of changing the responsibility.

Q. Should not some action have been taken to have me removed from the cafe when I returned?

A. My answer is given in my evidence.

C.W. Lewis Capt
Signature of witness.

Second Witness.

Lieutenant H. H. Curtis, 26 Cdn. Armd. Regt, sworn, states:

I was on 5 June 1943 and still an A/Tech. Adjutant, 26 Cdn Armd Regt (BCR). When S.Q.M.S. Dawson and another S.Q.M.S. entered the cafe they were quiet but were obviously drunk and unsteady on their feet. They looked around for a table, and wandered around between the tables bumping into people as they went past. Finally they stopped and stood talking together at one side of the room. In the meantime Lieutenant Stevens and friend walked over to a table in the corner where R.Q.M.S Davis was sitting alone, and I saw Lieutenant Stevens talking to the R.Q.M.S., who then left, and Lieutenant Stevens and friend sat down. At this point S.Q.M.S. Dawson waved his arm and said in a loud voice "look at that, we were here before then and they get a seat before we do". This statement caused Lieutenant Stevens and friend to get to their feet and they both appeared to apologize to S.Q.M.S. Dawson for having taken the seat. By this time everyone in the cafe was taking a great deal of interest in the proceedings. Captain Lewis left our table and went over and spoke to S.Q.M.S. Dawson. I did not hear the conversation. The other S.Q.M.S. took S.Q.M.S. Dawson by the arm as Captain Lewis returned to the table and tried to head S.Q.M.S.Dawson out of the cafe. I heard him say, "NO I am not going". The R.S.M.S. , who had been paying his bill at the counter, went over to S.Q.M.S. Dawson, and the three left together. About one half hour later S.Q.M.S. Dawson returned to the cafe and he was quiet. I think S.Q.M.S. Dawson was capable of understanding and executing an order.

The accused declines to cross examine this witness.

H H Curtis Lieut
Signature of Witness.

Third Witness.

Captain R. H. Hodgson, 4 Cdn Armd Bde Workshop Coy, R.C.O.C. , sworn, states:

I was on 5 June 1943 and still an Captain of 4 Cdn Armd Bde Workshop, R.C.O.C. I saw two N.C.O's of the British Columbia Regiment enter the cafe. They appeared to be under the influence of liquor. I was sitting facing the door near the doorway and was unable to observe their conduct after they passed our table. Captain Lewis left the table for a short time. I did not observe where he went or to whom he spoke. Approximately one half hour after his return to the table, Captain Lewis said, "theres that chap again". I looked around and saw a staff sergeant sitting by himself. Captain Lewis remarked, "There he is back to flaunt authority". Shortly after we left the cafe. I am not acquainted with the N.C.O's concerned and consequently am unable to say whether the staff sergeant who was sitting alone was either one of the two N.C.O's whom I saw earlier.

The accused declines to cross examine this witness.

R H Hodgson Capt
Signature of Witness.

Fourth Witness.

Lieutenant L. D. Stevens, 26 Cdn Armd Regt., sworn, states:

I was on 5 June 1943 and still an Signal Officer of 26 Cdn Armd Regt (BCR). As my friend and I entered the cafe, all the tables were occupied and I noticed S.Q.M.S. Dawson and S.Q.M.S. Millar standing near a table. I also saw R.Q.M.S. Davis finishing a cup of coffee at another table. I went over and spoke to the R.Q.M.S. and shortly afterwards he left and we sat down.

My friend then went to speak to an acquaintance and when S.Q.M.S Dawson and Millar approached my table, realizing they had been in the cafe before us I also got up and as I left to join my friend I said to the S.Q.M.S. , "Here is the table you were here before I was". I noticed S.Q.M.S. Dawson had been drinking but I saw nothing further.

Cross examined by the accused:

Q. Did I say or do anything to insult or embarrass you or your friend?

A. No. I was interested in what was going on in another part of the room.

Signature of Witness.

Fifth Witness.

K37361 S.Q.M.S. Millar, D., 25 Cdn Armd Regt (BCR), sworn, states:

I was on the 5 June 1943 and still an S.Q.M.S. "C" Sqn 25 Cdn Armd Regt (BCR). I entered a cafe near the Queen's Head Hotel with S.Q.M.S. Dawson. I had had a good deal to drink and have very little recollection of what occured. I remember waiting for a table. I saw Captain Lewis speaking to S.Q.M.S. Dawson, then Captain Lewis turned to me and said in effect, "Here is your prisoner." I then recall seeing MQMS Davis. I do not remember leaving the cafe. What I have said contains everything that I recall from the time I entered the cafe.

Cross examined by the accused:

Q. Do you remember any further conversation between yourself and Captain Lewis?

A. No.

Signature of Witness.

Sixth Witness.

K37270 R.Q.M.S. Davis, R. H. 25 Cdn. Armd Regt (BCR), sworn, states:

I was on the 5th June 1943 and still an Regimental Quartermaster Sergeant, 25 Cdn. Armd. Regt (BCR). I had just turned my table over to Lieutenant Stevens and was on my way out of the Cafe when I noticed SQMS Dawson and SQMS Millar approach Lieutenant Stevens. Both N.C.O's were under the influence of liquor. SQMS Dawson began talking to Lieutenant Stevens in a loud voice. I decided to intervene. I turned to the counter to pay my bill and then got my hat. Captain Lewis came up to me and asked me to assist in getting the N.C.O's. out of the cafe. I walked over and interviened and managed to get them outside. On reaching the sidewalk SQMS Millar was unable to walk, fell down and injured his ankle. I then aided him in getting to his quarters. I was not aware that Captain Lewis had placed SQMS Dawson in close arrest, nor did I hear the conversation between Captain Lewis and SQMS Dawson or between Captain Lewis and SQMS Millar.

Cross examined by the accused:

Q. Do you consider I was in a condition to understand and carry out an order.

A. No, not properly.

Signature of Witness.

No. K38538 Name Dawson, A.M. Sqn., Battery, or Company — Corps 28 Cdn Armd Regt(BCR) — Date of enlistment 5 May 41 — G.C. Badges N.A. — Service or Proficiency Pay N.A.

Date of last entry in Company Conduct Sheet N.A. — No. and date of last drunk N.A. — Period not reckoning towards freedom from extra fine N.A. — Sheet No. 1 — Signature O.C. Company, etc. (signed) D. Vercheres Major — Character

M.F.M. 6 (A.F.R. 122) 40/P&S/136 (2637)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
				NO ENTRIES CERTIFIED A TRUE COPY 24 Jun 43 (D.E. Harker) Capt & Adj 28 Cdn Armd Regt					

(P.T.O.)

App 'X'

Tom Leslie Major
HQ Sqn 4 Cdn Armd Bde
President

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Was given under Judge Advocate

Number	Rank	Name	Regiment (or unit)
K-38538	S.Q.M.S.	Dawson, A.M.	28 Cdn Armd Regt

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, ~~Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment or appointment	
For	times		times
For	times		times
For	times		times
For	times		times

~~Number of instances of gallantry or distinguished conduct~~

~~—or—~~

There are no entries in the conduct sheets of the accused.

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~—or—~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~—or—~~

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and nil days in Air Force military custody, making a total of nil days in custody, of which nil days were spent in hospital. (under ~~open~~ arrest for 1 day - under open arrest for 22 days.) Wott

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 36

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 5 May 41

7. The service which the accused is allowed to reckon towards discharge is 2 years 1 month 18 days.

~~8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.~~

9. ~~The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.~~ ~~military~~ ~~military~~ ~~military~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of ..... Air Force~~

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ ~~Permanent Force~~ ~~unit~~ ~~dated~~ ~~, and in his regiment (or corps), the rank of~~ ~~dated~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

16 Apr. 42 Date of promotion.

In the rank of A/Cpl. ~~years.~~ 1 month

In the rank of A/Sgt. ~~years.~~ 2½ months

In the rank of A/S.Q.M.S. ~~years.~~ 3 months: confirmed 7 months

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Air Force Unit Regiment

Name ..... of .....

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of June 1943 [illegible] Capt. offr. i/c Records

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

=96. Pte. C. R. Dawson.

COUNTER NUMBER 5-41607

HOUR 17.50

OPERATOR'S INITIALS HMB

RELIEVING OPERATOR

Correspondence to be PINNED here.

Army Form A.3. 39C

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 25th day of July, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint:—

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~*(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—~~]

Proceedings Recorded
J.W. Leger Capt. Aug 27/41
Receiving Officer (Jas.) Clerk

President.

Rank.	Name.	Regiment.
Major	J.W. Johanson	1 Cdn Div Sigs

Members.

Rank.	Name.	Regiment.
Capt.	G.L. Coward	13 Cdn Tp C Coy
Lieut.	N.H. Ballingall	1 Cdn Div Sup Coln
Waiting Lieut.	J.W.R. LeBlond	Sask L.I. (MG)

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.H. Pearkes
(G.H. Pearkes) Major-General
Commanding 1st Canadian Division
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.86217 Pte. DAWSON, C.R. 1 Cdn Tp Carrying Coy.	1st charge A.A. 18(4) GHP	not guilty	Guilty of gaudent incapacitation	I confirm the finding & sentence of the Court. Gil Pearkes MG
withdrawn by prosecution	2nd charge A.A. 18(4) GHP	[redacted]		
	3rd charge A.A. 15(3) GHP	not guilty	Guilty [redacted]	
	4th charge A.A. 40 GHP	[redacted]		
withdrawn by prosecution	5th charge A.A. 11 GHP	[redacted]		

9 months imprisonment

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— no sir

(Signed) Gil Pearkes
(G.R. Pearkes) Major-General
Commanding 1st Canadian Division
Consenting Officer (e)

(Signed) [signature] Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 2nd day of August 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 2nd day of August 1941.

[signature] Johanson Major
President of the Court Martial.

* Omit if not applicable.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

* See footnote (b) on page 702 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

Signed this 7th day of August 1941.

Gil Pearkes
Confirming Officer

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of B 86217 Pte Dawson C.R. 1 Cdn Tp Carrying Coy

(a) (Dated) 9 August 1941 (Signed) [signature] Major

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Upon reading the petition of B.66217 Pte. Dawson, C.R., a soldier under sentence, who was sentenced by a Court Martial on 2 Aug 41 to 9 months imprisonment and which sentence was confirmed on 7 Aug 41, I the competent Military Authority under the provisions of section 57(2) of the Army Act, DO ORDER that the sentence of the Court be mitigated to 6 months imprisonment.

Dated this 12th day of November, 1941.

G.R. Pearkes

(G.R.Pearkes) Major-General
G.O.C. 1 Cdn Div.

T

Upon reading the petition of B.86217 Pte. Dawson, C.R., a soldier under sentence, who was sentenced by a Court Martial on 2 Aug 41 to 9 months imprisonment and which sentence was confirmed on 7 Aug 41, I the competent Military Authority under the provisions of section 57(2) of the Army Act, DO ORDER that the sentence of the Court be mitigated to 6 months imprisonment.

Dated this 12th day of November, 1941.

W.H. Pearkes

(G.R. Pearkes) Major-General
G.O.C. 1 Cdn Div.

T

CHARGE SHEET

1

The accused Regtl. No. B-86217 Private DAWSON,CHARLES,R., No.1. Canadian Troop Carrying Company,Royal Canadian Army Service Corps, a soldier of the Canadian Army Overseas is charged,when on Active Service,with;

FIRST CHARGE Sec. 18 (4) Army Act. — STEALING PUBLIC PROPERTY

in that he,
at Tadworth,Surrey on the 8th of July 1941 when acting as driver of War Department vehicle No. L-765807 and concerned in the refuelling of the said vehicle,stole two (2) tins,each containing two (2) gallons of petrol,a total of four (4) gallons,the property of the Public.

SECOND CHARGE Sec. 18 (4) Army Act. — FRAUDULENTLY MISAPPLYING PROPERTY OF THE PUBLIC

in that he,
at Tadworth,Surrey,on the 8th of July 1941 sold two (2) tins each containing two (2) gallons of petrol,a total of four (4) gallons valued at one shilling seven pence and one halfpenny (1/7½) per gallon,property of the public to James Denis Archer,a civilian of Lochiel Rest, Ashurst Drive,Boxhill Road.

THIRD CHARGE Sec. 15 (3) Army Act. — WHEN IN BILLETS FOUND BEYOND THE LIMITS FIXED BY COMPANY ORDERS WITHOUT A PASS OR WRITTEN LEAVE FROM HIS COMMANDING OFFICER

in that he,
when billeted in "C" section at Tadworth,Surrey,was found in No.3. Howard Close,a private residence at 0130 hours on the 9th of July 1941 a place beyond the limits fixed by Company Orders without a pass or written leave by his Commanding Officer.

FOURTH CHARGE Sec. 40 Army Act. — AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,
at Tadworth,Surrey,on the 24th of June 1941 did sell to Police Constable Courtney of the Metropolitan Police at Tadworth,fourteen (14) packages,each containing twenty (20) cigarettes,a total of two hundred and eighty (280) Canadian Cigarettes,contrary to instructions laid down in Canadian Army Routine Orders Overseas No.635 dated 25 March 1941. Price received one shilling and six pence (1/6) per package.

(E.H.Dean) Major
O.C.,1st. Cdn.Troop Carrying Company
R.C.A.S.C., Cdn.Army Overseas.

CHARGE SHEET

Sec. 11.
Army Act.
(Alternative)

Neglecting to Obey Company Orders

in that he

on 24 June 1941 did sell to Police Constable Courtney, No.724 Metropolitan Police at Tadworth, fourteen (14) packages, each containing twenty (20) cigarettes, a total of two hundred and eighty (280) Canadian cigarettes, contrary to instructions laid down in Company Orders, issue No.87, dated 6 April 1941. Price received, one shilling and sixpence (1/6) per package.

(E.H.Dean) Major,
O.C. 1st Cdn. Troop Carrying Coy.,
RCASC Cdn. Army (Overseas).

FORM "A"
PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD IN THE FIELD ON THE...2nd.....DAY
OF. August 1941.

TRIAL of No. 386217 Pte Dennison C.R.

PROSECUTOR Lieut McGillivray

DEFENCING OFFICER Lieut E.G. Goodman

OFFICERS under INSTRUCTION: ——

1. The order convening the court is read in the presence of the accused.
The accused is asked the following question;
"Do you object to be tried by the President or any Members of the court whose names you have heard read over?"
ANSWER; no sir

3. The President, Members, ~~Judge Advocate, Officers under Instruction~~ Shorthand Writer and ~~Interpreter~~ are duly sworn.

4. (a) The accused answers to his name and number, and is duly arraigned on the charges.
(b) The accused having pleaded guilty to the 4 el Charges, R.P-36(B) is complied with.

5. The accused is asked the question at the foot of page 2 of A.F. A. 3, and his answer is recorded beneath the question.

6. The Prosecutor makes (no) ~~(the following)~~ opening address;

L/Cpl. Gill, having been called, is duly sworn and questioned by the Prosecution:-

Q. Will you give your number, rank, name and Unit to the Court?

A. B.84308 L/Cpl. Gill, 1 Cdn. Troop Carrying Company.

Q. What is your occupation with that unit?

A. I am the L/Cpl. in charge of petrol.

Q. Do you recognize the accused?

A. Yes, sir.

Q. Will you give your story of the afternoon of 8 July 41?

A. On the day of 8 July, Pte. Dawson drew 8 gallons of petrol from me to fill his vehicle. I issued him with four 2 gallon cans. He returned two 2 gallon petrol cans and two 2 gallon oil cans. When he brought the cans back I told him to leave them outside as I was going to load them up;to have them refilled. After he left I noticed that two of the cans he had returned were oil cans. I never thought any more of the matter at the time but when I heard he was in trouble I remembered then about the two oil cans. That is as far as it went that day. On the 9th we checked up on his lorry and found the tank was only three quarters full. Before we, the Driver-Mechanic and myself, filled it I went to Captain Kendall and reported that it was only three quarters full. We checked up on the mileage and till the eight gallons which Dawson had drawn, the lorry averaged 11 miles to the gallon. After the eight had been put in it was only three quarters full and took another four to fill it. We checked on that and found it was only averaging four miles per gallon.

Q. On the 8th of July, after this petrol had been given to Dawson to put into his vehicle, did that vehicle make a trip?

A. No, sir.

Q. What time of day was it Dawson drew this petrol?

A. I would say approximately 1100 hrs to 1130 hrs.

Q. How much petrol does a driver generally draw?

A. I ask him how much he needs and he says two, three or four cans.

Q. Then you would assume that when he asked for the eight gallons that was sufficient to fill his vehicle?

A. Yes, sir.

Q. You are quite sure no trip was made from the time it was drawn until you checked the tank?

A. Positive, sir.

Q. L/Cpl. Gill is questioned by the Defence:-

L/Cpl. Gill, you stated that Dawson drew petrol from you on 8 July 41?

A. Yes, sir.

Q. You gave him four 2 gallon tins?

A. Four 2 gallon tins, sir.

Q. Did the whole section draw petrol that day?

A. Not the whole section, just the drivers that were out.

Q. When Dawson brought the four tins back, did he bring them to you?

A. He brought them to the garage and was going to leave them inside. I was going to get them filled up so I told him to leave them outside by the fence.

Q. When he took them outside were they left on the pile?

A. No, the four of them were together.

Q. Did you see him place the four cans there?

A. Yes, sir.

Q. What drew to your attention the fact that two of them were petrol tins and two were oil tins?

A. Oil cans are regular petrol cans but when a petrol can gets a small leak in it we make an oil can out of it. These cans are usually very oily and dirty on the outside whereas the petrol cans are clean.

Q. Was it possible for petrol cans to get dirty like the oil cans?

A. Not likely as the oil is very gummy and holds the dirt.

Q. Did you, on the 9th of July, admit to anyone that you did not know there were two petrol tins and two oil tins?

A. No, sir.

Q. By your statement it would appear that you would naturally assume the eight gallons the accused drew from you would be sufficient to fill that lorry. Do you issue all the petrol just on assumption?

A. As they come for it I give them what they ask for.

Q. You never question them?

A. No, sir.

Q. Is there anything to stop a driver coming to you and asking for six 2 gallon tins of petrol?

A. No, sir. I would give it to him unless I knew he did not require it.

Q. If Dawson had have asked for six, would he have got it?

A. Yes, sir.

Q. They could ask for any reasonable amount of petrol and insofar as you were concerned you would give it to them?

A. Yes, sir, but they would have to return cans either full or empty to compare with the amount drawn.

Q. Did you make up this Log Book?

A. No, sir.

Q. You did not tell anyone on the 9th that you did not know where Pte. Dawson put those cans?

A. No, sir.

Q. When the accused brought back these four tins you say that

you saw the tins as he brought them in?

A. Yes, sir.

Q. He brought them inside to you?

A. No, sir. I told him to leave them outside.

Q. You saw him put them down?

A. Yes, sir. He set them against the fence.

Q. How did you particularly remember Pte. Dawson bringing back these tins?

A. He was the first to return the cans.

Q. Was there any possibility of getting these cans mixed up?

A. No, sir.

Q. When did you first notice that two of them were oil cans?

A. When we were loading them on to the lorry.

L/Cpl. Gill is questioned by the Court:-

Q. What time were the tins loaded on to the lorry?

A. At approximately 12 O'clock on the 8th.

Q. How do you know how many tins you issued the accused?

A. When they come in I ask the number of the lorry and beside the number put a small 2 or 3, whatever number of tins they draw, and when they come in I change it into gallons.

M.7068 Pte. C.E. Keast, having been called, is duly sworn and questioned by the Prosecution:-

Q. Will you give your name, rank and unit?

A. M.7068 Pte. C.E. Keast, 1 Cdn. Troop Carrying Company.

Q. What were you employed at on the night of 8-9 July?

A. I was on guard at vehicles in "C" Section.

Q. Where is that located?

A. At Tower Road, Tadworth.

Q. Do you recognize the accused?

A. Yes, sir.

Q. Did you encounter the accused on the 8-9 July?

A. He came and spoke to me while I was on guard.

Q. Will you give the court the complete story of your encounter with the accused that night?

A. While I was on my beat I saw a civilian car draw up at the Orderly Room and stop. Pte. Dawson got out of the car and walked into the Orderly Room. I think he was in there possibly about ten minutes then he came out and got into the car again. They then drove down near my post and the car stopped

just past where I was on guard. Pte. Dawson came back and spoke to me. He asked me if I knew anything about a convoy going out the next day. He went back to the car and he said he was going into the bush to relieve himself. Idid not see him again until he was getting into the car., Just as he was getting into the car his tunic fell back and there was a petrol can under his arm. The car then pulled away.

Q. At about what hour on that night did you see the accused?

A. It was roughly around 1030.

Q. And how long was it before the accused drove away?

A. Possibly ten minutes.

Q. How many trips did you see the accused make into the bush?

A. I saw him only once.

Q. Were you watching him all the time?

A. I did not see him while in the bush but I saw him when he came out.

Q. Was that the type of tin he had?

A. Yes, sir.

Pte. Keast is questioned by the Defence:-

Q. Pte. Keast, you stated that you were speaking to Pte. Dawson at 1030?

A. Roughly around 1030.

Q. Then he went into the Orderly Room?

A. He went into the Orderly Room before he spoke to me.

Q. When he came out of the Orderly Room and went to the car, how far away was it from where you were?

A. About 30 to 35 yards.

Q. How far would the bushes be from the Orderly Room?

A. Probably 100 yards from the Orderly Room.

Q. How far away from Pte. Dawson were you when you saw him come out of the bushes with the can under his arm?

A. About 30 to 35 yards again.

Q. Your sure it was a petrol can?

A. It looked like an ordinary petrol can.

Q. What does the ordinary oil can look like?

A. In my old unit they used to be like a petrol can but painted black. I don't know what the others look like.

Q. How long have you been with this unit?

A. About 1½ months.

Q. Are you a driver?

A. A driver-mechanic.

Q. As a driver-mechanic, knowing their duties, can you still

say you don't know what type of can they are putting oil in

A. The drivers have been drawing their own oil. I have been looking after the transmission oil, which is in black 5 gallon containers.

Q. Is the type of can used for oil in any way similar to the ones used for petrol?

A. The ones we used to use were.

Q. Can you tell us of any particular difference between the two cans in size?

A. I don't know, it all depends what the unit is using. All I know is that the oil is drawn in five gallon containers.

Q. Does that look like a can that might be used for oil?

A. I don't know.

Q. You are a driver mechanic with the 1 Troop Carrying Coy?

A. Yes, sir.

Q. Did you see the can that the accused had under his arm?

A. Yes, sir.

Q. Did you have that can in your hand?

A. No, sir.

Q. Did you know the can was full?

A. How would I know if I did not have it in my hand?

Q. You did not know if it was full or not?

A. It could have been full or empty, I did not know.

Q. All this took place at approximately 2230 hours?

A. As near to that as I can say.

Q. Do you know what blackout time was on 8 July?

A. No, sir.

Q. It was daylight?

A. It was still light enough to see.

Q. You could not see whether the can was filled or not?

A. No, sir.

Mr. Frank Buck, having been called, is duly sworn and questioned by the Prosecution:-

Q. Will you give the Court your name, address and occupation?

A. F.B. Buck, White Cottage, Box Hill - Master Butcher.

Q. Do you recognize the accused?

A. Yes.

Q. Have you had any dealings with the accused?

nly through my shop.

Q. Did the accused ever tell you he had petrol to sell?

A. He asked me if I was interested in petrol.

Q. How many times did he ask you, just once?

A. Yes.

Q. When?

A. On the Tuesday. I just don't know the date off hand.

Q. What action did you take?

A. I said I wasn't ineterested. I had enough petrol of my own.

Q. Did you take no action whatsoever?

A. No, just verbal action.

Q. Could you enlarge on that?

A. I just said no, that I wasn't interested.

Q. Did you tell the accused that you would find a customer for him or that you would send someone around?

A. No.

Q. Did you actually pass on the information to anyone else?

A. Yes. In the course of conversation but not as a special piece of news.

Q. Would you just tell the Court the way in which you passed this on?

A. I had occasion to see Mr. Archer that evening over some shopping his wife had done for my wife. During the course of the conversation the shortage of goods was brought up and I told Mr. Archer that I had had some cigarettes offered to me by a soldier and that I thought he would be able to get some from him and that he lived at No. 3 Howards Close. I also told him that he had offered me some petrol that afternoons so I knew that he would be in.

Q. You are quite sure that you did not tell the accused that you would find him a customer or send someone around?

A. Yes. As far as I was concerned the petrol question was finished with.

Mr. Buck is questioned by the Defence:-

Q. In your statement you said the accused asked you if you were interested in petrol?

A. Yes.

Q. He did not offer to sell you any?

A. No.

Q. As a master butcher you are under the petrol rationing scheme drawing additional or a special allowance of petrol?

A. Yes. Not for my private car but for my vans.

Q. In the course of your transactions with Pte. Dawson, the accused, did he ever owe you any money?

...o, he paid cash for every transaction.

Q. Did the accused actually offer to sell you petrol?

A. He just asked me if I was interested in petrol. He did not actually offer to sell me petrol.

Mr. J.D. Archer, having been called, is duly sworn and questioned by the Prosecution:-

Q. Will you give the court your name, address and occupation?

A. James Dennis Archer, Lock Hill Rest, Ashurst Drive, Boxhill Road, near Tadworth. Paint Manufacturer's technical representative.

Q. Do you recognize the accused?

A. Yes.

Q. When did you first meet him?

A. 8 July.

Q. How did you happen to meet the accused?

A. I was given an address by Mr. Buck.

Q. What did you do on getting that address?

A. It was some hours after I had been given the address. I asked a friend if he would take me down into Walton.

Q. Where did you go then?

A. To No. 3 of a row of council houses.

Q. Who lived there?

A. I was told that the accused lived there.

Q. About what time did you arrive at the house of the accused?

A. I would say between 9 and 10 p.m.

Q. It was still daylight?

A. Yes.

Q. Did the accused seem to be expecting you?

A. My impression would be that he was.

Q. What transpired then?

A. As I entered the gate the accused walked down the path. After some conversation he said that he had four gallons of petrol.

Q. Who brought up the subject of petrol?

A. The accused.

Q. After having said he had four gallons of petrol, what happened then?

He said that he wanted to be driven to some other place to settle some private affairs about a pass. We drove to this place then drove on a little further around a corner where we stopped the car. The accused got out and returned with a tin of petrol. He then fetched another 2 gallon tin and re-entered the car. We then drover to near the place where the house was situated where I met the accused and the accused got out of the car.

Q. What did you do with the petrol?

A. I just took it home and put the tins outside my bungalow?

Q. What eventually happened to the petrol?

A. The police collected it the next morning.

Q. Did the accused tell you that this was army petrol?

A. No, the subject wasn't mentioned.

Q. You are sure there were two tins brought by the accused?

A. Yes, two 2 gallon tins.

Q. Were they the same type of tins as these?

A. The same kind of tins.

Q. Would you be able to recognize the tins picked up by the police?

A. No, I'm afraid I wouldn't.

Q. There were no special markings that you would recognize them by?

A. No.

Q. In between the time that the accused put these two tins into the vehicle which you were driving and the time you handed them over to the police the next morning, was there any likelihood that anyone would have tampered with the tins?

A. I would not say that there was a likelihood. It would not have been impossible.

Q. At about what time was it that the accused brought the tins out to the car.

A. About 9 or 10 o'clock. I can't be more definite than that.

Q. Was it light out?

A. It was still light.

Q. Did you see a sentry or a picquet?

A. Yes.

Q. Did you notice where he was while the petrol was being brought out?

A. No, I didn't notice.

Mr. Archer is questioned by the Defence:-

Q. Previous to the incident, had you ever seen the accused before?

A. No, not to the best of my knowledge.

Had you ever communicated with him in any way?

A. No.

Q. Would you tell the Court what makes you think he was expecting you?

A. I did not say he was expecting me. He was expecting somebody.

Q. In your statement you mentioned that the accused returned from some spot with a two gallon petrol tin and he went back again for another 2 gallon tin. How did you know those tins had petrol in them?

A. I don't know they had petrol in them. They certainly had some liquid in them.

Q. In your statement you also mentioned that the incident took place between 2100 hours and 2200 hours?

A. Yes.

Q. What time were these tins handed over to the police?

A. About 0800 hours.

Q. Were they locked up?

A. No.

Q. Were they in the open?

A. They were in the open, yes, but covered up.

Q. Did you put any of the contents of those tins in your car?

A. No.

Mr. Archer is questioned by the Court:-

Q. Was there a financial transaction between yourself and the accused?

A. Yes, I paid the accused eight shillings.

Q. Did you think you were paying for petrol when you paid the accused 8 shillings?

A. Yes.

Mr. Archer is again questioned by the Defence:-

Q. Did you know the value of those tins empty on the open market here in England?

A. No, I didn't.

Lieut. Archer, having been called, is duly sworn and is questioned by the Prosecution:-

Q. Will you give your rank, name and unit to the court?

A. Lieut. Archer of the R.C.R., attached to Chemical Warfare.

Q. Can you find any identifying markings on these tins?

A. No. I only saw them for a fleeting moment.

Q. Can you tell the Court what you know about an analysis of petrol that was made by Capt. Macpherson of the Chemical Warfare Branch for 1 Cdn. Troop Carrying Coy?

A. I believe it was 23 July, a sample was brought up about 5 o'clock in the evening to see if it was W.D. Petrol or not. I was in the lab when he made his tests and saw the results of the tests.

Q. What were the results?

A. The results were that he found the petrol given to him to be tested was consistent with W.D. petrol.

Q. The term "consistent with W.D. petrol". Just what is the meaning of it?

A. It means simply that it contains the same ingredients as W.D. petrol.. It could be conceivably made up by someone knowing what ingredients were put into the petrol.

Q. There are special ingredients in W.D. petrol, to identify it from other?

A. Yes.

Q. Have these ingredients any other value in petrol besides being used to identify it?

A. No, they haven't.

Q. What tests were made?

A. They are a series of tests laid down by the Petroleum Board in London and have to be made before we can get the desired results.

Q. Is it likely that any other petrol would react similarly?

A. No, not other than W.D. petrol.

Q. Who brought this petrol in that you saw being tested?

A. He was a Captain in 1 Troop Carrying Company. I forget his name but I believe he is O.C. "D" Section.

Q. You mentioned in your evidence that a sample was tested. How was the sample brought in?

A. In a W.D. petrol can.

Q. In one can?

A. No, two cans actually.

Lieut. Archer is questioned by the Defence:-

Q. Was the sample that was analysed a little from each of the cans or a sample from each of the cans?

A. There was a test made of each can.

Q. And in your statement you stated that W.D. petrol could be conceivably made up?

A. Yes, by anyone knowing the ingredients but it is not likely.

Q. Do you think this would come within the scope of work of a paint manufacturer's technical representative?

A. No, I don't think so. I couldn't rightly say.

He might have business to do with dies used in W.D. Petrol?

A. He might, but it is not likely.

Q. Is the die used in W.D. petrol used as a pigment in paint?

A. No.

Q. Are you a chemist?

A. Yes, I am a chemist.

B.82763 Sgt. H.West, having been called, is duly sworn and questioned by the Prosecution:-

Q. Will you give your number, rank and name?

A. H. West, Sergeant, B.82763.

Q. What unit are you with?

A. 1 Can. Troop Carrying Company.

Q. What is your position with your unit?

A. "C" Section Sergeant.

Q. Do you recognize the accused?

A. Yes, sir.

Q. Will you recount to the Court the happenings on the night of 8-9 July?

A. The Orderly Officer of the day, in company with Sgt. Hornberger picked me up at my billets and we in turn drove to a civilian residence which we had reason to believe Pte. Dawson was at. Sgt. Hornberger and myself entered the civilian residence and questioned Pte. Dawson. I did not directly question Dawson but I was a witness to the statements which he made. We then took Pte. Dawson to Company Orderly Room where Capt. Poulter, Orderly Officer of the day, asked him if he wished to make a voluntary statement. He also warned Pte. Dawson of his position in making such a statement. Pte. Dawson then proceeded to make a statement in front of Sgt. Hornberger, myself and the Orderly Officer of the day.

Q. Did you ask the accused for a pass?

A. No, sir. His pass had been turned in to the Orderly Room.

Q. What time?

A. At approximately 2300 hrs, as he had been marked present on the Tattoo Report.

Q. Did you know then that the accused had no pass?

A. The accused would not have a pass issued to him after 2300 hours at night.

Q. Did you see Captain Poulter write the statement?

A. Yes. I was only about 4 feet away.

Q. Do you recognize this document?

A. Yes, that is a very close resemblance to the written statement.

Q. Just a close resemblance?

A. Asfar as I can see, I am not a handwriting expert.

Q. Did the accused need a pass or written permission to be outside the lines after "lights out" or at the time apprehended?

A. Yes, sir.

Sgt. West is questioned by the Defence.

Q. Was a statement taken from the accused, Pte. Dawson, in the kitchen of 3 Howard Close?

A. No, sir.

Q. Where was Pte. Dawson the accused, when you and Sgt. Hornberger went to 3 Howard Close?

A. I cannot state for sure, but it was he who answered the door.

Q. What attire was he in when he answered the door?

A. Trousers as I recollect properly.

Q. Did he have a shirt on?

A. I don't know.

Q. Was there anyone with you and Sgt. Hornberger?

A. Not directly with us. The Orderly Officer of the day was in the car parked in the street. I recollect Sgt. Hornberger told Dawson to go upstairs and get dressed.

Q. Then we can take it for a fact that he was in an undressed state?

A. Yes, sir.

Q. When Pte. Dawson dressed and came down, where was the voluntary statement taken?

A. A verbal statement was taken in the kitchen.

Q. Could you repeat to the Court as closely as possible the words that Sgt. Hornberger said to the accused when he asked him for a voluntary statement?

A. I will not swear on oath that this is correct. He said to Dawson, "Did you sell that petrol this evening?".

Q. Was that his first words?

A. I don't know.

Q. Did Sgt. Hornberger caution the accused before listening to a voluntary statement?

A. He did not ask Pte. Dawson for a statement, he questioned him as to the event.

Q. When you were in the kitchen with Sgt. Hornberger and the accused, did Sgt. Hornberger caution Pte. Dawson?

A. I don't recollect.

Q. Did you do it?

A. No, sir.

Q. If you cannot recollect, it is not an established fact that

Sgt. Hornberger did caution him?

A. I don't know. I took no part in the questioning of him at all.

Q. After you and Sgt. Hornberger saw Dawson, I presume you arrested the man and he was taken to "C" Section Orderly Room?

A. Company Orderly Room, sir.

Q. Captain Poulter was there?

A. Yes, sir.

Q. And when the accused was brought in to the Company Orderly Room did Captain Poulter caution the accused that anything he said would be used against him?

A. Yes, sir.

Q. Do you know what he said when he did that?

A. As far as I recollect, he said that anything the accused said could be used as evidence against him.

Q. Captain Poulter himself cautioned Pte. Dawson?

A. Yes, sir.

Q. Up to this time had Sgt. Hornberger cautioned him?

A. Not that I recollect. Up to that time Sgt. Hornberger had not placed him under arrest.

Q. You placed him under arrest?

A. No, sir. The Orderly Officer of the day placed him under arrest.

Q. Do you know his name?

A. Captain Poulter.

Capt. Baskim, having been called, is duly sworn and is questioned by the Prosecution:-

Q. Will you give your rank, name and unit to the Court?

A. Capt. H. Baskim, 1 Cdn. Troop Carrying Company.

Q. Will youtell the Court what your position with that Company was on the 8th of July?

A. I was the Workshop Officer, attached to the Company.

Q. Is that the position you have maintained since that time?

A. That is the position I hold now.

Q. Do you recognize this petrol tin?

A. Yes.

Q. How do you recognize it?

A. The cross on top, placed there by a civilian policeman and the initial on the side placed there by myself.

Q. Do you recognize this one?

A. Yes. It is marked in the same fashion.

Q. Will you tell the court what you know about the tins?

A. Those tins were given into my custody by a policeman in the Sutton Police Court, after the trial of a man by the name of Archer.

Q. What was the date?

A. I have forgotten. It was a Thursday.

Q. Was it the Thursday subsequent to the arrest of the accused?

A. I cannot quite recall the exact date.

Q. From the time that those two cans came into your possession what did you do with them?

A. Those cans were in my possession at all times. The only time they were removed was to take them in to the Corps Chemist for analysis.

Q. Were you present during the analysis?

A. Yes.

Q. Did you bring the cans back?

A. Yes.

Q. When you were absent from your office what happened to the cans?

A. The office is locked or the Orderly Corporal is in my office at all times during my absence.

Q. Between the time the petrol was given to you and the time you had it analysed, was there any addition made to the contents of the can?

A. No. The cans were not touched at all.

Q. Would you say that the same petrol was in the cans?

A. Yes.

Q. Who carried out the analysis?

A. The Corps Chemist. I believe his name is Macpherson.

Capt. Baskim is questioned by the Court.

Q. When did you mark these tins?

A. I didn't put the cross on.

Q. When did you put the initial on?

A. The same date as I was warned to take them down for analysis.

Q. There is no way you can identify them as 1 Troop Carrying Company tins?

A. No, sir. They are the same as used by any other Unit. There are a few cans that are different from the W.D. cans.

Q. The first association you had with the cans is when the police gave them to you.

A. Yes, sir.

Capt. Baskim is questioned by the Defence:-

Q. What is the difference between these cans and the cans you spoke about previously?

A. Sometimes the cans come from the Shell Oil Company and the only way you can tell them to be W.D. cans is by the paint.

Q. You are the Workshop Officer?

A. Yes.

Q. Does Corporal Gill have anything to do with the Log Books of your lorries?

A. No. He is the N.C.O. detailed to take care of the petrol.

Q. Was Corporal Gill ever the driver of the lorry in question, #7658O7?

A. I'm afraid I can't answer that.

Q. Would you recognize this as being the Log Book for #7658O7?

A. Yes, this is the Log Book for the vehicle.

Q. Is Cpl. Gill's signature in here?

A. His signature won't be in there unless he signed for petrol.

Police Constable Cooper is called and having been sworn is questioned by the Prosecution:-

Q. Do you recognize those tins?

A. Yes. They have a mark which I put on them when they were in my possession.

Q. Will you tell the court what you know of this case?

A. On the 9th of July 41, in consequence of information received I made certain inquiries and as a result of these inquiries I went to Lock Hill Rest, Box Hill, in the company of P.C. Adsett, where I saw a Vauxhall 12 h.p. Motor Car POP.342 stationary outside a wooden dwelling house. I aroused the occupant of the house who was the registered owner, Mr. Peachy. I told him that it was alleged that on the previous evening his car had been seen at Walton to pick up two 2 gallon cans of petrol and was driven away. He then volunteered a statement. In his statement he admitted that it was Mr. Archer that had the petrol. I saw Mr. Archer who went to the rear of a wooden dwelling house and produced the two cans here from under some sacking. I examined them and a quantity of the contents was poured into a clear bottle and it was seen that it was coloured as is usual with army petrol. I told him that it was alleged that he had received this petrol from a Canadian Soldier. I cautioned him and he volunteered a statement.

Q. What happenedto the tins of petrol between the time that you received them and the time handed to Capt. Baskim?

A. I took possession of those two cans. They were locked in a shed at the Police Cottages at Box Hill. That evening they were called for by myself in company with Detective Cunningham of Sutton. They were handed to him, conveyed to Banstead Police Station and thence to Sutton. They were then secured in a cupboard and I was present when this cupboard was unlocked. I helped to convey them to Sutton Police Court and

handed them to Captain Baskim.

Q. In your opinion was there any chance between the time these were taken from Mr. Archer until handed to Capt. Baskim of them being tampered with?

A. No chance whatever. They were in police custody at all times.

P.C. Cooper is questioned by the Defence:-

Q. Can you tell me if that is the usual way of marking things like that?

A. The markings are such that you can recognize it yourself.

Q. This is your marking?

A. There are now three other markings on there. Do you think there is anything to prevent me going outside, getting two full petrol cans painted as near the same colour possible and earmarking them. Could you distinguish between them?

A. Yes, I could tell by the location of the markings. If I used a label they would have been easier to remove.

Capt. Poulter, having been called, is duly sworn and is questioned by the Prosecution:-

Q. Do you recognize that document?

A. I do.

Q. Will you tell the Court what you know about it?

A. In what way?

Q. Who wrote it?.

A. I Was Orderly Officer of the day and was told that Pte. Dawson was acting queer and petrol tins were seen coming from "C" Section lines and I immediately took action to apprehend him. I understood there were civilians mixed up in the case so I contacted Sgt. Hornberger, late of the Field Security Section and Sgt. West of "C" Section and went to see if we could find Pte. Dawson. Sgt. Hornberger and Sgt. West found Dawson at his wife's place of abode on Howard Close. We took him to Company Orderly Room where we took the evidence. I told him that it was of his own free will and may be used as evidence if it was brought to court. From there it is the evidence as laid down in the statement.

Q. Is it in your handwriting?

A. It is in my handwriting.

Q. In your opinion, Capt. Poulter, did the accused realize that it was possible that the statement could be used as evidence at his trial?

A. I am sure he did.

Captain Poulter is questioned by the Defence:-

Q. You cautioned Pte. Dawson before taking the statement from him?

A. I did.

Q. Would you repeat again how you cautioned him?

A. I cautioned him that it was a statement of his own free will and would be used as evidence in his trial if brought to Court.

Q. To your knowledge, was there any coersion or any pressure brought to bear?

A. I don't think there was any forde used.

Q. I don't mean force, I mean prompting?

A. As far as my statement is concerned there was not any force used. He made it of his own free will.

Q. This is Sgt. Hornberger's signature?

A. Yes.

Q. Was there any other witnesses?

A. Sgt. West but he did not sign it.

Sgt. West is recalled and questioned by the Defence:-

Q. In your statements the last time you were in you said that the accused was present at Tattoo. What time is Tattoo?

A. 2300 hrs.

Q. Did the accused have a pass that night?

A. Yes, until 2359 hours.

Q. Is 3 Howard Close within the Barrack Area, for a man to walk out to without a pass?

A. No,, up until 2300 hours.

Q. Then from what you just said, the accused was not out of Barrack Area?

A. I would consider a man out of Barrack area at 3 Howard Close after 2300 hours, unless he had a pass.

Q. Then he would not be out of Barrack Area because he had a pass?

A. He had handed in his pass and was present at Tattoo.

Sgt. West is questioned by the Prosecution:-

Q. Regardless of whether Howard Close is within the Barrack Area it is not within the billets of "C" Section?

A. No, sir.

Sgt. West is questioned by the Court:-

Q. As I understand it, the men are required to be in their billets at 2300 hours unless they have a later pass?

A. Yes, sir.

Sgt. West has testified that he found the accused there and did not and could not have had a pass. That, in connection with the case is, I think, sufficient to find him guilty of both charges.

The Court questions the accused.

Q. Do you wish to give evidence yourself as a witness?

A. No, sir.

Q. Do you intend to call any witnesses on your behalf?

A. Yes, sir.

Q. Will that be a witness as to character?

A. Yes, sir.

Lieut. Irwin, having been called, is duly sworn and makes the following statement:-

Approximately 1 Nov 40, Dawson was detailed to me as batman-driver. He was my batman until I was struck off strength unit and I was posted to other duties. I came back to the Unit 18 June 41 at which time Dawson again approached me with a view to taking over duties again as batman-driver. At that time I told him that I had made previous arrangements. During the period referred to previously that Dawson was with me, I had no reason at any time to question his honesty or integrity. I didn't wish to take him on again as batman-driver because I did not consider him to be a good driver.

The Court addresses the Defence.

Q. Do you wish to say anything now or do you wish to make a statement now on the first of three charges?

A. Yes, sir. In the first charge, the charge of stealing public property. The first thing the prosecution would have to prove in any court of law and particularly a civil court is ownership. He must find someone to own that property, as the public, in law, is not a person. In civil law, these first two charges would be thrown out on that technicality. However without asking for that I will try and sum up the case of the accused as quickly as possible.

From the facts submitted before the Court, no concrete evidence has been brought forward to prove that there was actually petrol in the two cans which have been listed as exhibits in this Court. From the time that Pte. Keast saw the accused until the time that the petrol was picked up by Constable Cooper there was no evidence at all to show what liquid, if any, was in either of these two cans. Pte. Keast, in his evidence, admits that he did not know the contents of the cans. Mr. Archer, J.D., in his evidence before this Court admits that he did not know the contents of these cans. He only presumed the contents to be petrol. Further, Mr. Archer admits that he did not put any of the liquid from either of these cans into his car. He also admits that anyone had access to these cans. L/Cpl. Gill in his evidence brought out one fact in particular as to how he could identify petrol cans from oil cans, and stated one reason was that the cans used for oil often or sometimes had leaks in them. One of the two cans submitted to this Court as an exhibit as a petrol can leaks. The fact that the vehicle No. 1.765807 was assumedly short petrol in the amount of four gallons does not necessarily prove that the petrol drawn by the accused was not put in into the above mentioned vehicle. It is quite possible that petrol from any lorry can be syphoned out or drained from any lorry not under direct guard. In Mr. Bucks evidence there is nothing to prove the accused offered to "sell" petrol to Mr.

Buck. In Buck's statement to this Court he admits speaking of petrol but stresses the fact that he only spoke of it in the general course of conversation. Again in the evidence of J.D. Archer, Mr. Archer admits that he never saw the accused before and did not satisfactorily explain his statement in which he said that he thought the accused was expecting him (J.D.Archer). Mr. Archer again in the cross examination admits that two tins were put into the car, but also admits he did not definitely know the contents to be petrol. Lieut. Archer of the R.C.R. in his evidence before the Court admitted that W.D. Petrol could possibly be made up by other than those permitted to manufacture same. The defence admits that this is a remote possibility but wishes to draw the attention of the Court to J.D. Archer's occupation in civil life. On the second charge the defence wishes to point out that while the accused was found in No. 3 Howard Close that the Defence presumes that he was still within the Unit's barrack area and it has been established in Sgt. West's evidence the accused was granted a midnight pass. The fact that the accused turned his midnight pass in at 2300 hours and went to No. 3 Howard Close rather suggests anything but "sky-larking" and if anything is in the accused's favour. It must be also drawn to the Court's attention that the time of expiration of his midnight pass until the time he was apprehanded was 0131 hours. It is unfortunate that the late No. A.5049 Sgt. Hornberger, H.L. cannot be present at this Court Martial because his evidence submitted in the Summary does not show that the accused was either warned or cautioned at any time prior to being taken to the Company Orderly Room. Sgt. West's evidence further bears this out.

The Defence not knowing or being in a position to know the findings of this Court further submit the following defence. Even with the remote possibility that the accused might be found guilty of these offences, it must be admitted that if the accused was criminally inclined he could have easily hidden cans among other cans or as the prosecution contends, rather than bring back two oil cans could as easily have transferred any liquid from a petrol can to the two oil cans alleged to have been brought back.

In conclusion, the character evidence offeredby Lieut. Irwin speaks unquestionably well for the accused's honesty and integrity. There can be no doubt in the Court's mind but that the accused, Pte. Dawson, acting in the capacity of driver-batman for Lieut. Irwin must have had access to practically all of Mr. Irwin's belongings. He was with Mr. Irwin from November 40 until Arpil 41, a little over five months and during that time the evidence proves that while he was not the best of drivers he was undoubtedly a capable and honest batman.

The Court adjourns for a finding.on charges to which pleas of "Not Guilty" were given.

Summary of Evidence is read before the Court.

The accused is questioned by the Court:-

Q. Do you wish to make a statement on this charge? (plea of guilty)

A. No, sir.

The Defence is questioned by the Court.

Q. Do you wish to make a statement in mitigation of sentence on this charge?

A. Yes, sir.

While there is very little evidence it has to be admitted by

Summary by the Prosecution:-

On the first charge of stealing public property, in that he, ... the property of the public. From that it is essential that the Prosecution, in order to see the accused person convicted, shall firstly, prove that there was property stolen; secondly, that it was public property and thirdly that the place, time and date and amount of the theft be proven. As to the stealing, L/Cpl. Gill in the first of the case raised the presumption that two 2 gallon cans of petrol had been made away with. This also shows the purported tins were in the accused's possession and although he drew four 2 gallon tins of petrol he returned two empty petrol tins and two empty oil tins. This was enough to raise the question as to what had become of the other two petrol tins. When this was followed and a check up of the tank showed it to be four gallons short and a check up made of the average mileage, it set up a pretty fair case to show that these two tins with the four gallons of petrol were made away with. In connection with the evidence of Cpl. Gill. The fact that Cpl. Gill's statement may have differed by ½ a gallon should not be operated against the credability of this N.C.O. as in the summary he was working from actual figures but in his present statement he had no figures at all. Actually he has shown that after a trip of 48 miles the tank was found to require eight gallons of petrol. At least he was told by the driver. This would show an average of 6 miles to the gallon if the tank had been full before the start of that run. He then found out the tank required another four gallons, which, added to the 8 would make 12 gallons. Work this out. Actually that 48 mile trip would have been at the rate of four miles to the gallon.

Now another point which the Defence Officer was trying to bring out was that these oil cans may have been substituted by someone else. But that is denied by what follows. On page 118 of the Manual of Military Law, para 50, first sentence, sets out what the crime of theft amounts to; "A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith "takes" and "carries away" anything "capable of being stolen" with intent, at the time of such taking, permanently to deprive the owner thereof." Intent is shown here by the subsequent dealings of the accused. The intention to deprive the owner of possession is shown by the ultimate disposal of the petrol to Mr. Archer.

Now it is necessary to prove that the petrol was property of the public. The evidence of Cpl. Gill sets out a prima facia case. The evidence of Mr. Archer that he got the petrol in tins which resembled the ones here, the evidence of Police Constable Cooper that he got the tins and that he passed them on to Captain Baskim shows what it is. Even if there was anybody wanting to frame the accused, it is just barely possible that it could be tampered with while it stood outside Mr. Archer's house.

The evidence to the time and place of the theft is in the evidence of Cpl. Gill and Pte. Keast. The evidence of the amount stolen is in the amount of petrol Mr. Archer turned over to the police.

If the court find the accused "not guilty" then section 56(2) of the Army Act and para 53, page 120 of M.M.L. apply, "the accused may be found guilty of the lesser offence, fraudulently misapplying property".

In connection with the second charge, "When in billets .... Sgt. West's evidence on that matter is complete in all details. The accused was supposed to be in "C" Section billets with "C" Section. He also went to a place outside the billet area which actually was the civilian home of his wife.

the Defence that the accused is guilty. At the same time the Defence wishes to point out the ease with which Canadian Cigarettes may be purchased in any locaility in which Canadians are billetted. While the Defence admits this to be a most serious charge and there is plenty of evidence from Cdn. H.Q. showing that the sales of the Canadian cigarettes must be stopped, it is to be trusted that the Court will not hold the accused guilty of more than his own misdemeanor in the charge.

Capt. Baskim is called and states:-

I submit herewith two certified copes of M.F.M. 6 of the accused and a short statement as to particulars of service.

FORM "C"

AFTER FINDING

Capt H Baskin Is sworn and states:

I produce a certified true copy of A.F. B.122 and statement as to particulars of service relating to the accused. (The said copy is marked signed by the President, and attached to the proceedings.)

QUESTION TO THE ACCUSED:

Do you wish to address the Court, or to call evidence as to character?.

ANSWER. Call witness as to character

The ~~(Accused)~~ (Defending Officer) makes the following plea in mitigation of sentence.

No. B86217 Name Dawson C Sqn., Battery or Company 1st. Div. Petrol Company R.C.A.S.C. C.A.S.F. Date of enlistment 5-9-39 1 Cdn Troop Carrying Coy., RCASC

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Entitling to freedom from extra fine | Sheet No. | O.C. Company, etc. | Badges | Rate of Proficiency Pay | Character

C.F.M. 4 (A.F.B. 122) 300M—8-39 (7521) H.Q. 1772-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Oxted	1-7-40	Pte.		A.A. 15(1): A.W.L. 1800 hrs. 4-7-40 to 2230 hrs. 4-7-40.	Cpl. Rutherford	2 days C.B. 2 days pay.	8-7-40	Major Hallam	Forfeiture
Field	20-5-41	Pte.		A.A. 15(1): WOAS A.W.L. from 2300 hrs. 20-5-41 to 0630 hrs. 21-5-41. (7 hrs. 30 min.)	Cpl. Henwood Pte. Price	7 days C.B.	21-5-41	Major Dean.	Forfeits 7 days pay.
Field	26-5-41	Pte.		A.A. 15(2): Failing to appear at place of parade appointed by his C.O. - in that he failed to appear at 1645 hrs. parade.	Sgt, Cook Cpl. Cannon	7 days C.B.	27-5-41	Capt. Kendall	

CERTIFIED TRUE COPY

1st CDN. TROOP CARRYING COY. R.C.A.S.C.

..... O.C.

SUMMARY OF EVIDENCE

SUMMARY OF EVIDENCE in the case of

No. B8[illegible]17, PRIVATE DAWSON, C.,

1st. Canadian Troop Carrying Company, Royal Canadian Army Service Corps, Canadian Army (Overseas), taken down by CAPTAIN D.C. SHAW, 1st. Canadian Troop Carrying Company, Royal Canadian Army Service Corps, at WYKE HOUSE, CHEQUERS LANE, WALTON-ON-THE-HILL, SURREY, on the 10th. day of JULY, 1941, in the presence of the accused.

FIRST WITNESS FOR THE PROSECUTION.

No. M-7068, Pte. Keast C.E., 1st. Cdn. Troop Carrying Coy., RCASC., having been duly sworn, states:

"On the night of 8/9 July 41 at approximately 2230 hrs. I was on duty as sentry in "C" Section vehicle lines. While on my beat I saw a civilian car stop opposite "C" Section Orderly Room, and saw Private Dawson, whom I now recognize, get out and enter, to the best of my knowledge, "C" Section Orderly Room. The car then proceeded and stopped just near where I was on duty and Private Dawson came over and asked meif I had any information regarding the convoy that was to go out the following night. I told him that I knew nothing about it, and he then said he was going into the bushes to relieve himself. I did not see him again until I saw him enter the civilian car once more. Just as he entered the car, his tunic, which he had slung over his arm, fell back and I saw that he had a can of petrol under his arm. I did not have a chance to stop the car, but as it went down the road I took the number of it. I gave the number to Lance-Corporal Paul when he was making his rounds about 2330 hours. I had nothing further to do with the case."

The accused declines to cross-examine the witness.

C C Keast

(M-7068) Pte. Keast C.E.,
1 Cdn Troop Carrying Coy., RCASC.

SECOND WITNESS FOR THE PROSECUTION.

No. M-16435, Lance-Corporal PAUL, C.W., 1st. Cdn. Troop Carrying Coy., RCASC., having been duly sworn, states:

"On the night of 8/9 July 41, I was Corporal of the Guard in "C" Section. At approximately 2330 hrs. while making my rounds, Private Keast, one of the sentries on duty in "C" Section vehicle lines, reported to me that he had seen Private Dawson, whom I now recognize, enter a private car with a can of W.D. petrol. He, Private Keast, told me that he had taken down the lisscense number of this car, of which I made a note and waited until Section Sergeant came in, to see what further action I should take. The Sergeant ordered me to report the incident immediately to the Unit Orderly Officer. This I did at approximately 2359 hrs. This is all my evidence."

The accused declines to cross-examine this witness.

Cpl Paul

M-16435 - L/Cpl. Paul,

Summary of Evidence - Private Dawson C.

THIRD WITNESS FOR THE PROSECUTION

NO. B82508 - CPL. RICHARDS, W.E., 1st. Cdn. Troop Carrying, Coy., RCASC., having been duly sworn, states:

"On the night of 8/9 July 41, I was acting Orderly Sergeant and at approximately 2359 hrs., L/Cpl. Paul, N.C.O. in charge of "C" Section Guard reported to Capt. Poulter and myself at Unit Headquarters that a soldier reported as Pte. Dawson had been seen taking W.D. petrol away in a car. The license number of this car was reported at this time. We, Capt. Poulter, Sgt. Hornberger, and myself drove to "C" Section lines and wakened Sgt. West, "C" Section Sergeant. From there we proceeded to "Kingscote House" to find if Private Dawson was in his billet. L/Cpl. Paul and I searched the house without finding this man. Finding that he was not in his billet, we thought we would try the house in Howard Close, Walton-on-the-Hill where his wife lives, to see if he was there. When we arrived at this house Sgt. West and Sgt. Hornberger found Private Dawson there. We then proceeded with Private Dawson, whom I now recognize, to the Unit Orderly Room, where Private Dawson was brought into the C.S.M's office by Capt. Poulter, Sgt. West and Sgt. Hornberger. I waited outside. After Private Dawson came out I was ordered by Capt. Poulter to stay at Unit H.Q. until he returned. This is all my connection with this case."

The accused declines to cross-examine this witness.

W E Richards Cpl.

(B82508 - Cpl. Richards W.E.)
1 Cdn. Tp Carrying Coy., RCASC.

4TH. WITNESS FOR THE PROSECUTION.

CAPT. M.R. POULTER, 1st. Cdn. Troop Carrying Coy., RCASC., having been duly sworn, states:

"On the night of 8/9 July 41 at approximately 2359 hrs. while acting as Orderly Officer, L/Cpl. Paul of "C" Section reported to me at Unit Orderly Room that a civilian car No. FGP-342, with two civilians and Pte. Dawson, whom I now recognize, in it, had entered "C" Section vehicle lines. The guard on duty, Pte. Keast, had reported to him this fact, also that Pte. Dawson was seen entering the civilian car with W.D. can of petrol. As there were civilians involved, I contacted Sgt. Hornberger of the Field Security Company who is billeted nearby. Accompanied by Sgt. Hornberger and Cpl. Richards, A/Orderly Sgt., we proceeded to "C" Section lines and contacted Sgt. West, "C" Section sergeant. I had the billets searched and found Pte. Dawson absent from his quarters. We then went to No. 5 Howard Close where Pte. Dawson's wife resides. Sgt. Hornberger and Sgt. West were detailed by me to enter the house to ascertain if Pte. Dawson was there. They soon returned accompanied by Pte. Dawson. We returned to Unit Orderly Room where Pte. Dawson made a voluntary statement as to the procuring and disposal of 4 (four) gallons of W.D. petrol. We then drove to the Unit guard room where I had the A/Sgt. of the Guard, Cpl. Golding, receive Pte. Dawson in "Close Arrest". The statement referred to above is attached to this Summary of Evidence"."

The accused declines to cross-examine this witness.

M R Poulter Capt

(Capt. M.R. Poulter)
1 Cdn. Troop Carrying Coy., RCASC.

Summary of Evidence - Pte. Dawson C.

FIFTH WITNESS FOR THE PROSECUTION

NO. A5049, SERGEANT HORNBERGER, H.L., Field Decurity Intelligence Corps, having been duly sworn, states:

"On the night of 8/9 July 41 ataapproximately 2359 hrs. I was called for at my billet, No. 1 Howard Close, Walton-on-the-Hill, by Capt. Poulter, 1st. Cdn. Troop Carrying Coy., RCASC., He informed me that he had received a report from a sentry that Pte. Dawson, "C" Section, 1st. Cdn. Troop Carrying Coy., RCASC., whom I now recognize, had been seen getting into a private automobile, liscense No. FGP-342 with a can of W.D. petrol beneath his tunic, and that the car had driven away with Pte. Dawson. We conferred on the best action to be taken and first proceeded to pick up Sgt. West, "C" Section Sergeant. We then determined that Pte. Dawson was not in his official billet, and further determined that Pte. Dawson was at No. 3 Howard Close, Walton-on-the-Hill. Capt. Poulter, Sgt. West and another rank whom I do not know and myself drove to No. 3 Howard Close. Accompanied by Sgt. West, I knocked at the door of this house and Pte. Dawson answered the knock. We first ordered him to get his clothes quickly, and a few moments later, when he returned downstairs, I asked him in the kitchen what were the names of the civilians to whom he had sold the petrol that evening. He answered, "I do not know". I asked him how did he know who they were, and he responded, "Buck, the butcher, sent them." I asked him if he had sold them just the one can, and he answered "yes". He finished dressing, went to the car, and drove with us to Company H.Q., 1st. Cdn. Troop Carrying Coy., RCASC., Capt. Poulter told Pte. Dawson that he was under close arrest, and Pte. Dawson then proceeded to make a voluntary statement, which he signed and I witnessed. This statement is attached to this Summary of Evidence, and I recognize its contents. Following the signing of the statement, Pte. Dawson was ~~returned~~ placed in Unit Guard Room and Capt. Poulter and myself returned to Company H.Q. I then went to Dorking Police H.Q., arriving there at approximately 0200 hrs. 9 July 41., and laid the facts before the police sergeant on duty, whose name I do not know. He got in touch with Leatherhead Police immediately by telephone as Walton-on-the-Hill is in the Leatherhead Police district. I then returned to my billet and was informed later in the morning by P/C Cooper, Walton-on-the-Hill, that they, the Police, had apprehended James Dennis Archer, Royal Mail, Lochiel Rest, Ashurst Drive, Boxhill, purchaser of the petrol, and they had also the driver of car FGP-342, Ronald Sidney Peachey, who had an address in London, and also Headley Hights, Lochiel Rest, Boxhill. P/C Cooper informed me that these two men had made statements to him. These statements I read myself."

The accused declines to cross-examine this witness.

H. L. Hornberger

(A5049, Sgt. Hornberger, H.L.
Field Security Intelligence Corps.

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SIXTH WITNESS FOR THE PROSECUTION — NO. B82763, SGT. WEST H., 1 Cdn Troop Carrying Coy., RCASC., having been duly sworn, states:

"On the night 8/9 July 41 at approximately 2359 hrs. Capt. Poulter, Orderly Officer of the day, sent Cpl. Richards, A/Orderly Sgt. of the day to "C" Section Lines to order me to report to Capt. Poulter outside "C" Section Orderly Room. I accompanied Capt. Poulter, to Howard Close in company with Sgt. Hornberger of the Field Security Police. We called at No. 3 Howard Close and Pte. Dawson C. whom I now recognize, answered the door. Sgt. Hornberger, took Pte. Dawson into the kitchen of the same house and questioned him in my presence as to the sale of W.D.petrol. Pte. Dawson admitted having sold W.D. petrol to civilians. We, Capt. Poulter, Sgt. Hornberger, Pte. Dawson and myself left Howard Close and drove to Unit Orderly Room, where Pte. Dawson made a voluntary statement, signed in my presence. This statement is attached ~~hereto~~ to this Summary of Evidence and I recognize its contents."

The accused declines to cross-examine this witness.

Sgt. H. West

SEVENTH WITNESS FOR THE PROSECUTION. — NO. B82778, CPL. GOLDING T.A., 1 Cdn Troop Carrying Coy., RCASC., having been duly sworn, states:

"On the night 8/9 July 41, I was A/Sgt. of Unit Guard. At 0130 hrs. 9 July 41, Capt. Poulter brought Pte. Dawson to Unit Guard Room, in the custody of Sgt. West and Sgt. Hornberger. I was ordered to receive him in "Close arrest" which I did. I placed him in Unit Detention Room. This is all my evidence."

The accused declines to cross-examine this witness.

Cpl. Golding T.

EIGHTH WITNESS FOR THE PROSECUTION — NO. B84308, L/CPL. GILL, T.W., 1st. Cdn. Troop Carrying Coy., RCASC., having been duly sworn, states:

"I am L/Cpl. i/c Petrol for "C" Section, 1st. Cdn. Troop Carrying Coy., RCASC. On the afternoon of 8 July 41, Pte. Dawson, whom I now recognize, drew 4 two-gallon tins of petrol for his lorry No. L7665807. When he returned with the cans he returned two 2-gallon petrol cans, and two 2-gallon oil cans. I checked up on his lorry on the following day, 9 July 41, and found it still needed petrol. I put 4 gallons to completely refill the tank. At the same time I took the log book of the vehicle in question and checked the former consumption of petrol and found that the lorry was averaging 11½ miles per gallon. Pte. Dawson on the previous day had put 8 gallons into the tank reputedly, and this plus the 4 gallons which I put into the tank on the 9 July 41, making a total of 12 gallons, made an average for the last trip registered of 48 miles at 4 miles per gallon. The following figures were taken by me from log book of this vehicle. ~~xxxxxx~~

Original Speedometer reading when lorry taken by this Unit --	478	
Reading before 8 July 41 --	1280	
Miles Run	802	
Petrol drawn up to 8 July 41	70	gals.
Average miles per gallon	11½	
Speedometer reading 8 July 41	1280	miles.
" " after trip 8 July 41	1328	"
Miles Run	48	
Petrol drawn by Pte. Dawson 8 July 41 after trip (48 miles)	8	gals.
Petrol necessary to fill tank 9 July 41 (no trip)	4	gals.
Total	12	gals.

Average for 48 mile trip - 4 miles per gallon.

Summary of Evidence - Pte. Dawson C.

EIGHTH WITNESS FOR THE PROSECUTION (CONTINUED)

Question: How did you know that I returned two 2 gallon Oil-cans in place of Petrol Cans.

Answer: When you returned the cans to me, you brought them into the garage, and I told you to leave them outside, as I intended to go to the Fuel Pumps to reload. The first four cans in the lot outside when I started to load the lorry to go to the pumps were the four cans you returned. I at one noticed that two of these cans were oil and not petrol cans.

The accused declines to further cross-examine this witness.

T W Gill Capt

(B84308) L/Cpl. Gill, T.W.)
1 Cdn Tp Carrying Coy., RCASC.

NINTH WITNESS FOR THE PROSECUTION

POLICE CONSTABLE G.A. COOPER, NO. 336, Walton-on-the-Hill, having been duly sworn states:

"In consequence of information received I made certain inquiries and as a result of these inquiries I interviewed a Mr. Peachey at Lochiel Rest, Boxhill, owner of motor-car index No. FGP-342. I acquainted him with the alleged incident, cautioned him, and he volunteered a statement. A copy of this statement is attached to this Summary of Evidence. In consequence of the allegations in Mr. Peachey's statement, I interviewed Mr. James Dennis Archer, Lochiel Rest, Boxhill. I told him that I was a Police Officer and that it was alleged that he had bought two 2-gallon cans of petrol from a Canadian Soldier at Walton-on-Hill the previous evening. I cautioned him and he volunteered a statement. This statement is attached to this Summary of Evidence. Mr Archer went to the rear of his residence and brought out two petrol cans both full of petrol. These cans are produced. The two statements mentioned above were read to the accused by me in the presence of Capt. D.C. Shaw, the officer taking down this Summary of Evidence and the accused did not desire to further question Mr Peachey but does desire to question Mr. Archer. Mr Archer will be produced by me for such questioning."

The accused declines to cross-examine this witness.

G A Cooper

(P/C G.A. Cooper) No. 336,
Walton-on-the-Hill.

TENTH WITNESS FOR THE PROSECUTION

J.D. ARCHER, CIVILIAN, LOCHIEL REST, ASHURST DRIVE, BOXHILL ROAD, having been duly sworn, states:

"This is the second statement that I have made. The first one having been made to P/C Cooper. I now wish to have the original statement amended as hereunder.

About 7 P.M. on the evening of 8 July 41, Mr. Frank Buck of Walton-on-the-Hill approached me to collect some shopping. These were some things which I had purchased for him due to local shortage. Conversation between us then turned to shortages in general, and cigarettes and petrol in particular. He left the impression with me during this discussion that he knew a Canadian who could possibly supply me with some Canadian cigarettes, and that this same person could supply me with some petrol if I cared to call at an address which he described to me. This description was as follows: - some Council houses on the left hand side of Chequers Lane, just this side of the Chequers Public House and the number was No. 3. For some hours I thought no more of this until about 9.30 P.M. when I was assisting a friend to repair a puncture. I then asked this friend if he would drive me to Walton-on-Hill, and he agreed. We then proceeded to the house above described. We stopped outside No. 3 and I walked up the path, and a soldier came towards the gate to meet me. Conversation between us at first was general and I do not remember our exact words. I offered this soldier a cigarette, which he refused, and I asked him then if he had any cigarettes which he could spare. He said, "No". He then said that if we would take him to N.C. where he wished to arrange some personal business, he had 4 gallons of petrol which he would sell me. We drove to the spot where the soldier got out of the car and went into a building, afterwards coming out again and telling us to drive on a bit further. We then stopped again and the soldier left the car, returning after a few minutes with a tin of petrol. He left us again for a few minutes and returned once more with a two-gallon tin of petrol. We then drove to the junction of the road where we originally met the soldier, and Chequers Lane. He got out of the car and we drove off. I paid this soldier 8 shillings for the petrol which he had given me. This soldier I now recognize as the man standing beside me."

The accused declines to cross-examine this witness.

J D Archer

(J.D. Archer) Civilian,
Lochiel Rest, Ashurst Drive,
Boxhill Rd.

ELEVENTH WITNESS
For the
PROSECUTION

F.B.Buck,CIVILIAN,WHITE COTTAGE,BOXHILL,having been duly sworn,states:

"Somewhere about the beginning of the week of 5 July 1941.Private Dawson,who stands beside me,mentioned he had a number of cigarettes and was I interested. I said "No" as I was a non-smoker. Last Tuesday, 8 July 1941. Private Dawson came into my shop on Chequers Lane, Walton-on-the-Hill, and asked about his wife's new ration book. It was at this time that he mentioned about petrol. I said I was not interested as I had enough of my own. That was all there was to that interview. There were a number of other people in the shop at this time these people being my assistants and they may or may not have heard what had been said. That same evening I had occassion to go to Mr. Archer's house to collect some shopping which his wife had done for mine. During the conversation that I had while I was there,the shortage of supplies was brought up and I told him that I thought he would be able to get some cigarettes from No.3. Howard Close,and that also the fellow had offered me some petrol that afternoon. No.3. Howard Close being the address of Private Dawson and he also being the "fellow" referred to in the preceeding paragraph. That is all my evidence".

The accused declines to cross-examine the witness.

Frank B. Buck

(F.B.Buck) Civilian
White Cottage,Boxhill.

TWELVETH WITNESS for the Prosecution.

Police Constable J.H.Courtenay No.724,Metropolitan Police having been duly sworn,states:

"On Tuesday 24th of June 1941,I was posted to Police Box,Tadworth,Surrey,at approximately 1730 hours of that date. A Canadian Soldier, whom I now recognize as the soldier standing beside me,came to the Box and asked me where my mate was. I asked him to whom he referred and he answered "The other officer who wanted cigarettes". As there are nine different reliefs posted to that Box during twenty-four hours and since the Officer could not be identified by me,I purchased the cigarettes, fourteen packages at one shilling and six pence a package. There is nothing further I can add to this testimony".

J.H.Courtenay

Statement taken from B-86217 Private DAWSON,C.
July 9,1941 at 0100 hours.

"I was in to see the butcher at Walton-on-the-Hill
(Mr. Buck,Jr.) and asked him if he knew anyone
that wanted Petrol. He said he would send a man
down to where my wife lives at Howard Close.

Approximately 2145 hours a man came and said that
Buck had sent him,I went with this man in his car
driven by another civilian to "C" section Lines.
We then went around by Tower Road,where I got the
Petrol from the bushes where I hid it at approximately
1130 hours 8th.July 1941.

We got in his car and they drove me back to Howards Close
I left the two 2 Gallon tins of Petrol with the men,who
had paid me four shillings for it.

I have just returned from leave some three weeks and
my wife has just come out of Hospital and I needed the
money. I tried to borrow some from a number of the men
but could not".

C Dawson.

(B-86217 Pte. Dawson,C.)

Witness

Taken before Captain M.R.Poulter,1st. Can.Troop Carrying
Company,R.C.A.S.C.

Summary of Evidence - Pte. Dawson C.

The accused, having been duly cautioned in accordance with Rules of Procedure 4(e), reserves his defence.

Certified that Rules of Procedure 4(c), (d), (e), (f), and (g) have been duly complied with.

.....
(D.C. Shaw) Captain,
1st. Cdn. Troop Carrying Coy.,
RCASC. C.A. (Overseas)

No. B86217 Name Dawson C. Sqn., Battery or Company 1st. Div. Petrol Company, R.C.A.S.C. Attached to C.A.S.F. Date of enlistment 5-9-39. Sheet No. 1 Cdn. Troop Carrying Coy., RCASC

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Badges | Proficiency Pay | Character | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Oxted	1-7-40	Pte.		A.A. 15(1): A.W.L. 1800 hrs. 4-7-40 to 2230 hrs. 4-7-40.	Cpl. Rutherford	2 days C.B. 2 days pay.	8-7-40.	Major Hallam.	Forfeiture
Field	20-5-41	Pte.		A.A. 15(1): WOAS A.W.L. from 2300 hrs. 20-5-41 to 0630 hrs. 21-5-41 (7 hrs. 30 min.)	Cpl. Henwood Pte. Price. W.E.	7 days C.B.	21-5-41	Major Dean	Forfeits 7 days pay
Field	26-5-41	Pte.		A.A. 15(2): Failing to appear at a place of parade appointed by his C.O. - in that he failed to appear at 1645 hrs. parade.	Sgt. Cook Cpl. Cannon	7 days C.B.	27-5-41	Capt. Kendall	

1st CDN. TROOP CARRYING COY. R.C.A.S.C.

CERTIFIED TRUE COPY ! ..... Major O.C.

Summary of Evidence - Pte. Dawson C. COPY.

STATEMENT :- RONAL SIDNEY PEACHEY.

Walton-on-the-Hill Leatherhead 9th. July 1941.

Ronal Sidney PEACHEY.

"Headley Heights" Lochiel Rest, Ashurst Drive, Boxhill.

31 years. Techical Rep. to Paint Manufacturers.

Alleged Receiving etc. of army petrol.

STATES:

" I was approached by Mr. J.D. Archer of Lochiel Rest, Boxhill, with a view to running him into Walton, and we left the Rest at about 10 P.M. on the 8 July 41. On arriving in Walton, we called at the Council Houses and picked up a Canadian soldier. We drove on for a distance, and then stopped close to a number of stationary army vehicles, which were parked in a side road, leading of the main road. The soldier got out and made two journeys, bringing one two gallon can on each occasion. These were placed in the back, then the soldier got in, and after proceeding for a while he got out.

Some silver was passed by Mr. Archer to the soldier.

We returned to Lochiel Rest, where the petrol cans were removed from my car by Mr. Archer.

I was offered some petrol by Mr. Archer, and knowing how he came by it, I refused to have anything further to do with it, and would not have had anything to do with it, had I known what the journey was for."

Signed (R.S. Peachey)

Summary of Evidence - Pte. Dawson C.

COPY

STATEMENT - RONAL SIDNEY PEACHEY.

Walton-on-the-Hill

Leatherhead

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I was offered some petrol by Mr. Archer, and knowing how he came by it, I refused to have anything further to do with it, and would not have had anything to do with it, had I known what the journey was for."

Signed (R.S. Peachey)

COPY

STATEMENT BY JAMES DENNIS ARCHER,
Royal Mail, Lochiel Rest,
Ashurst Drive,
Boxhill, Surrey.

Age 31 years. Occupation - Technical Representative to Paint Mfrs.

After caution, the above named states:

"I gave a Canadian soldier a lift in my car the latter part of last week and it was arranged that I should call at his billet on Tuesday evening , the 8th. of July 1941 and he would have some Canadian cigarettes for me. On Tuesday evening just before 10 P.M. I left the Rest in Mr. Peachey's car and proceeded to this soldiers billet at No. 3 Howard Close where this soldier came out from and he informed me he had no cigarettes and said he wanted to go to H.Q. for a pass and if I could take him around he had two cans of petrol there he would sell me. I agreed to do this, so he got in the back. We drove on past some army vehicles which were parked in the side road and stopped the car just past in the main road. The soldier got out and went behind us and made two journeys, each time bringing one two-gallon can of petrol and placed them in the car. On completion of the the second journey he got into the car. We moved off and I paid him eight shillings in silver. After travelling to the entrance of Howard Close we stopped and he got out. We came back to Lochiel Rest and there I removed the petrol from the car and placed in the rear of my residence. These two cans are the two I have given you."

(Signed) J.D. Archer.

Statement taken from Pte Dawson July [illegible] 86217 [illegible]100 hrs

I was in to see the butcher at Walton on Hill (Mr. Buck Jr) and asked ~~them~~ him if he knew anyone that wanted Petrol. He said he would send a man down to where my wife lives at Howards Close.

Approx. 2145 hrs a man came and said that Buck had sent him. I went with this man in his car driven by another civilian ~~to~~ to C Sect. Lines. We then went around by Tower Road where I got the petrol from the bushes where I hid it at approx 11.30 - 8th July 41.

We got in his car & they drove me back to Howards Close. I left the 2 gall. tin of Petrol with the men who had paid me four shillings for it.

I have just returned from leave

some three weeks and my [illegible]e has just come out of Hospital & I needed the money. I tried to borrow some from a number of the men but could not.

Signed Pte. C. Dawson

witness Hugh L. Hawkeyen Sgt.

Taken before Capt Poulter.

LIST OF ORIGINAL EXHIBITS

2 -- Two Gallon War Department Petrol cans.

"I, Regtl. No. B-86217 Private DAWSON,C.R.
desire to have an Officer assigned to represent
me at my trial by Field General Court Martial.

I desire the services of Lieutenant E.G.Woodman,
12th. Cdn.Troop Carrying Company,R.C.A.S.C.

C Dawson

B-86217 Pte.Dawson,C.R.
1st. Cdn.Troop Carrying Coy.
R.C.A.S.C.,C.A.(O).

22 July 41.

1 Cdn Troop Carrying Coy.,
RCASC. C.A. (Overseas)

2 Aug 41.

TO THE PRESIDENT OF THE COURT:

B86217 - PTE. DAWSON C.
SHORT STATEMENT AS TO
PARTICULARS OF SERVICE
OF THE ACCUSED

(a) The accused has been in confinement awaiting trial on the present charges for [illegible] days in Civil Custody and 24 days in Military Custody, making a total of 24 days, of which [illegible] days were spent in hospital.

(b) The present age of the accused according to his attestation paper is 34 years.

(c) The date of his attestation specified in his attestation paper is 8 Sept. 1939.

(d) The accused is in possession of or entitled to no military decoration or military reward.

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

(E.H. Dean) Major, O.C.,
1 Cdn Tp Carrying Coy.,
RCASC. C.A. (Overseas)

Form A.F.B. 296 is not available.

UUU-10

Dawson F.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 18427 Spr. Frederick Elliott Dawson 13Bn 2CBRG.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	charge	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

60 days detention

~~(Sgd) ... Judge Advocate, if any.~~ Date awarded 22 Jul 44 (Sgd) D.M. Cooper, Maj. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

I confirm the decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding sentence

~~and that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) ... Officer in Command ...

Date ... Commanding ...

GHQ 1 Echn.

9 AUG 1944

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

B18427 Spr. DAWSON F.E. 9 Aug. 44 [signature] Lt. A/T. 1 CAERU.

D.O. No 191
9 Aug. 44
1 CAERU.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 4444-10

FIELD GENERAL COURT-MARTIAL

CPA108, 1 To Bks of ARAB, 40 I/F & S. Regt (Mar 43)

4/38B

Convened by Order of Lt-Col. W.J. STEWART Comd 13Bn 2CBRG dated 21 Jul 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B18427	Spr.	Frederick Elliott	DAWSON	13Bn 2CBRG.

PROCEEDINGS REVIEWED 23 Aug 44
H.C. Finch Capt.

PROCEEDINGS REVIEWED BY D.J. Amyot Lt-Col. Asst. Judge Adv. Gen. Sec GHQ 2 Echn. (for Army Gp) Date 23 Aug 44

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH CMHQ

Held in the Fd in (country) ENGLAND on (date(s)) 22 Jul 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 9/60

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1155 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~I propose subject to ... as Interpreter. Any~~ ~~The Interpreter is sworn.~~(1) Do you object to L22504 Sgt. Kowbel, A.M. as shorthand writer? Ans No, Sir. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No, sir.(1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 19, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.W.M. COOPER RCA	12Bn 2CBRG.
Member	Lieut.	G.L. GRANT RCCS	13Bn 2CBRG.
Member	Lieut.	R.P. St Pierre RCCS	13Bn 2CBRG.
~~Judge Advocate~~			
Prosecutor	Lieut.	W.T. MEAD RCCS	13Bn 2CBRG.
Defending Offr	Lieut.	H. Mortell RCE	13Bn 2CBRG.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 60 (B) and fn 2 were not followed. See D1 & 2.)

A8. The accused B18427 Spr Frederick Elliot DAWSON before arraignment makes (has) (1) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A+1

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his pleas of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No, Sir.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (4). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) (has) (have) changed his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*c*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114. *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CP A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 108(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(7) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(7), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No, Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 4. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, Sir.
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 20(*f*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its generals, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 363-366, *Overseas KO* 309, 2323, *RP* 48. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(3), 68(1), *KR Can* 564. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assemble and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

DMC.

CHARGE SHEET

FIRST CHARGE
AA SEC. 15(1)

The accused B.18427 Spr Frederick Elliot DAWSON, RCE, 13 Bn 2 CBRG, a soldier of the Canadian Army Overseas, is charged with, WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from approximately 2100 hrs 1 Jul 44 until 1950 hrs 8 Jul 44 when he surrendered to the Civil Police at London.

Total time absent (6 days 22 hrs 50 mins).

W.J. Stewart Lt.Col.
(W.J. Stewart) Lt.Col.
Commanding 13 Bn 2 CBRG

In the field
17 Jul 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

W.J. Stewart Lt.Col.
(W.J. Stewart) Lt.Col.
Commanding 13 Bn 2 CBRG

In the Field
21 Jul 44

D'Me.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B18427	Spr		Frederick Elliot	DAWSON	13 Bn 2 CBRG

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Jul 44 endorsed by me, [redacted], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D.W.M. Cooper	12 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Lieutenant	To be detailed by OC	13 CBR Bn
A Lieutenant	To be detailed by OC	13 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Lieutenant	To be detailed by OC	13 CBR Bn
[redacted]		
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 21 Jul 44

[signature] Lt.Col. (Rank.)
(Signed personally. RP 105 fn 2.)
(W.J. Stewart) Lt.Col.
Commanding 13 Bn 2 CBRG
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (FAGO 12b (Sets of AFAs) 40-V & 81/1561 - 40/11)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so *far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 2, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions where accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than as mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(*E*), *KR Can* 663(a).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of regimental books see AA* 163 (1) (g) (ii).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML* p 789.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

DMC.

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined B18427 (No.)

SPR (Rank) DAWSON, F.E. (Name) and in my opinion he is

~~fit~~ ~~unfit~~ to undergo trial by Court-Martial.

Station FIELD

Date. 22 July 44

R. Laing Capt (Sgd)
Medical Officer
(unit) 18 Bn 2 C.B.R.G.

E 3
DMC

B 18427 Spr. Dawson, F.E. having been duly sworn states:-

I went to the Company in February as a driver and was a driver for about a month when I was taken off driving. I asked for a transfer to 2 Delivery Coy but didn't get it. I was put on fatigues and I asked for another transfer. I was on late pass and I missed the train one night and I was in the washroom, I stepped out for a moment and when I came back my watch was lost. I asked for a kit inspection and was refused. I went to the Sgt Major and asked for a parade to the O.C. but was refused. I reported the lost watch to the police in Dover. I left Dover to come here and went to London to look for my watch. I understood that you could not be refused a parade to the O.C. I have volunteered for overseas draft. I tried to get on draft to Italy before when I was in C.G.R.U. and had spoken to the officer. I had been in camp all the time but I missed the draft to Italy. I still want to go on draft. My mother sent the watch to me and thats why I valued it so much. It was a very expensive watch.

Exhibit A

DMx.

SUMMARY OF EVIDENCE IN THE CASE OF

B.18427 Spr Frederick Elliot DAWSON, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, all evidence is given on oath.

FIRST WITNESS FOR THE PROSECUTION

Lt. W.A. Murray, Records Officer, 13 Bn 2 CBRG, having been duly sworn, states:

"I am Lt W.A. Murray, Records Officer, 13 Bn 2 CBRG, and present the following documents pertaining to the accused B.18427 Spr DAWSON, F.E."

(2) AFO 1617 Certificate of Surrender showing B.18427 Spr DAWSON, F.E., [illegible] surrendering [illegible] 1944.

(3) AE 422A Military Railway Warrant issued 1 Jul 44 showing transportation of B.18427 Spr DAWSON, F.E., from 1 Cdn Fd Pk Coy, at DOVER, to 13 Bn 2 CBRG.

WA Murray

(W.A. Murray) Lt.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

SECOND WITNESS FOR THE PROSECUTION

Lt. J.E. Miller, 13 Bn 2 CBRG, having been duly sworn, states:

"I am Lt. J.E. Miller, 13 Bn 2 CBRG, and on 14 Jul 44 the accused B.18427 Spr DAWSON, F.E., made a voluntary confession to me. I warned him that such confession would be used as evidence should the charge against him be tried by FGCM.

He then made a sworn confession to me and I herewith submit such confession as evidence, marked Exhibit 1."

J E Miller Lt

(J.E. Miller) Lt.

THE ABOVE EVIDENCE AND CONFESSION WAS READ TO THE ACCUSED AND HE DECLINED TO CROSS-EXAMINE THIS WITNESS.

S J Ashbridge Lt.

(S.J. Ashbridge) Lt.
Officer Taking Summary of Evidence
13 Bn 2 CBRG

The accused was cautioned in accordance with rules of procedure 4 (c) of the Army Act.

THE ACCUSED DECLINES TO MAKE A STATEMENT AT THIS TIME.

"I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) and (e) have been complied with."

S J Ashbridge Lt

(S.J. Ashbridge) Lt.
Officer Taking Summary of Evidence
13 Bn 2 CBRG

n the field

7 Jul 44

13 Bn 2 CBRG

Exhibit 4

"I, B.1 427 Spr Frede ick Elliot DAWSON, of the 1 Cdn Fd Pk Coy, RCE, hereby confess that at approximately 2100 hrs on the 1 July 44 I went absent without leave after having received instructions and transport warrant from my unit to report to 13 Bn 2 CBRG and remained absent until I surrendered to the Civil Police in London at 1950 hrs on the 8 July 44.

This is a free and voluntary confession and has not been given as a result of any threat, promise or inducement."

Signed in the field this 13 July 1944.

B18427 Spr Dawson F. E.

(B.18427 Spr DAWSON, F.E.)

The accused made the following voluntary confession under oath before me on the 13 Jul 44. He was duly cautioned that the statement he was about to make would be used as evidence. The statement was read back to him before he attached his signature.

J. O. Miller Lt.
(J. O. Miller) Lt.
13 Bn. 2 CBRG.

Army Book 422A

Exhibit (3)

WAR DEPARTMENT RAILWAY WARRANT

for personnel, etc., travelling as individuals or in parties with [illegible] such baggage as is covered by the Railway Companies' free allowance.

D 662311

DMC

NOTE.—This Warrant is NOT TRANSFERABLE and must be exchanged for a ticket(s) before joining train.

CHARGES PAYABLE BY:—
OFFICER I/C. RAILWAYS BRANCH,
ARMY PAY OFFICE, ALDERSHOT,

Stamp of

1 DON. FOR PARK COY. R.C.E.
C.A.
1 JUL 1944

Issuing Office

"Normal

To the Southern RAILWAY COMPANY. Date 1 July 1944

Please issue without charge to the bearer, Ticket(s) as shown below for a duty journey via the recognized direct and cheapest route* and debit the charges at military* fares.

FROM Dover Station. TO Fleet Station (single* return*)

* Delete words not applicable.

Signature of issuing Officer [signature]

Rank and Corps Capt RCE

	Number (in words) to be conveyed. To be filled in by issuer.	To be filled in by Railway Company. Public Fares.	Military Fares.	Amount Payable £ s. d.
FIRST CLASS				
THIRD CLASS	ONE	—	—	
TOTAL				

TO BE FILLED IN BY RAILWAY COMPANY.

Number(s) of ticket(s) issued Date 194

Issued by

via Station Stamp

IMPORTANT

(1) This Warrant is Not Transferable. It must be presented at the Booking Office of the Station from which the journey is authorized to begin, when a railway ticket or tickets will be issued in exchange. Such Tickets are Not Transferable.

(2) Any alteration on this Warrant must be initialled by the Issuing Officer.

(3) Children under 14 to be entered as "Half Passengers"; no entry to be made for children under 3 years of age.

(4) This Warrant will become null and void if not used within one calendar month from the date of issue.

(5) Baggage must not be [illegible] on this Warrant. If baggage in excess [illegible] Railway Companies' free allowance (Firs[illegible] 112 lb., Third Class 56 lb.) is to be conveyed at the public expense, A.B. 422a will be used.

(6) Great care will be taken by issuing Officers to denote the appropriate class of ticket required. Where a Warrant is made out 3rd class and a cross channel journey is involved it should be conspicuously endorsed "Saloon on Boat" if applicable.

(7) Where Warrants are issued on repayment the instructions in paragraph 1100, King's Regulations, 1940, must be strictly complied with. Such Warrants will be endorsed on the front in red ink "On repayment."

Particulars of passengers authorized to travel will be shown below. If space is insufficient a nominal roll will be completed.

Unit.	Army Number and Rank.	Name and Initials.
	B18427 SPR	DAWSON, F. E.

Authority for journey 2 Fch Msg FAOD/3492 A/071430B

Nature of duty SOS to 13Bn CBRG

Charge[illegible]* "Normal"

* Insert "Normal," or other applicable heading.

[P.T.O.

Exh. B.T 2)

I CERTIFY that the man whose personal description is given below surrendered himself to* PS65 G Woodley at Dalston at (hour) 1.50 pm on the 8th day of July 1944 as being No. B18427 (Rank and Name) Sapper F.E. Dawson a deserter (or absentee wtthout leave) from Canadian Army and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 27 Height Six Feet One Inches
Complexion Dark Hair Dark brown
Eyes Brown
Marks
In uniform or plain clothes Uniform

Probable Date and Place of Attestation	30-12-41 Toronto, Canada
Probable Date of Desertion or beginning of absence, and from what place	1st July 1944 Dover

L. Woodley PS65 G
Signature of Officer of Police in charge of Dalston Station
8-7-44 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of No. who surrendered to the Police at on

Payable to

DMC

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Army Form O.1617
R.A.F. Form 1617

IMMEDIATE.

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in case for the disposal of absentees and deserters from the Army who surrender to the civil police; e.g., such personnel will be taken into form the civil authorities by the O.C. the nearest military unit to the O.C. Troops of the nearest military station. (A.C.I. 489/1940).

WT.[illegible] [illegible] N.G.P.C. [illegible]

DML

LIST OF WITNESSES

FOR PROSECUTION: Lt. W.A. Murray, Records Officer, 13 Bn 2 CBRD.
Lt. J.E. Miller, 13 Bn 2 CBRD.
Mil.

FOR DEFENCE:

LIST OF EXHIBITS

(1) Voluntary confession by the accused B.18427 Spr DAWSON, F.E. as to the time of going AWL - 2100 hrs 1 Jul 44.

(2) AFO 1617 Certificate of surrender showing B.18427 Spr DAWSON, F.E. as surrendering at 1950 hrs 8 Jul 44.

(3) AB 422A Military Railway Warrant issued 1 Jul 44 showing transportation of B.18427 Spr DAWSON, F.E. from 1 Cdn Fd Pk Coy, at DOVER, to 13 Bn 2 CBRD.

REQUEST FOR A DEFENCE COUNSEL

"I B.18427 Spr DAWSON, F.E. wish to have a competent officer appointed to defend me at the forthcoming trial by Court Martial." B18427 Spr Dawson F.E.

(B.18427 Spr DAWSON, F.E.)

Exhibit B
DMC

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B.18427	Spr.	DAWSON, F.E.	13 Bn. 2 CBRG

* 1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For AA Sect 15(1) 7 times
For AA Sect 40 2 times
For _____ _____ times
For _____ _____ times

Date of first entry in Field Conduct Sheet 9 May 43

Date of last entry in Field Conduct Sheet 5 May 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

† 3. The accused at the present time is under sentence for NA beginning on the NA day of NA

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for Nil days in military custody, i.e., Nil days in open arrest, Nil days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 27

6. The date of his ~~calling up for military service~~ attestation is 30 Dec 41

7. The service which the accused is allowed to reckon is 2 yrs 6 mos.

8. The accused is in possession of‡

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of _____	NA
In the war substantive rank of _____	NA
In the acting rank of _____	NA

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE* The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

†Strike out if not applicable.

‡State the military decorations (if

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 21 day of July 44

(J.F. MILLER) LT.
13 Bn. 2 CMBG

Exhibit C

MFM 6
(AFB 132)
40/PAS/130 (3488)

No B.18427 Name DAWSON, F.E. Sqn, Battery, or Company Corps RCE Date of enlistment 30 Dec 41 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 1 Signature OC Company, etc C.C. Hunter Maj Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
PREVIOUS SHEET DESTROYED 30 JUN 42. LAST ENTRY NIL. CASES OF DRUNKENESS NIL. 12 May 43 WA WILSON, Lt.									
Field	9 May 43	Spr		(1) AA 40 Cto P not properly dressed-canvass slippers. (2) Not in possession of MBl.	L/Cpl P.I. Cladman L/Cpl G North	3 days CB			
Field	17 Jul 43	Spr		AA Sec 15 (1) AWL from 2359 hrs 17 Jul 43 to 2200 hrs 18 Jul 43 (Absent 22 hrs 1 min)	B27372 Cpl Veitch TB K31047 Cpl Chase GF	3 days CB	19 Jul 43	Maj D.H. McCallum	1 days pay FR&I 149 (1)(a)
Field	29 Aug 43	Spr		AWL from 2300 hrs 29 Aug 43 until reporting to Descip NCO at School of instructions at 0830 hrs 31 Aug 43 (absent 1 day 9½ hrs)	Sgt Stanforth	5 days CB	31 Aug 43	Maj A.V. Greenfield	Forf 2 days FR&I 149(1)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Nov 43	Spr		(1) AA 15 (1) AWL from 2200 hrs 23 Nov 43 to 1040 hrs 25 Nov 43 (Absent 1 day 12 hrs 40 mins). (2) AA 40 Cond to the prej etc Had hooks and top button of his tunic open.	Doc	12 days FP Forf 10 days pay.	27 Nov 43	Lt.col AS Rutherford	Forf 2 days pay FRAI 149(1)(a)
Field	24 Dec 43	Spr tu		AA 15(1) AWL from 220 hrs 24 Dec to 2230 hrs 28 Dec 43(Absent 4 days 30 mins).	Doc.	7 days F.P.	29 Dec 43	Lt.col AS Rutherford	Forf 5 days pay FRAI 149(1)(a)
Field	16 Jan 44	Spr		AA 15 (1) AWL from 2359 hrs 16 Jan 44 to 2230 hrs 17 Jan 44 (Absent 22 hrs 31 mins).	CQMS Montgomery L/C Lepine	Forf 7 days pay AA 46(2)(d)	18 Jan 44	Maj O.C. Hamilton	Forf 1 days pay FRAI 149(1)(a)
Field	23 Apr 44	Spr		AA 15(1) AWL from 1200 hrs 23 Apr 44 to 115 hrs 25 Apr 44 (Absent 1 day 23 hrs 50 mins)	L/C Lepine L/C Brock	Forf 10 days pay FRAI 149(2)	25 Apr 44	Maj CC Hunter	Forf 2 days pay 149(1)(a)

MFM 6
(AFB 122)
40/PAS/136 (3488)

No B.18427 Name DAWSON, F.E. Sqn, Battery, or Company Corps RCE Date of enlistment 30 Dec 41 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 2 Signature OC Company, etc C.C. Hunter Maj Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 May 44	Spr		Sec 15 (1) AA AWL from 2359 hrs 5 May 44 until 2030 hrs 24 May 44 (Absent 18 days 20 hrs 30 Mins)	L/C Frame CQMS Hayes	21 Days det	25 May 44	C.C. Hunter Maj	Forf 19 dy pay FR&I 149(1)(a)

[signature] 13 Bn. 2C BRG
CERTIFIED TRUE COPY 18 July 44

(PTO)

RRR-1
CPL DAWSON HG

RECORDED AT CMHQ IN AB 160 RRR-1

RECEIVED 12 JUL 1944 JAG Branch

FIELD GENERAL COURT-MARTIAL

CPAM6 (ID No. of Wording) 40/P.A.C. Forms (2044)

Convened by Order of Brig R O G Morton / Comd CM 203 Incre dated 7 Jan 44

PROCEEDINGS REVIEWED Date 12 JUL 1944 CMHQ, Sec G H Q 2 Echelon, 21 Army Gp

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A/37333 Cpl Harold George DAWSON, HLI of C

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	Guilty	Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the ranks and to forfeit all ordinary pay for a period of 28 days

(Sgd) D.A. Colvin Judge-Advocate, if any. Capt 7 Jan 44 Date awarded. (Sgd) R.O.G. Morton Brig President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(O) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ~~kept in custody~~ committed to ~~military~~ detention barracks until further orders.(1)

(1. AA 57A. Delete if not applic)

Date 1 June 1944. (Sgd) R. O. G. Morton Brigadier

~~Commanding~~ 3 Cdn Inf Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
A 37333 Cpl Harold George Dawson HLI RC	30 June 44	A.H. Howard Capt. OIC Base Admn. Aldershot Camp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PROCEEDINGS REVIEWED 12 Jul 44 Lieutenant-Colonel REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 7 Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, ~~and Offrs under instr~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 37 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Con 557 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~his~~ as interpreter? Ans

~~The Interpreter is sworn.~~(1) Do you object to as shorthand writer? Ans

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. ranks, nat

President

Member

Member

Judge-Adv

Prosecutor

Defending Offr Lieut G D Lavalle

Questions by President: Is the Prosecutor a lawyer? Ans Is the Defending Offr a lawyer? Ans (3)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See p 2.)

A8. The accused A/37333 Cpl Dawson, H G before arraignment makes(s) (no) ~~no~~ plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13C, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B ~~& C~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 38(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No sir.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.~~(1) ~~The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s).~~ The accused is (are) so informed, and he (they) changes) his (their) pleas) on charge(s). ~~Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Forms C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) to which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence to be read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded p.r. Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 page 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), MML 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....
Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(D). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes at Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Give evidence on oath and call witness
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 3 and Ex 'C' respectively.(3)
(*1. AFB 1105 or AFB 296. 2. MML 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes Exhibit 'C'
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or both anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346. Overseas RO 308, 2102, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A/37333 Cpl Harold George DAWSON, HLI of C

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	Guilty	Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

~~As present~~ under sentence for ~~.....~~ beginning on (date) ~~.....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the ranks and to forfeit all ordinary pay for a period of 20 days

(Sgd) [signature] 7 Jun 44 (Sgd) [signature]
Judge-Advocate, if any. Date awarded. President. (RP 45, 52.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ~~not committed to prison or~~ detention barracks until further orders.(1)
(1. AA 57A. Delete if not wished.)

Date 7 June 1944 (Sgd) R. O. G. Morton Brigadier
A/Commanding 3 Cdn Inf Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
A/37333 Cpl Harold George Dawson HLI IC	30 Jun 44	[signature] Capt OIC Cdn Adm Holding Camp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 12 JUL 1944 JAG Branch

RECORDED AT CMHQ IN AD 160. RRR-1

FIELD GENERAL COURT-MARTIAL

(AFB6 (In lieu of AFB6 40/P.A.F. Form (2nd))

Convened by Order of Brig R O G Morton / Comd CM 203 Incre dated 7 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substantive rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A/37333	Cpl	Harold George	DAWSON	HLI C

PROCEEDINGS REVIEWED 12 Jul 44 [signature] Lt-Col REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS REVIEWED Date 12 JUL 1944 OIC JAG Sec GHQ 2 Echelon 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 7 Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 8/104

A1. The President, Members, waiting Member, JA, if any, ~~and Offrs under instr,~~ if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnnn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 37 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~.....~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to ~~.....~~ as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H I Posbery	~~RCASC~~ RCOC
Member	Capt	A M Appleby	4 Cdn LAA Regt, RCA
Member	Lieut	D J Lubert	4 Cdn LAA Regt, RCA
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor			
Defending			
Questions			

The name of the Prosecuting Officer, omitted from the a/m proceedings and now obtained from the m/n unit, is Capt R A Echlin, Service Increment 3 Cdn Inf Div. It is stated that Capt Echlin is not a lawyer.

Extract from letter by DJA Cdn Sec GHQ 2 Ech 21 Army Gp d/20 Jul 44 at fo.4 of 10/Dawson HQ/1.

(1. RP 111. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A8. The accused ~~is~~ ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 71, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF 88s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A9. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B ~~or C~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

CHARGE SHEET

The accused -- No A37333 Cpl George Harold Dawson, Highland Light Infantry of Canada, a soldier of the Canadian Army Overseas -- is charged with:

First Charge
Army Act
Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on the 14th day of May 1944 did absent himself from 2359 hrs until he surrendered himself to the unit residue at A-22 Camp at 1800 hrs on the third day of June 1944. Time absent 19 days 18 hrs.

In the field
5 Jun 44

(R A Echlin) Capt
Officer i/c Cdn Residue
A-22 Camp

To be tried by F.G.C.M.

R.O.G. Morton Brigadier

6 June 1944 A/ Div Comd 3 Cdn Div

CFA95 (In lieu of AFA3)
40/P&R/1697 (2663)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or if any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A/37333	Cpl		Harold George	DAWSON	HLI of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 6 Jun 44 endorsed by me, ~~(or by an offr of my staff for me)~~ in h/w "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~ in h/w

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. in h/w

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) H T Fosbery (Must be named. RP 106.) ~~RCASC~~ RCOC (Unit.)

MEMBERS.

Capt A M Appleby 4 Cdn LAA Regt, RCA

Lieut (Rank.) D J Lubert (Named or detailed. RP 106.) 4 Cdn LAA Regt, RCA (Unit.)

WAITING MEMBER.

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.) A C Hall (Must be named, if any. RP 106.) ADJA 3 Cdn Inf Div (Unit.)

On Active Service in the Fd

in England (Country.)

R. O. G. Morton (Signed personally. RP 105 fn 2.) (Rank.)

for (R O G Morton) Brig
Commanding CM 203 Increment
Convening Officer.

Date 7 Jun 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

I certify that Cpl W.G.Dawson is fit to undergo trial this 7th day of June 1944

Lieut H.C. Pearson
R.A.M.C.

Exhibit "D"

Corporal H. O. Dawson has been in the H.L.I. for four years. He has an excellent record with only one minor crime against his character. His wife wrote several letters saying that she was quite ill, and at the time she was pregnant. At last she told him that the doctor had advised her to have someone responsible person by her side. Cpl Dawson felt it to be imperative to go to her and since his application for special leave had been refused there was only one alternative. At the time he left his unit he had not been told that leaving his unit would be considered as desertion

[illegible] Lt.
4 C.A.A. Regt. R.C.A.

F D

Capt Echlin RA HLI of C.

Having been duly sworn states:

Know accused 4 years. I know him quite well - have known him some 6 years knew him as a young boy before he joined the Regt.

Accused was one of the 1st 100 men to enlist with the Regt. As a recruit he showed good soldierly qualities - had very few minor offences - I knew his plt. cmdr who spoke well of him. During 4 with Regt I have never heard adverse comment about the accused. I personally consider him to be a 1st class

S.C. In my opinion a S.C. should have special qualities of endurance, capabilities initiative

No - X X X.

~~Enlisted~~ D

HH

A 37333 Harold George Dawson of HLI of C.

Having been duly sworn states

4 years in HLI

May 42 last time - AWL for a short period thinks a week-end

Is a section leader. Of the Endurance section 1/c section for approx 15 months.

Knows Regt has gone into action - Was not briefed before going AWL

Not warned that AWL would be a serious charge

Went AWL because his wife ~~was ill~~ needed assistance - this was known from previous letters - Wife during pregnancy had high blood pressure - was very nervous and ill - needed somebody in the house with her. Considered it his duty to be in house with his wife.

XXN.

Q Is it true you went AWL because of your wife's illness

Ans. Yes.

Went AWL on 14 May

Took your wife to doctor on 2nd June

F D

Capt Echlin RA HLI of C.

Having been duly sworn states:

Know accused 4 years. I know him quite well - have known him some 6 years knew him as a young boy before he joined the Regt.

accused was one of the 1st 100 men to enlist with the Regt. As a recruit he showed good soldiering qualities - had very few minor offences - I knew his plt. cmdr who spoke well of him. During 4 with Regt I have never heard adverse comment about the accused. I personally consider him to be a 1st class S.C. In my opinion a S.C. should have special qualities of endurance, capabilities initiative

No - XXX.

Lubert Reduction with additional 30 day fine pay.

Capt. Uffley " " 20 days.

~~Exhibit~~ D

A 37333 Harold George Dawson of HLI of C.

Having been duly sworn states

4 years in HLI

May 42 last Crime - A W L for a short period thinks a week-end

Is a section leader. Of the Endurance section

I/c section for approx 15 months.

Knows Regt has gone into action - Was not briefed before going A W L

Not warned that A W L would be a serious charge

Went A W L because his wife was ill needed assistance - this was known from previous letters - Wife during pregnancy had high blood pressure - was very nervous and ill - needed somebody in the house with her. Considered it his duty to be in house with his wife.

X & N.

Q Is it true you went A W L because of your wife's illness

Ans. Yes

Went A W L on 14 May

Took your wife to doctor on 2nd June

Wife had been to Doctor – my wife told me this –

I had no pass at time I went AWL

They would only give passes up to 20 miles at that time even on compassionate grounds.

I applied on special compassionate grounds for pass and it was not granted.

Exhibit 'A'

SUMMARY OF EVIDENCE in the case of No A37333 Cpl. Harold George Dawson, HLI of C, charged with absenting himself without leave.

The Commanding Officer directs that the evidence be taken on oath.

The rights of the accused in relation to the taking of the summary of evidence are explained to him.

First Witness

No A37314 Sgt A W Lantz, HLI of C, having been duly sworn states:

I produce herewith Part II Order No 24 dated 30 May 1944 and I identify the accused as the Cpl H.G. Dawson to whom the same refers. At 1300 hrs 3 Jun 44 I was on duty at A-22 Camp, when the accused surrendered himself to me as an absentee without leave. I have been continuously present with the unit since 14 May 44 and know that the accused has been continuously absent.

The accused declines to cross-examine the witness.

(A W Lantz) Sgt

Question to the Accused

Do you wish to make a statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used in evidence.

Answer by the Accused

I wish to give evidence on oath.(having been duly sworn states) I had been getting letters from my wife stating that she was not feeling well during her pregency, due to high blood pressure. She could not keep her food down, and was sick at her stomach and sweating each day. From that I decided that she needed my assistance and I went immediately to her. My wife is living with her mother, who goes out each day to work. She said that she had been to the doctor, who had told her she should have someone stay with her. I decided to stay with my wife. She was very nervous and excited, and the air raids and ack-ack continually upset her. Before I returned I took my wife to Dr.Ivor Kingsley, 100 Rugby Road, Brighton., whose statement is attached. (Exhibit B)

H.G. Dawson

(H.G.Dawson Cpl.)

Taken down by me in the presence and hearing of the accused this 6th day of June 1944.

I certify that Rules of Procedure 4 (C) (D) (E) & (F) have been complied with.

H A Echlin

(H A Echlin) Capt
Officer i/c Cdn Residue
A-22 Camp

FROM DR. IVOR KINSLEY.

TELEPHONE:
PRESTON 2272

100, RUGBY ROAD,
BRIGHTON.

3/6/44

Mrs Dawson is pregnant
& is expecting in
October next.
She states she was unwell
~~for~~ during the past
3 weeks but did
not have medical
attention as she did not
think it necessary. She however
definitely needed some
help, preferably her
husband's.

I Kinsley
MRCS

THE HIGHLAND LIGHT INFANTRY OF CANADA A.F.

6 June 1944

EXTRACT OF H.L.I. D.O 24 d/30 May 44

A-37333 Cpl. Dawson, H. G.

ABSENT WITHOUT LEAVE

(a) AWL from 2230 hrs 14 May 44 Still absent at 2230 hrs 22 May 44 (8th day)

A-37333 Cpl. DAWSON, HG.

Certified true extract of H.L.I. order 24 d/30 May 1944

(H. E. Fullerton) Captain

Cdn Sec G.H.Q. 2nd Echelon 21 A.Gp.

Exhibit 'C'

MFM 6
(AFB 122)
(PAS/136 (34369))

No A37333 Name DAWSON George Harold | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 11 Jun 40 | GC Badges | Service or Proficiency Pay | Character GOOD

Date of last entry in Company Conduct Sheet | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc [signature]

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20Nov41	Pte	-	A.A. 15 (1) AWL 2 days 4 hrs 31min	-	7 days forfpay	26 Nov	Lt.Col. J.A.McIntosh	
Field	18May42	Pte	-	A.A. 15 (1) Awl 21hrs 1 min.	-	8 days forfpay	22 May	Lt.Col. R.J.McPherson	

Certified copy of entries re punishments appearing on MFM 4 [signature] Capt

Exhibit B1

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
A.37333	Cpl.	Harold George Dawson	Highland Light Infantry of Canada

1. The following is a fair and true summary of the entries in the ~~regimental and squadron, battery or company con-~~ MFM 4 (PART I) duct sheet† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offences in each category, and to any recognised special mode of punishment or distinguished conduct.

Instruction (c).—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. 15 (1)	Nil times	Two times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct, Nil~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~ Nil

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ Nil

~~beginning on the Nil day of~~

4. ~~The accused has been in confinement awaiting trial on the present charges for~~ ~~days~~ Nil ~~in civil custody, and~~ ~~days in military custody, making a total of~~ ~~days~~ Nil ~~of which~~ ~~days were spent in hospital~~ Nil

5. The present age of the accused according to his record of service ~~attestation paper~~ is 23 years

6. The date of his ~~enlistment~~ attestation specified in his record of service ~~attestation paper~~ is 11 June 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 years

8. The accused is entitled to deferred pay or gratuity in respect of 4 years service.

9. The accused is entitled to reckon 4 years service for the purpose of determining his pension, etc.

10. The accused ~~is in possession of, or entitled to, no military decoration or military reward~~ (or is in possession of *or* ~~obtained as~~ (*state any military decoration or reward*)). C.V.S.M.

11. (*If the accused is a warrant officer.*) ~~The accused before he was made a warrant officer was held the regimental rank of~~ Nil

12. (*In the case of an officer.*) ~~The accused holds in the army the rank of~~ Nil dated and in his regiment (or corps or department) the rank of Nil dated

(P.A.2250) W.11602/141 125,000 6/40 A.R.&W.Ltd. Gp.459

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A57353 Rank Cpl Name Harold George Dawson of H.L.I. of Can. Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of June 1944

L A Echlin Capt.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of L/Cpl	4 years	14 Nov 42
In the rank of Cpl	15 years	20 Mar 43
In the rank of	years.	

(*Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.*)

Y-80.

Pte DAWSON, J.

Y 80

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this FIFTH day of FEBRUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

~~I hereby~~ convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~*(3. Three Officers having more than one year's service.)~~

~~(of the following reasons, namely:—)~~

Proceedings Reviewed

J. C. Campbell Major

Reviewing Officer (JAG) 22 Feb 43.

(14)

President.

Rank.	Name.	Regiment.
Major	F.J. GILMOUR	RCA 2 Cdn Div

Members.

Rank.	Name.	Regiment.
One Major to be detailed by the OC	Essex Scot	
One Capt or Lieut to be detailed by the O.C.	RHLI	
Waiting Member One Lieut to be detaield by the O.C.	RHLI	

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (M.H.S. PENHALE) Brigadier

Commanding 4 Cdn.Inf.Bde.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.43048 Private, James DAWSON, 1st Bn The Royal Hamilton Light Infantry a soldier of the Canadian Army (Overseas).	FIRST CHARGE A.A. Sec. 15 (1) Absenting himself without leave (See Charge Sheet attached)	Guilty	Guilty 80 days Detn. 6 Feb 1943 F J Gilmour	confirmed [illegible]

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) [signature] (M.H.S. PENHALE) Brigadier, Commanding 4 Cdn. Inf. Bde. Convening Officer (c)

(Signed) F J Gilmour Major R.C.R. President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of Feby 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~
were duly sworn.

* Omit if not applicable.

Signed this 6th day of Feby 1943

F J Gilmour Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this [illegible] day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless paid servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

Signed this [illegible] day of February 1943.

[signature]
Confirming Officer

Promulgated and extracts taken in the case of B43048 Pte James Dawson Cond. 4 Cdn Inf Bde Brigadier Capt & Adjt

(a) (Dated) 10 Feb. 43 (Signed) [signature] ~~Lieut. Colonel~~ Royal Hamilton Light Infantry

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused B43048 Pte. James DAWSON, 1st Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army Ove rseas, is charged with

FIRST CHARGE
Sec 15(1) Army Act.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 2359 hrs 26 Dec 42 until 2340 hrs 3 Feb 43

.....
(J.J. Hurley) Lt.-col.,
Comd 1 Bn R.H.L.I., Cdn Army A.

In the Field
4 Feb 43

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

.....
Brigadier
Fourth Cdn Inf Bde

In the Field
5 Feb 43

I desire the Adjutant of 1st Bn Royal Hamilton Light Infantry
to detail an officer to defend me at my trial by Field General
Court Martial.

J. Dawson
(B43048 Pte. Dawson, J.)

- MEDICAL CERTIFICATE -

I certify that I, this morning, have examined No: B 43048

(Rank) Pte (Name) Dawson J.E. (Unit) R.H.L.I.

and find him Pit/[redacted] to undergo trial by Court-Martial.

Date: 6 Feb 43.

J.P. Fletcher Capt
(Medical Officer)

H Fulmour
Mgr Pres

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Gen'l Court-Martial held at In the Field on the 6th day of February 1943 by order of Brigadier M H S Penhale

Commanding 4th Cdn Inf. Bde

dated the 5 day of February 1943

President.

Major F. J. Gilmour R.C.A. att'd H.Q. 2 Cdn. Div.

Members.

Major W. E. Kime Kent Regt att'd Essex Scots

Lieut J. E. Reekie R.H.L.I.

Trial of* B-43048 Pte J.E. Dawson ~~Judge Advocate~~ Royal Hamilton Light Infantry

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~waiting member takes his place as a member of the Court~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt G.R. Reid R.H.L.I.

Counsel‡ or defending officer† Lt. L.T. Spalding R.H.L.I.

At 1010 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

F J Gilmour
Mr of a Pres

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers~~ under instruction are duly sworn.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty.

* To be struck out in case the plea of "Not Guilty" has been proceeded with.

~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

The accused B.43048 Pte Dawson J.E. is found guilty of the charge.

†The summary (or abstract) of evidence is read, marked "G" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

No sir

Answer. ~~The accused in mitigation of punishment says:—~~

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

Instruction. † If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

Evidence as to character.

No Sir

The defending officer addresses the Court reads a written statement which is handed in & attached to the proceedings marked "J"

F H Gilmour
Major
Pres

F H Gilmour
Major
Pres.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

Evidence as to character.

No Sir

The defending officer addresses the Court reads a written statement which is handed in & attached to the proceedings marked "J"

F Gilmour
Major
Pres

F Gilmour
Major
Pres.

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

E

Finding.*

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused

HS

*When the Court is already open this sentence will be struck out.

Evidence of character, &c.

Proceedings on Conviction before Sentence.

*The Court being re-opened, the accused is again brought before it.

Lieut R Reid. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes AFB 296 & Cert copy of M F M G.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked H & S, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. No

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise the finding of the Court renders him liable to any disciplinary punishment in addition to that it is to inflict by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

[signature]

SUMMARY OF EVIDENCE

In the case of B43048. Pte. James DAWSON, 1st Bn. Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas.

THE ACCUSED IS INFORMED OF HIS RIGHTS.

THE C.O. DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS FOR THE PROSECUTION.

B38230. L/Sgt. Muir. J. R.H.L.I. having been duly sworn states;

" I am transport Sgt . The accused, whom I recognize is a member of the transport section. On the night of 2o Dec 42 he approached me at the transport office and inquired about a five days special pass which was being granted to drivers who had been attached to 4 Cdn Inf Bde Battle School. There was no pass at the transport office for him and I informed him that he had better apply at the Bn. O.R. From then until to-day, the 4th of Feb 43 I have not seen him"

J. Muir
B38230. L/Sgt. Muir. J.

THE ACCUSED DECLINES TO CROSS EXAMINE.

SECOND WITNESS FOR THE PROSECUTION.

B37180. Pte. Thomson. W.P. R.H.L.I. having been duly sworn states;

" I am a clerk in the Bn. O.R. R.H.L.I. Pte Dawson returned from 4 Cdn Inf Bde Battle School and H.Q. 4 Cdn Inf Bde authorized a special ~~five day~~ leave to personnel returning from this school. Pte Dawson was given a ~~five day~~ pass from 20 Dec 42 until 2359 hrs 26 Dec 42.

W. T. Thomson
B37180. Pte. Thomson. W.P.

THE ACCUSED DECLINES TO CROSS EXAMINE.

THIRD WITNESS FOR THE PROSECUTION.

B37553. Cpl. Miller. F. R.H.L.I. having been duly sworn states;

"On the night of 3 Feb 43 I was acting Sgt of the Guard. At approximately 2340 hrs 3 Feb 43 Pte Dawson J., voluntarily surrendered himself at the Regimental Guard Room. He was sober.

F. Miller
B37553. Cpl. Miller. F.

THE ACCUSED DECLINES TO CROSS EXAMINE.

THE ACCUSED HAVING BEEN DULY CAUTIONED IN ACCORDANCE WITH R.P. 4. (2) says;

" I do not wish to make a statement",

THE ACCUSED DOES NOT WISH TO CALL WITNESSES IN HIS DEFENCE AT THIS POINT.

Certified that R.P. 4 has been complied with.

In the Field, 4 Feb 43.

G. R. Reid
Lieut. G.R.Reid
Officer detailed to take the Summary

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused

HG

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut R Reid. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes AFB 296 & Cert copy of Mr FMG.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked H & S, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. No

[Instruction.—At the request of the accused in a departmental copy, or otherwise, the finding of the Court needs, now taken to any exceptional punishment, an addition to that it is awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

[signature]
Maj
[illegible]

F

Sentence.

Sentence

The Court sentence the accused to 80 days detn

SUMMARY OF EVIDENCE

In the case of B43048. Pte. James DAWSON, 1st Bn. Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas.

THE ACCUSED IS INFORMED OF HIS RIGHTS.

THE C.O. DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS FOR THE PROSECUTION.

B38230. L/Sgt. Muir. J. R.H.L.I. having been duly sworn states;

" I am transport Sgt . The accused, whom I recognize is a member of the transport section. On the night of 2o Dec 42 he approached me at the transport office and inquired about a five days special pass which was being granted to drivers who had been attached to 4 Cdn Inf Bde Battle School. There was no pass at the transport office for him and I informed him that he had better apply at the Bn. O.R. From then until to-day, the 4th of Feb 43 I have not seen him"

James Muir
B38230. L/Sgt. Muir. J.

THE ACCUSED DECLINES TO CROSS EXAMINE.

SECOND WITNESS FOR THE PROSECUTION.

B37180. Pte. Thomson. W.F. R.H.L.I. having been duly sworn states;

" I am a clerk in the Bn. O.R. R.H.L.I. Pte Dawson returned from 4 Cdn Inf Bde Battle School and H.Q. 4 Cdn Inf Bde authorized a special ~~five day~~ leave to personnel returning from this school. Pte Dawson was given a ~~five day~~ pass from 20 Dec 42 until 2359 hrs 26 Dec 42.

W. F Thomson
B37180. Pte. Thomson. W.F.

THE ACCUSED DECLINES TO CROSS EXAMINE.

THIRD WITNESS FOR THE PROSECUTION.

B37553. Cpl. Miller. F. R.H.L.I. having been duly sworn states;

"On the night of 3 Feb 43 I was acting Sgt of the Guard. At approximately 2340 hrs 3 Feb 43 Pte Dawson J., voluntarily surrendered himself at the Regimental Guard Room. He was sober.

F Miller
B37553. Cpl. Miller. F.

THE ACCUSED DECLINES TO CROSS EXAMINE.

THE ACCUSED HAVING BEEN DULY CAUTIONED IN ACCORDANCE WITH R.P. 4. (E) says;

" I do not wish to make a statement",

THE ACCUSED DOES NOT WISH TO CALL WITNESSES IN HIS DEFENCE AT THIS POINT.

Certified that R.P. 4 has been complied with.

In the Field, 4 Feb 43.

G.R. Reid
Lieut. G.R.Reid
Officer detailed to take the Summary

Pte Dawson joined up with the Perth Regt in 1939 and in April 1940 was boarded out as category "E". Pte Dawson liked the Army and wanted to do his part for his country so on Aug 9, 1940 he joined the D. & H. R. of Can where he became an I. C. S. In Sept. 1942 he volunteered for overseas service. I do not think there can be any serious [illegible] in a man who is so determined to do his duty for his country.

Pte Dawson has applied several times for a transfer to the R. C. A. S. C. which is his type of work. His application was turned down and as many of us would have been was disappointed and fed up. Pte Dawson did a foolish thing ~~but and~~ ~~[illegible]~~ and admits that he did wrong, and, is willing to take his punishment.

Due to Pte Dawson past record which has been good I ask the court to be as lenient as they possibly can.

C. [illegible] Gelding Lieut.

"J" [illegible]

Description of Court by which tried, or station of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the Regimental books in my custody.

Signed this Sixth day of February 1943

Adjt., R.H.L.I.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B43048 Pte. JAMES DAWSON of the 1Bn. Royal Hamilton Light Infantry

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, R.R. 1938.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For AWL	one times	~~Three~~ Two times. AWL
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct,~~

or,

~~There are no entries in the Conduct sheets of the accused.~~ AWL

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. [illegible] 10,000 2/40 W. S. Ltd. 12—[illegible]

3. The accused is not under sentence at the present time,

~~or,~~

The accused at the present ~~time is~~ under sentence for ~~beginning on the~~ day of

4. The accused has been in confinement, awaiting trial on the present charges for N11 days in Civil Custody,

and ~~One (1)~~ days in Military Custody.

Total One days.

Of which N11 days were spent in hospital. STET

5. The present age of the accused according to his ~~record of service~~ attestation paper is 29

6. The date of his ~~commission~~ ~~record of service~~ attestation specified in his attestation paper is 9 Aug 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to ~~deferred~~ pay or gratuity in respect of years' service.

9. The accused is entitled to reckon years' ~~service~~ for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward (*or is in possession of or entitled to*

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or corps or department*) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without redaction, to the present date,

	Date of Promotion.
In the rank of	years,
In the rank of	years,
In the rank of	years,

(INSTRUCTIONS.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		NIL		

(*Continued overleaf.*

In lieu of M.F.M. 6

No. B43048 Name Dawson, J. Sqn., Battery or Company) BHQ Corps R.H.L.I. Date of enlistment) 9 Aug 40 C.C.) Badges) Service or proficiency pay

Date of last entry in Company Conduct Sheet) No. and date (of last drunk) Period not reckoning towards freedom from extra fine) Sheet No. 1 Character

Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkeness	OFFENCE	Names of Witnesses	Punishment Awarded	Date of award or order dispensing trial	By whom awarded & remarks
~~Canada~~	~~13 Dec 40~~	~~Pte~~		~~A.W.L. 10 days, 13 hrs, 30 mins.~~				~~Forf 21 days pay~~
Canada	15 May 41	Pte		A.W.L. 11 days, 22 hrs, 45 mins.		14 days C.B.		Forf 22 days pay
Canada	14 Sep 42	Pte		A.W.L. 3 days, 4 hrs, 50 mins.		14 days C.B.		Forf 18 days pay

(Entries taken from M.F.M. 6)

A.J. O'Donohoe

(A.J. O'Donohoe) Capt & Adjt,
1 Bn R.H.L.I., C.A.(Os)

9/7/43

CONFIDENTIAL

CONFIDENTIAL

H 16040
Pte Dawson P.S.
3 C 2 Hu

Records

234B

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 31st day of May, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~*[I am unable to appoint—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~*(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—]~~

PROCEEDINGS REVIEWED.

President.

Rank.	Name.	Regiment.
Major	L.P. Chapman	No.1 Cdn Arty Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.H. McLeod	No.2 Cdn Arty Hldg Unit
Lieutenant	E.A. Ballantyne	No.1 Cdn Eng Hldg Unit
Lieutenant	P.E. Amyot	No.1 Cdn Sigs Hldg Unit

*Must be signed personally by the Officer personally in Command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed C. [signature], Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H-16040 PTE. DAWSON, P.J. (P P C L I reinforcement) No.3 Cdn Inf Hldg Unit.	First Charge A.A. Sec 18(4) as per charge sheet	NOT GUILTY	GUILTY	✓
	Second Charge A.A. Sec 40 as per charge sheet	NOT GUILTY	NOT GUILTY	Confirmed
	Third Charge A.A. Sec 18(4) as per charge sheet	NOT GUILTY	NOT GUILTY	
	Fourth Charge A.A. Sec 40 as per charge sheet	NOT GUILTY	NOT GUILTY	
	Fifth Charge A.A. Sec 40 as per charge sheet	NOT GUILTY	GUILTY	✓
		TO BE IMPRISONED WITHOUT HARD LABOUR FOR ONE YEAR		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" NO.

Answer (to be recorded on separate sheet if necessary):—

(Signed) L. F. [illegible] Brigadier (Signed) L. P. Chapman Major
Commanding Cdn Base Units, Cdn Army. President
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of June, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~) Court Stenographer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 5th day of June 1941.

L. P. Chapman Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 576 of 1918 have been~~ complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted if penal or [illegible] or imprisonment having been awarded, the Confirming Officer has no authority to commit to prison, or, having such authority, recommends pension.

Signed this 5th day of July 1941

L. F. [illegible] Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of H16040 Pte Dawson, P.J.

(a) (Dated) 9th July 41 (Signed) [illegible] Lt.-Col.
[illegible] Redman, Commanding,
No. 3 Cdn. Inf. Holding Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Army Form B252

CHARGE SHEET

The accused No.H-16040 Pte DAWSON,P.J. (Princess Patricia's Canadian Light Infantry) No.3 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas) is charged with,while on active service;

CHARGE No.1. A.A.Sect 18(4)

STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

at Witley,Surrey on the night of 29th-30th March 1941 did steal one greatcoat the property of No.H-16766 Pte Fairhurst E.

or in alternative

CHARGE No.2. A.A.Sect 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Witley Surrey on the 30th day of March 1941 was improperly in possession of property belonging to a person subject to military law, to wit, the said greatcoat.

CHARGE No.3. A.A.Sect.18(4)

STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

at Witley Surrey on the night of 29th-30th March 1941 did steal one money belt, the property of No.K-53306 Pte Fayers F.J.

or in alternative

CHARGE No.4. A.A.Sect.40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Witley, Surrey on the 30th day of March 1941 was improperly in possession of property belonging to a person subject to military law, to wit, the said money belt.

CHARGE No.5 A.A.Sect.40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Witley Surrey on the 2nd day of April 1941 was improperly in possession of public property,to wit, three suits of Battle-dress which had never been issued to him.

M.C.

CHARGE SHEET

In the case of No.H-16040 Pte Dawson P.J.

[signature] Lt.Col.
(D.L.Redman)
Officer Commanding
No.3 Canadian Infantry Holding Unit

Dated at Witley Surrey
this 26th day of April
1941.

To be tried by Field General Court Martial

[signature] Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 21st day of May 41.

1 P.6.

16040, Pte. Dawson, P.J., No. 3 Cdn. Inf. Holding Unit, tried by Field General Court-Martial at Witley, Surrey, on the 5th day of June, 1941.

The order convening the Court, the charge-sheet, summary of evidence and medical certificate are laid before the Court.

Prosecutor - Lieut. J. Braden (Lawyer)
Defending Officer - Lieut. C.T.B. Vance (Lawyer)

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members of the Court are duly sworn.

Q2 - Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

Prosecutor - Regarding the third charge with respect to stealing one money belt, the property of Pte. Fayers; Pte. Fayers, from whom the money belt was stolen -- alleged to have been stolen -- is in hospital with Scarlet Fever and therefore the prosecution wishes to withdraw the third and fourth charges.

The Court agree that these charges be withdrawn and that the accused be arraigned upon the three remaining charges.

Q3 - Are you guilty or not guilty of the first charge against you, which you have heard read?
A3 - Not guilty, sir.
Q4 - Are you guilty or not guilty of the second charge against you, which you have heard read?
A4 - Not guilty, sir.
Q5 - Are you guilty or not guilty of the fifth charge against you, which you have heard read?
A5 - Not guilty, sir.

Prosecutor - On or about the 29th -30th March the accused, Dawson, came under suspicion and was placed in custody and an investigation carried out and these charges laid. The prosecution will attempt to prove by the evidence adduced that Dawson did steal this greatcoat that was found in his possession and that he was seen taking the coat. Regarding the suits of battledress, that was found in his kit.

The prosecutor proceeds to call witnesses.

First witness for the prosecution, M-36707, C.S.M. Coogan, J.C., No. 3 Cdn. Inf. Holding Unit, being duly sworn, is examined by the prosecutor.

Q6 - You are Sgt. Major J.C. Coogan, No. 3 Cdn. Inf. Holding Unit?
A6 - Yes, sir.
Q7 - Of which company?
A7 - Headquarters Company.
Q8 - On the morning of the 30th March there was a report made to you?
A8 - Yes, sir.
Q9 - Will you tell the Court what it was?
A9 - On the morning of the 30th part of my men made a complaint that their lines had been ransacked and articles of clothing and personal equipment taken away, greatcoats, money, pay-books, medals and other personal property. We have only found the greatcoat, sir.
Q10 - What happened on the 1st April?

A10 - On the 1st April at 1600 hours the orderly corporal told me that that Pte. Fairhurst had recognized his greatcoat in possession of Pte. Hawley. Pte. Hawley was escorted to the orderly room and a statement taken as to where he had got the greatcoat. He was placed under close arrest and handed to me the money belt and pencil and pen. I knew then that Pte. Dawson was the man he had bought the greatcoat off.

Cross-examination by the defending officer

Q11 - Did Pte. Fairhurst identify the greatcoat in your presence as being his?
A11 - Yes, sir.
Q12 - And you had Pte. Hawley placed under arrest?
A12 - Yes, sir.
Q13 - Did you say that you found the greatcoat on Hawley?
A13 - Not on Hawley; Hawley was wearing it in my orderly room.
Q14 - You examined it and found that it was Pte. Fairhurst's?
A14 - Yes, sir.
Q15 - But as far as Dawson was concerned he didn't come into it. You don't know of your own knowledge that Pte. Dawson came into it at all?
A15 - No, sir.

Second witness for the prosecution, K-42118, Pte. Hawley, M., No. 3 Cdn. Inf. Holding Unit, being duly sworn, is examined by the prosecutor.

Q16 - Your name and number, please?
A16 - K-42118, Pte. Hawley, M.
Q17 - You are in No. 3 Cdn. Inf. Holding Unit?
A17 - Yes, sir.
Q18 - You were there on the 30th March, 1941?
A18 - Yes, sir.
Q19 - You bought a greatcoat?
A19 - I did, sir.
Q20 - Whom did you buy it from?
A20 - Pte. Dawson, sir.
Q21 - In this court?
A21 - Yes, sir.
Q22 - The accused?
A22 - Yes, sir.
Q23 - Will you tell the Court what happened in respect of the greatcoat?
A23 - Dawson asked if I would like to buy a greatcoat as mine was slightly too big and I traded in my greatcoat and ten shillings for the greatcoat.
Q24 - What happened next?
A24 - Well, next I was wearing it around camp and Pte. Fairhurst recognized it and he said it was his greatcoat and I said he would have to prove it and he called the regimental police and the regimental orderly sergeant and took me to Sgt. Major Coogan's office and Sgt. Major Coogan put me in detention, sir.
Q25 - Is this the greatcoat you purchased from Dawson?
A25 - Yes, sir, that is the one.

The prosecutor presents in evidence one greatcoat which is accepted by the Court.

Cross-examination by the defending officer.

Q26 - You just glanced at this greatcoat a minute ago didn't you?
A26 - Yes, sir.
Q27 - How do you know it is the greatcoat?
A27 - Pte. Fairhurst's name is on it.
Q28 - Don't all greatcoats look exactly alike?
A28 - Yes, sir.
Q29 - Then you don't know if it is the greatcoat. Can you swear it is the greatcoat?
A29 - Not until I see his name.
Q30 - Why did you buy it?
A30 - Because I liked the style and mine was too big.

Q31 - Did you examine it?
A31 - I didn't see no identification.
Q32 - You didn't see any marks?
A32 - No, sir.
Q33 - Did you look it over carefully?
A33 - Yes, sir.
Q34 - And there were no marks on it?
A34 - No, sir.
Q35 - When they took the greatcoat from you when you were arrested how did they prove it belonged to Pte. Fairhurst?
A35 - On the little size tag Fairhurst's name was in very small writing.
Q36 - But you didn't see it when you bought it?
A36 - No, sir.

Re-examination by the prosecutor.

Q37 - Will you examine the coat and see if you can find the identification marks you have just said were on it?
A37 - Yes. (Indicates to the Court)
Q38 - That is the coat you bought from Pte. Dawson?
A38 - Yes, sir.

Re-examination by the defending officer.

Q39 - That mark, is it in quite a prominent place?
A39 - Yes, sir.
Q40 - You can see it easily can't you?
A40 - If you look closely, sir.

Third witness for the prosecution, H-16766, Pte. Fairhurst, E., No. 3 Cdn. Inf. Holding Unit, being duly sworn, is examined by the prosecutor.

Q41 - Will you give to the Court your number, name and rank, please.
A41 - H-16766, Pte. Fairhurst, No. 3 Cdn. Inf. Holding Unit.
Q42 - On or about 29-30 March, 1941, were you at No. 3 Cdn. Inf. Holding Unit?
A42 - Yes, sir.
Q43 - In what barrack rooms were you at that time?
A43 - E-1, sir.
Q44 - On the 29th-30th March did you lose your greatcoat?
A44 - Yes, sir, I did.
Q45 - Had you had the greatcoat the night before?
A45 - Until that afternoon.
Q46 - Had you been out the night before; the 29th March?
A46 - Yes, sir.
Q47 - Where?
A47 - Godalming.
Q49 - When did you return to camp?
A49 - Nine forty-five.
Q50 - 2145 hours?
A50 - Yes, sir.
Q51 - Had you had your greatcoat in Godalming?
A51 - Yes, sir.
Q52 - You took it there and brought it home with you?
A52 - Definitely.
Q53 - What did you do then?
A53 - I booked in at the orderly room and went to the barrack room and sat around until eleven p.m. and retired. The lights were put out and that was all I knew until reveille next morning.
Q54 - Where had you left the greatcoat?
A54 - At the head of my bed. My greatcoat had disappeared the following morning and I made a report to the orderly room to the orderly sergeant that the greatcoat had been stolen.
Q55 - When did you next see your greatcoat?
A55 - At 1730 hours on Tuesday, April 1st.
Q56 - What transpired then?
A56 - I was on duty in the men's kitchen in No. 2 mess and Pte. Hawley happened to come back to talk to one of the assistants and I recognized the overcoat. After I recognized the overcoat I asked the N.P. to detain the party in question until I notified my orderly room to see

what was to be done, and the orderly sergeant took the party, with the coat, to the orderly room for further questioning.

Q57 - Did you identify the greatcoat?
A57 - I did.
Q58 - How did you identify it?
A58 - By my name written some months ago on the size tag on the right hand side inside the coat.
Q59 - Is this the coat taken from Pte. Hawley? (Shows witness Exhibit 1)
A59 - Yes, sir, that is it.

Cross-examination by the defending officer.

Q60 - Am I right in supposing, Pte. Fairhurst, that all you really know about this case is that you hung the greatcoat up at night and went to sleep and it was gone the next morning. Later you were told they had found a greatcoat and you went to the guard-room and identified it?
A60 - I recognized it on the individual.
Q61 - And you had Pte. Hawley arrested?
A61 - Yes, sir.
Q62 - You don't know how it got away from you?
A62 - No, it was just missing until I found it on Pte. Hawley.

Fourth witness for the prosecution, Pte. A.W. Barrette, M-16728, No. 3 Cdn. Inf. Holding Unit, being duly sworn, is examined by the prosecutor.

Q63 - Will you tell the Court your number, name and unit?
A63 - M-16728, Pte. Barrette, A.W., No. 3 Cdn. Inf. Holding Unit.
Q64 - You are attached to H.Q. Company, No. 3 Cdn. Inf. Holding Unit?
A64 - Yes, sir.
Q65 - Were you on or about the 29-30th March?
A65 - Yes, sir.
Q66 - Will you tell the Court what happened on that night as far as you were concerned?
A66 - On the night 29-30th March.....
Q67 - In what hut were you quartered?
A67 - E-1
Q68 - Do you know Pte. Fairhurst?
A68 - Yes, sir.
Q69 - Is he in that hut too?
A69 - At the time, sir.
Q70 - Where is his bed from yours?
A70 - The room is partitioned off and there are four double bed in each partition and his was the next partition, the other side of the next partition, on the opposite side of the room.

Q71 - Will you tell us what happened that night?
A71 - On the night of the 29th-30th March I was awakened about two o'clock by someone opening the door and I heard someone going in and then they stood in the middle of the floor about half way between Fairhurst's and my bed. I don't know who it was, and he went to Fairhurst's bed and lit matches and came back again. I sleep close to the door and the bed across from me was where he went and he had a flashlight which didn't stay lit, it would come on and go off right away -- like a poor match. I heard a rustling of papers and asked who he was looking for.

Q72 - Did you challenge this person at all?
A72 - I asked who he was looking for.
Q73 - Did you see him; did you see his face?
A73 - Yes, sir.
Q74 - How did you see that?
A74 - By the flashlight.
Q75 - What time was it then?
A75 - A little past two.
Q76 - Did you know who that person was who was in the hut?
A76 - I didn't know at the time.
Q77 - Did you know later?
A77 - I just came back from school at Aldershot and I just knew one or two of the cooks and the others were all strangers and I thought it was one of the boys I didn't know.
Q78 - Did you later recognize the person in the hut that night?
A78 - Later.

Q79 - Where was that?
A79 - I was standing in front of the orderly room of the unit when the parade came.
Q80 - For Colonel's orders?
A80 - They were in front of the unit orderly room.
Q81 - What happened then?
A81 - I identified the man I saw in the room.
Q82 - Who was that person you identified as being the man in your hut?
A82 - It's that man there. (Indicates the accused)
Q83 - Were there any other people standing around when you identified him as being in your hut?
A83 - I think either five or six.

Cross-examination by the defending officer.

Q84 - When this door opened in your hut, were you awake or asleep?
A84 - About half asleep. I sleep close to the door and when someone opens or closes the door I can hear them; but I was pretty well asleep.
Q85 - When you did wake up you were rather groggy weren't you? Everyone is a little groggy at first aren't they? Especially if the room is dark. You know what I mean -- sleepy.
A85 - I am not a man to sleep very much.
Q86 - You didn't wake right up with a jump did you? You were likely sleepy and groggy, weren't you?
A86 - I was pretty well awoke that night because a few of the boys came in before that and I heard the boys going to bed.
Q87 - You wouldn't think much of the door opening if you were expecting people to come in. You would be awake but not paying much attention.
A87 - I would at that time for anybody to come around.
Q88 - I am talking about when you were awakened by the door. When the door opened and the fellow walked in you would be sleepy wouldn't you?
A88 - I wasn't sleepy.
Q89 - Yet you were sound asleep before?
A89 - The door woke me up; I heard the door open and close again.
Q90 - You knew what was going on but you were half asleep weren't you?
A90 - It all depends.....
Q91 - Don't hedge, answer yes or no.
A91 - Some times I have felt that way, but other times I am wide awake.
Q92 - That night did you suddenly wake up wide awake or were you sleepy?
A92 - I awoke enough to see and hear things what was going on.
Q93 - Then you say the man went over with matches?
A93 - Yes, after he passed about two beds from me.
Q94 - Then a flashlight?
A94 - No, he stopped for a while, a few seconds, and went on to the next bed.
Q95 - When you called on him he lit his flashlight?
A95 - That was on the way back
Q96 - But you didn't when he lit the matches?
A96 - No.
Q97 - Why didn't you ask when he lit the matches.
A97 - I thought it was someone trying to find his way in the dark and I called him when I thought he had been there long enough.
Q98 - You were awake enough to observe anyone; you could see their form and see it fairly well?
A98 - Not when he was going in, when he stopped about the centre I could see a cap just like mine.
Q99 - When you called out, how far away was he from you?
A99 - The width of a door and a brick wall on each side of the door for a certain length, about three feet.
Q100 - Did he have the flashlight on then?
A100 - It would go on and off.
Q101 - Then what?
A101 - I heard the noise of the locker and heard the paper rustling. I sat up in bed to see if it was one of the boys who belonged to the bed.
Q102 - How was the light shining?
A102 - It was a dim light.
Q103 - Held out from his body?
A103 - In the front I think; anyway, I didn't see the light but I could see his face.
Q104 - Plainly?
A104 - Yes, sir.
Q105 - But it was a dim light.
A105 - It would go off and on; it would stay on a second or so.

Q106 - You mean to say that it was a dim light and he was some distance away from you....Was he facing you?
A106 - Sideways.
Q107 - And yet you could, in that light that wasn't bright, you could positively swear that you could identify that man?
A107 - By looking at him from the side I could.
Q108 - In the half light?
A108 - I could tell the shape of his face.
Q109 - But it would be very vague in a half light; the shape of anybody's face is vague, you can't get a sharp outline.
A109 - I think you can get a better look at him sideways than looking straight at him.
Q110 - These men on the Colonel's orders; you say there were five or six?
A110 - Yes, sir.
Q111 - Were they all dressed alike?
A111 - Yes, they were all dressedalike.
Q112 - They all had hats on did they?
A112 - Well I don't remember if they had hats on now. I think two had no hats on.
Q113 - The man you picked out, did he have a hat on?
A113 - No.
Q114 - Did the man in the hut the night before have a hat on?
A114 - That man came in with a hat when I noticed him when he stopped about half way in between my bed and the other end.
Q115 - When you identified the accused, did he have side arms; belt and bayonet?
A115 - No, sir.
Q116 - Did the others?
A116 - Not that I know of.
Q117 - None of them?
A117 - Except the guards.
Q118 - Were there guards?
A118 - Two guards.
Q119 - They were all together in the five or six?
A119 - Yes, sir.
Q120 - You knew the guard had prisoners then, didn't you? You knew the group of men were prisoners with a guard and knew they were going to the Colonel's office?
A120 - I didn't notice them going in?
Q121 - You knew what they were there for?
A121 - I had an idea.
Q122 - Did you know someone had been arrested for stealing a greatcoat?
A122 - I heard something about it.
Q123 - Did you hear the name?
A123 - I heard more than one but I didn't know who it was at the time.
Q124 - But you knew it would be one of those men?
A124 - I figured one of them, but I didn't know for sure because when I went there for a few minutes before there was another parade ahead.
Q125 - You knew he would be in one of those groups?
A125 - I didn't know for sure.
Q126 - You still say that you woke wide awake as soon as the door opened? Did you wake up or did you not -- wide awake? You are positive about the man, you should remember that.
A126 - I was awake, I remember that.
Q127 - Did you wake up every time somebody came in that night?
A127 - There might have been some others, but I heard two or three come in.
Q128 - And you woke right up when they came in?
A128 - I heard them going to bed and undressing.
Q129 - Don't you think that anyone coming in to steal something would come in quietly and would be gentle in closing the doors so you wouldn't be wakened up? Don't you think that? Don't you think that if somebody were coming in to steal something they would open the door gently so as not to waken anybody up? That is a natural thing, isn't it?
A129 - Yes.
Q130 - And this man that came in opened and closed the door to such an extent you were wide awake?
A130 - I was easy awakened that night.
Q131 - You were wide awake immediately? Just say whether you were or not. I think you can answer that question.
A131 - I must have been pretty well awake.

Fifth witness for the prosecution, Lieut. K.D. Wilson, No. 3 Cdn. Inf. Holding Unit, being duly sworn, is examined by the prosecutor.

Q132 - Your name and rank, please?
A132 - Lieut. K.D. Wilson, No. 3 Cdn. Inf. Holding Unit.
Q133 - Your duties in that unit are what?
A133 - Training officer and also security officer.
Q134 - Was there reported to you any thefts on or about 29-30 March?
A134 - There was a series.
Q135 - Did you investigate them?
A135 - I did.
Q136 - Do you know the accused?
A136 - Pte. Dawson, yes.
Q137 - Did you investigate..... Did he come under suspicion during your investigation?
A137 - He did.
Q138 - Will you tell the Court exactly in what manner?
A138 - There was a series of thefts in the camp and Dawson's name came to my attention in connection with a greatcoat stolen and purchased by Pte. Hawley. In investigating this I interviewed Dawson who told me that he had picked it up at the Half Moon Hotel at a quarter to ten just before closing time

Defending Officer - Before we get any further statement I would ask whether Lieut. Wilson was investigating this in the role of a police officer.

Witness - Security is a broad term. Regimental security has to do in general with the morale of the troops. Thefts are considered as a dangerous threat to the morale of the troops. I was not acting as a provost.

Defending Officer - I would like to make a submission that this is a statement being brought in as being made by the accused and he should give evidence that the accused was warned in the usual manner.

Witness - This is a voluntary statement.

Defending Officer - I submit, sir, a voluntary statement cannot be accepted in court unless the accused was warned.

President - We cannot accept the statement of Dawson in this case from Mr. Wilson.

Q139 - Did you search Pte. Dawson's kit, Mr. Wilson?
A139 - I did.
Q140 - What did you find there?
A140 - In company with Pte. Deegan I went through Dawson's kit and found three suits of battle dress over and above what were issued to him.

Cross-examination by the defending officer.

Q141 - What condition were these suits of battle dress in?
A141 - In what way?
Q142 - Were they used?
A142 - Used.
Q143 - Were they in fairly good condition or poor condition?
A143 - All wearable.
Q144 - By wearable I would like to get your definition; do you mean they could possibly be worn for a parade?
A144 - As I recall, one would be quite passable for training parade such as ground work and the other two if brushed up would be passable for parade. They were all crumpled up and rolled up and the average battle dress after three weeks with the man is not considered formal attire.
Q145 - Were they covered with paint or grease?
A145 - I believe there is grease on one; I wouldn't be sure.

Re-examination by the prosecutor.

Q146 - I have three suits of battle dress, can you identify these as the ones found in Dawson's kit?
A146 - I couldn't possibly identify them at this stage as they have not been in my possession.
Q147 - Do you know where they have been?
A147 - Every safeguard was taken. They have been in the lock-up at the guard-room and from there removed to the cupboard in the Colonel's room under lock and key where they were under protection at all times.

The prosecutor presents to the Court three suits of battle dress which the Court accepts in evidence, marking them Exhibits 2, 3 and 4.

xth witness for the prosecution, M-12146, Pte. Deegan, H.J., No. 3 Cdn.
nf. Holding Unit, being duly sworn, is examined by the prosecutor.

146 - Your name, rank and number, please?
146 - M-12146, Pte. Deegan, H.J.
147 - On the 29th-30th March what unit were you with?
149 - No. 3 Cdn. Inf. Holding Unit.
150 - On the provost strength there?
150 - Yes, sir.
151 - Were you detailed for any special duty on the 1st April, 1941?
151 - Yes, sir.
152 - What was that?
152 - I was detailed by Lieut. Wilson to investigate and search kits of two soldiers in detention at that time.
153 - Was Pte. Dawson one of those?
153 - Yes, sir.
154 - The accused here?
154 - Yes, sir.
155 - You searched the kits?
155 - Yes, sir.
156 - What did you find?
156 - Five uniforms.
157 - That is suits of battle dress?
157 - Yes, sir.
158 - In Dawson's kit?
158 - In his kit bag, sir.

ross-examination by the defending officer.

159 - What happened to these uniforms you found?
159 - As near as I can remember, sir, Lieut. Wilson took them and they were left in his custody.

venth witness for the prosecution, P-22265, Pte. Cessford, D., No. 3 Cdn.
f. Holding Unit, being duly sworn, is examined by the prosecutor.

60 - You are P-22265, Pte. Cessford, D., No. 3 Cdn. Inf. Holding Unit?
60 - Yes, sir.
61 - What are your duties?
61 - Storeman.
62 - In what company?
62 - "A" Company.
63 - The P.P.C.L.I. Company?
63 - Yes, sir.
64 - Do you know Pte. Dawson?
64 - Yes, sir.
65 - The accused?
65 - Yes, sir.
- Did you get his kit for anyone on or about the 1st April?
- I was ordered by C.Q.M.S. Willis to pick up his kit and take it to the stores.
- How did you know it?
- I was told the bed he stayed in and the room he occupied and I cleaned out his locker.
. Was his kit bag marked in any way by which you could identify it?
. One kit bag and pack were marked.

fending officer declines to cross-examine this witness.

witness for the prosecution, H-17085, Cpl. Wilkenson, E.W., No. 3 Cdn.
lding Unit, being duly sworn, is examined by the prosecutor.

ill you give the Court your name and number?
-17085, Cpl. Wilkenson, E.W., No. 3 Cdn. Inf. Holding Unit.
ou are attached to "A" Company Stores at No. 3 C.I.H.U.?
s, sir.
you know Pte. Dawson?
know Pte. Dawson, sir.
e accused?
s, sir.

Q173 - Were you detailed to search his kit?
A173 - No, sir.
Q174 - Did you have anything to do with the searching of his kit?
A174 - Not with the search, sir.
Q175 - Did you have anything to do with his kit when it was produced search?
A175 - It was brought to my attention.
Q176 - How many suits of battle dress were found in his kit, do you know
A176 - Five suits, I think, sir.
Q177 - I produce here a certified copy of Pte. Dawson's M.F.C. 800. Is that a correct copy of his 800?
A177 - Yes, I think.....
Q178 - I want you to know.
A178 - I know it is.
Q179 - It is a true copy of his 800?
A179 - Yes, sir.
Q180 - He had only been issued with two suits of battle dress?
A180 - Yes, sir.

Cross-examination by the defending officer.

Q181 - You are sure there were five suits of battle dress?
A181 - Yes, sir. Whether it was counting the one on Dawson and four in the kit bag I don't remember. There were five altogether I know.
Q182 - How do you remember? He might have been wearing fatigue clothes; he was not necessarily wearing his battle dress, was he? Are you sure of the number?
A182 - Yes, sir.
Q183 - Is there any record of him having bought any suits of battle dress?
A183 - Not to my knowledge.
Q184 - Would you know?
A184 - Yes, sir.
Q185 - And he didn't buy any suits?
A185 - No, sir.

The case for the prosecution is closed.

Defending Officer - I would like to submit, sir, with regard to the first charge and the alternative charge, charge number two, I would submit that the prosecution has failed to connect Dawson with the stealing and the possession of the greatcoat. With regard to the stealing, Fairhurst saw no-one take the coat. He hung the coat up and went to sleep and it was gone when he woke up. Then the private who was asleep and was awakened by the door opening and closing, Pte. Barrette, quite evidently was beating about the bush. He isn't sure what went on that night. He didn't see the person who went by so he could recognize him. It was a very poor light and he had a flashlight held in front and he saw him sideways and from seeing him in a dim light with his hat on he could recognize him the following day at Colonel's orders without a hat. That isn't identification. If you know there is somebody there and he is supposed to have done a thing you can invariably pick him out. He couldn't have a good look in a dark room. That is allthe identification connecting Dawson with the greatcoat. Hawley examined the coat very carefully and he didn't see any name in it or any identification marks although all he did now was to turn out the white tab with the size of the greatcoat on it. The natural thing for a person buying a greatcoat would be to look at the size and Fairhurst's name was on the tag. If it was Fairhurst's greatcoat the name would be on there and he would have noticed it. Dawson has not been connected in any way. I think the next two charges should be withdrawn. It is my prerogative to make a motion for dismissal and you shall rule on it and if you say the charges haven't been proven I don't have to call evidence.

President - I am not going to throw it out; you can call evidence.

Q186 - Do you apply to give evidence yourself as a witness?
A186 - Yes, sir.
Q187 - Do you intend to call any other witness in your defence?
A187 - Yes, sir.
Q188 - Is he a witness as to character only?
A188 - Both as to character and fact.

First witness for the defence, H-16866, Pte. Doig, H.A., No. 3 Cdn. Inf. Holding Unit, being duly sworn, is examined by the defending officer.

Q189 - Do you know the accused?
A189 - Yes, sir.
Q190 - Do you remember the evening, Saturday evening, the 29th March this year?
A190 - Yes, sir.
Q191 - Will you tell the Court what you can remember about that evening? As it relates to the accused.
A191 - We went to the Half Moon Pub on the corner and just before leaving the pub Dawson found his greatcoat missing and there was another one lying on the bench by the window and there was nobody owning it and he took it figuring someone had taken it in mistake.
Q192 - How was Pte. Dawson dressed when you arrived at the Half Moon?
A192 - Properly dressed with his greatcoat and respirator.
Q193 - Would you recognize the greatcoat he took?
A193 - I believe so, sir.
Q194 - Could you identify it or not if I showed it to you?
A194 - I think I could.
Q195 - Is that the greatcoat Pte. Dawson had? (Shows witness exhibit)
A195 - I think it is. It was a coat the same as this one, a short coat.

Cross-examination by the prosecutor.

Q196 - You recognize the coat because it is a short coat?
A196 - Partly, sir, yes.
Q197 - Any other reason?
A197 - It had the Canada flashes on it.
Q198 - A lot of greatcoats have it on.
A198 - A lot have the regimental crest also.
Q199 - There are probably several thousand short greatcoats in the Canadian Army with Canada flashes on?
A199 - Yes, I suppose.
Q200 - How can you swear definitely?
A200 - I didn't say I could swear; I have said I thought it was the coat.

Second witness for the defence, H-16103, Pte. Slater, J.A., No. 3 Cdn. Inf. Holding Unit, being duly sworn, is examined by the defending officer.

Q201 - Do you know the accused?
A201 - Yes, sir.
Q202 - Do you remember the evening of Saturday, March 29th, this year?
A202 - Yes, sir.
Q203 - Will you tell the Court what you can remember about that insofar as it relates to the accused?
A203 - That evening we went to the pub up the road, to the Fox and Hounds, and I met Dawson there, and when we were coming away he had lost his greatcoat and found another on the bench.
Q204 - When did you arrive at the inn with relation to Pte. Dawson?
A204 - I couldn't say what time.
Q205 - Was it before or after?
A205 - He was there when we got there.
Q206 - And you left with him did you?
A206 - Yes, sir.

Cross-examination by the prosecutor.

Q207 - This was on the night of the 29th-30th March, Slater?
A207 - Yes, sir, I don't remember the exact date.
Q208 - What time?
A208 - Approximately nine or eight-thirty.
Q209 - Where was it?
A209 - The Fox and Hounds.

Q209 - (Defending Officer) Sir, I would like to clear up this point. I think the witness is getting the pub mixed up with a place near where he is stationed now. Will you think carefully of the name of the pub?
A210 - The Half Moon.
Q211 - Where is the Fox and Hounds?
A211 - Where we are stationed at Godstone.
Q212 - But at this time you were up here?
A212 - Yes, sir.

Defending Officer - I would have liked to have called another witness, but unfortunately he is in the field punishment camp and yesterday afternoon I visited there in an attempt to get him to come down as a witness but they wouldn't release him and so I took a statement according to the rules of procedure. I have warned the prosecutor and I am not sure of the form, but I will submit it as it is.

Prosecutor - Under what rule of procedure is that submitted?

President - I will confirm the fact in any event.

The defending officer submits in evidence a statement made by P-22264, Pte. Freeman, J.D., No. 3 Cdn. Inf. Holding Unit, and this statement is accepted by the Court in evidence.

Third witness for the defence, Lieut. J. Stewart Townsend, No. 3 Cdn. Inf. Holding Unit, being duly sworn, is examined by the defending officer.

Q213 - Do you know the accused?
A213 - Yes, I have known him since January, 1940.
Q214 - Would you tell the Court what you know about his character?
A214 - At no time during the time I have known Dawson has anything occurred to make me feel that he would be inclined to steal. He was the batman to an officer in my company and we were billeted in the same building and barracks and on manoeuvres and schemes. Our equipment and personal belongings were at all times around and at no time did anything happen which would indicate that Dawson had taken anything or was involved in anything being taken.

Cross-examination by the prosecutor.

Q215 - How long is it since Dawson was with your company?
A215 - The last I recall of Dawson was in August, 1940.

Fourth witness for the defence, H-16040, Pte. Dawson, J.P., No. 3 Cdn. Inf. Holding Unit, being duly sworn, is examined by the defending officer.

Q216 - Will you tell the Court in your own words just how you explain the greatcoats and suits of battle dress.
A216 - Yes, sir. On the evening of the 29th we went down to the Half Moon a short distance from the camp. I went with Doig and it was about ten minutes to nine when we left and I looked for my greatcoat and there was only one available coat and I asked the others if they had my greatcoat on and there were no Pats in there and I was under the impression somebody had taken my coat in mistake. I looked for Edmonton Regiment or Seaforth flashes on the one I took but there was no way I could tell and I had thought I would be able to take it to their company offices. The coat was too short for me and I exchanged it with Pte. Hawley but did not take any money from him. I had borrowed money from Hawley but not at the time and I gave a chit and the only way I could get the money was to say that I owed Hawley tensnillings.
Q217 - Will you explain the battle dress.
A217 - With regard the battle dress, I was in detention and a trustee there and during that time there was an old tunic which had been around the boiler room for some time and I was told I could have it and that no-one owned it and there was one suit left on the rear guard at Bordon at the time we moved to Witley Camp and then there was a suit I had borrowed from Doig. That gave me four suits. About the pair of pants, I exchanged a pair of trousers for an Australian pair. This

Australian was going East and asked me for a pair of pants I had in exchange for his and as his were good I exchanged with him. That is how I came in possession of them. The others were all left behind and I have made quite a few moves and there has been quite a lot of stuff left behind. My reason for picking up this stuff was that I would rather have the serge for fatigue in the cold weather and I like to keep two suits clean at all times. That is about all I would like to say as to how I became in possession of those uniforms there.

Prosecutor - Cross-examination.

Q216 - Regarding the battle dress, Dawson, Did you pick up two suits at Bordon?
A216 - Yes, sir.
Q219 - And that is one that is here?
A219 - Yes, sir.
Q220 - Did you pick it up in the huts?
A220 - Yes, sir. There were quite a few in the huts left behind.
Q221 - They were army battle dress?
A221 - Yes, sir.
Q222 - You realize you should have turned it in to stores? I was
A222 - I didn't know at the time it had to be turned in to stores. I was under the impression anyone throwing it away would have to pay for it.
Q223 - Anything you find in the way of army property you don't keep do you?
A223 - No, sir, this was old stuff.
Q224 - This at Bordon had never been issued to you?
A224 - No, sir.
Q225 - It was not a suit?
A225 - I got the pants at one hut and the tunic at another.
Q226 - The second suit, where did you get it?
A226 - From Pte. Doig.
Q227 - And the tunic you got in the detention barracks boiler room. Who gave it to you?
A227 - I ddon't like to bring anyone else in. An n.c.o. said he wished it taken out; it was no good to anyone.
Q228 - Regarding the greatcoat, you found it in the Half Moon Inn on the Saturday night?
A228 - Yes, sir.
Q229 - About what time?
A229 - It was about twenty minutes to nine when I found it. I arrived at the billets about ten minutes to nine.
Q230 - That was the greatcoat produced in court?
A230 - Yes, but I have no way of identifying it except it was a short coat.

Closing address by the defending officer.

I would still submit, sir, that the prosecution has not connected Dawson with the stealing of the greatcoat in any way. The evidence, as I said before, of Pte. Barrette, is evidence that cannot be taken as anything very definite at all. He saw a man in the half light and the next morning, or some time later, picked him out of a group of prisoners among whom he knew was the fellow accused of stealing the greatcoat. That is very slim evidence, sir. Then there is Pte. Fairhurst who doesn't know how his coat went missing except it was gone in the morning. Pte. Hawley bought a greatcoat from Dawson and he saw no name on the coat, no identification on the coat, to show that it belonged to Fairhurst. Now he identifies it by Fairhurst's name on the size tag on the coat. I would submit that if it is the same coat he bought he would have seen the name there when he bought it. He says he examined the coat very carefully and I think that is one of the first places anyone would look -- at the size. Otherwise his evidence doesn't amount to anything. That is the only way they attempt to connect Dawson with the greatcoat and I would submit he hasn't been connected on this evidence. He comes forward with a story and has witnesses. He wore a greatcoat to the pub and took his greatcoat off while he drank and when he came to go home his was gone and he saw another beside where his had been and thinking somebody had taken his by mistake he said he would take his, thinking they would be able to trade each other greatcoats. Counting the written evidence handed in there are three witnesses as well as the accused who substantiate that. That is definite evidence and the men are straight-

forward and tell a simple story in a straight-forward manner. They are not beating about the bush and humming and hawing as though seeing if they will be caught. As far as the battle dress is concerned, Lieut. Wilson says he searched the kit of the accused, Dawson, and in the kit he found three uniforms of battle dress. Then there comes another witness, Pte. Cessford, and he states he got the kit of Pte. Dawson and in the kit were five suits of battle dress. Then we find the next witness, Wilkenson, and he says first of all that Dawson had five suits of battle dress, he thought, and then, when faced with the question, says four suits there. That means out of three witnesses one says the accused had five, the next four, and the last three suits. The suits were described as being in good condition capable of being worn on a parade except one which had grease on it. One of these suits was picked up in the boiler room; one at Bordon when the unit moved and the other was borrowed. He has since been charged with it and the man he borrowed if from has had to buy another suit and he has an extra suit and is being tried by court-martial for having it. I think, sir, these are serious charges on which he is being tried. He most certainly is not connected with the stealing of the greatcoat. They only infer it might be him who took the greatcoat. As far as being in possession of the greatcoat was concerned that was not proven until my submission was turned down and the accused explained why he was in possession. That possession has been explained. I would suggest that the accused be found not guilty on all three charges; they have not been proved.

Closing address by the Prosecutor.

In this case the prosecution has built its case on the logical sequence that Pte. Fairhurst's greatcoat was stolen from his hut. Secondly, Pte. Fairhurst saw Pte. Hawley waaring his coat in the dining room and had him up in front of Sgt.-Major Coogan and proved the coat belonged to Fairhurst to the satisfaction of the sergeant-major and he had Pte. Hawley kept in custody. Hawley explained the possession of the greatcoat in that he had purchased it from the accused now charged before this court-martial; that he had bought it from Dawson on Sunday morning, March 30th. Fairhurst in his evidence stated definitely that he came in at 2145 hours wearing the greatcoat and that he hung it up over his bed and that was the last he saw of it until he saw Hawley wearing it. Barrette, in his evidence, said quite definitely he was awake. The defence asked long-winded questions about whether or not he was awake, but I think he was awake even to the questions and awake enough to identify the accused as the man who was in the hut the night the greatcoat disappeared. The accused had the opportunity of taking the greatcoat and Hawley stated it was the coat he had purchased and there is no question as to the identification and it was definitely identified as belonging to Fairhurst. The coat is traced directly back to Dawson and Dawson says he got it at the Half Moon Inn about eight-thirty or a quarter to nine the previous Saturday evening which seems a hard thing to do when Fairhurst was ~~seen~~ wearing it until a quarter to ten on the same evening.

Regarding the battle dress, one of the witnesses for the prosecution did state that he was not sure whether there was four or five and one said five and another said three extras. He automatically took it for granted he had two suits and three extras which makes five. I believe on the evidence the guilt of the accused has been established.

The Court is closed for the consideration of the finding.

Lieut. J. Braden, No. 3 Cdn. Inf. Holding Unit, is duly sworn.

Q31 - Have you any evidence to produce as to the character and particulars of service of the accused?

A31 - Yes, sir, A.F.B. 296 and M.F.M. 6.

Q32 - Is the accused the person named in the statement which you have heard read?

A - Yes, sir.

Q - Have you compared the contents of the above statement with the regimental books?

A - Yes, sir.

Q234 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A234 - Yes, sir.

The accused declines to cross-examine.

Q235 - Do you wish to address the Court?
A235 - (Defending Officer) I would like to say that since the accused was arrested he has spent sixty-four days in detention. I think that should be taken into consideration when considering punishment.

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the Case of No.H-16040 Pte Dawson, P.J.

1st Witness for the Prosecution No.H-36707 C.S.M. Coogan J.C. No. 3 Canadian Infantry Holding Unit, having been duly sworn states,

'I am No.H-36707 C.S.M.Coogan,J.C. of No.3 Canadian Infantry Holding Unit. I am the C.S.M. of H.Q.Coy. of the said Unit. On the morning of the 30th March 1941 a report was made to me by the Coy. Orderly Sergeant of articles which had been stolen from 'E' block huts during the previous night. A list of those articles is hereto, and initialled by me for the purpose of identification. Among the aforesaid articles was a greatcoat the property of No. H-[illegible] Pte. Fairhurst,M. On Tuesday 1st April 1941 about 1800hrs., Pte. Hawley,M.K-42118 was escorted to H.Q. Orderly Room by the Coy. Orderly Corporal who stated that Pte. Fairhurst had charged Pte. Hawley with being in possession of his coat. As Pte. Fairhurst identified the greatcoat and as Pte Fairhurst's name was written on the size tag of the greatcoat, I had Pte Hawley placed under arrest and taken to the guard room.

JCC

J.C. Coogan for S.M.

(C.S.M.Coogan)

The Accused declines to question the witness

2nd Witness for the Prosecution K-42118 Pte. Hawley, M. (P.P.C.L.I.) Coy. No. 3 Canadian Infantry Holding Unit, having been duly sworn states,

'I am K-42118 Pte.Hawley,M. of No.3 Canadian Infantry H Holding Unit. On the morning of the 30th March 1941 Pte. Dawson approached me in my quarters and offered to sell me a greatcoat, the price being my greatcoat and 10/-. As my greatcoat was too large for me I agreed. We therefore changed greatcoats, my intention was to wear my new coat on church parade. I had no idea that the coat was stolen until Tuesday the 1st April 1941. on that date about 1730 hrs. when I was in the mess hall Pte. Fairhurst stopped me and informed me that I was wearing his greatcoat. I told him that he would have to prove this. He then had the R.P. on duty in the mess hall detain me until he brought the H.Q.Orderly Corporal who escorted me to the H.Q.Orderly Room. After Pte. Fairhurst identified the coat as his property C.S.M. Coogan took the coat from me and placed me in the guard room under arrest.I bought t he money belt from Dawson on 30-3-41 for two packets of cigarettes.The belt is now before me.

M Hawley

(Pte. Hawley,M.)

The accused declines to question the witness

L.P.C.

3rd Witness for the Prosecution No.H-16766 Pte Fairhurst, E. (H. Q.Coy.) No. 3 Canadian Infantry Holding Unit, having been duly sworn states,

'I am No.H-16766 Pte Fairhurst, E. of No.3 Canadian Infantry Holding Unit. On the morning of 30th March 1941, I got out bed and found that my greatcoat had disappeared during the night from the hook at the head of my bed. I had come in the night before, taken my greatcoat off and hung it up. On Tuesday evening ,April 1st 1941, at about 1730 hrs. I saw Pte.Hawley in No.2 mess hall with my greatcoat on. I accosted Pte. Hawley asking him what he was doing wearing my greatcoat. Hawley told me to prevethat it was my coat I then had the R.P. on duty detain Hawley and I went and brought the Coy.Orderly Corporal. Hawley told the Orderly Corporal and myself that he had purchased the coat from Pte Dawson. Hawley was then escorted to H.Q.Coy. Orderly room where in the presence of C. S.M.Coogan I identified the greatcoat as belonging to me by my name being written on the size tag on the lower right hand side of the greatcoat on the inside.C.S.M. Coogan then took the greatcoat from Pte Hawley and placed him under arrest.

Pte E Fairhurst
(Pte.Fairhurst, E.)

The accused declines to question the witness

4th Witness for the Prosecution No. H-16728 Pte. Barrette, A.W.(H.Q. Coy.) No.3 Canadian Infantry Holding Unit, having been duly sworn states,

'I am No. H-16728 Pte. Barrette, A.W. of No. 3 Canadian Infantry Holding Unit. On the night of 30th-31st March 1941, I was awakened at about 0200 hrs. by the sound of the hut dooropening. I live in hut 'G' 1. I saw someone walk in and when I saw the intermittent flash of a flashlight I called out. The person who came in answered ' Is this G-1. Ireplied 'No this is G-1'. During the time he was examining a locker the flashlight was going on and off. I had a good look at his face. I then asked him what time it was and he said 15 minutes to 12. He then went out of the hut and I, thinking it was later looked at my watch. The time was 0220 hrs. I am certain that when the intruder left the hut he was wearing a greatcoat. On April 4th 1941 I attended an identification parade and I can positively identify Pte Dawson as the man who came into hut 'G'-1 on the night of 29th-30th March 1941.

Pte A W Barrette
(Pte. Barrette, A.W.)

The accused declines to question the witness

1.P.6.

5th Witness for the Prosecution; Lt. K. D.Wilson of No.3 Canadian Infantry Holding Unit, having been duly sworn states,

'I am Lt. K.D. Wilson of No.3 Canadian Infantry Holding Unit. I am the security officer of the said Unit. ~~In the performance of my duties I was investigating thefts which had taken place in the Unit.~~ No.M-10041 Pte Dawson ~~came under suspicion and~~ on being questioned as to where he obtained the greatcoat which he sold to Pte Hawley, the accused stated that he had found this greatcoat in the Half Moon Inn and that he had left the Half Moon Inn ~~at~~about 2145hrs.29/3/41 bringing the greatcoat with him. Pte. Dawson was detained by the Regimental Police who detailed Pte.Deegan,W.J. to accompany me on my search of Dawson's kit. The search took place on the 1st April 1941 at about 1030 hrs. Among the articles found which appeared not to belong to Dawson were ~~kxxx

8th Witness for the Prosecution; No.K-53308 Pte. Tayers,F.J. (Seaforth Highlanders of Canada Coy.) No.3 Canadian Infantry Holding Unit, having been duly sworn states,

'I am No.K-53308 Pte. Tayers F.J. of No.3 Canadian Infantry Holding Unit. On the evening of April 1st, 1941 at about 1800hrs. I was going through my personal kit and discovered that my money belt was missing. The last time I had seen my money belt was on March 26th 1941 when I had placed it in my kit bag.On the night of April 1st 1941 after I had missed my belt I was advised that there was a money belt in the custody of the Regimental Police. I went to the Guard Room and on being shown the belt I identified it as being my property. This money belt is now before me.

F.J. Tayers
(Pte. Tayers, F.J.)

The accused declines to question the witness

9th Witness for the Prosecution; No.M-17085 Cpl.Wilkenson,E.W.(R.C.C.L.I. Coy.)No.3Canadian Infantry Holding Unit, having been duly sworn states,

'I am No.M-17085 Cpl.Wilkenson,E.W. of No.3 Canadian Infantry Holding Unit. I am employed in theR.C.C.L.I.Coy store at the said Unit. On the 8th day of April 1941I was instructed to check the kit of No.M-16041 Pte. Dawson,E.J. On so doing I found him to be deficient in kit to the value of £3/0/11 as per the attached statement which I have initialled for the purpose of identification

E.W. Wilkinson L/Cpl
(Cpl. Wilkenson, E.W.)

The accused declines to question the witness

The accused states that at this time he does not wish to make a statement of produce witnesses.

Lt
(Thos.W.Knight) Adjt.No.3 C.I.H.U.

I certify that all the provisions of the Rules of Procedure 4(c),4(d)and 4(e) have been duly complied with in connection with the above Summary of Evidence.

Lt.
(Thos.W.Knight) Adjt.No.3 C.I.H.U.

Dated at Witley,Surrey
this 20 day of April
1941.

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SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of No. H-16040 Pte.Dawson, P.J.

10th Witness for the Prosecution:- No.H-17085 Cpl. Wilkenson, E.W.(P.P. C.L.I.) No.3 Canadian Infantry Holding Unit, having been duly sworn states,

'I am No.H-17085 Cpl. Wilkenson,E.W. of No.3 Canadian Infantry Holding Unit. I am employed in the P.P.C.L.I. Coy. store at the said Unit. On the 1st of April 1941 I took part in a search of Pte. Dawson's kit. Pte. Dawson was found to be in possession of five suits of Battle-dress. On referring to Dawson's M.F.C.800 I found that Dawson had been issued with two suits of Battle-dress. Lt. Wilson took charge of the three extra suits which were found in Dawson's possession. A certified copy of Dawson's M.F.C.800 is now before me, duly initialled by me for the purpose of identification.

E.Wilkinson
(Cpl.Wilkenson,E.W.)

The accused declines to qusetion the witness.

The accused states that at this time he does not wish to make a statement or produce witnesses.

W.Howarth Lt.
(W.Howarth) A/Adjt No.3 C.I.H.U.

I certify that all the provisions of the Rules of Procedure 4(c),4(d) and 4(e) have been duly complied with in connection with the above Summary of Evidence.

W.Howarth Lt.
(W.Howarth) A/Adjt. No.3 C.I.H.U.

Dated at Witley, Surrey
this 9th day of May
1941.

1.16.

LIST OF EXHIBITS

In the case of No.H16040 Pte.Dawson,P.J.

1 A greatcoat the property of No.H-16766 Pte Fairhurst,E.

2. A money belt the Property of No.K-53308 Pte. Fayers, F.J.

3. to 5. Three suits of battle-dress

6 A certified copy of the M.F.C.800 of the accused.

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5th June 1941

H-16040 Pte Dawson, P.J.

I certify that I have examined the a/m soldier and find him fit to undergo trial by Court Martial.

E B Ruehl upr Rt a m c

L.P.C.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of April 1941

(S.L. Redman) Lt.Col.
Officer Commanding
No.3 Canadian Infantry Holding Unit

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

No.H-16040 Pte Dawson P.J. of the 3rd Canadian Infantry Holding Unit

NOTE.—The Regimental and Squadron, Battery or Company Conduct sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

See Para. 664, R.R. 1935.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, permanence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.		*Since Enlistment.	
For A.W.L.	9	times	9	times.
For Misc.	1	times	1	times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges

for ..... days in Civil Custody,

and 64 days in Military Custody,

Total 64 days.

Of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 26

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 7-9-39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 7 mos.

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr. 7 mos. years' service.

9. The accused is entitled to reckon 1 yr. 7 mos ~~years~~' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	, years,	.....
In the rank of	, years,	.....
In the rank of	, years,	.....

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked A 1, signed by the president, and annexed to the proceedings.

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Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name ..... of the .....

NOTE.—*Literatim extract from the regimental books, stating these convictions and dispensations with trial must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

Sheet Destroyed 7-3-40 Certified True Copy

No. H16040 Name Dawson P.J. Sqn., Battery, or Company Corps Date of enlistment 7.9.39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 15.2.40 No. and date of last drunk 31-3-41 Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character Poor

M.F.M. 6 (A.F.B. 122) (SBM—8-39 (1703) H.Q.-1772-45-18)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
[illegible]	1.5.40	Pte	-	HOAS AWL 0830 hrs 1.5.40 to 0300 hrs 8.5.40 (Abs 1 days 17½ hrs)	Cpl Fenner Sgt Burns	10 days Detention	10.5.40	Major Colgan	Forfeits 2 days Pay F.R.I. Ans R.R. fees
DAS	17.7.40	"		HOAS AWL 0810 hrs [illegible] 0845 hrs Parade 2200 hrs Tatoo Roll Call	Sgt Lewis [illegible] L/Cpl [illegible]	1 days C.B.	20.7.40	Lt Cooley	
DAS	31-7-40	"		HOAS. AWL 2200 hrs 31.7.40 to Rev. 3.8.40 Abs. 2 days 6½ hrs (1) absent from stand to on 1/2.3/8.40. (2) Making false statement to a superior officer (3) C to P.O.G.D.+M.D. i.e. creating a disturbance which brought complaint to C.M.P.	Sgt. Lewis Cpl. Atkins L/Cpl. Brooks Documentary	10 days detention	3.8.40.	Lt. Col. Coghlan	Forfeits 2 days pay F.R.I.
DAS.	16.8.40	"		HOAS. AWL 1450 hrs 16-8-40 to 2230 hrs 17-8-40 (absent 1 day 7 hrs. 40 min)	Cpl. McKee L/Cpl. Katchawski Documentary	11 days C.B. 9 days Pay 11 hrs digging	19.8.40.	Col. Colgahan	Forfeits 2 days pay F.R.I.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with (rial)	By whom awarded	Remarks
Bordon	2.11.40	P.B.		WOAS. AWL 2359 hrs 2.11.40 to 1430 hrs 4.11.40 (absent 1 day 14½ hrs)	Cpl Harte A.	3 days C.B.	5.11.40.	Maj. Sinclair	Forfeits 2 days pay. F.R.
Guadalupe Barracks	12.1.41	"		WOAS AWL 2359 hrs 12.1.41 until 1800 hrs 15.1.41. Absent 2 days 18 hrs. 1 min. AA Sec 15(1)	L/Cpl Cummings	Forfeits 3 days pay Add 6 days pay - 7 days C.B.	16.1.41.	Maj. W. Henderson	
Witley	10.2.41	"		WOAS. AWL from 0630 hrs 10.2.41 until 2300 hrs 25.2.41. Absent 15 days 17 hrs. AA Sec. 15(1)	Sgt. Harte A.	27 days ~~C.B.~~ Detention	27.2.41.	Col. Redman	Forfeits 27 days pay. Rate 0 of 16 days pay. Total 43 days pay.
Witley	31.3.41	"		WOAS AWL from having fatigue party 1400 hrs 31.3.41 until 0600 hrs 1-4-41. Absent 16 hrs AA Sec 15(1)	Sgt. Papineau O.J.	Additional forfeits 5 days Pay.	1-4-41.	Maj. Henderson	Automatic forfeit of 1 days pay.
Witley	1-4-41	"		WOAS AWL from 2200 hrs 1-4-41 until 0600 hrs 2.4.41. Absent 8 hrs AA Sec 15(1)	L/Cpl Edkins R.	Fined 3 days Pay	2-4-41	Lt Col. Redmond	Automatic forfeiting 3 days Pay

Trust Copy

[illegible]

MAJOR

DOMDG COY. 3RD CDN. INF. HOLD. UNIT.

Pte Freeman JD P22264 P.P.C.L.I.

having been warned that his evidence might be used as though he were sworn in the proper manner in court states:

I met Pte Dawson in the half moon on Saturday night and when he arrived he had a great coat with him. When we came to leave his great coat was gone so he took another great coat in place of his own. This was about the end of March.

I make this statement conscientiously believing it to be true and knowing it to be of the same force and effect as if made under the Canada Evidence Act.

June 4th 1941

Canadian Corps Field Punishment Camp
Canadian Army Overseas.

P. Freeman

J. P. M.

26/4/41

(643)

Reg. No. 16040 Rank PTE Name DAWSON P. J.

INDIVIDUAL'S CLOTHING AND EQUIPMENT STATEMENT

Date of Attestation

DESCRIPTION OF ARTICLES	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials
Anklets, web, prs.	1								
Badges, cap									
" collar, prs.									
" shoulder, prs.									
Bags, Kit	1								
Battle Dress—									
Blouses, serge	2								
Trousers, serge, prs.	2								
Bonnets, Tam O'Shanter									
Bootlaces, prs.									
Boots, ankle, prs.	2								
" " (pl), prs.									
Boots, lumberman's, rubber—prs.									
Insoles, prs.									
Braces, prs.	1								
Brassos, button									
Breeches, D.C., or Trousers, S.D. prs.									
Brushes, boot, blacking	1								
" boot, polishing	1								
" button	1								
" cloth	1								
" shaving	1								
" tooth	1								
Cap, comforter	1								
" field service									
" forage, drab									
" winter, Melton cloth									
Cloak or Greatcoat, drab	1								
Comb, hair	1								
Dhaw identity, with cord	2								
Drawers, woollen, prs.	2								

DESCRIPTION OF ARTICLES	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials
Dressings, first field	1								
Forks	1								
Gloves, woollen, khaki, prs.	1								
Holdalls	1								
Housewives	1								
Jackets or Doublets, S.D.									
Jacket, sweater	1								
Knife, clasp, and lanyard	1								
" table	1								
Mitts prs.									
Overalls—									
Blouses, denim	1								
Trousers, denim, prs.	1								
Overshoes or Rubbers, prs.									
Pantaloons or Trousers, service, prs.	1								
Razors	1								
Shirts, flannel, khaki	2								
" service									
" woollen	2								
Shoes, canvas, prs.	1								
Socks, prs.	3								
Spoon, table	1								
Towels, hand	2								
Hair brush	1								
PT Shorts	2								
PT vests	2								

Free issues only will be accounted for on this form.

Signature of Soldier

Signature of Quartermaster

Unit..... No..... Rank..... Name.....

			Transferred or Attached	
From.....	to.....	Date.....		
From.....	to.....	Date.....		
From.....	to.....	Date.....		
From.....	to.....	Date.....		
From.....	to.....	Date.....		

EQUIPMENT (a)	Date of Issue	Date of Issue	Date of Issue	Date of Issue
Attachments, brace				
Bags, ration				
Bandoliers				
Belts, waist	1			
Bottles, water	1			
Braces	2			
Carriers, cartridge	2			
" water bottle	1			
Cases, pistol				
Covers, materials	1			
Frogs, bayonet	1			
Haversacks	1			
Helmets, steel	1			
Lanyards, pistol				
Packs	1			
Pouches, ammunition				
Slings, rifle	1			
Spurs, jack, pr.				
Straps, shoulder	2			
" web, supporting	2			
Ties, mess	1			

ARMS AND MISCELLANEOUS (a)	Date of Issue	Date of Issue	Date of Issue	Date of Issue
Bayonets and Scabbards	1			
Bottles, oil				
Pistol				
Pullthroughs	1			
Rifle A 5626	1			
Swords and Scabbards				
Blankets				
Sheets, ground	1			
Resp Compl	1			
Gas	1			
Wallet	1			

(a) Arms and equipment will not be transferred with the soldier unless authorized by the D.O.C.

On return of any article the Q.M. will initial in the date column opposite the article returned and line through in red ink.

Signature of Soldier.....

Signature of Soldier.....

Signature of Soldier.....

Signature of Soldier.....

Signature of Soldier.....

Signature of Soldier.....

Signature of Soldier.....

Signature of Soldier.....

XX-167

PTE DAWSON P.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H.16040 Private Peter James DAWSON, P.P.C.L.I., 1 C.I.R.U.

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

F.D.T. ~~Appeal under sentence in ... deposing, suspending, etc.~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 2 (two) years.

(Sgd) ..... Judge-Advocate, if any. 14 Dec 43. Date awarded. (Sgd) F.D. Tweedie Lt.-Col. President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding & sentence of the Court

~~I cannot take the action required by AA 54(2) [or 57(2)] for the following reasons:~~ J.R.S.L.

(1. AA 57A. Delete if not used.)

(Sgd) J.R. Stewart Lough Brigadier

Date 18 Dec 43 Commanding "G" Gp, Cdn. Rft. Units. Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
H.16040 Pte. Dawson, P.J. PPCLI - 1 C.I.R.U.	19 Dec 43	(H. Sharp) Colonel (H. Sharp) Commander 1 Cdn. Inf. Reinf. Unit.

Promulgated in Part II D.O. 255 d/21 Dec 43.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA96 (To pen of AFA32) 40/P & C/1608 (2864)

Convened by Order of Brig J.R. Stewart Lough, DSO, MC, VD Comd "G" Gp C.R.U. dated 13 Dec 43.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.16040	Private	Proceedings Reviewed Peter James	DAWSON	P.P.C.L.I. 1 C.I.R.U.

(E.K. McDougall) Capt. Certified true copy of original
29 Dec 43 Reviewing Officer (J.A.G.) C.M.H.Q. herein.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 14 Dec 43.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

F.D.T. A1. The President, Members, waiting Member ~~if any~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

F.D.T. A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) ~~&~~ attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(4)

F.D.T. (1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

F.D.T. ~~The Prosecutor informs the Court that accused elected to be tried by ... instead of being dealt with summarily by ... and ...~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~As ... is present, the ... is read to him and explained to him by ...~~ F.D.T.

~~He ... in his own words ... of desired ... the Court~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt.-Col	F.D.Tweedie	Carlt & York
Member	Capt.	K.B. Harrison	1 C.I.R.U.
Member	Lieut.	T.E. McKee	1 C.I.R.U.
Judge-Advocate			
Prosecutor	Lieut.	R.B. Allen	1 C.I.R.U.
Defending Offr	Lieut.	J.J. Murphy	1 C.I.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (E) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment makes(s) (no) (~~a~~) plea(s). F.D.T (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 28), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Ref Lited. Insert in A8 name and name of the accused making the plea.)

F.D.T. A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

F.D.T. A10. The Court ~~adjourned~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

[redacted] F.D.T.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

F.D.T. B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

[redacted] inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read [redacted] (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

F.D.T.

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial then proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record on a separate sheet.*)

[redacted] The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using [redacted] on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

[redacted] F.D.T.

relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

(1. *RP* 155. 2. *RP* 40(*A*), *see* 40(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record in Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 44(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(2) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using [redacted]

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

F.D.T. E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy [redacted] of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB* 255 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes - Attached

(1. *RP* 27(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(4), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 108. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its provisos, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Oversea's RO* 309, 2323, *MML p* 80, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 66(1), *KR Con* 564. 2. *RP* 30. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, No. H-16040 Private Peter James DAWSON, of Princess Patricia's Canadian Light Infantry, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Section 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at Albuhera Barracks, No. 1 Canadian Infantry Reinforcement Unit, absented himself without leave from 0800 hours on the 25th day of May, 1943, till apprehended by the Civil Police in London, at 2140 hours on the 16th day of July, 1943.

Total Absence: 52 days, 13 hours, 40 minutes.

(J.H. Mothersill) Lt.-Col.
(J.H. Mothersill) A/Commander,
1 Cdn Inf Rft Unit.

Barrosa Barracks,
Aldershot, Hants.

11th day of December, 1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J.R. Stewart Lough)
(J.R. Stewart Lough) Brigadier
Commander "G" Group
CANADIAN REINFORCEMENT UNITS

F.D.T. 13 Dec 43.

Convening Officer

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA52)
40/P&D/1697 (2603)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.16040	Private	Peter James	DAWSON	P.P.C.L.I. 1 C.I.R.U.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~x~~ named above as the accused, being subject to military law, has ~~xxx~~ committed the offence~~x~~ set forth in the Charge Sheet~~xx~~ attached and on (date) 13 Dec 43 endorsed by me, (~~xxxxxxxxxxxxxxxxxxxxxx~~ " To be tried by Field General Court-Martial ". J.R.S.L.

2. And whereas I am of opinion that it is not practicable that such offence~~x~~ should be tried by an ordinary General Court-Martial ; ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ J.R.S.L.
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~x~~, and to assist of the Offrs appointed or detailed hereunder. J.R.S.L.

~~xxxxxxxxxxxxxxxxxxxx

Medical Officers Certificate
K.R. Can. Para 557

I certify that I have this morning examined No. H-16040 Private
Peter James DAWSON and in my opinion he is ~~unfit~~ fit to undergo
trial by Court martial.

Station 1 C.I.R.U.

Date 14 Dec 43

(F.A. McConnell)
(Medical Officer)

F.D.T.

SUMMARY OF EVIDENCE

In the case of H-16040 Pte. Dawson, P.J., of Princess Patricia's Canadian Light Infantry, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

FIRST WITNESS for the PROSECUTION

Lieut. H.J. Snell, Loyal Edmonton Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn states as follows:-

I am Lieut. H.J. Snell, Loyal Edmonton Regiment. I produce Army Form B 115, certified true copy of Record of Declaration of a Court of Inquiry on the Illegal Absence of a Soldier, purporting to be signed by Lt.-Col. H.C.A. Hervey, A/Commander, No. 1 Canadian Infantry Reinforcement Unit, which relates to the accused whom I now recognize. This document is marked Exhibit "A" and is duly initialled by me for purposes of identification. I also produce Certificate in Accordance with Section 163 (m) of the Army Act purporting to be signed by N. Harris, Officer in charge of Police Station, which relates to the accused whom I now recognize. This document is marked Exhibit "B" and is duly initialled by me for purposes of identification

The accused declines to cross-examine this witness.

(H.J. Snell) Lieut.
(H.J. Snell)

The accused was warned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The Accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

(T.A. Bate) Lieut.
(T.A. Bate) Officer detailed to take the Summary of Evidence.

Albuhera Barracks,
Aldershot, Hants.

11th day of December, 1943.

Ex. A
F.D.T.

"CERTIFIED TRUE COPY FROM A.B. 68" ARMY FORM B 115.

RECORD OF THE DECLARATION OF A COURT OF INQUIRY ON THE ILLEGAL ABSENCE OF A SOLDIER. Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at 1 C.I.R.U. on the 17th day of June 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of

No. H 16040 Pte. DAWSON P.J. (P.P.C.L.I.) 1/CIRU)

DECLARATION.

The Court declare, that H 16040 Pte. DAWSON P.J. (P.P.C.L.I.) 1/C.I.R.U.) did illegally absent himself without leave from 0800 hours 25 th day of May 1943 and is still so absent, and that on the 25th day of May 1943 he was deficient and is still so deficient the following articels of kit.:-

"Attached hereto as an appendice"

Names of President and Members

PRESIDENT Capt. P.C. SHABY (Unall Reinf)

MEMBER Lieut R.R. DOUGLAS (Westmr. R.)

MEMBER Lieut D.A. LEEDHAM (Westmr. R.)

Signature of Commanding Officer (H.C.S. HERVEY) LT-Col. A/Commander 1 Cdn Inf Reinf Unit

F.D.T.

CERTIFIED TRUE COPY.

(signed) E.L. Beetlestone (E.L. BEETLESTONE) Lieut
Signature of Officer having custody of the Original Record

A/Records Officer
1 Cdn Inf Reinf Unit

The prosecutor states that he has not given to the Defending Officer notice under R.P. 89(b) DAWSON

The Defending Officer waives the notice.

F.D.T.

14 Dec 43

Medical Officers Certificate
K.R. Can. Para 557

I certify that I have this morning examined No. H-16040 Private
Peter James DAWSON and in my opinion he is fit ~~unfit~~ to undergo
trial by Court martial.

Station 1 C.I.R.U.

Date 14 Dec 43

(F.A. McConnell)
(Medical Officer)

F.D.T.

SUMMARY OF EVIDENCE

In the case of H-16040 Pte. Dawson, P.J., of Princess Patricia's Canadian Light Infantry, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

FIRST WITNESS for the PROSECUTION

Lieut. H.J. Snell, Loyal Edmonton Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn states as follows:-

I am Lieut. H.J. Snell, Loyal Edmonton Regiment. I produce Army Form B 115, certified true copy of Record of Declaration of a Court of Inquiry on the Illegal Absence of a Soldier, purporting to be signed by Lt.-Col. H.C.A. Hervey, A/Commander, No. 1 Canadian Infantry Reinforcement Unit, which relates to the accused whom I now recognize. This document is marked Exhibit "A" and is duly initialled by me for purposes of identification. I also produce Certificate in Accordance with Section 163 (m) of the Army Act purporting to be signed by N. Harris, Officer in charge of Police Station, which relates to the accused whom I now recognize. This document is marked Exhibit "B" and is duly initialled by me for purposes of identification

The accused declines to cross-examine this witness.

(H.J. Snell) Lieut.
(H.J. Snell)

The accused was warned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The Accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

(T.A. Bate) Lieut.
(T.A. Bate) Officer detailed to take the Summary of Evidence.

Albuhera Barracks,
Aldershot, Hants.

11th day of December, 1943.

Ex. A
F.D.T.

"CERTIFIED TRUE COPY FROM A.F. 68" ARMY FORM B 115.

RECORD OF THE DECLARATION OF A COURT OF INQUIRY ON THE ILLEGAL ABSENCE OF A SOLDIER. Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at 1 C.I.R.U. on the 17th day of June 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of

No. H 16040 Pte. DAWSON P.J. (P.P.C.L.I.) 1/CIRU)

DECLARATION.

The Court declare, that H 16040 Pte. DAWSON P.J. (P.P.C.L.I.) 1/C.I.R.U.) did illegally absent himself without leave from 0800 hours 25 th day of May 1943 and is still so absent, and that on the 25th day of May 1943 he was deficient and is still so deficient the following articels of kit.:-

"Attached hereto as an appendice"

Names of President and Members

PRESIDENT Capt. P.C. SHABY (Unall Reinf)

MEMBER Lieut R.R. DOUGLAS (Westmr. R.)

MEMBER Lieut D.A. LEEDHAM (Westmr. R.)

Signature of Commanding Officer (H.C.A. HERVEY) LT-Col. A/Commander 1 Cdn Inf Reinf Unit

CERTIFIED TRUE COPY.

F.D.T.

(signed) E.L. Beetlestone (E.L. BEETLESTONE) Lieut
Signature of Officer having custody of the Original Record

A/Records Officer
1 Cdn Inf Reinf Unit

"APPENDIX "A" "CERTIFIED TRUE COPY FROM A.B. 68

ARTICLES	No.	VOCAB PRICE			APPRSD VALUE		
		£	s	d	£	s	d
Anklets web prs	1	0	3	5½	0	2	7½
Badges cap	1	0	0	4½	0	0	3
Blouses serg	2	2	15	4	2	3	4
Trousers serg prs	2	2	15	10	2	3	6
Boots ankle prs	1	2	4	0	1	17	0
Brushes boot	1	0	0	9	0	0	6½
" shaving	1	0	1	4	0	0	10
" tooth	1	0	0	4½	0	0	3
Caps comforter	1	0	1	1½	0	0	9
Caps field service	1	0	3	8	0	2	0
Greatcoats	1	3	17	0½	2	18	6
Combs hair	1	0	0	2	0	0	0
Forks	1	0	0	5	0	0	3½
Holdall	1	0	0	9	0	0	6½
Jersey	1	0	0	6	0	0	4
Knives table	1	0	0	9	0	0	6
Razor	1	0	0	9½	0	0	6½
Shirts flannel	1	0	1	10½	0	1	7½
Spoons	1	0	0	9	0	0	6
Vests gym F.D.T.	2	0	0	4½	0	0	3
Drawers cell.	2	0	0	3	0	0	2
Haversacks	1	0	0	4	0	0	3
Tins Mess	1	0	0	9	0	0	6
TOTALS		£ 15	2	9½	£ 10	19	6

METROPOLITAN POLICE

No. 144A
(Unruled)

Any communication on this subject should be addressed to/
The Superintendent,
Metropolitan Police,
27, Savile Row,
London, W.1.

"C" DIVISION. Tottenham Court Road STATION

8th December, 1943.

Report for the information of the Adjutant, No. 1 Canadian Infantry Reinforcement Unit, Canadian Army in England.

respecting Pte. H.16040 Peter J. Dawson.

To ~~Superintendent~~ D.D. Inspector J.S. Exhibit "B"

CERTIFICATE IN ACCORDANCE WITH SECTION 163 (m) OF THE ARMY ACT.

I certify that the person whose description is given below was arrested at Oxford Street, W. 1., at 9.40pm on 16th July, 1943.

Regimental particulars of above soldier.
(No. H.16040
(Rank. Private
(Name. Peter James Dawson.
(Unit. P.P. Canadian Light Infantry.

Description.
(Age. 33.
(Height. 5'5".
(Complexion. Sallow.
(Hair. Dark Brown.
(Eyes. Brown.

F.D.T.

N. Harris Is 51 c Officer in Charge of Station.

Forwarded by direction of the Commissioner of Police of the Metropolis in response to telephone communication of 8-12-43.

(C. Jeffery) D
Div'l. Det. Inspector, for Sup't

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Barrosa Barracks, Aldershot, Hants, preliminary to my court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

(Dawson, P.J.)

Dated at Aldershot, HANTS,
this 11th day of
December 1943

(2) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

~~I desire the services of~~ P.J.
~~if he is available.~~ F.D.T.

M.F.B. 355

STATEMENT AS TO CHARACTER AND PARTICULARS
OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H.16040	Private	Peter James DAWSON	PPCLI, 1 C.I.B.U.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ (H.J.S.) ~~Regimental and Squadron, Battery~~ Conduct Sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~(H.J.S.) Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since Enlistment or Appointment
For ..... AA.15(1)	.....times	..... 7 .....times
For AA.40	.....times	..... 1 .....times
For	.....times	.....times
For	.....times	.....times

~~Number of instances of gallantry or distinguished conduct~~ (H.J.S.)
~~or~~ (H.J.S.)
~~There are no entries in the conduct sheets of the accused~~ (H.J.S.)

Note:- If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~ (H.J.S.)
~~or~~ (H.J.S.)
Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act (H.J.S.) and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 (H.J.S.) are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,
~~or~~ (H.J.S.)
~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~ (H.J.S.)

4. The accused has been in confinement awaiting trial on the present charges, for 123 days in civil custody, and 10 days in military (H.J.S.) ~~Air Force~~ custody, making a total of 133 days in custody, of which No days were spent in hospital.
(H.J.S.)

5. The present age of the accused according to his ~~record of service~~ attestation paper is 31 years ~~corrigenda~~ (H.J.S.)

6. The date of his attestation specified in his ~~record of service~~ attestation paper is 7 Sep 39 (H.J.S.)

7. The service which the accused is allowed to reckon towards discharge is 1 year 224 days.

8. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

~~H.J.S.) 9. The accused is in possession of or entitled to an air force decoration, or air force reward (or is in possession of or entitled to). State ~~military~~ ~~military~~ (H.J.S.) any air force decoration or reward~~

~~10. (If the accused is a warrant officer) The accused before he was made a warrant officer last held the (Air Force) regimental rank of~~

~~11.--(In the case of an officer.)--The accused holds in the Royal Canadian Air Force the rank of--Permanent Force--Unit--.....dated.....and in his regiment (or corps), the rank of.....dated.....--~~

~~12.--The accused has served as a non-commissioned officer continuously, without reduction, to the present date:-.....Date of promotion-----~~

~~---In the rank of.....years----~~
~~---In the rank of.....years----~~
~~---In the rank of.....years----~~ (H.J.S.)

~~Note.---If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.~~

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army ~~Air Force~~ Act, and of cases in which trial has been dispensed with of accused, Number H-16040 Rank Private Unit ..... (H.J.S.)
Name Peter James DAWSON of P.P.C.L.I., 1 C.I.R.U. Regiment

Note:- A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of trial	Charge upon which convicted.		Sentences of the Court	Punishment Remitted
F.G.C.M.	9 Jul 41 Field	AA.18(4) AA.18(4)	Guilty	1 year imprisonment wthout H.L.	121 days with pay
		AA.40 AA.40 AA.40	Not Guilty		
Central Criminal Court	24 Mar 42 London	AA.41 AA.41	Robbery with Violence	18 months penal servitude & 15 strokes of birch rod on each charge	173 days with pay
Civil Court Clerkenwell	31 Jul 43 London	Larceny		6 months imprisonment with H.L.	61 days with pay

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11th day of Dec 43 H.J. Snell
(H.J. Snell) Records Officer

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....signed by the president, and annexed to the proceedings.

Plea of mitigation in the case of H-16090 Pte. Dawson, P.J. of Princess Patricia's Canadian Light Infantry on the strength of #1 C.I.R.U.

Sir:

This plea may appear to be a peculiar one for a defending officer to give but when you have heard me through I am firmly convinced that you will agree that I do it in the interests of Pte. Dawson and in the interests of the service. To do full justice I must go back a considerable number of years.

When Pte. Dawson was of a tender age he was placed in an orphanage. In the course of years he became old and strong enough to do manual labour. The orphanage then sent him out to work on a farm but retained their supervision of him. However, when the orphanage authorities made their appearance at the farm he was out in the fields. This farmer was apparently not of the best disposition and, in time, life became unbearable and Pte. Dawson left.

He appealed to an uncle who was working on a merchant ship. This uncle took him on board and found him a job there. Eventually Pte. Dawson became a stoker and had ten years service to his credit. He became interested in a marine school and decided to try and get 4th class stoker's papers which would give him sufficient qualification to obtain a stationary shore job as fireman. He decided to try this and went to Western Canada, to the prairies, to earn the necessary money. He was there when war was declared.

He immediately started East to join a naval service. When he reached Winnipeg he saw a naval barracks and sought the senior officer of the watch. He inquired of this officer about joining the navy. The reply was that at the moment there was nothing doing but when the mobilization order came through they would be most desirous of having him because of his experience. However, whilst waiting around for this to happen Pte. Dawson was seized in the enthusiasm that was rife at the time and joined the army in Sept. 39.

For awhile he was a good man in the army. He had been told a transfer to the naval service could be arranged. But let me show you his record since the first entry on his MFM 6. Since that time he has been sentenced to one year imprisonement with hard labor, 18 months penal servitude and 39 strokes of the birch rod and six months imprisonment with hard labour. Other than this he has received punishments totalling 64 days. Let me sum it up. For 3 yrs 127 days service he has been sentenced to a total of 3 yrs 64 days. Also since that time he has been AWL for a total of 90 days. So it works out that Pte. Dawson since that time spent practically all that time in confinement or AWL.

This to me shows that this man has never been a soldier and it also shows me that he will never be a soldier, through his own volition or through the attempts of some other person or authority. I feel sure that the last three years have meant nothing but expense and trouble to the Government of Canada in so far as Pte. Dawson is concerned. I am also certain that Pte. Dawson has proved only a problem to all with whom he came in contact within the last three years. Therefore, I think it to be an absolute certainty that the army is no life for Pte. Dawson.

In conclusion, Sir, I ask, in the interests of Pte. Dawson and in the interests of the service, that the court will consider these circumstances and arrive at the same conclusion as I that Pte. Dawson be dishonorably discharged. I ask this because continuance of life in the army with its constant repetition of imprisonment will eventually ruin this man. I ask this because whilst so employed he will be nothing but an expense and a problem. I ask this because, if discharged, Pte. Dawson could get a ship and do something useful for both his country and himself -- for his country in finally helping the war effort -- for himself in getting a grip on himslef and becoming a good and useful citizen.

(J.J. Murphy) Lieut.,
Defending Officer.

No H-16090 Name DAWSON P.J. Sqn, Battery, or Company — Corps C.I.C. — Date of enlistment 7 Sep 39 — Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/P&S/156 (3426)

Date of last entry in Company Conduct Sheet 4-12-39 — No and date of last drunk NIL — Period not reckoning towards freedom from extra fine — Sheet No 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed on completion of six months service 7-3-40					
Field	3-8-40	Pte		AA 15(1) AWL 2 days 6 hrs 30 mins AA 40 Making false statement		10 days detn.	DO 16 d/7-8-40		13 days Pay FR&I 149(1) a,b, I
Field	4-11-40	Pte		AA 15(1)			DO 75 d/7-11-40		2 days Pay FR&
Field	12-1-41	Pte.		AA 15(1) AWL 2 days 18 hrs 1 min		6 days pay	DO 16 d/18-1-41		9 days Pay FR&
Field	15-2-41	Pte.		AA 15(1) AWL 15 days 17 hrs		27 days detn.	DO 50/1-3-41		43 days PayFR&I
Field	31-3-41	Pte.		AA 15(1) AWL 1400 hrs 31-3-41 to 0600 hrs 1-4-41(Absent 16 hrs.)		5 days pay FR&I 149(2)	DO 77/3-4-41		1 days pay FR&I 149(1)(a)
Field	1-4-41	Pte.		AA 15(1) AWL 2200 hrs 1-4-41 to 0600 hrs 2-4-41 (absent 8 hrs)		3 days pay FR&I 149(2)	DO 78/4-4-41		1 days pay FR&I 149(1)(a)

Ex. C
F.D.T.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5-6-41	Pte.		AA 18(4) Guilty AA 40 Not guilty AA 40 Not guilty AA 40 Not guilty AA 18(4) Guilty		1 yr. imprisonment without h.l.	DO 159/9-7-41	FGCM	429 days pay FR&I
				Released from Civil Prison granted remission of 121 days with Pay			DO 31/7-2-42.		
Field	2-4-42	Pte.		AA 41 robbery with violence AA 41 robbery with violence		18 mons. penal servitude & 15 strokes of birch rodd on each charge	24-3-42	Central Criminal Court	570 days pay FR&I 149(1)b)
				Released from H.M. Prison with Remission of 173 days Pay 24-4-43		27 days detn.	DO 69 d/28 Apr 43		43 days Pay FR&I 149(1) a,b.
Field	15-2-42	Pte.		AA 15(1) awl from 0630 hrs 15 Feb 42 till 0545 hrs 3 Mar 42. (absent 15 days 23 hrs 5 mins.					

MFM 6
(AFB 122)
40/P48/156 (3438)

No H-16040 Name DAWSON P.J. Sqn, Battery, or Company Corps C.I.C. Date of enlistment 7 Sep 39 OC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 4-12-39 No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16-7-43	Pte		Larceny civil charge		6 mons imprisonment with H.L.	31-7-43	Civil Court Clerkenwell	15 days pay FR&I 149(1)c 184 days pay FR&I 149(1)b) Total 199 days Pay
				Certified True Copy taken from MFM 4 4 Dec 43 ?????????????????? Capt. (H.F.Atkinson) Records Offr 1 Cdn Inf. Reinf Unit.		Released from civil custody 1 Dec 43. Remission of 61 days with pay.			
				CERTIFIED TRUE COPY CONSISTING OF TWO PAGES: Dated: H.J. Snell Lieut. (H.J. Snell) (Officer having custody of original documents.					
				"F.D.T."					

(PTO)

W-87

Gen. DAWSON, WI

W 87

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Seventh day of January, 1943. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[~~I am unable to appoint:—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

* Omit if not applicable.

~~for the following reasons, namely:—~~]

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NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	K.A.Harrison	2 Cdn Lt AA Regt

Members.

Rank.	Name.	Regiment.
Captain	E.K.Lavitt	2 Cdn Fd Regt
Lieut.	G.M.T.Hawken Waiting Member	3 Cdn Lt AA Regt
Lieut.	A.E.Bruce	2 Cdn Fd Regt

*Signed [K.E.D.Tremain]Brigadier
Commanding C.R.A. 1 Can Div
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H5085 Gnr. Dawson, William Irvin 3 Cdn Fd Regt	First Charge Sec. 41 A.A.	Guilty	Guilty. 30 days F.P. K.G. Harrison Maj 9 Jan 43	I confirm the finding of the sentence but suspend execution (151 Regs) Brigadier Commanding. 10 Jan 43.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

Signed [illegible] (Signed) K.G. Harrison Maj
Brigadier
Commanding R.C.A. Corps Div 2 A.A. Regt.
Convening Officer (d) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of January 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) [illegible] 9 Jan 43
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 9 day of January 19 43

K.G. Harrison Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. Confirmation

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 10 day of June 1943.

[illegible]
Confirming Officer. Brigadier

Promulgated and extracts taken in the case of H-5085 Gnr. Dawson, W. I. 3 Fd Regt.

(a) (Dated) 11 Jan 43 (Signed) [illegible]
[W. A. Ford] Lt.-Col.
Comd., 3 Fd. Regt., R. C. A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, No. H-5085, Gnr. Dawson, W. I., Regimental Headquarters, 3 Field Regiment, R. C. A., a soldier of the Canadian Army Overseas, is charged with:--

First Offence

When on Active Service, committing a civil offence, that is to say, stealing,

in that he

in the field, at approximately 0930 hours on 7 Dec 42, did steal one cigarette lighter, the property of Mrs. Xenia Hinkinson, of "Two Trees Tea Room", Little Common, Bexhill-on-Sea, Sussex, the value of said cigarette lighter being estimated at Thirty-five Shillings.

(E. A. Ballard) Major
A/Comd., 3 Fd. Regt., R. C. A.

In the field
6 Jan 43

To be tried by Field General Court Martial.....

Date:.....

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN) PARA 557

I certify that I have this morning examined No. H-5085, Gnr. Dawson, William Irvin of R.H.Q., 3 Field Regiment, R. C. A. and in my opinion he is fit/~~unfit~~ to undergo Trial by Court Martial.

Station: In the field
Date: 9 Jan 43

(B. Raxlen) Capt RCAMC
M.O., 3 Fd. Regt., RCA

Form "A"

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD
ON THE 9 DAY OF January 1943

Trial of No. H 5085 Gunner William Irwin Dawson

Prosecutor: Lieut W K McIntyre

Defending Officer: Lieut G.N. Vogel

Officers under instruction: Lieut H.M. Block

N.F. 22 and 23 complied with, Conv Order. Medical Certificate, Chgs Sht & S of E & ~~Med Cert~~ relevant to the Court.

1. The order convening the Court is read in the presence of the accused.

The accused is asked the following question:
"Do you object to be tried by the President or any Members of the Court whose names you have heard read over?"

Answer: "No sir".

3. The President, Members, ~~Judge Advocate~~ Officers under Instruction, ~~Reporter and Interpreter~~ are duly sworn.

4. (a) The accused answers to his name and number, and is duly arraigned on the charges.
(b) The accused having pleaded guilty to the charge(1)
R.P.55(B) is complied with.

5. ~~The accused is asked the question at the foot of page 2 of R.F.A.S., and his answer is recorded beneath the question.~~

6. The Prosecutor makes (no) ~~the following~~ opening address:

7 after finding Prosecutor was sworn and presented MEMS and short statement of service of accused. Defence declined to cross examine. Defence called character evidence (see attached). The accused made a statement in mitigation see attached & defending officer made a plea for leniency in which prosecutor concurred.
& Court adjourned for sentence.

K C Harrison Jr

SUMMARY OF EVIDENCE in the case of No. H-5085 Gnr. Dawson, W. I., Regimental Headquarters, 3 Fd. Regt., R. C. A.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

No. L-20, L/Sgt. Treadwell, E. K., Regimental Headquarters, 3 Fd. Regt., R. C. A., having been duly sworn, states:

I had breakfast on the morning of the seventh of December, 1942 with Mrs. Hinkinson and her mother. I left the cafe about 0900 hrs. That afternoon I returned to the cafe. Mrs. Hinkinson asked me if I had hidden her lighter as a practical joke. I said "No, I hadn't." She then said there was only one person who could have taken it. She told me of the circumstances why she believed this man had taken the lighter. She said this soldier had come into the cafe shortly after I had gone and had sat in a corner near the table where we had had breakfast. She had left her lighter on the table while she went to serve at the counter. Just then two soldiers came in. Walking back towards the breakfast table with the soldiers she noticed that her lighter had gone. She started to look for it with the help of the two soldiers who had just come in. She said she hadn't wanted to say anything to this man she suspected in case I had hidden it as a joke. I asked her if she knew the name of the man, or could she recognize him if she saw him again. She described him to me in detail and told me she would definitely be able to recognize him if she ever saw him again. She also described the lighter to me in detail. She said it was a Parker Beacon lighter worth about thirty-five shillings. It had an "X" scratched in the wick cover, the sides were engine-turned, the ends plain silver, it had "Parker Beacon" written on the screw at the bottom. I told her I would keep my eye out for the lighter.

On about the 27th of December I again visited the cafe, where I was told by Mrs. Hinkinson that the man she suspected had been in again, and that she found out his name was Dawson. I told her this man was in my section and that I would try to get her lighter back. On 4 Jan 43 I went into the survey room where Dawson was working and saw a lighter on the table beside him. I picked it up and recognized it from Mrs. Hinkinson's description. I asked Dawson where he got the lighter. He said, "I bought it in Scotland." I asked him if he was sure, and he said "Yes." I told him the lighter was stolen property and that I was taking it for awhile. I took the lighter down to Mrs. Hinkinson. She identified it as her lighter without question. I brought the lighter back and laid the whole matter before the R. S. M.

On 5th January I had a talk with Gnr. Dawson alone when he said to me, "I admit taking the lighter."

The accused declines to cross-examine this witness.

E K Treadwell

(E. K. Treadwell) L/Sgt.
R.H.Q., 3 Fd. Regt., R. C. A.

to page 2

SECOND WITNESS FOR THE PROSECUTION

Mrs. Xenia Hinkinson, Little Common, Bexhill-on-Sea, Sussex.

A written statement of this Witness's evidence, purporting to be signed by her has been read to the accused and is included in this Summary of Evidence.

"I am employed at the Two Trees Tea Room in Little Common. On about Monday 7th December 1942, in the morning between 9:00 and 10:00 o'clock, I left my lighter and some cigarettes on one of the tables after having breakfast with Sgt. Treadwell and my mother. At about this time a soldier came in and I proceeded to serve in the shop. I noticed that he went to get a newspaper from that table. When I went back to pick up my lighter it was gone but the cigarettes were still there. Two other soldiers came in about the same time and helped me look for it. Not being able to find it I decided that Sgt. Treadwell might have hidden it as a joke. When I saw Sgt. Treadwell later in the day he told me he did not have the lighter. I told him that the first soldier who had entered must have taken it. The two who helped me look for it could not have taken it because I had noticed it was gone as they came in.

Sgt. Treadwell being informed of my suspicions asked me to try and find out who the man was. A day or two after Christmas the soldier I suspected came in again with several others. I asked one whom I knew, what his name was, and he told me it was Dawson. I told Sgt. Treadwell the man's name was Dawson. I described the lighter to him which I could recognize by the screw in the bottom, which is a different colour than the rest, and it has faint rings around the head of the screw, and I had scratched an "X" in the inside of the cap which covers the wick.

On January 4th Sgt Treadwell brought in a lighter which I positively identified as my own. I estimate the value of the lighter to be about thirty-five shillings.

(Sgd) Xenia Hinkinson "

Having regard to the loss of time involved the attendance of this Witness cannot in my opinion be readily procured.

(W. R. McIntyre) Lieut.
3 Fd. Regt., R. C. A.

The accused does not demand the attendance of this witness for cross-examination.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E), reserves his defence.

Certified that Rule of Procedure 4 (C)(D)(E)(F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this fifth day of January, 1943, In the field.

(W. R. McIntyre) Lieut.
3 Fd. Regt., R. C. A.

Character Witnesses

(1) I am H5008 R.S.M. Cairns. R.H. R.H.Q
3 Cdn. Fld Regt R.C.A.
I've known the accused since Oct. 1938,
and ~~since~~ ever since that time I've never
found him to do anything wrong. He came
overseas with my battery, and since
coming to R.H.Q, 1940 I have found the
accused very reliable

(2) I am H5085 Gnr Dawson, Wm Irving,
R.H.Q. 3 Cdn. Fld Regt RCA. On the
morning mentioned 7/12/43, I had gone to
the cafe to get my breakfast. After giving
the waitress my order, I noticed the
lighter on the table. After about 15
minutes, while waiting for my order, I
picked up the lighter, to light a cigarette
I had no idea the lighter belonged to the
lady of the cafe, and thought that
somebody had left it there by mistake.
After taking it I did not make any attempt
to find out who the actual owner was

[illegible]



3FR/5-4-3
(FD "DAWSON")
6 Jan 43

H. Q., R. C. A.
1 Cdn. Div.

Application for Field General Court Martial
H-5085, Gnr. Dawson, W. I., 3 Fd. Regt. RCA
Prosecuting and Defending Officers

1. Gnr. Dawson has requested that Lieut. G. N. Vogel, 3 Fd. Regt., R. C. A., defend him at his trial.

2. Lieut. W. R. McIntyre, 3 Fd. Regt., R. C. A., has been selected to prosecute in this case.

(C. A. Ballard) Major
A/Comd., 3 Fd. Regt., R.C.A.

NoH-5085 Name Dawson, W. I. Sqn., Battery, or Company

Corps RCA

Date of enlistment 8.9.39 G.C. Badges

Service or Proficiency Pay

M.F.M. 6 A.F.B. 122

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc. (Sgd) R.S. Dyer, Major

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Apr 42	Gnr		Sec 40 AA - WOAS neglected to report for work party as required to do so in pt I Orders	RSM Cairns	3 dys C.B.	10 Apr 42	Major G. F. Rainnie,	2 i/c
Field	17-7 42	Gnr		Sec 40 AA - WOAS driving a W. D. vehicle and being involved in an accident.	Documentary	Awarded stoppage of pay of £4.0.0 to cover cost of damage to W.D.Vehicle	29 Jul 42	Lt.-col. F.A.Ford Comd. 3 Fd Regt	Stoppage of pay of £4.0.0 FRMI 156(2)
Field	12 Sep 42	Gnr		Sec 40 AA - WOAS neglect to the prejudice &c - negligently drove W.D. vehicle involving same in accident.	Lt Patterson	To forfeit 5 dys pay	29 Sep	Lt.-col. F.A.Ford	

CERTIFIED A TRUE COPY

ADJT

(P.T.O.)

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED

No. H-5085, Gnr. Dawson, W. I.

3 Fd. Regt., R. C. A.

(a) The accused has been in confinement awaiting trial on the present charge for nil days in Civil Custody and one day in military custody, making a total of one day, of which nil days were spent in hospital.

(b) The present age of the accused according to his Record of Service is 25 years.

(c) The date of his attestation specified in his Record of Service is 8 Sep 39.

(d) The accused is in possession of, or entitled to, no military decoration or military reward.

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

(W. R. McIntyre) Lieut.
R. O. C., 3 Fd. Regt., R. C. A.

In the field
9 Jan 43

Y-146 (Case #2)
GNR DAWSON W.I.

See W-87 for 1st case

Y-146

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this first day of February, 1943.

Whereas it appears to me, the undersigned, an officer in Command of t Royal Canadian Artillery, First Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ "Abm"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~[I am unable to appoint~~ :—

~~(1) Three Officers to form the Court.)~~

~~(2) A Field Officer as President.)~~

~~for the following reasons namely:—~~

* Omit if not applicable.

Proceedings Reviewed

Major Capt

8 Mar 43

"Abm"

S.L. Higgs Major

(10)

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	S.L. Higgs	2 Cdn Lt AA Regt

Members.

Rank.	Name.	Regiment.
Capt	H. Burnett	1 Cdn A.Tk Regt
Lieut	R.A. Brannen	2 Cdn Lt AA Regt
Lieut	WAITING MEMBER W.S. Dunfield	1 Cdn A.Tk Regt

"Abm"

*Signed A. Bruce Matthews Brigadier,
(A. Bruce Matthews)
Commanding CRA 1 Cdn Div
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H 5085 Gnr William Irvin DAWSON, 3 Cdn Fd Regt.	1st Charge Sec 18(4) AA	Guilty	Guilty Six (6) months imprisonment 3 Feb 1943. S L Higgs Major	I confirm the finding and sentence of the Court — but mitigate the punishment to 120 days detention. A M Matthews Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) A M Matthews Brigadier (Signed) S. L. Higgs Major.
(A. Bruce Matthews) Commanding CRA 1 Cdn Div Convening Officer (e) 2 Cdn L Fd Regt. President

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. "S.L.H." Certificate of President as to proceedings.

I certify that the above Court assembled on the 3 day of February, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule. "S.L.H."

I also certify that :—

1. The members of the Court
2. The witnesses
~~(3. The interpreter)~~ "S.L.H."
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 3 day of Feb. 1943

S. L. Higgs, Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 702 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 5 day of Feb 1943.

A M Matthews Brig
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 6th February 1943 (Signed) [signature] Major, A/Comd., 3 Fd. Regt., R.C.A.

G.O.C., extract attached

Promulgated and extracts taken in the case of

(Dated) 20 Apr 43 (Signed) B J Kelly Lieut 1 Cdn C.O. 3 Fd Regt. R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

1 RCA 5-4-1
HQ RCA 1 Cdn Div
17 Apr 43

19 APR 1943

1 Cdn Div A

Remittance of Sentence
H 5085 Gnr Dawson, W.I.
3 Cdn Fd Regt

1. Ref the att application, I recommend that 40 days remission of [illegible] sentence be granted H 5085 Gnr Dawson, W.I. for good behaviour.

(A. Bruce Matthews) Brigadier,
CRA 1 Cdn Div.

ERC/RJHB.

HAND.

18 April.

FGCM
H 5085 Gnr Dawson, W.I.
3 Cdn Fd Regt

Under the authority conferred on me by AA 57(2) and RP 126 (B), I hereby remit 40 days of sentence of m/n soldier.

(H.L.N. Salmon)
Major-General
GOC 1 Cdn Div

Original passed to 3 Fd 19 Apr 43.

Promulgated 20 April 43

Sir ADJA for making

3FR/5-4-2-D
13 Apr 43

5-4-1
14 APR 1943
1 CDN. DIV.

HQ RCA
1 Cdn Div

H 5085 GNR DAWSON, W.I.
F. G. C. M.

1. On 3 Feb 43 the m/n was tried by F.G.C.M. for an offence under Sec 18(4) A.A.

2. He was found guilty and was sentenced to undergo Six Months Imprisonment.

3. The Finding and Sentence were confirmed by the C.R.A. 1 Cdn. Div, but the sentence was mitigated to 120 days Detention.

4. As Gnr. Dawson was found medically unfit, and was again found unfit within the past two weeks by the Medical Officer for admission to the Detention Barracks, he has been serving his sentence within the unit.

5. Gnr. Dawson's conduct during the period of detention up to and including the present date has been very good, and this Regt is desirous of obtaining a remission of sentence for good behaviour.

6. As the C.O. of the Regt has not the power to grant a remission of sentence, may this remission be granted by the C.R.A., 1 Cdn. Div., or can only the Commandant of the Canadian Detention Barracks grant the usual one-third remission of sentence for good behaviour.

7. Up to and including the present date Gnr. Dawson has served Seventy (70) days of his sentence.

DMD/RDC

[signature]
Capt.,
for (J. S. Ross) Lt.-Col.,
Comd., 3 Fd. Regt., R.C.A.

CHARGE SH[illegible]

The accused, No. H-5085, [illegible] Irvin,
Regimental Headquarters, 3 [illegible] R. C. A.,
a soldier of the Canadian Army [illegible] charged
with:-

When on Active Service, stealing proper[illegible] to
a person subject to military law,

in that he,

in the field, at approximately 1130 hours on 1 Nov 42,
stole ten pounds (£10.0.0), the property of No. M-4138
L/Bdr. Hanson, F. A., 3 Fd. Regt., R. C. A., a person
subject to military law.

(H. J. Lake) Major
A/Comd., 3 Fd. Regt., R. C. A.

First
Offence
SEC 18(4)
A A

In the field
30 Jan 43

To be tried by Field General Court Martial.

Date. 1 Feb. 43

In the field.

(A. Bruce Matthews) Brigadier,
CRA 1 Cdn Div

S. L. Higgs
Major

CHARGE SHEET

The accused, No. H-5085, Gnr. Dawson, William Irvin, Regimental Headquarters, 3 Field Regiment, R. C. A., a soldier of the Canadian Army Overseas, is charged with:-

First Offence

SEC 17(4) A A.

When on Active Service, stealing property belonging to a person subject to military law,

in that he,

in the field, at approximately 1130 hours on 1 Nov 42, stole ten pounds (£10.0.0), the property of No. M-41360 L/Bdr. Hanson, F. A., 3 Fd. Regt., R. C. A., a person subject to military law.

(H. V. Lake) Major
A/Comd., 3 Fd. Regt., R. C. A.

In the field
30 Jan 43

To be tried by Field General Court Martial.

Date. 1. Feb. 43

In the field.

(A. Bruce Matthews) Brigadier,
CRA 1 Cdn Div

S. L. Biggs Major

MEDICAL OFFICER'S CERTIFICATE

S L Higgs
Major

I certify that I have this morning examined

No. N5085 Cpr. DAWSON, W.I.

of 3 Field Regiment, R.C.A. and in my opinion he

is fit ~~unfit~~ to under go Trial by Court Martial.

Station In The Field

Date 3 Feb 43

[signature] Capt
(Medical Officer)

Proceedings of a Field General Court Martial held in the field on the 3rd. day of February 1943.

Trial of: No. A. 5085 Gnr. Dawson William, Irvin
3 Cdn. Fd. Regt.

Prosecutor: Capt. A. N. Bruce
3 Cdn. Fd. Regt.

Defending Officer: Capt. H. E. Scott
3 Cdn. Fd. Regt.

Officer under instruction: Lieut. N.S. Denfield
1 Cdn. A/Tk. Regt.

1. The Court opened at 1000 hrs. having complied with K.R. 22 and 23.
2. The order convening the Court is read in the presence of the accused.
3. The accused is asked the following question:
"Do you object to be tried by the President or any Members of the Court whose names you have heard read over?"

Answer: No.

The Medical Certificate for accused is presented to the Court.

4. The President, Members, and Officer under instruction are duly sworn in the presence of the accused.

5. (a) The accused answers to his name and number, and is duly arraigned on the charge.

(b) The accused having pleaded guilty on the charge, K. P. 35 (b) is complied with and Summary of Evidence was read by the Court.

6. The accused was asked if he wished to make a statement

Statement of Accused.

I am No. H 5085. Gnr. William Irvine Dawson, 3 Cdn. Fd. Regt. A day or so before I took the money I had received a cablegram from my wife stating that my daughter was seriously ill. This made me worried and I tried to get some money to send home.

Question One (by Court)

Can you present this cablegram?

Answer One - No.

(S. L. Higgs Major)

Question Two (by Court)
Did you send the money to your wife?
Answer Two - Some of it.

7. The accused was asked if he wanted to give evidence as to his good character, or to call witnesses to prove his good character. The answer of the accused was "no".

8. Capt. C. F. Clemis, Adjutant 3 Can. Id. Regt. is sworn and states "I am Capt. C. F. Clemis, Adjutant, 3 Can. Id. Regt. I produce a certified true copy of the accused M.F.M.6 and a Short Statement as to Particulars of Service of the accused.

9. The accused was asked if he wished to make a statement as to mitigation of punishment. His answer was "no".

(S.L. Higgs Major)

9. (b) The defending officer stated that the accused had confessed of his own free will and had repaid the entire sum.

10. The accused was told that he was remanded in close arrest to await promulgation of sentence. The Court was closed at 1030 hrs.

S. C. Higgs
Major.

SUMMARY OF EVIDENCE in the case of No. H-5085 Gnr. Dawson, W.I., Regimental Headquarters, 3rd Fd. Regt. R.C.A.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

No. M-4138 L/Bdr. Hanson, F.A., Regimental Headquarters, 3rd Fd. Regt. R.C.A., having been duly sworn, states;

At about 1315 hours 1 Nov 42, I missed £10 from my wallet. After due consideration I came to the conclusion that the money must have been taken between the hours of 1100 and 1130 as that was the only time up until the time I missed the money that it had been away from my person The matter was reported to the R.S.M. and orderly Officer and a kit inspection followed. There was no reason to suspect anyone up until 29 Dec. 42, when Gnr. Dawson remarked that he had loaned Gnr. Murphy money to go on leave with. I questioned Gnr. Dawson regarding his being able to loan money whereupon he disclosed to me that he had a considerable amount of money loaned to various parties in R.H.Q., also that he had a balance in Post Office savings. I checked on Gnr. Dawsons Post Office book and found that he had deposited £5 two days after my money was stolen. I recalled that Gnr. Dawson had informed me that he had no money around 2nd or 3rd of Nov. 42. I reported what I had found to the R.S.M. whereupon Gnr. Dawson was questioned. On 25th Jan 43, I questioned Gnr. Dawson about the money and he admitted to me that he had taken it and also agreed to pay it back to me which he has done. I reported to the adjutant and repayment was made in his presence.

Questioned by Court.

Q.- As nearly as you remember what words did Gnr. Dawson use in admitting the theft?

A.- I asked Gnr. Dawson if he admitted taking the money-- He said- "Yes, I took it".

The accused having been given the opportunity declines to cross-examine the witness.

S/Sgt F A Hanson
(L/Bdr. Hanson)

SECOND WITNESS FOR THE PROSECUTION

No. H-5008 R.S.M. Cairns, R.A., Regimental Headquarters, 3rd Fd. Regt. R.C.A. having been duly sworn, states;

At about 1300 hours 1 Nov 42, I was in my room. I was informed that L/Bdr. Hanson had had a sum of £10 stolen from him. On instruction from Lieut. McIntyre to hold a kit inspection of all personnel in R.H.Q., we immediately carried out an inspection and during that afternoon in company with Lieut. McIntyre we inspected the kits of all personnel. We found no trace of the money. On approx. 25 Jan 43 L/Bdr Hanson reported to me that Gnr. Dawson had admitted to him that he had stolen his money and would pay it back. I immediately took the matter up with the adjutant and told him that Gnr. Dawson had £7 deposited in a Post Office savings account, so I made arrangements with Gnr. Dawson and L/Bdr Hanson to go to the Post Office and withdraw this money. Capt. Clemis, the adjutant, and myself were witnesses to the fact that £7 have been paid back to L/Bdr Hanson, also on Thurs. 28 Jan 43, I was witness to the fact that Gnr. Dawson paid an additional £3 to L/Bdr. Hanson, making a total of £10.

I was also a witness to statement made in the presence of myself and L/Cpl in the R.C.M.P. by Gnr. Dawson in writing in which he admitted the theft.

R A Cairns RSM
R.A.Cairns, R.S.M.

THE accused having been given the opportunity declines to cross-examine the witness.

S.L. Hughes Major

THIRD WITNESS FOR THE PROSECUTION

Captain E.R.Clemis, Adjutant, Regimental Headquarters, 3rd Fd. Regt. R.C.A. having been duly sworn, states;

On 1 Nov 42 it was reported to me that £10 had been stolen from the Survey party room - the property of L/Bdr Hanson. I originated inquiries and search in an attempt to find the guilty person, here efforts failed until around the 1 Jan 43 certain evidence was produced which indicated that Gnr. Dawson was implicated in the disappearance of the £10. I interrogated him and was told by him that he knew nothing about the money. On 25 Jan 43 it was reported to me that Gnr. Dawson had admitted taking the £10. I had the R.S.M. parade Gnr. Dawson before me and in the presence of the R.S.M. I asked Gnr. Dawson if he had any information with reference to the disappearance of the £10, he said "yes - I took the £10 and I will pay it back", " I will draw my seven pounds from the Post Office savings bank and the balance I will receive on pay day from personnel who owe me money". The £10 was paid to L/Bdr Hanson in my presence.

L/Cpl Buckman, R.C.M.P. had also conducted inquiries in this case and he was in my office on the afternoon of 26 Jan 43. I reported to him that Gnr. Dawson had confessed to me and he said he would get a written statement from Gnr. Dawson. He took the statement and turned it in to his superior officer.

E.R.Clemis

(E.R.Clemis) Capt.

Given an opportunity the accused declines to cross-examine the witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E), reserves his defence.

Certified that Rule of Procedure 4 (C)(D)(E)(F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this thirtieth day of January, 1943, In the Field.

W.R.McIntyre

W.R.McIntyre, Lieut.
3rd Fd. Regt. R.C.A.

S.L.Higgs
2 Major

No. H-5085 Name Dawson, W. I. Sqn., Battery, or Company Corps RCA Date of enlistment 8.9.39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. (Sgd) R. S. Dyer, Major Character

M.F.M. 6 (A.F.B. 122) 175M—7-41 (215-20) H.Q. 1772-89-1632

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Apr 42	Gnr		Sec 40 AA - WOAS neglected to report for work party as required to do so in Part I Orders.	RSM Cairns	3 dys C.B.	10 Apr 42	Major G. F. Rainnie 2 i/c	
Field	17-7 42	Gnr		Sec 40 AA - WOAS driving a W. D. vehicle and being involved in an accident.	Documentary of damage to WD vehicle.	Awarded stoppage of pay of £4 to cover cost	29 Jul 42	Lt.-col. F.A.Ford Comd 3 Fd Regt	Stoppage of pay £4.0.0 FR&I 158(2)
Field	12 Sep	Gnr		Sec 40 AA - WOAS neglect to the prejudice &c - negligently drove W.D. vehicle involving same in accident	Lt Patterson	To forfeit 5 dys pay FR&I 149(2)	29 Sep 42	Lt.-col. F.A.Ford Comd 3 Fd Regt RCA	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	7 Dec 42	Gnr		Sec 41 AA - WOA3 committing a civil offence - stealing: stole cigarette lighter, property of Mrs. A. Hinkinson, Little Common on 10 Jan 43 finding confirmed by CRA 1 Cdn Div, but sentence mitigated to 15 dys F.P. and to forfeit 15 days pay.	Mrs A Hinkinson L/Sgt Treadwell	30 dys F.P. and to forfeit 30 dys pay.	9 Jan 43	F.G.C.M. (Sgd) E. R. Clemis Capt. Adjt., 3 Fd. Regt., RCA	

MINUTE OF CONFIRMATION:

Certified a true copy.

(Sgd) E. R. Clemis
(E. R. Clemis) Capt.
Adjt., 3 Fd. Regt., R. C. A.

(Sgd) S. L. Hughes
Major

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED

No. H-5085, Gnr. Dawson, W. I.

3 Fd. Regt., R. C. A.

(a) The accused has been in confinement awaiting trial on the present charges for nil days in Civil Custody and ~~three~~ six days in military custody, making a total of ~~three~~ six days, of which nil days were spent in hospital.

(b) The present age of the accused, according to his Record of Service, is 25 years.

(c) The date of his attestation specified in his Record of Service, is 8 Sep 39.

(d) The accused is in possession of, or entitled to, no military decoration or military reward.

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

W. R. McIntyre
(W. R. McIntyre) Lieut.
R.O.O., 3 Fd. Regt., R. C. A.

In the field
~~30 Jan 43~~
3 FEB 43

E. R. Clemis Capt. ADJT.
3 FD. REGT. R.C.A., C.A.

S. L. Higgs Major

EEE-127

SGT DAWSON W J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: Gt. Wilfred James Dawson

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

As present under sentence for ~~beginning on~~ (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days of which ... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be pulverised & the fouls

(Sgd) W.J. Swan Wozu — Judge-Advocate, if any. Date awarded: 22 Feb 44 (Sgd) F.W. Fell — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) F.W. Worthington (F.W. WORTHINGTON) Maj-Gen

Date 24 Feb 44 Commanding 4 Can Armd Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused: B 85333 Sgt. Dawson, Wilfred James — Date: 26 Feb 44 — Signature of Offr: H. Evans Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. EEE-127

Form 1 (In lieu of AFA3) 40-P-M-H-1608 (9864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt. Gen. H.D.G. Worthington Commanding 4 Can Armd Div dated 19 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B85333	Sgt	Wilfred James	Dawson	10 Cdn Inf Bde Coy RASC

PROCEEDINGS REVIEWED
H.C. Inch Lieut
22 Jan 44
REVIEWING OFFICER, JAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 22 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Instn ROs. For guidance on procedure when a variation in this form arises, see Instrs for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for points and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn a. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 0910 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to the interpreter?~~ Do you object to ~~the shorthand writer~~ Mr Ellis CT as shorthand writer? Ans No.

~~The Interpreter is sworn.~~ (1) The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	V.R. Fell	HQ 4 Cdn Armd Div
Member	Captain	J.D. Galloway	15 Cdn Fd Amb RCAMC
Member	Lieut.	J.A. McLean	6 Cdn Fd Pk Sqn RCE
Judge-Advocate	Wozu	W.J. Swan	HQ 4 Cdn Armd Div
Prosecutor	Captain	J.R. Wilson	10 Cdn Inf Bde Coy RASC
Defending Offr	Captain	H.R.V. Jarvis	4 Cdn Armd Div Tp Coy RASC

Questions by President: Is the Prosecutor a lawyer? Ans No Sir Is the Defending Offr a lawyer? Ans No Sir

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DF p 3.)

A8. The accused Gt Wilfred James Dawson before arraignment makes(s) (no) ~~no~~ plea.(1)

(1. If a special plea is made for separate trial as one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is sworn and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Nil. (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (5). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to NOT Guilty on charge(s). The accused is (are) so informed, and he (they) charge(s) his (their) plea(s) on charge(s). Part I of the Schedule is accordingly amended.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "Yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....
Do you intend to call witnesses on your behalf?
Ans.....
Are they witnesses as to character only? Ans.....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (b), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Yes and call witnesses as to character.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(1. *MFB 253 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, through my Defending Offr. (2) Ex "M"
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1313, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B85333 Sergeant Wilford James Dawson, 10 Canadian Infantry Brigade Company, Royal Canadian Army Service Corps, a soldier of the Canadian Army Overseas, placed on Active Service, is charged with :-

Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he

in the Field, on 30 January, 1944, absented himself without leave from 10 Canadian Infantry Brigade Company, RCASC, from 0700 hrs on the said 30th day of January, 1944 until he returned at 2230 hrs, 6 February, 1944. Total time absent - 7 days, 15 hrs, 30 minutes.

H. [illegible] Major,
Commanding Officer
10 Cdn Infantry Brigade Company,
RCASC.

The Field,
12 February, 1944.

To be tried by FGCM.

F. F. Worthington
(FF WORTHINGTON) Maj-Gen
GOC 4 Cdn Armd Div

In the Fd
19 Feb 44

O.R. Fd Court

CFA95 (In lieu of AFA3)
40/P&S/1697 (2868)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B85333	Sjt		WILFORD JAMES	DAWSON	10 Cdn Inf Bde Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 Feb 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". FFL

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ FFL

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ FFL

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col	V.R. FELL	HQ 4 Cdn Armd Div

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.D. GALLOWAY	15 Cdn Fd Amb RCAMC
Lt	J.A. MCLEAN	6 Cdn Fd Pk Sqn RCE

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	W.A.D. GUNN	HQ 4 Cdn Armd Div

On Active Service in the Fd

in England (Country) — F.F. Lovett (Signed personally. RP 105 to 2.) — Maj-Gen (Rank.)

Date 19 Feb 44 — Commanding 4 Cdn Armd Div Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

O.R. [illegible] pres.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined

No. B85333 Sgt. Dawson W. J.
of 10th. Canadian Infantry Brigade Company, RCASC.

and in my opinion he is fit/~~unfit~~ to undergo trial by

Court-Martial.

Crowborough, Sussex.

22nd February, 1944.

Medical Officer

First Witness for the Defence

Capt J.A. Moran, 4 Cdn Armd Div Tps Coy being duly sworn is examined by the Defence

Q.1 Will you identify yourself to the court?
A.1 I am Capt J.A. Moran, 4 Cdn Armd Div Tps Coy RCASC.
Q.2 Will you tell the court what you know of Sgt Dawson, I understand you have known him for some time?
A.2 I have known Sgt Dawson for approximately three years before I joined in 1940 in Canada in civilian life and I worked with him and he was a very good worker, very conscientious, I had not any trouble with him at any time.
Q.3 Did you ever know of any instance where Sgt Dawson has carried on in which you would described as going on a bender.
A.3 Not that I know of.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Second Witness for the Defence

K 75804 MSM Byatt, J.R. 10 Cdn Inf Bde Coy RCASC being duly sworn is examined by the Defence.

Q.1 Will you identify yourself to the court?
A.1 I am K 75804 MSM J.R. Byatt,
Q.2 Will you tell the court what you know of Sgt Dawson, how long you have known him and anything about his character?
A.2 I have known Sgt Dawson since September 1942 when he first came to the unit and have had dealings with him in the workshops and in regard to vehicles and I have always found him to be trustworthy and an excellent N.C.O. and man. I have never had any trouble with him and his behaviour in the mess has been good and his behaviour in the unit has been all it should be.
Q.3 Are there any comments you can make as to his ability as a leader
A.3 I have always found him to be a good leader, he is well liked by the men and a capable leader.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83 (b)

THE WITNESS WITHDRAWS

"M"

OK Feel [illegible] [illegible]

Plea in mitigation. Sgt. Hawson, H.J.

Sirs:

Sgt Hawson, throughout the investigation of this case, has been direct and frank in every way. He has admitted his error and is willing to accept the consequences of it.

I appreciate that it is not ~~[illegible]~~ easy for you to come to a decision in the matter of sentence since you have such a very confined field of "Cardness" in the record of this NCO's character — so confined that there is no such record. There has never been an instance which in any way reflected adversely upon Sgt Hawson's good conduct.

But let us briefly review the known quantities:

First, you can see for yourselves that Sgt Hawson is the type of man who is thoroughly honest and dependable.

Secondly, the two character witnesses whom you have heard bear out and amplify the first. Sgt Hawson has been known to both these witnesses for a considerable time — one before and the other since 1939, and their evidence has, in effect, commended him and shown him to be not only a good citizen but a good soldier.

Thirdly, Sgt Hawson has never been in any trouble since he has been in the army. I myself have known him well since Nov. 1942 and I can, and do, assure you now that there has never been a shadow to dull the shine of the good example he has always set for troops under him.

The Statement of Character which you have ~~[illegible]~~ just reviewed records his conduct as being "Good". I have been second-in-command of Sgt Hawson's unit since 1942, and

Ex "A"
O.R. Fell Lt Col
Pres.

SUMMARY OF EVIDENCE

in the case of -

No. B85333, Sergeant Wilford James Dawson, of the 10th Canadian Infantry Brigade Company, Royal Canadian Army Service Corps, a soldier of the Canadian Army placed on Active Service.

CHARGE -

1. When on active service absenting himself without leave.

The Commanding Officer directs that evidence be taken on oath.

First Witness

No. K75644, Company Sergeant Major Horace Bridgment, of the 10th Canadian Infantry Brigade Company, RCASC, having been duly sworn, states:-

Sir, I, K75644, Company Sergeant Major Horace Bridgment, did on the morning of 16 January, 1944, despatch the accused, whom I recognize, on a 20 mm Course at the Canadian Training School, Borden, Hants. At the time of despatching the accused I gave him a route card and I told him the place at which the course was to be held, the train he was to leave by, the route he was to go by and also to whom he was to report upon arrival. I also told him that the course terminated on the 29th of January, 1944, and that he was to return to the Company on that date. On the morning of 30th January, 1944, at 0700 hrs I searched the accused's room and the place where he ordinarily works and he was absent. As C.S.M. of the 10th Canadian Infantry Brigade Company, RCASC, I did personally re-establish his absence each morning and evening by visiting his quarters, moreover, since my duties are closely linked with those of the accused I would normally come into contact with the accused many times each day. From the morning of the 16th January, 1944 I did not see the accused at any time until 0700 hrs, 7 February, 1944, at which time I placed the accused under open arrest.

The accused declined to cross-examine. H. Bridgment CSM

Second Witness

No. K75493, Company Quarter Master Sergeant Robert Alfred Gilley, of the 10th Canadian Infantry Brigade Company, RCASC, having been duly sworn, states:-

Sir, I, K75493, CQMS Gilley, R.A., entered my room at 2230 hrs, 6 February, 1944, and saw the accused preparing to go to bed. I share a room with the accused and this was the first I had seen of him since he proceeded on course, on the 16th January, 1944.

The accused declined to cross-examine.

QUESTION TO THE ACCUSED -

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED -

I wish to make a statement on oath.

No. 69333, Sergeant Wilford James Dawson, of the 10th Canadian Infantry Brigade Company, RCASC, having been duly sworn, states:-

On the 29th January, 1944, I was returning to my company from a course at Canadian Training School, Bordon, Hants. On arrival in London I found that I had a couple of hours to wait for my train so I went over to a hotel and started drinking. I did not remember leaving the hotel and did not remember anything until the next morning. I took a few more drinks to try and straighten myself out and got into the same condition again as I was on the day before, and carried on in that way for the remainder of the week as far as I can remember. When I finally sobered up I realized what I had done and immediately reported back to my Company on the evening of the 6th of February, 1944.

W J Dawson Sgt

I certify that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

Taken down by me in the presence of the accused at Crowborough, Sussex, this 11th day of February, 1944.

(J.R. Wilson) Captain,
10 Canadian Infantry
Brigade Company, RCASC.

MFM 6
(AFB 122)

No B85333 Name Sgt. DAWSON, W.J. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 15.5.41 | GC Badge | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2. | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet No. 1 destroyed on completion of six months service - 15.11.41.					
				"Certified true copy from the Regimental Books in my Custody".					

(P10)

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Ex "X" V.R. Fell Hd Jno

Number	Rank	Name	Regiment (or unit)
B85333	Sergeant	Wilford James Dawson	10 Cdn Inf Bde Coy, RCASC.

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery Conduct sheets~~ H.m. ~~or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment	
For	times		times
For	times		times
For	times	H.m.	times
For	times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or,~~ H.m.

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~ H.m.

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for ---------- beginning on the ---------- day of ----------~~ H.m.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days in custody, of which Nil days were spent in hospital. 15 days open arrest H.P. H.m.

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 38 years, 4 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 15 May, 1941.

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon ---------- service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to ~~no air force~~ military decoration, ~~or air force reward (or is in possession of or entitled to)~~ H.m. State any ~~air force~~ military decoration or reward.

Canadian Volunteer Service Medal and Clasp

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ H.m.

11. (In the case of an officer.) The accused holds in the Royal Canad[illegible] Permanent [illegible] in

..... dated ..... and in his regiment (

..... dated [illegible]

12. The accused has served as a non-commissioned officer continuously, with[illegible] present date:— 17 August, 1943 Date of promotion.

In the rank of Corporal - 2 months ~~years~~.

In the rank of Sergeant - 6 months ~~years~~.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Army Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22nd day of February, 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force ~~the rank of~~ Permanent Force unit dated ..... and in his regiment (or corps), the rank of ..... dated ~~Nil~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

17 August, 1943 Date of promotion.

In the rank of Corporal - 2 months ~~years~~.

In the rank of Sergeant - 6 months ~~years~~.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~24th~~ 22nd day of February, 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

FF-61

PTE DAWYBIDA J

H-65693 Pte John Dawybida, Cdn Postal Corps - C.M.U. Postal Unit.

FF-61

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this NINETEENTH day of MAY, 19 FORTY-THREE

(Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

[redacted]

President.

Rank.	Name.	Regiment.
LT-COL.	D.L. HEADMAN, V.D.	H.Q. C.M.U.

Members.

Rank.	Name.	Regiment.
A MAJOR	FROM	1 C.I.R.U.
A LIEUTENANT	FROM	1 C.I.R.U.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court must be initialled by him.

*Signed (J.H. Roberts) Maj-Gen.,
Commanding Cdn Reinforcement Units.
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M-65693 Pte John Dawybida, C.P.C. CRU Postal Unit.	FIRST CHARGE Sec 9(2) A.A.	Guilty	Guilty Sentence To be admonished 21st May 1943 MB	Confirmed JB

See Charge Sheet Attached.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) (H.H. Roberts) Maj-Gen., (Signed)
Commanding Cdn Rft Units.
Convening Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of May, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) JW
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 21st day of May 1943.

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*k*) on page 762 M.M.L. 1939.

~~I certify that the Articles of War 1914 to 1918 have been duly complied with.~~

~~Signed this day of~~

~~President of the Court Martial.~~

JW

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) JB

Signed this 21st day of May 1943.

Confirming Officer.
Major Gen. C.R.U.

Promulgated and extracts taken in the case of M.65693, Pte. Dawybida, C.

(*a*) (Dated) 29 May 1943 (Signed) E. Cadot Major
O.C. C.R.U. POSTAL UNIT.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(21618) W1-4173-800 20-9-40 (242) A.A. & S.W. Ltd. Gp 488

THE ACCUSED ELECTS TRIAL BY COURT MARTIAL

CHARGE SHEET

The accused No H. 65693, Private John Dawybida, C.R.U. Postal Unit, Canadian Postal Corps, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Section 9(2)
Army Act

When on Active Service, Disobeying a Lawful Command given by His Superior Officer,

in that he

On 11 May 43 at approximately 1630 hours at Canadian Field Post Office, S.C. 11, Hammersley Road, Farnborough, Hants, when ordered by C.S.M. W.B. Kehoe, of C.R.U. Postal Unit, Canadian Postal Corps, to get his kit and accompany the said C.S.M., did not do so.

E. Todd
(C.Todd) Captain,
O.C. C.R.U. Postal Unit
Canadian Postal Corps

In the field,
this 15 day of May 1943

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J. L. Roberts
(J.L. Roberts) Major-General
Comd Canadian Reinforcement Units

In the field,
this 19 day of May 1943.

H.Q. ..... Squadron / Battery / Company / Detachment Canadian Reinforcement Units. Unit or Battalion

21 May 43. .....19....

MORNING SICK REPORT

Regt'l No.	RANK AND NAMES (Christian Name in full)	Age	Religion	Whether for duty a prisoner or defaulter	Married or Single	DISEASE	Medical Officer's Remarks and Initial
H-65693	Pte. Dawybida J.						

This is to certify that the a/m soldier has this day been examined and is fit to undergo trial by Court Martial.

S. A. MacDonald Lt. Medical Officer A. C. Randall Cpl. Orderly N.C.O.

(OVER)

M. F. B. 292
4500 [illegible]
H.Q. 1772-39-268

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT NAAFI READING ROOM, OUDENARDE BRKS., FARNBOROUGH, HANTS.
ON THE 21st DAY OF MAY 1943

The accused. H 65693 PTE. DANYBIDA, J. .....Unit. Cdn Postal Corps. M.W., C.W.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President LT.-COL. D.L. REDMAN .....Unit. H.Q., C.R.U.

Members MAJOR A.S. DONALD .....Unit. 1 C.I.R.U.

LIEUT. A.M. MCLEOUD .....Unit. 1 C.I.R.U.

The officers under instruction are duly sworn:-

LIEUT. R.G. HUNTER .....Unit. C.R.U. Postal Unit.

.....Unit.

Prosecutor Lieut. M.H. Thomas-Peter Unit. H.Q., C.R.U.

Defending Officer Lieut. R.A. White Unit. 29th C.A.R.R.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces ~~XFB XXX~~ and MFK 6.
The Court complies with R.P. 46(B). AFB 296

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) ~~Calls witnesses in mitigation~~
(d) Addresses the Court by his Defending Officer.

C.A.O.R.O. 3262 complied with.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

THE ACCUSED, HAVING BEEN DULY SWORN, STATES:-

I have been in the army almost two years, during which period I have had very little trouble. I have always tried to do my job well, and most of my service in the army has been in a mechanical capacity. Captain Todd wanted me to transfer to the Pioneer Corps. I explained to him that I did not want to go, the reason being that the Pioneer Corps is the lowest form of unit in the Army. I asked to go to the Service Corps, but he said I could not go. Then I asked to get para ded to my colonel, and he said I could not go. Then Sjt.-Major Kehoe gave me an order to pick up my kit and go on

(over)

the truck. I had an idea that I was going to the Pioneer Corps, and I knew that I was taking a risk by refusing to go, but I did not want to go to the Pioneer Corps. I thought I could convince them to let me stay with my unit. When I refused, I was paraded to the guard room. The next morning I was tried by Capt. Todd. I refused his punishment, and wanted to get paraded to my colonel, Colonel Ross of the Postal Corps. I was taken back to the guard room. On May 13th in the morning I was tried by Colonel Spankie, and I refused his punishment. On the morning of the 14th I was tried by Colonel Spankie again, and he said if I went to the Postal Corps immediately, he would not punish me, so I refused that and I had an option to face a court-martial, in order to stay with my unit, or go to the Pioneer Corps, which, I considered, was a fate I did not deserve. I asked to see the colonel again, and was refused. I had a mother to support, and knew that I would be losing money, but I did not want to go to the Pioneer Corps. I wanted to see my colonel again, and was refused. I went to grade 8 in school, I was about 14 years old when I left school, sir. I come from Ashville Manitoba. I am not married. My mother is not getting Dependants' Allowance, but just my assigned pay. Mother and Dad are separated. I have $10.00 assigned to my mother, and $10.00 assigned to my sister. I did a lot of mechanical work after I left school, and in 1939 I worked in a store as clerk. I don't know why they want to transfer me to the Pioneer Corps. I understand it was through a medical board. I am category "A". I have been here 17 months at Farnborough, as mail escort on the truck, and then I went on a driving course to London for a month. I was in charge of the postal transport for about two months after the course. Then I went on driving on the Postal Corps' 30 cwt. truck. I drove until sometime in February. Then I was taken off driving for being charged with speeding, and then I was asked to go to the Pioneer Corps, in February, and I refused. I could not get any Dependants' Allowance for my mother in Winnipeg. My brother is in the Army, and he has assigned pay to my mother. I have two sisters in Winnipeg and one in Toronto, all of whom are helping my mother.

I think the CSM has been on my neck, and I have never got a good deal from him, and I never could do anything to satisfy him. I don't know why. I think it started before Christmas. He asked me to loan him money, and I refused. He asked me two or three times. I figure that is the reason he is against me. I got along very well with the other people in the unit. I was with the Army Service Corps for three months, I have no idea why they would not let me go back. I went to a mechanical trades-school in Winnipeg, in the Army Service Corps. I did not finish the trades-school, as I wanted to transfer to the Postal Corps, where my brother is. I am a qualified driver, and also qualified at the L.P.T.B. in London, which appears in my pay book.

I think I was pushed around a little by the Sergeant-Major.

I want to say that I don't want to go to the Pioneer Corps. I have been interviewed by the Personnel Selection Board, I saw a slip that Capt. Todd had when he asked me to transfer to the Pioneer Corps, as far as I know it was a medical slip.

When I asked to see the colonel, Capt. Todd said I could not see him. He did not give me any reason why. I asked Col. Spankie about seeing my colonel, and he told me to see my O.C.

(Prosecutor pointed out that in the postal corps, he understands that there is no intermediate rank between Captain Todd and Colonel Ross.)

(continued on attached sheet)

1ST CHARACTER WITNESS:- H 290 53 S/SJT. GREEN, W., C.R.U. Postal Unit, sworn, states:-

I have known the accused since February, 1942. To the best of my knowledge he has always given good satisfa ction, and is hard working. He has been in the unit as a driver, and for a period he was in charge of the unit transport, in charge of the maintenance. I think he is a good driver. His general reputation is good. I have never had any trouble at all with him.

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

2ND CHARACTER WITNESS:- L 7271 A/S/SJT. CHAPMAN, N.C., C.R.U. Postal Unit, sworn, states:-

I have known the accused since he came to the postal corps in February, 1942. He has always performed his duties well, was conscientious, and was not afraid of hard work. All the jobs I gave him he did well. Among his comrades he is well liked, he is honest.

PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

PLEA IN MITIGATION OF PUNISHMENT BY THE DEFENDING OFFICER:-

The accused definitely is guilty of the offense charged. He was up twice before Col. Spankie, and refused his punishment, and the last time he was given the option of going to the Pioneer Corps of going up for court-martial. To me that is an indication of good faith, certainly anything but stupidity or being unreasonable, and there is nothing about his attitude that is unreasonable. He is 25 years of age, "A" category, he has a good record, and a good capability for hard work. Most of his work has been mechanical, but above all, he is determined to stay in that part of the army where he will be happy. To my mind, that is all you could ask of a soldier. Why send a man like that to the Pioneer Corps ? I think it would be tragic to send him to the Pioneer Corps, where he would run into more trouble. I think his whole conduct deserves commendation. I think the accused should be somewhere where he will be useful and happy. I think he was justified in doing what he did. Lastly, I think the accused should be given an opportunity to transfer to the Army Service Corps.

SUMMARY OF EVIDENCE IN THE CASE OF H-65693, PTE. DAWYBIDA,J., of Canadian Reinforcement Units Postal Unit, Canadian Postal Corps, Canadian Army (Overseas).

The Commanding,Officer, Capt. C. Todd, Canadian Reinforcement Units Postal Unit, Canadian Postal Corps, Hammersley Road,North Camp, Aldershot, Hants., directs that the evidence shall be taken on oath.

H.29053, S/Sgt.Green,W., having been duly sworn, acted as stenographer.

1st Witness for the Prosecution.

C.97118, C.S.M. Kehoe, W.H., having been duly sworn, states:

I am C.97118, C.S.M. Kehoe, W.H., of Canadian Reinforcement Units Postal Unit. At approximately 1630 hours on 11th May, 1943, I did give to H.65693, Pte. Dawybida, J., a direct order to pick up his kit and accompany me, as he would be going on a truck. Pte. Dawybida made no move to obey my order. About one minute later, I repeated the order to him again; he still did not make any move to obey my order. I then asked him if he did not hear or understand me. He replied: "Yes." I then repeated the order to him to pick up his kit and follow me. When he made no move to accompany me, I asked him was he disobeying my order. He replied by asking me where he was going. I next gave him a direct order to pick up his kit and accompany me, as he would be going on a truck. When he made no move to accompany me, I asked him was he disobeying my order. He replied: "In that case, yes." I then placed him under close arrest and marched him to the unit detention room, of H.Q.,Canadian Reinforcement Units. I then laid a charge against him of disobeying a lawful command.

C.97118,C.S.M. W.H. Kehoe.
C.R.U. Postal Unit,
Canadian Postal Corps.

The accused cross-examined this witness:

Q. Did I say: "In that case,yes"

A. Yes, you did.

2nd Witness for the Prosecution

C.97905, Pte. Miller, H.P., having been duly sworn, states:

I am C.97905, Pte. Miller, H.P., of Canadian Reinforcement Units Postal Unit, Canadian Postal Corps. On 11th May 1943, at approximately 1630 hours, in Field Post Office S.C.11, located in the Spider Hut, on Hammersley Road, North Camp, in the accompanyment of C.S.M. Kehoe, I heard Pte. Dawybida refuse to act when ordered by C.S.M. Kehoe to pick up his kit and put it in a waiting truck. The Sergeant Major ordered him three or four times to pick up his kit and go to the truck. Pte. Dawybida insisted that he be told where he was going to. The Sergeant Major ordered him again and Pte. Dawybida's answer was the same. After ordering him two or three more times, there was no response or action so the Sgt. Major placed Pte. Dawybida under close arrest.

H P Miller

C.97905, Pte. H.P. Miller.
C.R.U. Postal Unit
Canadian Postal Corps.

The accused declines to cross-examine this witness.

3rd Witness for the Prosecution

M.16459, Pte. Bauer, J., having been duly sworn, states:

I am M.16459, Pte. Bauer, J., of Canadian Reinforcement Units Postal Unit, Canadian Postal Corps. On 11th May 1943, at approximately 1630 hours, I was at the Field Post Office S.C.11 on Hammersley Road, and was a witness to the proceedings which took place between the accused, Pte. Dawybida, and Sgt. Major Kehoe. Sgt. Major Kehoe ordered Pte. Dawybida to pick up his kit and place it on a truck; he ordered him approximately four times to do that. Pte. Dawybida did not do so and he was then asked by the Sgt. Major (Sgt. Major Kehoe) if he had heard the order. He said "Yes." He was ordered once more to pick up his kit, he refused. He was then placed under close arrest.

J Bauer

M.16459, Pte. Bauer, J.
C.R.U. Postal Unit
CANADIAN POSTAL CORPS.

The accused cross-examined this witness:

Q. What answer did I give Sgt. Major Kehoe to his last order.

A. The approximate words, I do not fully remember all the details, were: "I refuse to obey the order, unless I know where I am going."

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath; you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

I CERTIFY THAT the foregoing summary of evidence consisting of three pages, was taken down by me in writing in the presence of the accused and rules of procedure 4 (C), (D), (E) and (F) have been complied with.

(C.Todd) Capt.,
Officer Commanding,
C.R.U. Postal Unit.
Canadian Postal Corps.

15 May 1943.
F.P.O. S.C.11,
Hammeraley Road,
North Camp, Hants.

M.F.M. 6
(A.F.B. 172)
175M.—7-41 (1219-20)
H.Q. 1772 39-1652

No. H.65693 Name Dawybida, J. Sqn., Battery, or Company Cdn. Postal corps C.R.U. Corps Date of enlistment 23-7-41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. C. Todd Capt. Character

	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20-1-43			W.O.A.S. A.A. Sec. 40. conducted to the prejudice etc. in that on 20 Jan 43 he drove W.D. Vehicle C.L. 42-3135 at an excessive rate of speed. (40/45 M.P.H.)	Documentary charge laid by C.M.P.	Admonished	4 Feb.43.	Capt.C. Todd	Forfeits 7 days pay F.R.I. 4-2-43 art. 149 (1) (e)

Certified a true copy of the documents in my custody
C. Todd Capt.

OFFICER COMMANDING
C.R.U. POSTAL UNIT C.P.C.

(P.T.O.)

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-65693.	PRIVATE	DANYBIDA, John.	C.R.U.POSTAL UNIT, C.P.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	Within last 12 months.	*Since Enlistment.*
For A.A.Sec.40.	One times	One times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NIL

or

[redacted]

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and ~~NINE~~ days in military custody, making a total of ~~NINE~~ days, of which NIL ~~NINE~~ days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 25 years, 4 months

6. The date of his ~~enlistment~~ attestation specified in his record of service / attestation paper is 23rd July 1941.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ([redacted]

[redacted]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of dated

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (or corps or department) the rank of dated

Note.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and marked to identify the proceedings.

† See para. 675, K.R., 1940.

* The numbers herein stated should correspond with the entries of offences in the conduct sheets, provided that reference being given to the naval sentence in each case, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be separately stated.

(7262-0) WT.30246/M22 50,000 12/40 A.& A.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. H-65693, Rank PRIVATE Name DANYBIDA, John of CRU POSTAL UNIT Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21ST day of MAY, 1943

Capt.
Officer Commanding,
C.R.U.Postal Unit,C.P.C.

IF the record has served as a [illegible] officer continuously, without reduction, to the present date, [illegible]

		Date of Promotion.
In the rank of	years,	
In the rank of	years	
In the rank of	years,	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)*

This is to certify that I, H-65693, PTE. JOHN DAWYBIDA, of Canadian Reinforcement Units Postal Unit, Canadian Postal Corps, Canadian Army Overseas, wish to have an officer assigned by the convening officer to represent me at my trial, and desire, if at all possible, that such officer selected to represent me will be Lieut.R.A.White.3 C.A.C.R.U.

17th May 1943

John Dawybida
H-65693, Pte. J. Dawybida
C.R.U. POSTAL UNIT,
Canadian Postal Corps.

II-28 (Case #2)

PTE DAWYBIDA J

See FF-61 for 1st case

H-65693 Pte John Dawybida,
CRU Postal Unit. II-28

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY-FIRST day of JUNE, 19 . FORTY-THREE

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [redacted]

*Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be stated. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
MAJOR	A.S. PETTAPIECE	HQ. CRU.

Members.

Rank.	Name.	Regiment.
A MAJOR	FROM	1 CASCRU
A CAPTAIN	FROM	HQ 'B' GP CRU.

*Signed (J.H. ROBERTS) Maj-Gen.,
Commanding Cdn Rft Units
Convening Officer.

12 July 1943

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
-65693 Pte John Dawybida, HQ CRU Postal Unit.	FIRST CHARGE Sec 9(2) A.A.	Not Guilty	Guilty Sentenced to undergo detention for a period of forty-five (45) days. 22 Jun 43 Arthur S. Pettapiece Major	Confirmed. J.M.R.

See Charge Sheet Attached.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No.
Answer (to be recorded on separate sheet if necessary):—

(Signed) J.M. Roberts (J.M. ROBERTS) Maj-Gen., Cdn Rft Units
Commanding Convening Officer (e)

(Signed) Arthur S. Pettapiece, Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious [illegible] only.
[illegible] to mercy, if any, to be inserted in this column. [illegible] should sign his name in this column. Initials are sufficient. [illegible] on the first page, and all alterations in the first two

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

B.

I certify that the above Court assembled on the 22nd day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

Certificate of President as to proceedings.

I also certify that:—
1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 22nd day of June 1943.

Arthur S. Pettapiece, Major
President of the Court Martial.

C.

Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

*See footnote (b) on page 762 M.M.L. 1929.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

Confirmation.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 26 day of June 1943.

J.M. Roberts
Confirming Officer.

J. M. ROBERTS, Maj-Gen., Comd. Cdn. Rft. Units.

Promulgated and extracts taken in the case of H-65693, Pte. Dawybida, J.

(a) (Dated) 28 June 43 (Signed) A.W. Markey Major

Promulgated and extracts taken in the case of OFFICER COMMANDING C.R.U. POSTAL UNIT . C.P.C.

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
J-65693 Pte John Dawybida, HQ CRU Postal Unit.	FIRST CHARGE Sec 9(2) A.A.	Not Guilty	Guilty Sentenced to undergo detention for a period of forty-five (45) days. 22 Jun 43 Arthur S. Pettypiece Mjr	Confirmed. J.W.R.

See Charge Sheet Attached.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on sheet if necessary*):—No.

(Signed) J.W. Roberts (J.W. ROBERTS) Maj-Gen., Commanding Cdn Rft Units
Confirming Officer (*e*)

(Signed) Arthur S. Pettypiece, Mjr
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The Interpreter)~~
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 22nd day of June 1943.

Arthur S. Pettypiece, Mjr
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 702 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

J.W.R.

Signed this 26 day of June 1943.

J.W. Roberts
Confirming Officer.

J. W. ROBERTS, Maj-Gen.,
Comd. Cdn. Rft. Units.

Promulgated and extracts taken in the case of J-65693, Pte. Dawybida, J.

(*a*) (Dated) 28 June 43 (Signed) [illegible] Major
OFFICER COMMANDING C.R.U. POSTAL UNIT . C.P.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23573) Wt.46178-8/20 50,000 2-43 A.& E.W.Ltd. Gp.498

CHARGE SHEET

The accused No. H. 65693, Private John Dawybida, C.R.U. Postal Unit, Canadian Postal Corps, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Section 9(2)
Army Act.

When on Active Service, Disobeying a Lawful Command given by His Superior Officer,

in that he

On 15 June 1943, at approximately 1500 hours at Cdn. F.P.O. SC-11, North Camp, Hants, when ordered by A/S/Sgt. Chapman, of C.R.U. Postal Unit, C.P.C., to pack his kit and be ready for a car to take him to the 4 Cdn. General Pioneer Company, did not do so.

In the field,
this 16th day of June, 1943.

(C. Todd) Major,
Officer Commanding,
C.R.U. Postal Unit,
Canadian Postal Corps.

To be tried by Field General Court-Martial.

(J.H. ROBERTS) Maj-Gen.,
Comd
CANADIAN REINFORCEMENT UNITS.

In the Field,
21 Jun 43

President

Medical Officers' Certificate
K.R. (Can.) Para 557

I certify that I have this morning examined No. H 65693 Pte Dawyhuda J.

of Canadian Postal Corps and in my opinion he is fit to undergo

trial by court martial.

Station. H. Q. C. R. U.

Date. 22 June 1943

Sgd. S. C. MacDonald Lt.

Arthur S. Pettapiece Mgr (Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT H.Q.C.R.U., Farnborough, Hants.
ON THE 22nd DAY OF June 1943

The accused H.6.5.6.9.3 Pte Dawgheda, J. ...Unit. C.R.U. Postal Unit....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. A.S. Pettapiri .....Unit. H.Q.C.R.U.....

Members: Maj. R. Bingham .....Unit. 1 C.A.S.C.R.U....

Capt. J.B. Dyand .....Unit H.Q.B. Tp. C.R.U.

The officers under instruction are duly sworn:-

Capt. L.E. Fox .....Unit. 5 C.R.U.....

.....~~Unit.~~..... AHP

Prosecutor Lt. L.C. Shankman .....Unit. 1 C.A.S.C.R.U.

Defending Officer Lt. M.H. Thomas Peter Unit. H.Q.C.R.U. (B.C.C.S.)

The charge sheet is signed by the President and the accused is arraigned.
~~The accused pleads guilty to the charge(s) and R.P. 35(B)~~ AHP
is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS ~~OF ACCUSED OR HIS DEFENDING OFFICER~~ AHP

The accused pleads "Not Guilty" to the charge.

R.P. 39(A) is complied with.

The Prosecutor proceeds to call witnesses.

1st Witness for Prosecution

Lt. S. A. MacDonald, R.C.A.M.C. of H.Q.C.R.U.
having been duly sworn, states:-

I identify these papers (Exhibit "A") as the original Medical papers relating to the accused. On June 2nd I examined the accused and I have also seen his medical report. I cannot say whether he has a gastric ulcer or not. He is suffering from gastritis in my opinion. He has also been examined by a Psychiatrist.

No cross examination

2nd Witness for Prosecution

47271 A/S/Sgt. Chapman, M.C. of C.P.C. at C.R.U.
having been duly sworn, states:—

On 15 Jun 43 I was told to get the accused ready to go to 4 C.G.P.C. About 15 00 hrs. I ordered him to have his kit ready to go. He refused. I asked him if he understood the order. He said yes and he again refused. So I placed him under arrest. I did not expect him to obey the order because before this he told me that he had refused to go once before and was prepared to refuse again. I was asked by Capt. Fenchler to get the

accused ready to go. I came on that occasion prepared to place the accused under arrest if he refused.

Cross-examination

His answer to me was "I can't". About 5 mins. elapsed between the time I told him to get ready and when he was placed under arrest. The accused did nothing in the mean time. It takes more than 5 mins. for a man to pack his kit. Capt. Frankland ordered me to tell the accused to get ready. I don't think he told me to take an escort with me. The accused made no move to pack his kit before I placed him in custody.

By the Court

I do not think Capt. Frankland told me to get the escort ready. I did it on my own.

Cd Witness for Prosecution

F 5530 Pte. Larkin, H.L.I. of C.P. Corps. at C.R.A. having boundary sworn, states:

On 15 Jan 43 I heard Chapman give the accused an order. He asked him to get his kit ready and he prepared to go. The accused refused to go. He again refused after Chapman had asked him if he understood the order. It took about 5 mins. from the time Chapman told the accused to get ready and the accused was under arrest. I was asked to be present at the by Chapman. I was waiting

before this conversation took place. I do not know why Chapman asked me to be there. I was one of the escorts for the accused when he was placed under arrest.

Cross-examination

Chapman told the accused that a truck would be ready to take him away in a few minutes. It would take me twenty minutes to pack my kit under like circumstances.

4th Witness for Prosecution

B130711 Pte Spiece, H.A.C. Cdn Port C. of C.R.A. having been duly sworn, states.

On 15 Jan 43 about 1500 hrs in the Field Port Office Chapman ordered the accused to pack his kit and get ready to go to 4 Pioneer. The accused refused to do so and he was placed under arrest. I think the accused certainly said "I'll have to refuse this order the same as I refused the other order". He did not do any thing to carry out the order. Chapman told me to put my train on and come up as a witness. This was about 10 mins. before the conversation between Chapman and the accused. Just before I ordered the place where the accused was we were told they were never going to be parent. Chapman said he wanted me as witnesses. I was one of the escorts for the accused ~~at that time~~ on that day.

No cross-examination
The Prosecution is closed.
R.P. 40(A)(B) complied with

Pt Witness for Defense

The accused having been duly sworn, states:

I have ~~always~~ been sick and medically examined just before I arrived at C.R.A. Portal Unit. I was admitted to hospital on 10 Apr 42. I was discharged on 12 May 42. I have always had trouble with my stomach but I carried on. I went to hospital again in August. I was in charge of transport at C.R.A. post office. Then I was examined by Maj'n Gould the psychiatrist. He said that my stomach condition was due to anxiety. He never said that I was to go to a Pioneer Coy. The first I heard of it was months later by my Bgt. Maj'n. I never tried to pretend I was sick at any time. He did I even have an "axe to grind". I did not exaggerate any of my surgeons and part of my medical report is unfair to me. I tried to stay with the Portal Corps. I went to see Maj'n C. Todd. and he said he did not think he could do anything about it. I then asked to see Col. Ross but the interview was never arranged. I asked again to be paraded before Col. Ross and Capt. Todd, as he then was, said that that was impossible I saw Col. Ross about two weeks ago, 12 Jan 43. Maj'n Todd was

present also. Col. Ross said I was to go to the Prairies by. This conversation took place in London. I like working at the kind of work at the Postal Corps. I was also interviewed by the Personnel Selection Board but I do not know what has happened. I am still category "A". I had two interviews with Major Todd about my transferring to the R.C.A.F.C.

Cross-examination

I did not want to go to the Prairies because I felt that my qualifications are most useful in the R.C.A.F.C. I have a good idea and experience of transport. I have asked Major Todd at least a dozen times to try and transfer me to the R.C.A.F.C. I have been in the Army for years and am a good mechanic. Also Major Todd gave me no reason for refusing me an opportunity of seeing Col. Ross. I always felt that Major Todd was determined to send me to the Prairies by. I realise that I should do what he told me but I felt that the proper channels had been closed to me.

Re-examination

The reason I refused this order was because I do not want to go to the Prairies. This would be against me a bit.

By the Court

I belonged to the R.C.A.F.C. in Canada but because

my brother was in the Postal Corps. I asked to be ~~[illegible]~~ transferred to the A.S.C. after I was examined by Maj'r Gould. It was April of this year when I formally requested to be transferred to the A.S.C. I had taken a Diesel Course with the Sardou Transport and had taken a driving and mechanical course there. I was in charge of six vehicles at the Postal Corps although I was only a private. I dealt directly with Capt. Todd and the Sgt. Maj'r. I was relieved of my duties in charge of the vehicles because the Sgt. Maj'r was always asking me to lend him money and I refused. His name is Sgt. Maj'r Kehoe. I started to try and get transferred to the A.S.C. at the beginning of April and I must have approached the Sgt. Maj'r about a dozen times to be paraded before my C.O. about this

2nd Lt. Stress for Defence

Maj'r C. Todd, O.C. C.R.U. Postal Unit, being been duly sworn, states.

The accused was not sent to as R.U. because the medical report did not recommend it. It was a case of a C.M.H.Q. posting of the accused to the Pioneer Coy. I made many arrangements for the accused to be interviewed with several officers of C.R.U. He was requested to be transferred to the A.S.C. He said that if he must go from the Postal Corps he would like to go to the A.S.C. rather than the Pioneer Coy. I saw with Col Ross and told him that the accused was a poor soldier. I telephoned Maj. De Bernier at C.M.H.Q. and asked him for a stay of this posting to the Pioneer and he said nothing could be done. The A.G. Branch of C.M.H.Q.

does not know of his case as far as I know. I do not think they were ever consulted.

Cross examination

I have been ~~a Major for 6 months~~ with the unit here for 8 months as its O.C. I think that the accused was not an efficient soldier. I can only go by his medical report. He was always complaining about being sick. He did not like the Medical profession as a whole. I devoted a lot of my time trying to get the case cleared up so that he could be placed in a corporal job. But, unfortunately we never seemed to get anywhere with him. I spoke to Major Gould before the accused saw him and examined him. I also saw Major Gould after his examination. I do not remember all of my conversation with Maj. Gould before he examined the accused but I wanted to make sure that the accused was not just being humidly examined.

Re-examination

On many occasions he was too ill to work. ~~He had no place in an establishment.~~ He was used as a handy man. He was doing maintenance on vehicle for a while. I took him off driving because he said he got dizzy spells. The accused was assisting the drivers to do their maintenance. I don't know how long he was on this job. He was a partial assistant on one establishment. The accused was eventually passed by me before Col. Ross my C.O.

By the Court

The accused never filled out any transfer application nor did anyone ever give him an application to fill out.

The Defense is closed.
The Defending officer makes a closing address (Attached hereto)

The Prosecutor replies (attached hereto)
The Court is closed for consideration of finding.

The Court is re-opened and Overseas R.O. 3262 is complied with.
The Prosecutor produces the ~~MF~~ PF 8296 and MFM 6 of the accused.

The Defense proceeds to call character witnesses.

1st Character Witness — Capt. W. E. Frankland, the 2 i/c of the accused of C.R.U. postal unit having been duly sworn, states.
I have known the accused for about ~~8~~ 6 months. Before I left the unit in which he and I were serving, his work was entirely satisfactory. After I returned he was under close arrest. His work was always satisfactory when I was in command of him. He had never been before me for a ~~like alleged~~ similar offence. I was away from the unit for about 3 months and of course I cannot say what happened while I was away.

2nd Character Witness — H 29253 S. Sgt. Green, W. C.R.U. Postal unit having been duly sworn, states.
I have known the accused for 16 months. To my knowledge his work was always satisfactory. I know all the personal of the unit. I work in the orderly room. During the past two months the accused was under a mental strain. This took the form of a worried state of mind and I think

it was due to his proposed transfer. On one occasion he said that the M. O. did not seem sympathetic to him. I certainly would not describe him as a "bad-swinger" at all.

Bad Witness for Character

C 97178 Sgt. Young, J. E., C. R. A. Postal unit, having been duly sworn, states:-

I knew the accused for 9 months. He was always a good worker and seemed happy where he was until he was told that he could no longer be the sort of transport Gulf which a fit. although he merely was what he was doing. He was always saying he had a bad stomach and that the M. O's were not sympathetic. He slept in the same room as I did and he said that he was worried about conditions at home.

4th Character Witness

The accused states (attached hereto).

The Defending Officer addresses the Court (attached hereto)

Overseas R. O. 3262 is complied with.

The Court is closed for consideration of sentence.

Arthur S. Pettapiece
Major

Address by Defending Officer

In this charge, certain facts must be proven by the prosecution beyond any reasonable doubt. First they must prove actual disobedience of a command, second they must prove that such a command was lawful and given by a superior and third, they must show that the accused did actually understand all that was expected of him.

On the first of these points, the following facts emerge: a) There was a lapse of only 5 minutes between command and arrest.

b) The packing of a kit takes twenty minutes or more

c) It is therefore manifestly impossible for Dawydida to obey or disobey the command since he had not the time to do either.

Under Footnote 1 to Section 9 of the Army Act, the mere statement of "I will not do it" does not constitute an offence under this section - yet we have S/Sgt Chapman statement that the accused merely said "I can't do it" and, with another two or three sentences, was under arrest.

The second point has been established and need not be discussed. The third and last point is the one on which the case

This man is, on the basis of [illegible]
neurotic subject; yet he remains legally
"A". In the period between his interview
with the psychiatrist and his present trouble,
we have a long history of stomach disorders,
poor management — the doctors statements
that this man tends to introspection would
be of no account — all these things have
played on this man's already delicately
balanced mind and have produced the obvious
effect. He is obsessed with but one idea —
to keep from being "railroaded" into the
pioneer coy. He already introspective mind
is becoming imbued with a persecution
complex — he feels, and, perhaps, rightly, that
he is being victimized.

With this in mind, can the law of
disobedience — or, alternatively, insubordinate
language — be applied equally to a normal
man who thumbs his nose at authority and
to a man, the balance of whose mind is
disturbed?

I suggest to the court, that, in view of the
lack of proof shown, the provisions of the Army Act
as quoted — and this man's mental conditions

no crime has been committed. Instead there is an appeal by a man who feels an injustice has been done him to a court, not of discipline, but of justice, hoping that he may obtain it.

Thomas Tch Lieut.

AHP

Closing Address by Prosecutor

Sir,

The accused before us is charged with "disobeying a lawful command given by his superior officer". There is no question about that. We have the evidence of S/Sgt. Chapman corroborated by that of Privates Larkin and Spence that the accused refused to carry out the order to pack his kit and further did nothing whatsoever to carry out the order.

The circumstances surrounding the refusal of the order are rather exceptional. There is evidence on behalf of the accused that he attempted to transfer by being paraded to his C.O. to the R.C.A.S.C., and that nothing was done about it. We also have the evidence that he had been examined by medical officers who describe the accused as being in fit condition to be transferred to the Provost Company. On the other hand, we have the evidence of the accused's C.O. that practically everything possible was done to satisfy the accused. The accused according to Major Todd did not definitely request a transfer to the R.C.A.S.C., but agreed such preference if he had to be transferred from the Postal Corps.

The accused may have a grievance and perhaps certain individuals are guilty of mismanagement, but that does not excuse the offence committed. If the accused had a grievance, and I do not argue with that allegation, he should have carried out the order, and then on his arrival at the Provost ~~Grievance~~ Company aired his grievance through the proper channels.

We can not in the Army permit certain individuals to act as they see fit even though right they may be. In order to maintain discipline, it is essential that an

Statement by H65693 Pte Dawyluk J in mitigation of sentence

I am a Ukrainian by birth. My mother, who speaks little or no English, does not know I am overseas: she thinks I am in Halifax. Together with my brothers and sister, I help to support her as she is separated from my father.

When I first arrived in England, I was with the Postal Service in Manchester. From there I came to C.R.U. Postal Unit as a driver. Just after I came here, I was sent to hospital for a stomach disorder. I am not a lead swinger, nor am I a shirker. If there is work to be done, I will do it. I feel that C.S.M. Rebec of C.R.U. Postal Unit has been down on me - he hasn't given me a square deal. When Major Todd had me in to tell me about this transfer to the Pioneer Corps, I asked if I could go to Army Service Corps instead. He said no. He would not let me see my Colonel - Lt. Col. Ross - until after my first Court Martial: so, since I was getting kicked around I decided that the best way to get things straightened out was to go for trial by F.C.C.M. rather than to go to the Pioneer Coy.

I do not want to buck the army. I only want a square deal and work to do which makes me happy doing it.

John Dawyluk Pte

Statement by Defending Officer in Mitigation.

The accused is of foreign origin. He has had a great deal of trouble and is, in my opinion a fitter case for a hospital than for a detention bks.

It is my opinion that this man has a definite grievance. He has reached the stage where he is willing to become either a criminal or a leadswinger — and a man of his type does not reach that point easily.

I make application to the court that a minute be attached to the proceedings requesting a close and thorough investigation of the circumstances of this case and that this man's grievance, if any, is redressed before he becomes an incorrigible criminal or an incurable lunatic — or both.

I would bring to the attention of the court the fact that he is admittedly a neurosis case; yet he is still Category "A": the irregularity of the non compliance with R.O. 2457: and the evidence of Gross and serious mismanagement of men which has been shown by this case.

I believe that Dawsbida realises his offence and that he has made himself liable to disciplinary action — but I also believe that such an act as this in his case is the direct result of a steadily deteriorating mental condition, which has been impaired rather than repaired by his handling and which requires careful & considerate treatment to prevent permanent brain damage and consequent insanity.

[illegible] Lieut.

CHL

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The accused may have a grievance and perhaps certain individuals are guilty of mal mis-management, but that does not excuse the offence committed. If the accused had a grievance, and I do not argue with that allegation, he should have carried out the order, and then on his arrival at the Pioneer ~~Grenadier~~ Company aired his grievance through the proper channels.

We can not in the Army permit certain individuals to act as they see fit even though right they may be. In order to maintain discipline it is essential that a

II

soldier carry out his orders properly and efficiently and then take the proper proceedings to satisfy his grievance.

Thank you.

L. Shankman Lieut
Prosecuting officer
A.H.P.

Statement by H65693 Pte Dawydiak J. in mitigation of Sentence

I am a Ukrainian by birth. My mother, who speaks little or no English, does not know I am overseas: she thinks I am in Halifax. Together with my brothers and sister, I help to support her as she is separated from my father.

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Pte.

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[illegible] Lieut.

CHL

Exhibit "A"

AKP

5-2

NOTIFICATION OF NEUROLOGICAL CASES

No.	Rank.	Name.		Category.	Date:
H.65693	Pte.	Dawybida, N.	Hosp. No.8 Gen Hosp	A	25 Jan 43

Interviewed by: Capt. Gould.

Diagnosis: Anxiety Neurosis

Category changed to: Nil

Recommendation: No.4 Pioneer Corps

Unit M. O's remarks: I concur

17 MAR 306

.....
(Medical Officer)
1 Cdn. A. S. C. - R. U.

Copy to:
O. C. COY
P. S. C.
FILE

A & D# C-1753-42

HOSPITAL DISCHARGE NOTIFICATION

To: Officer Commanding Cdn. Postal Corps, (Unit)

It is notified for your information that the undermentioned was discharged from No.14 Cdn. General Hospital R.C.A.M.C., ~~Stationed~~ (Admitted 10 April, 1942) on 12th May, 1942. He has been instructed to go on the first Unit Sick Parade after reporting to your Unit and to hand this form to the Medical Officer.

Name DAWYBIDA, John No. Rank Pte.

Diagnosis Acute gastritis. M.O. i/c Case G.W. Halpenny (Major)
Mucosal haemorrhages.

Precis Case History

Has had slight burning in upper abdomen periodically for four years. After arrival in England December, 1941, burning became much more severe, had a steady pain in upper abdomen and gaseous eructations not related to meals.
Gastroscopy showed two large mucosal haematoma in lesser curve of stomach.

Recommendation

With bed rest and diet symptoms completely relieved and re-check showed a normal gastric mucosa.
Stool negative for blood. Gastric analysis normal.

One week light duty only.
Discharged to unit.

Burnett L. Johnston Major, RCAMC.

For: Colonel,
Officer Commanding

No.14 Cdn General Hospital,
R.C.A.M.C.

Distribution:
One copy to Unit of patient.
" " to Officer i/c Records, Acton.
" " to A.M.D.2, C.M.H.Q.
" " for File.

This form is also to be used when a patient is transferred from a hospital to No. 1 Convalescent Depot R.C.A.M.C.

AMD2—1
40/P & S/2

M.O.
ROOM
1 Cdn. S.C.
REINF. UNIT
23 JUL 1942

31 CASCRU

No. 403

No. 8 CANADIAN GENERAL HOSPITAL
R.C.A.M.C.—C.A. (O's)

MEDICAL SPECIALIST'S REPORT

Age 24. - Cat A.
Enlist — July 28/41
England — Dec 25/41.
Civil life — clerk.

No. H 6469 Rank Pte Name DANYBIDA, J. Unit C.P.C.

Epigastric burning ~~[illegible]~~ noticed 1 hr p.c. and during the night for the past 5 yrs. Never severe. Relieved by olive oil and alk powder. 1 Bro. also had heartburn — no other digestive complaints in family. Had RLQ pain for 1 yr intermittently (never associated with nausea) before it became severe & appendectomy done Jan. 41. Following this he had no digestive symptoms for 1 mo, when epigastric burning returned but RLQ pain never has. First actual epigastric pain noticed a few months after arriving in England (Dec/41). Powder relieved pain for 10-15 min only so was sent to #14 Gen. Hosp. where X Ray stom. & duod. neg., but patient claims gastroscopic showed "two hemorrhages". Was on A gastric I diet for 1 mo, then on GT for 3 days, but had to go back to GT on which he remained for another week. After that on GT for 2 wks & discharged after total stay of 5 wks feeling well. He was well for 4 + 2 wks when burning recurred 1 hr p.c. He has been taking powder with temporary relief. No nausea & vomiting. Wt. has not changed. Bowels reg. No dysuria. No hemorrhoids. Claims apart from stomach he feels well.

He just finished course & is due for promotion. He claims any heavy work aggravates his epigastric pain & would like to stay at CRU.

PAYS EXAM — neg. except 1+ hyperactive tendon jerks.

IMPRESSION — Mild gastritis. Advise only powder p.r.n. Duty.

[illegible] R.C.A.M.C.
Medical Specialist.

Date 17 Nov '41

Mars, Aldershot. A46080

X-Ray Stomach & Duod — normal.

403

3888 (2) CANADIAN MEDICAL SERVICES

X-RAY REQUISITION

Reg. No. 465693 Age 24

Unit C.R.C. (CRU)

Rank Pte Corps

Name DAWYBIDA, J. John

Ward OPD

Examination Requested Fluoro stom + duod.

Clinical Diagnosis Gastritis

Information desired Ulcer?

Unit 8 C.G.H.

Date 17.11.42

B.M. Mathew Capt.
Medical Officer i/c Case.

REPORT OF RADIOLOGICAL EXAMINATION

Esophagus, stomach and duodenum are normal.

Station A.C.B.H.

Unit Nov 19-42

Date

E.W. Spencer, Major.
Radiologist

M.F.M. 45b
40/P. & S./230

No. 1877

DEPARTMENT OF Medicine

No. H65693 Rank ~~Dawyhot~~ pte Name Dawybida J Unit 1 A S C R U

Age 24

REPORT:— DATE 18 Jan 43

C.C. - "pain in stomach"

Onset Jan 1938 with "stomach burn" which was relieved by powders & olive oil. After enlistment in July 1941 was quite well. This he attributes to an appendectomy in Jan 1941 6 mos before enlistment. As far as can be gathered the appendectomy was performed to relieve him of the pain he had since 1938.

Came to England Dec 25 1941 and shortly after arrival here developed this pain. The pain was like a cramp came on any time & soda relieved him. It got worse & was admitted to hospital. X-rays were negative though a hematoma was described under the gastroscope.

After being in hospital one month (April 42) was returned to duty & has been on duty since.

Was rechecked with negative G.I. in November '42. & has been doing his regular duties.

For the last week pains have been worse "steady pains" worse after meals, not relieved by food or powders.

Bowels regular, appetite good, no vomiting, no melaena.

P.H. attained Gr VII at 13. Did odd jobs until 1938 when he got a job clerking which he held 4 years.

Since in the army has been motor mechanic, transferred to postal corps. Since Sept '42 does driving & transport repair (draws trade pay)

no other illnesses. no serious accidents.

F.H. non-contrib.

P.E. well developed well nourished

Head & neck neg. Heart & lungs neg.

Abdomen - neg. K.J. & other reflexes - hyperactive.

Conclusion - The absence of definite organic signs & the mental attitude suggest that there is an element of neurosis -

[signature] Specialist, R.A.M.C.

Recommend -

Consultation with psychiatrist

A.M.D. — 10

No. 737

DEPARTMENT OF Neuro Psychiatry O.P.

No. H 65693 Rank Pte Name Dawybida J Unit #1 C.A.S.C.R.U.

Age 24 Cat. A Enlisted 23 July 41 DATE 25 Jan 43

REPORT:— Overseas Dec 41

History and findings as in Capt. Fahrni's and Maj. Mirsky's report.

This mans symptoms may be those of mild gastritis or of functional dyspepsia, but whichever they may be there is superimposed a large element of what may be termed neurosis, but what consists of an introspective fixation on his troubles, and the adoption of an entirely unreasonable attitude toward them. He threatens that he will not be able to carry on much longer unless something is done, and wants to be gastroscoped, obviously hoping, although he refuses to admit it, that sufficient cause will be found for lowering his category.

Although his previous record is a reasonably stable one, because of his nationality, and his present attitude, believe that his prognosis is not good, but suggest that he be handled firmly, as he is undoubtedly exaggerating his symptoms and has an axe to grind.

16 Mar 43 — I have reexamined this man today, and consider him to be a suitable candidate for Special Pioneer Coy.

C. E. L. Gould Capt
Specialist, B.C.A.M.C.

A.M.D.—10
46/F & B/1314

Army Form 13212.
R.N. Form M45.
R.A.F. Form 3212.
(Books of 100.)

SENDER'S No. 3427

LABY REPORT No. 2685

REQUEST FOR LABORATORY EXAMINATION.

Name and Initials (in block capital) Damyfide J. Official No. & {Rank / Rating} Pte H 65693 Age

Ship or Unit 1 CASCRU Hospital #8 C&A Ward OPD

To Officer i/c Laboratory at #1 Cdn Mobile Lab.

Accompanying Specimen of Blood

Examination required:— Wasserman

Points requiring special investigation:—

Diagnosis—Short statement of case, including treatment and progress, and references to any previous laboratory reports:—

Routine for Capt. Gould.

Station #8 C&A.

Date and hour of collection 0830 hrs 25 Jan 43 Capt. Gould. M.O. i/c Case.

LABORATORY REPORT.

KAHN NEG.

1 CDN MOB. BACT. LAB. 27 JAN 1943 R.C.A.M.C.

[signature] Major,
O.C. 1 Cdn. Mob. Bact. Lab. R.C.A.M.C.
O. i/c Laboratory.

Date Specimen received 27 JAN 1943

Date Report despatched

Station

In R.A.F. cases a synopsis of results must be entered on Forms 41 and 39.

G.7940 Wt. 33043 1247. 1,000 Pads. 1. 41. E. & S. Ltd. 51-8473. Form 13212

SUMMARY OF EVIDENCE

SUMMARY OF EVIDENCE IN THE CASE OF H-65693, Private DAWYBIDA, J., on strength of Canadian Reinforcement Units Postal Unit, Canadian Postal Corps, a soldier of the Canadian Army Overseas.

The Commanding Officer, Major C. Todd, of Canadian Reinforcement Units Postal Unit, C.P.C., Hammersley Road, North Camp. Aldershot, Hants., directs that the evidence shall be taken on oath.

FIRST WITNESS for the prosecution.

No. L-7271, A/S/Sgt. Chapman, N.C., on strength of C.R.U. Postal Unit, Canadian Postal Corps, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At Canadian Field Post Office S.C.11, Hammersley Road, North Camp, on the 15th June 1943, at approximately 1500 hours, I, L-7271, A/S/Sgt. Chapman, did give to H-65693, Pte. J. Dawybida, a direct order to pack his kit and be ready for a car to take him to No.4 Canadian General Pioneer Company. Private Dawybida refused to do so. I asked him if he understood the order and if he refused it, and he answered "Yes". I then had two men fall in and took him to the guard room of Headquarters, C.R.U., where he was held under close arrest.

The accused declines to cross-examine this witness.

N.C. Chapman A/S/SGT.

SECOND WITNESS for the prosecution.

No. F-5530, Private Larkin, D.L.G., on strength of C.R.U. Postal Unit, Canadian Postal Corps, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

I am F-5530, Private Larkin, D.L.G., of Canadian Reinforcement Unit, Canadian Postal Corps. At approximately 1500 hours on the 15th June 1943, at the Canadian Field Post Office on Hammersley Road, I heard Staff-Sergeant Chapman order Private J. Dawybida to get his equipment and there would be a truck to take him out to the Pioneer Corps. Private Dawybida refused to obey the order. Staff-Sergeant Chapman explained his order to Private Dawybida and asked him if he understood it thoroughly. Private Dawybida said he did. He repeated again that he was not going. He then was placed under arrest.

The accused declines to cross-examine this witness.

D.L.G. Larkin PTE.

THIRD WITNESS for the prosecution.

No. B-130711, Private Spiece, D.A.C., on strength of the C.R.U. Postal Unit, Canadian Postal Corps, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

I am B-130711, Private Spiece, D.A.C., of the C.R.U.Postal Unit, Canadian Postal Corps. At approximately 1500 hours on 15th June 1943, at the Canadian Field Post Office S.C.11 on the Hammersley Road, North Camp, I heard Staff-Sergeant Chapman order Private J. Dawybida to pack his kit and go to the No.4 Pioneer Company. Private Dawybida refused to go and was taken under escort to the guard room.

The accused declines to cross-examine this witness.

D A Spiece PTE.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Elects to make a statement:

The accused, No. H-65693, Private Dawybida, J., on the strength of the Canadian Reinforcement Units Postal Unit, Canadian Postal Corps, a soldier of the Canadian Army Overseas, states:

I want to say that I had to refuse the order because I did not want to go to the Pioneers. I refused this order once before. I did not want to go to the Pioneers this time.

J. Dawybida PTE.
(J. Dawybida)

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(C), (D),(E),(F) and (G) have been complied with.

C Todd
(C. Todd) Major,
Officer Commanding,
C.R.U. Postal Unit,
Canadian Postal Corps.

16th June 1943.
F.P.O. S.C.11,
Hammerslet Road,
North Camp,Hants.

LIST OF WITNESSES FOR THE PROSECUTION.
In the case of H.65693, Pte. Dawybida, John, of C.R.U. Postal Unit, Canadian Postal Corps, Canadian Army Overseas.

1.st WITNESS. L.7271, A/S/Sgt. Chapman, N.C., on strength of C.R.U. Postal Unit, Canadian Postal Corps.

2nd WITNESS. F.5530, Pte. Larkin, D.L.G., on strength of C.R.U. Postal Unit, Canadian Postal Corps.

3rd WITNESS. B.130711, Pte. Spence, D.A.C., on strength of C.R.U. Postal Unit, Canadian Postal Corps.

LIST OF WITNESSES FOR THE DEFENCE.

1st WITNESS. C.97178, Sgt. Young, J.E., on strength of C.R.U. Postal Unit, Canadian Postal Corps.

2nd WITNESS. H.20735, A/Sgt. Boulet, G., on strength of C.R.U. Postal Unit, Canadian Postal Corps.

3rd WITNESS. H.29053, S/Sgt. Green, W., on strength of C.R.U. Postal Unit, Canadian Postal Corps.

4th WITNESS. C.97652, A/Sgt. Marshall, C.W., on strength of C.R.U. Postal Unit, Canadian Postal Corps.

5th WITNESS. B.86943, A/Cpl. Lambert, R.F., on strength of C.R.U. Postal Unit, Canadian Postal Corps.

FORM OF APPLICATION FOR A COURT-MARTIAL

C.R.U. Postal Unit, C.P.C. Regiment

Station Hammersley Rd., N.Camp, Hants. Date 17th June 1943

Application for a Field General **Court-Martial**

SIR,

I have the honour to submit one charge against No. H.65693, PTE. DAWYBIDA, John of the unit under my command, and request you will obtain the sanction of higher authority that a Field General Court-Martial may be assembled for his trial at

The case was investigated by (a) Major C. Todd, O.C., Cdn.Reinf.Units Postal Unit Cdn.Postal Corps. (date)

~~XXXXXXXXXXXXXXXXXXXX~~ (Station).

at President } Ranks, names and corps.
Members }

G. Pettapiece Monday June

The accused is now at H.Q., C.R.U. His general character is (c) fair

I enclose the following documents (d):—

1. One Charge Sheet (in duplicate) (e).
2. Summary of Evidence, original (f) and one copy.
3. ~~XXXXXXXXXXXXXXXX~~
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. ~~XXXXXXXXXXXXXX~~
6. ~~XXXXXXXXXXXXXX~~
7. Statement as to character (M.F.B. 355) and regimental and company, etc., conduct sheets (or Field Conduct sheets) of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h).

Your obedient servant,

Signature of Commanding Officer C. Todd Major, (C. Todd) O.C., C.R.U. Postal Unit, CPC.

To: Commander, Canadian Reinforcement Units.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. H.65693, Pte. Dawybida, J., C.R.U. Postal Unit, Regiment, is* Fit to undergo trial by Court-Martial.

B.M. Wagman Capt
Signature of the Medical Officer.

*Insert "fit" or "unfit."

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).
(k) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 5 and 6 to be sent to the President.
(i) If the accused has elected to be tried under A.A. 46 (8), the fact should be recorded at the top of this form.)

M.F.B. 321
40/P & S/650

CANADIAN POSTAL CORPS

CANADIAN REINFORCEMENT UNITS POSTAL UNIT.

This is to certify that I, M.65693, PTE. JOHN DAWYDIA, of Canadian Reinforcement Units Postal Unit, Canadian Postal Corps, Canadian Army Overseas, wish to have an Officer assigned by the convening officer to represent me at my trial, and desire, if at all possible, that such officer selected to represent me will be Lieut. Thomas Peter. M.C. C.R.U.

17th June.

M.65693, Pte. J. Dawydia,
C.R.U. Postal Unit,
Canadian Postal Corps.

CANADIAN POSTAL CORPS
CANADIAN REINFORCEMENT UNITS POSTAL UNIT.

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17th June.

H.65693, Pte. J. Dawybida,
C.R.U. Postal Unit,
Canadian Postal Corps.

M.F.M. 6
(A.F.B. 172)

No. H65693 Name Dawybida, John Sqn., Battery, or Company C.R.C. Corps Cdn. Postal Unit 1 Date of enlistment 23/7/41 G.C. Badge Service or Proficiency Pay Yes

Date of last entry in Company Conduct Sheet 4/2/43 No. and date of last drunk Nil. Period not reckoning towards freedom from extra fine Sheet No. 1. Signature O.C. Company, etc. Character Fair.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	20/1/43	Pte		W.O.A.S. Sec.40, A.A. conduct to the prejudice etc. in that on 20 Jan. 1943, he drove M.D. vehicle CL4203-139, at an excessive rate of speed (40/45 m.p.h.) Documentary charge laid by C.M.P.		Forfeits 7 days pay under Art.149(1)(e)	4 Feb.43	C.Todd, Capt.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11/5/43	Pte./.		Was on 21st May 43 tried by a F.G.C.M. A.A.Section 9(2) W.O.A.S. Disobeying a Lawful Command given by his superior officer. Finding: Guilty. Sentence: To be admonished. Conformation: Findings and Sentence confirmed by Brig.J.C.Stewart, D.S.O. A/Cmdr., C.R.U. on 25 May 43. Close Arrest: In close arrest from 1700 hrs 11 May 43 to 1000 hrs 21 May 43 (9days and 17 hrs).		Admonished	21May43	Lt-Col D.L.Redmand	Forfeits 10 days p ay under FR&I, 149(1) (c).

Certified to be a true copy of the original MFM y in my custody

(C.Todd) Major,
CRU Postal Unit.

Arthur S. Pettapaio, Major

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-65693	PRIVATE	DAWYBIDA, John.	C.R.U.POSTAL UNIT, C.P.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced to court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number last or entries in the conduct sheets, precedency being given to the most serious offence in each entry, and to any pre-gained special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec.40.	ONE times	ONE times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NIL

or

[redacted]

2. [redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and Seven days in military custody, making a total of Seven days, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 25 years, 5 months.

6. The date of his [redacted] specified in his record of service / attestation paper is 23rd July 1941

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award [redacted]

[redacted]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of , dated .

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or corps or department*) the rank of , dated .

(*****) Wt. 30344/1622 75,000 12/40 A.& E.W.,Ltd. Gp.686

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. H-65693 Rank PRIVATE Name DAWYBIDA, John of C.R.U.POSTAL UNIT,cpc Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	21 May 1943 Farnborough,Hants	A.A. Sec.9(2),W.O.A.S.,Disobeying a lawful command given by his superior officer.	Admonished.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~17th~~ 22nd day of June 1943

Arthur S. Pettigrew Major

L. Dodd Major
O.C.,CRU Postal Unit, CPC

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	years,	
In the rank of	years	
In the rank of	years,	

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

C-C-48
CC-49
GNR DAY A.B.

Lt W J Burke 11th

Pres Maj A.M. Douglas 1st

Members Capt J.S. Orton 5th

Lt W.J. Burke 11th

7th A.F. ~~1600~~ 7th MAR

Correspondence to be PINNED here.

P.A. → 5-4-12 CC-48

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Second day of March, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 2 Cdn Arty Gp, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ W.E.H.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*[I am unable to appoint:—~~

~~*(1.) Three Officers to form the Court.]~~ W.E.H.

~~*(2.) A Field Officer as President.]~~

~~for the following reasons, namely:—]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

Proceedings Reviewed: [illegible] Reviewing Officer [illegible] 27 [illegible]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	E.H. Smith	5 Med Regt

Members.

Rank.	Name.	Regiment.
Capt	J.D. Hazen	1 Med Regt
Lieut	W.P. Rogers	11 Cdn A Fd Regt

*Signed W.E. Huckvale

(W.E. HUCKVALE) Brigadier,

Commanding 2 Cdn Arty Gp

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A.33157 Gnr. DAY, A.B. 7 Cdn A Fd Regt R.C.A.	1. Striking his superior Officer, A.A. Sec.8 (1) (alternative)	Not Guilty	Guilty	I do not confirm the Sentence of the Court but direct that the charges against this accused be submitted for retrial before a new Pty Ctl to be convened.
	2. Using threatening language to his superior Officer, A.A. Sec.8 (2)	Not Guilty		
	3. Absenting himself without leave, A.A. Sec.15 (1)	Not Guilty	Guilty	
			90 days detention. Forfeiture of one days pay	B.E. Huckvale Bing Field 4 Mar 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :— NO

(Signed) [signature] (Signed) [signature]

Commanding — B.E. Huckvale Bing, Lt Col Cmdg Gp — Convening Officer (c) — E.H. Guitt Major — President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the third day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

~~*(3. The interpreter)~~ etc

~~*(4. The officers under instruction)~~ etc

were duly sworn.

* Omit if not applicable.

Signed this 3 day of March 1943.

E.H. Guitt Major

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

PAGE 1.

PROCEEDINGS OF TRIAL

Accused A33157 (Number) Gnr (Rank) A. B. (Christian Names) Day (Surname) 7 Cdn A. Fd. Rgt RCA. (Unit)

Held in the Field in U.K. (Country) on 3 Mar 43

	Rank	Name	Unit
President	Major	E. H. Smith	5 Cdn Med Rgt RCA
Members	Capt.	J. D. Hazen	1 Cdn Med Rgt RCA
	Lieut.	W. P. Rogers	11 Cdn A. Fd. Rgt RCA.
Judge-Advocate (if any)			
Prosecuting Officer	Lieut. N. D. Slater	7 Cdn A. Fd. Rgt RCA	Lawyer? Ans. No
Defending Officer	Lieut. A. B. Dawber	7 Cdn A. Fd. Rgt RCA.	Lawyer? Ans. No

(The following procedure must be actually carried out.)

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs.P. 17(E); 22(A))

The President, in closed court (R.P. 22 fn 1), reads the Convening Order and the Charge Sheet(s) to the members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.108)

The accused is (are) brought before the Court, and at 1016 hours the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is (are) fit to undergo trial by court-martial. The certificate is initialled by the President, and attached to the proceedings.

President to accused
Do you object to N/A. as interpreter? Ans. ____
Do you object to Mr. Barney F.C. as shorthand writer? Ans. No

~~The Interpreter, Shorthand Writer are duly sworn.~~

The names of the President and Members of the Court are read to the accused (R.P. 110)

President to accused
Do you object to be tried by me as President or by any of the officers whose names you have heard read over? Ans. No

The President, Members, Judge-Advocate, officers under instruction, ~~Interpreter~~ and shorthand writer are duly sworn. (R.P. 26-27) (Forms of Oath, p.E)

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (not) elected trial by court-martial. (A.A. 46(8))

President to accused
Do you wish to make any special pleas before arraignment, that is to say, before you plead guilty or not guilty? Ans. No.
(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P. 62(E), 108); or as to the jurisdiction of the Court (R.P. 34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.30, R.P.57), record such plea and evidence (if any) on separate sheet(s) to be initialled by the President and attached to the proceedings.)

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads

	First Charge	Second Charge	Third Charge	Fourth Charge
	Guilty	Not guilty	Not guilty	

(Alternative charges, see RP.37 fn 2.)

PAGE "B"

(For Use when Accused Pleads Not Guilty to All Charges.)

(All printed matter not applicable to be struck out, and all alterations erasures and additions to be initialled by the President.)

1. President to accused:-
   Q. Do you wish to apply for an adjournement on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P. 39(A)) Ans. No

2. The Prosecutor's opening address (if any) (R.P. 39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn 1; R.P.70 fn 1.)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P. 40 fn 2).

5. President to accused:-
   Q. Do you apply to give evidence yourself as a witness? Ans. Yes
   Q. Do you intend to call any other witness in your defence? Ans. Yes
   Q. Is he a witness as to character only? (R.P.40(B)) Ans. Yes

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses, see Rs.P. 40, 41 and 42.)

8. The Court is now closed to consider the finding. (Rs.P. 43 and 117) (Record finding on p.3.)

9. The Court being re-opened, the accused is again brought before it and the findings of Not Guilty (if any) are pronounced and (if findings of Not Guilty on all charges) the accused is released. (R.P. 117(B))

10. Capt (Rank) W. G. (Christian Names) Ferguson (Surname) Fld A. Fd. Regt. RCA (Unit) sworn produces Statement of Character and Service, and Field Conduct Sheet, duly certified by the Officer having custody of the Regimental Books. The said documents are read, marked "A", "B", initialled by the President and attached to the proceedings (R.P.46).

11. President to accused:-
    Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (R.P. 46(D)) Ans. Yes
    No cross-examination.
    (Record address, if any, on separate sheet, initialled by the President and attached hereto.)

12. The Court is now closed to consider the sentence. (Record on p.3.)

(Punishments, A.A. 44, K.R.(Can) 563-566; one sentence only awarded, R.P.48; jurisdiction of F.G.C.M., R.P.116.)

The sentence is not announced to the accused by the Court.

[signature]
(Signature of President)

Prosecutor - Lieut N.D. Slater

I have witnesses Sir, on the 1st charge wherby I ~~xx~~ believe I can bring out the facts that the accused, Gnr Day, A.B. struck his Superior Officer.

I also have witnesses on the second charge(alternative) that the accused Gnr Day, A.B. used threatening language to his Superior Officer.

On the third charge of Absent without Leave from Guard Mounting on the 25th Feb 43, I have two witnesses to prove that the accused was absent from Guard Mounting.

President - The first witness is A 32039 BSM Evoy, W.C. who is duly sworn states:-

Pros.- Sgt Major Evoy - On the 25 Feb 43 the accused A 33157 Gnr Day, A.B. is charged with striking you. "Is this true?"

Evoy - "Yes Sir, it is".

Pros - Where were you at the time of the incident and before it happened

Evoy - I spent the early part of the evening in the Sgts Mess and about 2215 hrs retired to my hut. I was in bed reading when Gnr Day came into the hut.

Pros - How is it that Gnr Day was in the hut.

Evoy - Gnr Day opened the door and I asked him what he wanted. He said "I want to have a few words with you" so I told him to come back to my bed and sit down. He sat down on the bed opposite and we discussed his absence from Guard Mounting. Our conversation was getting nowhere so I told him to go to bed. He insisted on talking about his absence from Guard Mounting and I finally said - "Day you must go to bed". He refused and became very~~xxxxxxx~~ aggressive and then struck me, in the face.

Pros - What happened then?

Evoy - I got up, dressed and just before leaving the ~~xxxxx~~ hut, L/Sgt Wallace came in. I left the hut and went to the Orderly Room and ordered the Orderly Sgt to get an escort and place Gnr Day in close arrest. Sgt Cuming who was in the Orderly Room at the time, came back to the Sgts hut with me.

Pros - What prompted Gnr Day to make that remark?

Evoy - What remark, Sir?

Pros - The remark about blackening your other eye.

Evoy - I do not know Sir.

Pros - You made no move to touch the accused ?.

Evoy - No Sir, Sgt Cuming and I came into the hut and told Day that he had better go to the Guard Room with us, and then he make the remark, "Do not touch me or I will blacken your other eye for you".

Pros - Sgt Major Evoy - What was your particular duty on the 25 Feb 43?

Evoy - I was Tp S.S.M. Sir, and only had my regular duties to perform.

Pres.- What is the story about the Guard Mounting on the 25 Feb 43.

Evoy - I was ordered from the Orderly Room to replace a man on Guard that night, as the man posted was on the Calibration shoot and there was no indication of when he would be back. I place Gnr Day in this capacity.

Pres - How long was this Guard.

Evoy - From 1700 hours to 1700 hours, Sir. 24 hours Guard.

The Defending Officer, Lieut A.B. Dowker asks permission to cross-examine the witness -

Def - Sgt Major Evoy, you are the Sgt Major of the troop of the accused.
Defy - Did the accused make application for a late pas on the 25 Feb 43 ?
Evoy - Yes Sir.
Def - Was that accused in the habit of putting in an application for late passes.
Evoy - Yes Sir, but no more than any of the others in the troop.
Def - Why was the accused pass cut off?
Evoy - There were 27 applications that morning, 13 more than we were allowed, and his name was one of the ones that was struck off.
Def - Was there any other reason for cutting off his pass.
Evoy - Yes Sir. On the 0830 parade that morning I fell the Troop in brought them to attention and then stood them at ease and then gave them the order "Stand Easy" before the Tp officer arrived. I then said "Troop, Pay attention" and read them some information I had received the night before. Gnr Day and another man were still talking and I informed them that they could expect an extra guard for talking on parade.
Def - When were the men notified that their passes were cancelled?
Evoy - On the 1330 hrs parade, Sir.
Def - Then Gnr Days pass was cut off in a form of punishment?
Evoy - Yes Sir.
Def - If the accused had not been inattentive on parade, would his pass still have been cancelled?
Evoy - I would have checked back in the pass roster to see how many passes he had had lately.
Def - The accused was also notified to mount Guard at 1700 hrs that night, by you on the same parade, 1330 hours.
Evoy - Yes Sir.
Def - Therefore the accused was punished twice for the same inattentiveness.
Evoy - No Sir. I was ordered to replace the man that was away at the calibration shoot, and I detailed Gnr Day. On the 1330 hrs parade the Orderly Sgt came up to me and said Gnr Day was to go on Guard. This was when I detailed the accused and he would get credit for this Guard on the roster and it was not to be an extra guard.
Def - What kind of a soldier have you found the accused?
Evoy - Since taking over the Troop last Sep. I have found GnrDay to be very satisfactory and he has caused no trouble.
Def - When was the next time you saw the accused?
Evoy - He broke off parade around 1500 hrs to get ready for guard. At 1700 hrs the Orderly Sgt informed me that Gnr Day was absent from Guard Mounting. The next that I saw the accused was when he walked into the Sgt Hut that night, around 2230 hrs.
Def - Did you warn the accused that he would be up for office?
Evoy - No Sir, I didn't have a chance to.
Def - When you left the hut that night to go over to the Orderly Room and left Sgt Wallce there, did you leave instructions for Sgt Wallace to place the accused under close arrest?
Evoy - No Sir, as there was no one there to escort him to the Guard Room, if the accused had been place under close arrest.

Second Witness - A 31095 Sgt Cuming, H.S. - 97 Bty 7 Cdn A Fd Regt RCA having been duly sworn states:

Pros. - Sgt Cuming, On the 25 Feb 43 a certain fracas happened in the Bty lines. Will you tell the Court in your own words what you know of this affair.

Sgt C.- On the 25 Feb 43 I was in the Bty Orderly Room about 2230 hours when BSM Evoy came in and ordered the Orderly Sgt to place the accused Gnr Day,A.B. under close arrest. I saw that the Sgt Majors face was swollen on the left side and his left eye was partially closed. There were some minor scratches on his face and some blood. I accompanied BSM Evoy back to the Sgts Hut and when we entered Gnr Day was standing in the middle of the floor drinking from a bottle. BSM Evoy asked Day to come to the Guard Room with us and it was then that Day made the statement "Stay away from me or I will blacken you other eye". Right after that The Guard commander and two escorts and the Orderly Sgt came into the hut.

Lt Dowker Def. - Where was the accused when you entered the Hut?

Sgt C. He was standing at the back of the hut in the centre of the hut.

Def. - What promted this remark?

Sgt C - I do not know Sir, as we had just entered the hut and were walk- towards him.

Def. - What condition was the accused in?

Sgt C.- He had been drinking, but he had control of himself.

Def. - Did you smell intoxicating beverages on him?

Sgt C. - No Sir.

66

Third Witness - A 31065 L/Sgt Wallace, W.O. having been duly sworn states:

Pros. - Sgt Wallace, on the 25 Feb 43 a certain incident took place in you hut. Where were you on that evening, how did you spend the time etc.

Sgt W. - Sir, I spent the evning in camp, in the Sgts mess along with BSM Evoy, Sgt King and some others until about 2215 hrs. At 2230 hrs I returned to my hut and had just entered when BSM Evoy was leaving.

Pros - Did you see anything peculiar in the hut

Sgt W - No Sirnothing in the hut. Our Day was at the back and the Sgt Major had blood on the left side of his face.

Pros - Was it dry blood?

Sgt W. - No Sir it was moist.

Pros - Did you see the BSM earlier in the evening?

Sgt W.-- Yes Sir, in the Sgts mess.

Pros - Was there anything wrong with the Sgt Majors face then?

Sgt W - No Sir, his face was normal.

Lieut Dowker cross examines the witness -

Lt D - Was there any sign of a struggle in the hut when you entered.

Sgt W- No Sir.

Lt D - What did the Sgt Major say to you when you entered the hut.

Sgt W- He asked me outside and when we went out he disappeared in the darkness towards the Orderly Room. I then went back to the door of the hut.

Lt D - Did you have any words with the accused?

Sgt W- Not that I recall, Sir.

Lt D - In what condition would you say the accused was in?

Sgt W- He had been drinking, Sir.

Lt D - Did the accused make any attempt to get away?

Sgt W- No Sir.

President - What kind of a hut was it and what kind of lighting did you have.

Sgt W - It is a Nissen Hut Sir, with electric lights in it.

Fourth Witness - A 31043 Sgt King, R.F. - 97 Bty 7 Cdn A Fd Regt RCA having been duly sworn states;

Pros - Sgt King - On the 25 Feb 43 the accused Cpl Day struck BSM Evoy. Will you tell the Court where you were on this night and what you were doing.

Sgt K.- Sir, on 25 Feb 43 I was in camp all night in the Sgts mess until about 2220 hrs. I left the mess and went over to the Bty Q.M. Stores to get some Air Graphs forms. The accused was in the Stores when I got there and asked me where BSM Evoy was. I told him that I thought that he was out of camp. The accused seemed very displeased about the Guard Mounting. I told the accused to report to the Guard Room and that he could see the BSM in the morning.

I then left the Q.M. Stores and went over to get the Orderly Sgt at the Orderly Room to place the accused under arrest. The Orderly Sgt was out so I went down to the Guard room to get the Guard Commander. The Orderly Sgt, Guard Commander and two escorts had just left so I started back to the Sgts Mess. Just as I got back I saw the Guard commander the accused and the two escorts come out of the Sgts Mess and passed then met the Sgt Major at the door of the Sgts Hut. I words that I cannot recall now.

Lieut Hermon then came along and shone a torch in the Sgt major's face. It was then that I saw that his face was swollen and that there was wet blood on it.

Pros - You mentioned that you saw the accused in the Q.M. stores. How long were you in there?

Sgt K - A very short time Sir.

Pros - What comments did the accused make about the Guard?

Sgt K - He seemed very displeased and wanted to see ~~him~~ B.S.M. Evoy.

Pros - What was the discussion in the Q.M. Stores?

Sgt K - Nothing Sir.

Pros - Why did you tell the accused that the Sgt Major was out of camp, when you knew he wasn't?

Sgt K - He had been drinking and was in a very belligerent mood.

Pros - Why do you say that he was in a very belligerent mood.

Sgt K - By the way he expressed wanting to see the Sgt Major.

Pros - Were there any comments made in the Q.M. Stores?

Sgt King - No Sir.

Lieut Dowker cross examines the witness.

Lt D - Sgt King, you as No 1 of a gun crew what is the biggest responsibilities of these men under your charge.

Sgt K - To look after them Sir.

Lt D - The accused was in your sub-section?

Sgt K - Yes Sir.

Lt D - You knew he was absent on the 25 Feb 43. Did you call the roll in the evening.

Sgt K - Yes Sir I knew he was absent but I didn't call the roll.

Lt D - Why didn't you place the accused under arrest in the Q.M.S

(contd)

Lt D - Stores

Sgt K - I was improperly dressed at the time Sir. Besides I didn't have an escort to take the accused to the Guard Room. It was after Roll Call and the men were all in bed. I went over to the Orderly Room to get the Orderly Sgt but he was out getting the Guard Commander and an escort at the time.

Lt D - Did the accused submit an application for a late pass to you that morning.

Sgt K - Yes Sir, but it was later cancelled.

Lt D - Did the accused speak to you later in the morning.

Sgt K - Yes Sir.

Lt D - Did the accused mention anything about the pass or guard to you after the 1330 hr parade.

Sgt K - He mentioned that he would like to get off the guard that night as he was supposed to go on a party.

Lt D - What is the normal method for detailing guards?

Sgt K - By Sty Orders the day previous.

Lt D - And Gnr Day was not warned until 1330 hours that day.

Sgt K - Yes Sir.

Lt D - What condition was the accused in, in the Q.M. Stores?

Sgt K - He had been drinking but I cannot tell how much.

President - You mentioned that the accused was in a belligerent mood. Does he get this way when he is drinking?

Sgt K - I do not know Sir, as I have never been around when he has been drinking.

President - Why did you say this, then?

Sgt K - It was from his tone of voice, Sir.

1221.

(contd)

Lt D - Stores

Sgt K - I ws improperly dressed at the time Sir. Besides I didn't have an escort to take the accused to the Guard Room. It was after Roll Call and the men were all in bed. I went over to the Orderly Room to get the Orderly Sgt but he was out getting the Guard Commander and an escort at the time.

Lt I - Did the accused submit an application for a late pass to you that morning.

Sgt K - Yes Sir, but it was later cancelled.

Lt D - Did the accused speak to you later in the morning.

Sgt K - Yes Sir .

Lt D - Did the accused mention anything about the pass or guard to you after the 1330 hr parade.

Sgt K - He mentioned that he would like to get off the guard that night as he was supposed to go on a party.

Lt D - What is the normal method for detailing guards?

Sgt K - By Bty Orders the day previous.

Lt D - And Gnr Day was not warned until 1330 hours that day.

Sgt K - Yes Sir.

Lt D - What condition was the accused in, in the C.M. Stores?

Sgt K - He had been drinking but I cannot tell how much.

Accused - You mentioned that the accused was in a belligerent mood. Does he get this way when he is drinking?

Sgt K - I do not know Sir, as I have never been around when he has been drinking.

Accused - Why did you say this, then?

Sgt K - It was from his tone of voice, Sir.

101.

Fifth Witness -

A 33164 L/Bdr McDreight, C.J. - 97 Bty 7 Cdn A Fd Regt RCA, having been duly sworn states;

Pros - Where were you on the night of 25 Feb 43 when the accused struck RSM Evoy, L/Bdr ?
L/B M - I was on Duty in the Bty Q.M. Stores all evening. The accused came in around 2215 and asked me for the mail, and then he stayed for a few minutes talking to me.
Pros - What was your conversation about?
L/B M - It had nothing to do with the present case. It was a rambling conversation and I was trying to write a letter and talk to him at the same time. I cannot recall now what we were talking about.
Pros - Was RSM Evoy's name mentioned?
L/B M - Yes Sir, The accused was very unhappy about the Guard Mtg
Pros - What was the general tone and remarks about the accused grievance?
L/B M - He was very unhappy about the whole thing.
Pro - Is there no other way you can describe this.
L/BM - No Sir- he was unhappy and that was his main 'Beef'.
Pros - Were there any threats mentioned this night?
L/B M - No Sir.
Pros - Had the accused been drinking?
L/B M - Yes Sir.
Pros - Did the accused suggest any remedy for his grievance?
L/B M - No. Sir.

The Defending Officer did not wish to question the Witness.

A 33157 Gnr Day, A.B. - 97 Bty 7 Cdn A Fd Regt RCA

Pres - Gnr Day do you wish to give evidence.
Day - Yes Sir.
(Gnr Day duly sworn states)
Pres - Gnr Day you are liable to cross examination
Day - Yes Sir.

Lt D - On the 25 Feb 43 you are accused of striking BSM Evoy From 0830 on will you tell the court everything you did.
Day - We were on the 0830 parade standing easy and I was talking to Gnr Dittmer. I didn't hear a command from the Sgt Major and kept on talking. The Sgt Major said "Gnr Day I'll do the talking and you can expect an extra Guard for talking on parade.
On the 1330 hr parade Sgt Keighley came over and told the BSM that I was to take Gnr Weiser's place on Guard. After the parade I asked the BSM to be taken off the Guard but he said there wasn't a chance of doing ~~xx~~.this. We broke off at 1500 hrs to get ready for ~~parade~~ guard and at 1530 I went over to the wash room to have a wash and shave.
Lt D - When you asked the Sgt Major to be excused the Guard did you explain the party?
Day - Yes Sir.
Lt D - Who all were going on the party?
Day - My brother, Gnr Cole and myself.
Lt D - When had you planned the party?
Day - The night before.
Lt D - Did you look at the orders that night?
Day - Yes Sir, we went over to the recreation hut to read them.

Day - I noticed that the BSM was watching me so I put on my rubber boots and went back to the washroom. This was about 1600 hrs and I went around to the back of the abolution room and then out of camp the back way and went to Westerham. I was there until 2145 hrs when I caught the bus back to camp arriving around 2200 hrs. I went into the Q.M. Stores and asked L/Bdr McKnight if there was any mail for me. There wasn't so I stood there talking to him for a few minutes.
Sgt King came in and I asked where BSM Evoy was and he told me he was out of camp. After Sgt King went out I left and went down to the Sgts Mut. I tried the door but it was locked. I heard a shout from the inside so went around to the other door. Sgt Major Evoy asked me what I wanted and I told him I would like to speak to him. He told me to come in and come back to his bed. I did so and sat on the bed opposite him. We talked for awhile about my absense from Guard Mtg and the BSM told me to go to bed. He then told me the place for me was in the guard room, It is here that he claims that I hit him.
Pres. Did you hit him?
Day Yes Sir but he wasn't in bed when I hit him.
Pres What position was he in when you hit him?
Day He was sitting up in bed.

Charge 3.

Lieut Slater - Sir , as the accused has already admitted his absence from the Guard mounting, is it necessary that I bring in my two witnesses on this charge? The witnesses are the Guard Commander and the orderly Sgt.

Pres. - Yes Sir I would like to see them.

First Witness - A 31061 Sgt Keighley, W. 97 Bty 7 Cdn A Fd Regt RCA having been duly sworn states;

Pros - Sgt Keighley will you give all the facts that you know about the case, before the Court.

Sgt Ke - Sir, I was Bty Orderly Sgt on 25 Feb 43 when the accused failed to appear for the Guard Mounting at 1700 hours.

Pros - In what manner was the accused warned about the guard.

Sgt Ke - Verbally on the 1330 parade by BSM Evoy and I was witness to the warning.

Defence - no questions

1101.

Second Witness

A 33188 Bdr Warmer, C.R. - 97 Bty 7 Cdn A Fd Regt RCA having been duly sworn states;

Pros. - Bdr Warmer will you give the court any facts you have relating to the Guard Mounting on the 25 Feb 43.

Bdr W - Sir, I was Guard Commander on the 25 Feb 43 when the accused, Gnr Day failed to mount with the Guard.

Pros - How did you know the accused was supposed to mount with the Guard?

Bdr W - By the roll call that I had with Gnr Day's name on in place on Gnr Weiser's. The roll was taken from Bty Part I Orders.

At Gr about 2300 hrs 25 Feb 43 the Orderly Sgt came into the Guard Room and ordered me and two guards out to place the accused under close arrest.

Pros - Where did you place the accused under arrest.

Bdr W - In the Sgts Hut.

Lieut Dowker cross-examines the witness.

Lt D - I what condition was the accused in? Did he give any trouble when you arrested him or later when you escorted him to the Guard Room?

Bdr W - He had been drinking Sir, but he didn't cause any trouble at any time.

J.M.

Lieut Slater states -

Sir - There is little doubt that the accused is guilty as he has already admitted that he was absent. In the evidence of Sgt King in admitting that the accused was beligerent and was looking for BSM Evoy about his grievance over the Guard Mounting shows that it was intentional. When Sgt King told the accused [redacted] the BSM was out of camp it was an odd step as he knew that he wasn't. If Sgt King had placed the man under close arrest at the time, but did not for some reason.

BSM Evoys was in camp all evening and therefore was on duty. Day asked for an interview and this was granted by the Sgt Major as he is responsible for the discipline of his men.

When Sgt Wallace and Sgt King were with the Sgt Major all evening and there were no marks on his face then it is evident that they were put on during the interview between the accused and BSM Evoy.

Capt W.S. Ferguson - 97 Bty 7 Cdn A Fd Regt having been duly sworn states;

Character Reference of Gnr Day, A.B.

Sir:- The accused Gnr Day is a man in my troop. I have been in command of this troop since 1 Jul 42. Gnr Day is a qualified Artillery Signaller and a good one man. He has been on Active Service since Sep 39. During my Command he has never brought himself to undue office except in minor cases of trivial matters. His conduct is as good as as a good soldier should be. Day has been a reliable man ever since I have known him.

WM

President of the Court

Pres. Gnr Day ~~before~~ in mitigation of sentence of this court have you anything further to say.

Day No. Sir.

Defending officer considers to make statement (P 13).

Lieut A.B. Dowker - Defending Officer

In the above evidence Gnr Day has had a good recommendation from his Troop Commander and from BSM Evoy. The accused got into this trouble through a triviality on the 0830 parade. The accused had planned a party with his broth and Gnr Cole and made sure the night was clear before doing this, by checking the orders to see that he was free from duties.

His late pass was cancelled and was placed on Guard the same night. A Gnr has very few pleasures at any time and it was due to his plans being upset etc that he took it upon himself to go to Westerham. The accused had a few drinks which affected him more due to the frame of mind he was in, than would ordinarily.

The accused admitted striking the Sgt Major and at no time attempted to conceal the fact or to get away.

I wish the court to consider these facts before giving sentence.

Sgt King did not place the man under close arrest when it was his duty to do so and if this had been done the accused would have been in safe custody and the crime would never have been committed.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. A 33151 GNR DAY A.B.

of 97th Batt 1st Fld. Regt R.C.A. and in my opinion he

is fit ~~unfit~~ to undergo Trial by Court Martial.

Station. Field

Date. 2 Mar 43

R. Hardy, Capt

Medical Officer

L. C. Cline

5-8-12 CC-48

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this 9 day of Mar, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 2 Cdn Arty Gp, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ 1386

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~[I am unable to appoint:—~~

*~~(1. Three Officers to form the Court.)~~ 1386

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

Proceedings Reviewed [illegible]

Reviewing Officer [illegible]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	J. D. Young	11 Cdn A Fd Regt RCA

Members.

Rank.	Name.	Regiment.
Capt.,	G. L. Giroux	11 Cdn A Fd Regt RCA
Lieut	W.J. Burke	11 Cdn A Fd Regt RCA

*Signed W E Huckvale (W.E. HUCKVALE) Brig

Commanding 2 Cdn Arty Gp

Convening Officer

See Folio
Please
G.74

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A.33157 Gnr Day, A.B. 7 Cdn A Fd Rgt RCA	1. Striking his superior Officer A.A. Sec 8 (1)	Not guilty	Not guilty	
	(Alternative) 2. Using threatening language to his superior officer. A.A. Sec 8 (2)	Not guilty	Guilty 3 months detention 9 Mar 43	Confirmed WEH Field 16 Mar 43
	3. Absenting himself without leave. A.A. Sec 15 (1)	Not guilty	Not guilty Guilty	

Having been advised by the A.J.A.G., First Cdn Army, that the finding upon the second charge, in the Proceedings, is invalid; I hereby direct that the record of the said conviction be removed and the accused relieved from all consequences of his trial thereon.

W.E.Huckvale
(W.E.HUCKVALE) Brigadier
Comd, 2 Cdn Arty Group.

In the Field
5 Apr 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) W.E.Huckvale Brig (Signed) J.O.Young Maj
Commanding 2 Cdn Arty Gp. Convening Officer (e) 11 Cdn A Fd Regt President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~(3. The interpreter)~~
~~(4. The officers under instruction)~~

* Omit if not applicable.

were duly sworn.

Signed this 9th day of March 1943.

J.O.Young Maj 11 Cdn A Fd Regt
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

* See footnote (b) on page 762 M.M.L. 1929.

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 16th day of March 1943.

W.E.Huckvale Brig
Confirming Officer.

Promulgated and extracts taken in the case of A 33157, Gnr Day, AB.

(a) (Dated) 18 Mar 43 (Signed) [illegible] Capt Adj 7 Cdn A Fd Rgt RCA

Promulgated and extracts taken in the case of A 33157 Gnr Day, AB.

(Dated) 18 Apr 43 (Signed) [illegible] Capt Adjt 7 Cdn A Fd Rgt RCA

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused A33157 Gnr. Day, A.B., 7 Cdn. A. Fd. Regt. RCA a soldier with the Canadian Army Overseas placed on Active Service is charged with:

First Charge
A.A. Sec (8)
(1)

Striking his superior officer, being in the execution of his office, in that he, in the field on 25 Feb 43 struck with his fist in the face A32039 BSM Evoy, W.C. 97 Bty., 7 Cdn. A., Fd. Regt., RCA who was at the time BSM of the accused's battery.

Second Charge
(Alternative)
A.A. 8 (2)

Using threatening language to his superior officer, in that he in the field on 25 Feb 43 after having been warned to proceed to the guard room said to A32039 BSM Evoy, W.C., 97 Bty., 7 Cdn. A. Fd. Regt., RCA. "I'll blacken your other eye".

Third Charge
AA Sec 15 (1)

Absenting himself without leave, in that he, in the field absented himself without leave from guard mounting at 1700 hrs 25 Feb 43 until 2300 hrs on 25 Feb 43.

W. G. Myatt Lt-Col
(W.G. Myatt)Lt.-Col.,
C.O.7 Cdn. A. Fd. Regt.,
R. C. A., C.A. (O).

In the field
1 Mar 43.

To be tried by Field General Court Martial
[illegible] Brig
Cmd 2 Cdn Adv GP.

Field
1 Mar 43

MEDICAL OFFICERS CERTIFICATE

I have this morning examined A 33157 Gnr Day A.B. of the 97 Cdn Fd Bty., 7 Cdn A Fd Regt RCA (AF) and have found him to be ~~unfit~~ fit to undergo trial by Courts-Martial.

B Hardy. Capt. Reams.
Mo. 7th Fld Regt Rca.
9 Mar 43

PAGE 1

Accused A33157 Gnr Alvin Bertram Day 7 Cdn AFd Regt.
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in ENGLAND on 9 Mar 43
(Country) (Date)

	Rank	Name	Unit
PRESIDENT:	Major J.D.	Young	11 Cdn AFd Regt
MEMBERS:	Capt. G.K.	Giroux	11 Cdn AFd Regt
	Lieut. [illegible] W.J.	Burke	11 Cdn AFd Regt

JUDGE ADVOCATE: (If any)
OFFICERS UNDER INSTRUCTION:

PROSECUTING OFFICER: Lieut R.E. Barnes 7 Cdn AFd Regt. Lawyer? Ans No.

DEFENDING OFFICER: Lieut. A.L.S. Ireton. 7 Cdn AFd Regt. Lawyer? Ans No.

(The following procedure must be actually carried out)

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(f), 22(a)).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106)

The accused is (are) brought before the Court, and at 1145 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See Gnrl Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused:
Do you object to _____ as interpreter? Ans _____

The interpreter is duly sworn.

Do you object to A31115 Gnr FC Grieve as shorthand writer? No

The shorthand writer is duly sworn. (Forms of Oath on Page 'D'.
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.10)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No.

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page 'D')

The Charge Sheet(s) is (are) initialled by the President.

~~The Prosecuting Officer informs the Court that the accused was (not) elected trial by Court Martial (R.A.[illegible])~~

(If special plea/s is/are made for separate trial on one or more charges (Rs P 62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (R.A. 130, R.P.57), record such plea and evidence (if any) on paper to sheet/s to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge Not guilty

Second Charge Not guilty

Third Charge Not guilty

Fourth Charge _____

Fifth Charge _____

Sixth Charge _____

Seventh Charge _____

Eighth Charge _____

(For procedure on alternative charges, see R.P. 37, fn 2)

Further proceedings are recorded on Page hereto attached.

PAGE 'B'

(For use when accused pleads 'Not Guilty' to all Charges)
(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President)

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P.39(A). Ans No

2. ~~The Prosecutor's opening address~~ (if any) (R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D')

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn 1; R.P.70 fn 1)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (R.P.40(D)(ii)(a)).

5. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans No
Q. Do you intend to call any other witness in your defence? Ans No
Q. ~~Is he a witness as to character only?~~ (R.P.40(B)) Ans

6. ~~The evidence for the Defence~~ (if any) ~~is recorded on separate sheets, initialled by the President and attached hereto.~~

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see Rs P 40, 41 and 42)

8. The Court is now closed to consider the finding (Rs P 43 and 117) (Record Finding on Page 2 of A.F.A.3)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. (R.P. 117(B)

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (A.F(B.6) signed in the manner required by A.A.16(1)(n) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked "B" and "A", initialled by the President and attached to the proceedings. (R.P.46; Overseas R.O.3131)

11. President to accused:
Q. Do you wish to address the Court on the Statements of Character Service and Conduct and in mitigation of punishment? (R.P.46(D).
Ans No No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

12. The Court is now closed to consider the sentence (Record on Page 2 A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48); sentence should be dated.

The sentence is not announced to the accused by the Court.

Signature of President

RECORD OF EVIDENCE.

1st WITNESS - A32029 BSM Evoy, WC

Pros. Offr. - You are A 32039 BSM Evoy, WC, 97 Fd Bty RCA?

Evoy - Yes Sir.

Pros. Offr. - Will you tell the Court in your own words, exactly what happened on the afternoon and evening of the 25 Feb 43, regarding this Court?

Evoy - On the 25 Feb 43 I was and still am Tp BSM of the 97 Bty - 7 Cdn A Fd Regt RCA. On the 1330 hr parade on this day, Sgt Keighley, the Bty Orderly Sgt, told me to detail the accused for Guard that night. I did so in the presence of Sgt Keighley. ~~About 1630 hrs the Guard Commander came to the [illegible] Guard Room and I found Gnr Day [illegible] and then went down to the [illegible] and spoke to the accused but could not locate him.~~ At approximate 2225 hrs I was in the Sgts Mess along with some of the other Sgts. At about 2230 hrs I left the Mess and went down to my hut, undressed and got into bed. Shortly after Gnr Day came into my hut and we discussed his ~~[illegible]~~ce from guard mounting. The discussion was getting us nowhere and I said "Day you had better go to bed". We said he wasn't going to bed and after discussing the matter somemore, Day became very abusive. I said "The place for you is in the Guard Room" and raised up in bed. It was then that he struck me. I got up and was getting dressed when Sgt Wallace came into the hut. I left the hut and went over to the Orderly Room and told the Orderly Sgt to place Gnr Day under close arrest.

Sgt Cuming, who was present in the orderly room, accompanied me back to the Sgts Hut. When we entered the Sgts hut the accused was still there. I went up to him and said ~~What~~ "Come on Day, you had better come along to the Guard Room with Sgt Cuming and I". He then said "Keep your hands off me or I will blacken your other eye".

Pros Offr - Was there any doubt about the warning for Guard Mounting?

Evoy - No Sir, there wasn't.

Pros Offr - How long have you known Gnr Day?

Evoy - Ever since I came to the Bty, last Sept. He has been in my troop ever since.

President - I am not clear on how the accused was warned for Guard.

Evoy - I detailed Gnr Day on the 1330 hrs parade, on instructions from the Orderly Sgt, Sgt Keighley.

Pros Offr - That is all Sir.

Defending Offr - I have no questions, Sir.

IN THE OPINION OF THE COURT IT WAS NOT NECESSARY TO ~~[illegible]~~ COMPLY WITH R.P. 83(B).

.....

2nd WITNESS - A31043 Sgt King, R.K.

Pros Offr - You are A31043 Sgt King, R.K. of the 97 Bty 7 Cdn A Fd Regt?

King - Yes Sir.

Pros Offr - Will you tell the Court in your own words what happened on the night of 25 Feb 43 after you left the Sgts Mess?

King - I was in the Sgts Mess along with BSM Evoy and some others about 2220 hrs. I left the mess and went over to the Bty Q.M. Stores.

Def Offr - I object Sir. Will the witness answer the questions asked him. Is the witness allowed to give evidence in his own words?

Pres - The witness is allowed to give evidence in his own words.

Pros Offr - Now Sgt King, what happened after you left the Sgts Mess?

King - Sir, I was in the Sgts Mess about 2220 hrs. There were no marks or bruises on Sgt Major's face at that time.

Defending Officer objected to witness giving evidence in narrative form stating that evidence should be provided in question and answer form. This objection was NOT allowed by the Court.

Pros Offr - Sgt King, do you know the charges against Gnr. Day. The First - Striking his Superior Officer - Second, Threatening his Superior Officer and Third, Absenting himself from Guard Mounting.

King - Yes Sir.

Pros Offr - Will you tell the court in your own words what happened after you left the Sgts Mess on 25 Feb 43.

Defending Officer objected to the introduction of evidence without the prosecution making clear which charge the evidence was intended to substantiate. This objection was NOT allowed by the court.

King - Sir, on the 25 Feb 43 at about 2220 hrs I went into the Bty QM stores and the accused Gnr Day was there. Day asked me where BSM Evoy was. He seemed very displeased about having to mount Guard and wanted to see the Sgt Major. I left the Stores and went over to the Orderly Room to get the Orderly Sgt to place the accused in the Guard Room. When I arrived the Orderly Sgt was out and I went out into the lines to locate him.

Pros Offr - ~~Did you meet the Sgt Major when you were looking for the Ord. Sgt.?~~

King - ~~Yes Sir, in the doorway to his hut.~~

Pros Offr - ~~Did you notice the face of BSM Evoy at that time?~~

King - ~~Yes Sir, but it wasn't until Mr. Norman shone the light on the Sgt Major and then I saw blood on his face.~~

Pros Offr - ~~Who is this Mr. Norman~~

.....3

Sgt King (cont'd)

King - He was ~~the Sty Orderly officer that night, Sir.~~

Pros. Offr - When was the last time that you saw BSM Evoy before this?

King - About ten to fifteen minutes before in the Mess. At that time there were no bruises or blood on his face.

Pros Offr - That is all I have to ask the witness, Sir.

Defending Offr - Sgt King, you say that you saw Gnr Day in the Bty QM stores and went over to the Orderly Room to get the Orderly Sgt to place the accused in the Guard Room. Is this the usual procedure in a case like this, when a man misses Guard Mounting?

King - I knew he was absent, Sir.

Pros Off - I object to this question, Sir.

Def Offr - All I want to know is, if this is the regular procedure and if it is then the question is answered. If not it seems that there is something out of place and I would like to find it out.

Def Offr - That is all I have to ask the witness, Sir.

IN THE OPINION OF THE COURT IT WAS NOT NECESSARY TO COMPLY WITH RP 83(B).

3rd WITNESS. - A31095 Sgt Cuming, HS.

Pros Offr - You are A31095 Sgt Cuming HS of the 97 Bty, 7 Cdn A Fd Regt.?

Cuming - Yes, Sir.

Pros Offr - Do you know the accused?

Cuming - Yes Sir.

Pros. Offr - Do you know the charges that are against Gnr. Day?

Cuming - Yes Sir.

Pros Offr - Will you tell the Court what you know of this case, in your own words?

Cuming - On 25 Feb 43 I was in the Bty Orderly Room at 2230 hrs when BSM Evoy came in. ~~He said that he had been struck by Gnr Day and ordered the Sgt to place Gnr Day under close arrest.~~ He had been struck on the left eye which was turning black. I returned to the hut with him. When we entered Gnr Day was ~~still~~ there and was drinking outof a bottle. The Sgt Major "Come on Day and go to the Guard Room with Sgt Cuming and myself". It was then that Day mentioned, "Stay away fromme or I will blacken your other eye". The BSM then went out and returned with the Guard Commander and two escorts.

...../4

Sgt Cuming (cont).

Pros Offr - When you and the BSM went into the hut, did the BSM attempt to touch the accused?

Cuming - No Sir.

Pros Offr - What time were you in the hut?

Cuming - Five minutes after I left the Orderly Room around 2235 hrs.

Pros Offr - What time did the Guard Commander take the accused to the Guard Room?

Cuming - About 2240 hrs.

Pros Offr - That is all I have to ask the witness, Sir.

Defending Offr - Sgt Cuming, you mentioned that when you went into the hut, Gnr Day was still there. Were you in the hut previous and saw Gnr Day or why did you say he was still there?

Cuming - ~~I was talking to the Orderly Officer when BSM Svoy came into the Orderly Room, and said that Gnr Day had struck him, in the hut.~~

Def Offr - That is all I have to ask the witness, Sir.

IN THE OPINION OF THE COURT IT WAS NOT NECESSARY TO COMPLY WITH RP. 83(B).

4th WITNESS. - A33188 Bdr Harmer, CR.

Pros Offr - You are A33188 Bdr. Harmer, CR of the 97 Bty, 7 Cdn A Fd Regt?

Harmer - Yes Sir.

Pros Offr - Do you know the accused?

Harmer - Yes Sir.

Pros. Offr - Do you know the charges under which the accused is being tried? Namely, First Charge - Striking his Superior Officer. Second Charge - Using Threatening Language to his Superior Officer. Third Charge - Absenting himself from Guard Mounting?

Harmer - Yes Sir.

Pros Offr - Can you give any light on what happened on the night of 25 Feb 43?

Harmer - Sir, I was Guard Commander on 25 Feb 43 when Gnr Day failed to appear for Guard Mounting at 1700 hrs. At approximately 2300 hrs the Orderly Sgt came into the Guard Room and ordered me and two escorts to put Gnr. Day in the Guard Room. I proceeded to the Sgts Hut with the Orderly Sgt where we found Gnr. Day. I then escorted Gnr Day back to the Guard Room.

Pros Offr - That is all the questions I have to ask the witness.

...../5

Cdr. Harmer (contd)

President - I am still not clear on how Day was detailed for Guard.

Harmer - BQM Evoy detailed Day on the 1330 hrs parade for Guard Mounting that night at 1700 hrs on instructions from the Orderly Sgt. The man ~~xxxxxx~~ ~~xxixx~~ that was detailed for the Guard on the Bty Orders was away on duty with his gun and was not expected back until late that evening. It was for this reason that Day was detailed for the Guard. He did not report to the Guard Room until 2300 hrs that night, when he was placed under Guard.

IN THE OPINION OF THE COURT IT WAS NOT NECESSARY TO COMPLY WITH RP. 83(B).

5th WITNESS - A31061 Sgt Keighley, W.

Pros. Offr - You are A31061 Sgt Keighley, W of the 97 Btw, 7 Cdn A Fd Regt.?

Keighley - Yes Sir.

Pros Offr - Do you know the accused?

Keighley - Yes Sir.

Pros. Offr - Do you know the charges that are against the accused?

Keighley - Just the one that I am evidence for.

Pros Offr - Day is charged under three charges - First, Striking his Superior Officer - Second, Threatening his Superior Officer - Third, Absenting himself from Guard.

Keighley - I know them now, Sir.

Pros Offr - Will you tell the Court in your own words what happened on 25 Feb 43, and how you are connected with this case.

Keighley - Sir, on 25 Feb 43 I was Bty Orderly Sgt and attended the Guard Mounting at 1700 hrs. Gnr Day was reported absent.

Pros Offr - How was Day detailed for this Guard?

Keighley - Bty the Troop BQM on the 1330 hr parade.

Pros Offr - Were you there when Day was detailed for Guard?

Keighley - Yes Sir.

Pros Offr - Why wasn't Day placed on the Bty orders as being on Guard?

Keighley - Day was a replacement as the man that was detailed was away on duty and wasn't expected back until late that night.

Pros Offr - At what time did Day report back to camp?

Keighley - Around 2300 hrs.

...../6

Pros Offr - Did you place Day under close arrest?

Keighley - No Sir, I wasn't there at the time.

Pros Offr - ~~Are you sure that Day was detailed for the Guard that night?~~

Keighley - ~~Yes Sir. I came up to BSM Evoy on the 1330 hrs parade and told him Day was to go on Guard that night in place of the man that was on duty.~~

Defending Offr - Did you actually see Day on parade and did you hear the Sgt Major detail Day for the Guard.

Keighley - I saw Day on parade and was there when BSM Evoy detailed Day for the Guard. I was close enough that I could hear him detail Day for the Guard.

Def Offr - What did Day have to say about the Guard Mounting?

Keighley - I didn't hear Day say anything, Sir.

Defe Offr - That is all the questions I have for the witness.

IN THE OPINION OF THE COURT IT WAS NOT NECESSARY TO COMPLY WITH RP. 83(B).

Prosecuting Officer's Statement.

Sir I would like to sum up the case of A33157 Gnr Day, A.B. With regards to the first charge the evidence I have submitted shows that BSM Evoy was Day's Superior Officer and although there is nothing to show that BSM Evoy was wearing his rank insignia at the time, it has been proved that Day knew that BSM Evoy was his Superior Officer.

In regards to the actual striking, there is no evidence to show that Day did strike BSM Evoy, but on the other hand there is no evidence to show that he didn't strike him. Circumstantial evidence will prove though that he did. As for actual evidence BSM Evoy didn't have a black eye when he left the Sgts Mess but did have it when he entered the Orderly Room later on. BSM Evoy was still bleeding when he was in the Orderly Room. I will admit that there was no one in the hut at the time to see the accused strike BSM Evoy.

On the second charge it has already been established that BSM Evoy was Day's Superior Officer and Day knew it. By the evidence given by Both BSM Evoy and Sgt Cuming it has been proved that Day did make the statement "I'll blacken your other eye". There is no evidence to prove that the accused was drunk at the time.

On the Third charge firmly established evidence has been brought out that Day was warned on parade for Guard Mounting on the night of 25 Feb 43. As for Day's reply to this detail, he was on parade and therefore would not be able to make a reply. He was warned though and this was proved by the evidence of two NCOs. He was absent from Guard as it has been established that Day did not report to the Guard Room until 2300 hrs that night and the Guard mounted at 1700 hrs.

I have no character witnesses for the accused.

...../7

Defending Officers Statement

On the first Charge of Striking his Superior Officer, the charge should be dismissed due to lack of evidence. The Prosecution has in no way shown that the bruises or abrasions on the face of A32039 BSM Evoy had any relation to the accused, Gnr. Day.

It is quite possible that the BSM could have suffered these from the time that he left the Mess until he entered the Orderly Room. There is no evidence to show that Day appears on the scene until Sgt Cuming and BSM Evoy entered the hut and found Day there.

On the Third Charge there exists no reasonable doubt that Day was absent from Guard Mounting but there is some confusion and discrepancy in whether he was warned. It was not published in Bty orders for the accused to mount Guard.

Summary of Evidence in the case of - A 33157 - Gnr Day, A.B. - 97 Bty 7 Cdn A Fd Regt RCA. - C.A.C. - charged with - attched Appendix "A"

The C.O. directs that the evidence be taken on oath.

First Witness

A 33029 BSM Evoy, W.C. - 97 Bty - 7 Cdn A Fd Regt RCA - sworn states:

I was on the 25 Feb 43 and still an Troop BSM - E Tp 97 Bty- 7 Cdn A. Fd Regt RCA - I recognize here as the accused, A 33157 Gnr Day, A.B. On the 1330 hr parade, 25 Feb 43, I detailed the accused for Guard Duties to mount at 1700 hrs the same day. At 1640 hrs, as a result of information received, I went and searched for the accused, Gnr Day, A.B. I looked in his hut, the wash room and the mess hall but did not locate Him.

At about 2215 hrs I was in the Sgts Mess in the company of BSM Russell, BSM Gibson and Sgt King. I left the mess about 2220 hrs and went to my hut and got into bed. At 2230 hrs I was lying in bed reading a book when the accused came into the hut. I asked him "What do you want, Day?" He answered "I want to have a talk with you.". I said "Come back here and sit down". The accused sat down on the bed opposite mine. We discussed his absence from guard mounting parade. The accused appeared to have been drinking and our conversation was not accomplishing anything, so I then told the accused "Go to bed". He continued to discuss the absence from guard. I then said "You must go to bed, Day".

The accused then became very abusive and I said "The place for you is the Guard room". I started to raise up out of bed and the accused struck me several times in the face. I got up and pulled on my clothes. L/Sgt Wallace came into the hut. I went to the Orderly Room leaving L/Sgt Wallace and the accused in the hut. I reported the affair to the Orderly Sgt and ordered the accused placed in close arrest.

Sgt Cuming who was present in the Orderly Room, accompanied me back to the Sgts Hut. When we entered the Sgts Hut the accused was standing inside with a beer bottle to his lips. I went up to the accused and said "Come now, Day, you had better come along to the Guard room with Sgt Cuming and I". The accused replied "Keep your hands off me or I will blacken your other eye". At that moment the Orderly Sgt arrived with the Guard Commander and an escort who removed the accused.

Q. - (Accused) - Did the bottle contain beer?
Ans. -(Witness)- I do not know what the beer bottle contained.

A32039
W/O Evoy R.S.M.
A 32039 BSM Evoy, W.C.
97 Bty - 7 Cdn A Fd Regt RCA. - C.A.C.

Second Witness -

A 31043 Sgt King, R.K. - 97 Bty - 7 Cdn A Fd Regt RCA - C.A.C. - sworn states:

I was on the 25 Feb 43 and still an a Sgt in "E" Tp. 97 Bty - 7 Cdn A Fd Regt RCA - C.A.C.

At 2215 hrs, 25 Feb/43 - I left the Sgts mess where I had been in the company of BSM Evoy, W.C., among others. At that time there were no marks or injuries visible on BSM Evoy's face. I went into the Bty Q.M. Stores and I saw there Gnr Day, A.B. whom I recognize here as the accused. Gnr Day asked me "where is Sgt Major Evoy?". The accused (appeared) to have been drinking so I replied - "I think he is out of camp, see him in the morning". I told the accused to report to the Guard room as he had missed Guard mounting. I left the Bty Q.M. Stores and went to the Orderly Room to see the Orderly Sgt. Later, about 2235 hrs, I saw BSM Evoy in the doorway of the Sgts Mess. When Lieut Vernon came along and shone a flashlight on BSM Evoy I saw blood on the left side of BSM Evoy's face.

The accused declines to cross examine this witness.

A31043 Sgt King R.K.
A 31043 Sgt King, R.K.
97 Bty - 7 Cdn A Fd Regt

101
201

Third Witness -
A 31095 Sgt Cuming, H.S. - 97 Bty - 7 Cdn A Fd Regt RCA - C.A.C. - sworn states;

On 25 Feb/43, I was and I am still a Sgt in the 97 Bty - 7 Cdn A Fd Regt RCA - C.A.C. At about 2230 hrs 25 Feb/43, I was in the Bty. Orderly Room when BSM Evoy, W.C. came in. I saw that BSM Evoy's left eye was blackened. I accompanied him back to the Sgts hut and when we entered, Gnr Day, A.B. whom I recognize as the accused here, was in there and he was drinking from a bottle. BSM Evoy told the accused to go to the Guard room. Gnr Day, A.B. replied "Stay away from me or I will blacken your other eye".

The accused declines to cross examine this witness.

A 31095 H.S. Cuming Sgt
A 31095 Sgt Cuming, H.S.
97 Bty - 7 Cdn A Fd Regt RCA-CAC

Fourth Witness
A 33188 Bdr Harmer, C.R. - 97 Bty - 7 Cdn A fd Regt RCA - C.A.C. - sworn states;

On the 25 Feb 43, I was and still am a Bdr in the 97 Bty - 7 Cdn A Fd Regt RCA - C.A.C. I was Guard Commander of the Guard which mounted at 1700 hrs 25 Feb 43. I recognize Gnr Day, A.B. as the accused here. He was not present at the Guard mounting at 1700 hrs necessitating a replacement.

At 2300 hrs 25 Feb 43 on the instructions of the Orderly Sgt. I placed the accused in close arrest. At that time he was in the Sgts Hut.

The accused declines to cross examine this witness.

A33188 Bdr C R Harmer
.....
A 33188 Bdr Harmer, C.R.
97 Bty - 7 Cdn A Fd Regt RCA- CAC

Fifth Witness
A 31061 A/Sgt Keighley, W. - 97 Bty - 7 Cdn A Fd Regt RCA - C.A.C. sworn states;

On the 25 Feb 43, I was and still am a A/Sgt in the 97 Bty - 7 Cdn A Fd Regt RCA - C.A.C. On the 25 Feb 43 I was Orderly Sgt and I attended the Guard mounting at 1700. Gnr Day, A.B. was not present on that parade.

The accused declines to cross examine this witness.

A 31061 A/Sgt W. Keighley
A 31061 A/Sgt Keighley W.
97 Bty - 7 Cdn A Fd Regt RCA - C.A.C.

Sixth Witness
Lieut E.J.S. Hermon - 97 Bty - 7 Cdn A Fd Regt RCA - C.A.C. sworn states;

On the 25 Feb 43 I was and still am an officer of the 7 Cdn A Fd Regt RCA - C.A.C.. On the 25 Feb 43 I was Bty Orderly Officer. At about 2245 hrs BSM Evoy, W.C. came into the Orderly Room.. As a result of what he told me, I looked at his face and saw that his left eye was badly swollen and there were several minor scratches on the left side of his face around the swelling.

The accused declines to cross examine this witness.

E.J.S. Hermon Lieut
Lieut E.J.S. Hermon
97 Bty - 7 Cdn A Fd Regt RCA - C.A.C.

The accused was warned in accordance with R.P. 4 "B".

The accused states "I have nothing to say at this time and I do not want to call any witnesses at this time."

I certify that R.P. 4 has been complied with.

Taken by me In the Field in the presence and hearing of the accused A 33157 Gnr Day, A.B., this 27th day of Feb./43.

W.G. Ferguson, Capt.

(W.G. Ferguson) Capt.
97 Bty - 7 Cdn A Fd Regt RCA

Prosecution "B"

M.F.B. 355
7M—8-40 (6400-1)
H.Q. 1772-35-626
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A33157	Gnr.	Day, A.B.	97 Bty. 7 Cdn A Fd Regt RCA

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron~~, Battery Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment or appointment	
For AA. 15 (1) Absent without ~~times~~		AA 15 (1) Absent without leave	times
For ~~For~~ leave	3 times		5 times
For [illegible]	times	AA Sec 40 Conduct to the	~~times~~
For	times	prejudice etc.	1 times

Number of instances of gallantry or distinguished conduct Nil

~~or,~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or,~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 3 days in military ~~Air Force~~ custody, making a total of 3 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 25 years, 7 months. ~~attestation paper is~~

6. ~~The date of his commission specified in his record of service is attestation attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to). State any air force decoration or reward military~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force~~

~~14. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ ~~Permanent Force~~ ~~unit~~ ~~, and in his regiment (or corps), the rank of~~

~~dated~~

~~dated~~

~~15. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—~~ ~~Date of promotion.~~

~~In the rank of~~ ~~years.~~

~~In the rank of~~ ~~years.~~

~~In the rank of~~ ~~years.~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number A33157 Rank Gnr. Name Day, A.B. of 7 Cdn. A. Fd. Regt., RCA Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
nil	nil	nil	nil	nil

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this twenty-eighth day of February 1943 [illegible] Capt [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "B" signed by the president, and annexed to the proceedings.

[illegible] May
11 Cdn Atd Regt
president court martial

"A"

No. A33157 Name DAY, A.B. [illegible] Battery, [illegible] Company Corps R.C.A. Date of enlistment 8 Sep 39 G.C. Badges: Service or Proficiency pay N/A

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 2 Signature O.C. Company, etc.

MFM 4 (A.F.D. 133)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of non-commencing with one	Character: By whom recorded	Character: Remarks
Field	4-2-41	Gnr		AA. 15 (1) Absenting himself without leave from 0700 hrs 4-2-41 to 1830 hrs 20-2-41	Sgt Dick " Collins	10 days Det.	21-2-41	Lt.-Col. Ellis	Forfeits 17 days pay
Field	17-6-41	"		AA. 15 (1) Absenting himself without leave from 0600 hrs 17-6-41 to 1400 hrs 21-6-41	Sgt Collins Documentary	10 days C.B. 2 days pay	23-6-41	Lt.-Col. Ellis	Forfeits 5 days pay
Field	4-8-41	"		AA. 40 Conduct to the prejudice etc., in that he caused a disturbance in Newcastle, N.B. at 2400 hrs 4-8-41.	Documentary	18 days det.	22-8-41	Lt.-Col. Ellis	Forfeits 18 days pay
Field	16-4-42	"		AA. 15 (1) Absenting himself without leave from 2200 hrs to 2400 hrs 16 Apr 42.	L/Bdr Desjardine Bdr Sanders	7 days C.B.	17-4-42	Major MacDonald	Forfeits 7 days pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13-8-42	Gnr		AA 15 (1) Absenting himself without leave from 0100 hrs to 1730 hrs 13 Aug 42.	Sgt. Collins " Walker	7 days C.B.	17-4-42	Major Corbett	Forfeits 1 days pay
"	22-8-42	"		AA 15 (1) Absenting himself without leave from 1745 hrs 22 Aug 42 to 0030 hrs 23 Aug 42.	Documentary	10 days pay	24-8-42	Lt.-Col. Myatt	Forfeits 1 days pay FRd. I

Compared with original and Certified true copy:

(L.A. Staysco) Capt.,
Adjt., 7 Cdn A Fd Regt., RCA.

TTT-23.

Pte Day D.D.

RECORDED AT CMHQ IN AB 160a TTT 23

RECEIVED 7 AUG 1944 JAG BRANCH C.M.H.Q.

Correspondence to be PINNED here.

I-74

15

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Sixteenth day of June, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

Stratton Maj

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* ~~I am unable to appoint:~~

~~*(1) Three Officers to form the Court;~~

~~*(2) A Field Officer as President;~~

~~for the following reasons, namely:~~

PROCEEDINGS REVIEWED August 8th 1944

JAC Alone Lt.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

18

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	F.G.C. Darton	R.C.R.

Members.

Rank.	Name.	Regiment.
Captain	R J Harris	48 Highrs
Lt	A H Taber	Hast & PER
Lt	H L Watson	R C R

Waiting Member

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed D.C. Spry

(D.C. Spry) Brigadier

Commanding 1 Cdn Inf Bde

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F 51747 PRIVATE DAY, Douglas David, The Royal Canadian Regiment	FIRST CHARGE A.A. Sec 15 (1)	Guilty	Guilty To be imprisoned with hard labour for 18 months Sharton Maj. 22 June 44	Confirmed D.C. Spry Brig 26 June 44

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) D.C. Spry (D.C. Spry) Brigadier
Commanding 1 Cdn Inf Bde
Convening Officer (e)

(Signed) Sharton (F.G.C. Darton) Major R.C.R.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of June 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~ [initials]
~~*(4. The officers under instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this 22nd day of June 19 44

Sharton Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this~~ [initials] ~~day of~~ ~~19~~

*See footnote (b) on page 762 M.M.L. 1929.

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) [initials]

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this ~~twenty-sixth~~ day of June 1944.

D.C. Spry
Confirming Officer.
(D.C. Spry) Brigadier
Comd 1 Cdn Inf Bde

Promulgated and extracts taken in the case of F51747 Pte Day DD

(a) (Dated) 27 June 44 (Signed) [signature] Major RCR

Promulgated and extracts taken in the case of

(Dated) NA (Signed) NA

Promulgated and extracts taken in the case of

(Dated) NA (Signed) NA

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

Army Form A 9

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F. G. Court-Martial held ~~at~~ In the field

on the 22nd day of June 1944 by order of

Brig W. C. Spry

Commanding 1 Can Inf. Bde.

dated the 16th day of June 1944

President.

Major F. G. C. Dalton RCR

Members.

Capt. R. J. Harris 48th Highrs.

Lieut. A. H. Luber H. & P. E. Regt.

~~Judge Advocate~~

Trial of* F 51747 Pte. Douglas David Day The Royal Canadian Regt

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. E. H. Shuter RCR

~~Counsel‡ or~~ defending officer† Lt. S. T. B. Quayle RCR

At 1445 o'clock the Trial commences.

The order convening the Court is read, and is marked , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible]

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CHARGE SHEET.

The accused, F51747 Private Douglas David Day, "C" Coy., The Royal Canadian Regiment, a soldier of the Canadian Army Overseas, Central Mediterranean Forces, when on Active Service, is charged with:-

First Charge.
A.A. [illegible]

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, on 21 May 44, absented himself without leave from 1200 hrs 21 May 44 until surrendering himself to 105 Provost Coy, at Main HQ, 8th Army at 2000 hrs 23 May 44. (Time absent 2 days 8 hrs)

Dated, in the Field,

this 12 day of

June, 1944.

J.W. Ritchie

(J.W. Ritchie) Lt.-Colonel,
Comd., The Royal Canadian Regiment.

To be tried by Field General Court Martial.

D.C. Spry

(D.C. Spry) Brigadier
Comd 1 Cdn Inf Bde

In the Field
16 Jun 44

B2
Thurston Maj

MEDICAL OFFICER'S CERTIFICATE
(KR (Can) para 577)

I certify that I have this morning examined No. F51747
Rank...Pte....Name.....DAY...D.D.....of .....RCR.... .....
and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.
Station. Field.....
Date.....22.Jun.44....

(Medical Officer) Capt MO RCR.

Director Med.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

~~The accused~~ ~~is found guilty~~ of F51747 Pte. Day. D.D. A.A. Sec. 15 (1)

†The summary (or abstract) of evidence is read, marked C signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— No

~~or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.~~

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer.

Question. Do you intend to call any other witness in your defence?

Answer.

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (c) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Instructions.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

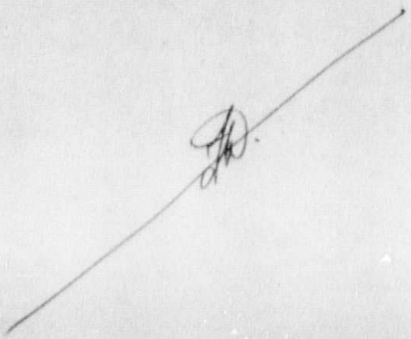
E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused



Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

A. E. H. Shuter is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked D signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Cross-examined by the accused.

No.

Question to the accused.

Do you wish to address the Court? *Answer.* Yes. (a)

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence

The Court sentence the accused

F 51747 Pte. Douglas David Daf
The Royal Canadian Regiment.
To be imprisoned with hard labour for
18 months.

Stratton Maj

Plea of Mitigation on behalf of
F51747 Pte Day, D. D.

Pte Day has given me a letter (C2) which will show that his wife - at the time of writing - was in hospital. She has been unwell for quite some time and in addition there are 4 children to be ~~too~~ cared for. Pte Day is 34 and he was finding rifle coy. work ~~[illegible]~~ very tiring. His family trouble adding to his physical strain made him decide to go out and forget it all. He took no kit and no money with him - he simply went out to drive his thoughts out and forget. He voluntarily gave himself up and made no effort to stay away. In view of these circumstances I request that the court show all possible leniency.

Signed

J Quayle, Lt.

C1
Charton Maj.

C2 Sharton Major

Fri June 2 - 44

Dear Doug

Just lines to let you know that we are all well hoping to find you the same there some cigarettes on the way for you you will get them sometime this month there is 10 packages

Soon as I am able I will send you something else The children are all find and Helen is going to School she like it

your mother is in town now and her and daisy is comming up to the hospital this Sunday to see me I have to stay in here for couple

(2)

7 day more but dont
Worried I will be all
right time you get this
letter I will be out
your Brother inlaw
have left the V.A. hospital
And he gone to the
Children hospital to work
he said there is more
money over there then
it is here
your mother got
all of her planting done
now And she is taken
vaction now Jean and
Roy is gone to the Camp
for week on his holiday
They try to get John
to come home and help
them week there planting
but he Couldn't get leave

So is mother was disappointed
she couldn't see him
Reg Myers was home on
in 14 days have they
haven't had any more
news from foster
I had one operation
and it was successful
but I dont know what they
are going to do now they
have to keep me in for
whole longer dont worry
over the children because
I seen to that before I
came in here two younger
one bee with my mother
and Helen is with Edna
and Marguard is with
Mrs George Mitchell for while
so I know they are getting
look after all right

141

this will be all for
now if there any difference
in the Change I will
write you again I will
close for the night from i
ever Loving Wife and family

Summary of Evidence in the case of F51747 (Douglas David) Pte Day. D.D., the Royal Canadian Regiment a soldier of the Canadian Army placed on Active Service.

By direction of the Commanding Officer evidence taken on oath.

1st Witness for the Prosecution. –

LT. L.G. SHORE The Royal Canadian Regiment having been duly sworn states: I am Platoon Commander of 15 Platoon "C" Coy ~~Bn~~ R.R and. That on the 21st of May '44 at approx 1200 hrs I was about 1000 yds in rear of our Coy area. I came across the accused ~~with~~ Pte Day. D.D. whom I now recognize as being present. He was with three others. I ordered them to return to camp immediately as we were on one hours' notice. They answered that they would return at once. On returning to Coy area I found that the accused was absent. I immediately placed a charge against him.

Sgd – L.G. Shore. Lt.

The accused being informed of R.P. 4(d) declines to examine the witness

2nd Witness for the Prosecution: –

Capt J.K.B. Ingram, O.C. 105 Provost Company. A Statement ~~of evidence~~ in accordance with AA 143(1)(1) purporting to be signed by this witness, has been produced, marked exhibit "A" to this Summary, read to the accused and attached to the proceedings.

"I certify that in my opinion the oral testimony of this witness is not available due to exigencies

P.T.O

of the service, and the loss of time and expense which would be involved thereby.

Sgd. J.K. Dent Lieut
Officer taking Summary.

I do not require the attendance of this witness at the Summary herein.

Sgd. Day D.D. RCC

The accused having been duly cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but anything you say or any evidence you wish to give will be taken down in writing and may be given in evidence," in accordance with R.P. 4 (E) declines to make any statement or to give evidence on oath.

Certified that R.P. 4 (C) (D) (E) (F) (G) have been complied with

Taken down by me in the presence of the ~~witness~~ accused, this seventh day of June 1944.

In the Field

Sgd. J. Radleigh Dent Lieut
Officer taking the Summary.

Summary of Evidence in the case of F51747 Pte Douglas David DAY, The Royal Canadian Regiment, a soldier of the Canadian Army, placed on Active Service.

By direction of the Commanding Officer, the evidence is taken on oath.

1st Witness for the Prosecution

Lt. L.G. Shore, The Royal Canadian Regiment, having been duly sworn states:-

"I am Platoon Commander of 15 Platoon, "C" Coy, RCR and that on the 21st of May '44 at approx 1200 hrs I was about 1000 yds in rear of our Coy area. I came across the accused Pte Day, D.D. whom I now recognize as being present. He was/three others. I ordered them to return to camp immediately as we were on one hours notice. They answered that they would return at once. On returning to Coy area I found that the accused was absent. I immediately placed a charge against him."

with

Signed L.G. Shore Lt.

The accused being informed of R.P. 4 (d) declines to examine the witness.

2nd Witness for the Prosecution

Capt. J.K.B. Ingram, O.C. 105 Provost Coy. A statement in accordance with A.A. 163 (1) (j) purporting to be signed by this witness, has been produced, marked exhibit "A" to this Summary, read to the accused and attached to the proceedings.

"I certify that in my opinion the oral testimony of this witness is not available due to the exigencies of the service and the loss of time and expense which would be involved thereby."

Signed J.R. Dent, Lt.
Officer taking Summary.

I do not require the attendance of this witness at the Summary herein.

Signed Day, D.D. Pte.

The accused having been duly cautioned as follows:-

"Do you wish to make any statemant or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but anything you say or any evidence you give will be taken down in writing and may be given in evidence," in accordance with R.P. 4 (e) declines to make any statement or to give evidence on oath.

Certified that R.P. 4 (c)(d)(e)(f) and (g) have been complied with.

Taken down by me in the presence of the accused, this seventh day of June, 1944.

In the Field.

Sgd. J.Radleigh Dent, Lieut.
Officer taking the Summary.

Certificate of Surrender under Sect 163(1)(j) A.A.

"A"

I, Capt. UCR Ingham certify that No. F.51747 Rk. Pte Name. Day D.D.
Unit. "C" Coy., Roy Can Regt., 1 Can Div surrendered himself to
No. 7686111 Rk. Sgt. Name. Barratt W. 105 Provost Company,
N. Police at Main HQ. 8th Army on the 23rd day of May 1944
2000 hrs, as a deserter or absentee without leave.
was dressed in uniform/civilian clothing.

Watton

Captain.
O.C. 105 Provost Company.

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-30-620
A.F.B. 20

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F51747	Private	Douglas David DAY,	R.C.A.

1. The following is a fair and true summary of the entries in the Field Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. Sec 15 (1)	3 times	A.A. Sec 15 (1)	3 times
For		times		times
For		times		times
Number of instances of gallantry or distinguished conduct			Nil	times

Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately. Nil.

2. The accused has not been previously convicted by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 30 days in military custody, making a total of 30 days in custody, of which Nil days were spent in hospital. Re at 22 June 44 ESH

5. The present age of the accused according to his attestation paper is 34 years 4 months 29 days

6. The date of his birth specified in his attestation paper is 5 Jan 43

7. The service which the accused is allowed to reckon towards discharge is 1 year 5 months 17 days

8. The accused is entitled to reckon 1 year 5 months 17 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward

State any military decoration or reward. NIL.

D Stanton Major

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force ..... unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number F51747 Rank Pte Name Douglas David DAY, of The Royal Canadian Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

NIL

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of June 1944.

The above statement (with the schedule of convictions and [illegible] in which [illegible] has been dispensed with) is read, marked [illegible] the [illegible] annexed to the proceedings.

[illegible] Lt.-Colonel,
[illegible] Canadian Regiment.

No. F51747 Name DAY, D.D. Sq., Batty., or Company Corps C.I.C. Date of enlistment 5 Jan 43 Sheet No. One

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc.

Army Form B.213

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				PREVIOUS SHEET DESTROYED ON COMPLETION OF SIX MONTHS SERVICE 5 Jul 43					
North Bay	2 Aug 43	Pte	-	AWL from 2359 hrs 2 Aug 43 until 0110 hrs 3 Aug 43 Total absence 1 hr 11 mins Sec 15 (1)	L/C Bzuma	5 days CB	3 Aug 43	F. Lorriman, Capt.	
				CERTIFIED CORRECT AS OF 20-Oct-43. C.G. Gillingwater, Capt.					
Debert, N.S.	8 Dec 43	Pte		AWL from 0200 hrs 4/12/43 until 2035 hrs 6/12/43 Total absence 2 dys 18 hrs 35 mins (15) (1) A.A.	Cpl McGarry Sgt Green, A.A.	7 days C.B.	8 Dec 43	Major V.W.Dyas	3 Days pay. (FRI/
								P.T.O.	

(P.T.O.

1349-298. 1000m. 6/41 S.P.C., 51-410

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	8-5-44.	Pte	-	WOAS Absenting himself without leave, in that he, in the field absented himself from 1400 hrs 8-5-44 to 1130 hrs 9-5-44. (Total absence 21 hrs 30 mins) AA Sec 15 (1)	Sgt Costello M L/Cpl Davis, O.	7 days C.B.	12 May 44	F.T. Forgrave Major	Forf. 1 days pay FRI 149 (1)(a)

CERTIFIED THAT THIS IS A TRUE COPY OF THE ORIGINAL DOCUMENT HELD IN MY CUSTODY,

(J.S. Smith) Captain.
Adjt., The Royal Canadian Regiment.

Day

149 (1)(a)	3 days	Forf.
149 (1)(c)(1)	29 "	"
149 (1)(b)	548 "	"
Total	580 "	"

Release DP Dec 44	~~11.00~~ 6.00
" Jan 45 - Nov 45 incl	220.00 ✓
Dec 45.	13.00 ✓
Total release	~~244.00~~ 239.00

OK OK WSL
Day Intn

FEDERAZIONE NAZIONALE FASCISTA DELLE MUTUE DI MALATTIA
PER I LAVORATORI AGRICOLI

MUTUA DI MALATTIA PER I LAVORATORI AGRICOLI
DELLA PROVINCIA DI CAMPOBASSO

Prot. N. .....
(da citare nella risposta)

CAMPOBASSO,
Piazza della Vittoria N. 5
Telef. 2-22

19 ..... A. .....

OGGETTO:

2 11 May
21 June
32 3 [illegible]
29

365
183
548

9 June
31
31
30
31
30
21 [illegible]
183 days

4650
21 3150
1
15
1

Per ogni lettera trattare un solo argomento

EGE-46

PTE DAI F.D

ENTERED IN RECORDS OF C.H. EEE x6

Correspondence to be PINNED here

Army Form A.3.

D79

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Ninth day of February, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 2 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [~~I am unable to appoint~~ :—

*[~~[illegible]~~

*[~~[illegible]~~

~~[illegible]~~ —]

PROCEEDINGS REVIEWED

H. C. Inch Lieut.

22 Mar 44 Rev 3

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.L. Malkin	Seaforth of C

Members.

Rank.	Name.	Regiment.
Lieut.	J.G. Coventry	P.P.C.L.I.
Lieut.	J.C. Allen	Seaforth of C
(W)Lieut.	J.R. Heppell	P.P.CL.I.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature]

*B.M. Hoffmeister) Brig

Commanding 2 Cdn Inf Bde.

Convening Officer.

D79

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M7101 Private DAY, Francis David. Loyal Edmonton Regiment.	First Charge A.A. Sec.6(2)(e) When on active service, When a Soldier acting as sentinel sleeping on his post.	Guilty	Guilty - to serve imprisonment for a period of 1 year with hard labour. 11 Feb 44 JHM mj	I confirm the finding and sentence of the court. 12 Feb Brut

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) Brut Hoffmeister (B.M. Hoffmeister) Brig
Commanding 2 Cdn Inf Bde.
Convening Officer (e)

(Signed) JH Malkin major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 11th day of February 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~ JHM
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 11th day of February 1944.

JH Malkin major
President of the Court Martial.

C. Certificate in case of death sentences

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) Brut

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 12 day of Feb 1944

Brut Hoffmeister Brig
Confirming Officer.

Promulgated and extracts taken in the case of M 7101 Pte Day F.D.

(a) (Dated) 15 Feb 1944 (Signed) [illegible] major A/2 K L [illegible]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

11 Feb 44

D79

The Court recommends that this man's case be investigated by medical authorities with a view to establishing whether or not he is suffering from any physical or mental complaint.

J.H. Martin
Maj.
President

CHARGE SHEET

The accused, M/101 Private Francis David DAY of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, CMF, when on Active Service, is charged with:-

FIRST CHARGE
SEC 6(2)(a)
ARMY ACT

When On Active Service

WHEN A SOLDIER ACTING AS SENTINEL, SLEEPING ON HIS POST

in that he

In the Field at 2140 hrs 30 Jan 44, whilst on guard, was found to be asleep at his post.

E.W. Day

(E.W. Day) Lt.-col
Comd The L Edmn R.

Date 9 Feb 1944
In the Field

TO BE TRIED BY FIELD GENERAL COUT MARTIAL

Date 9/2/44
In the Field

Commanding 2 Cdn Inf Bde

MEDICAL OFFICER'S CERTIFICATE
(KR (CAN) para 597)

I certify that I have this morning examined No. M/101
Rank Pte Name Day, F.D. of The Loyal
Edmonton Regiment and in my opinion he is fit/~~unfit~~ to
undergo trial by Court Martial.

Station In the Field
Date 1 Feb 44

(T.R. Grainger) Captain
Medical Officer i/c
The Loyal Edmonton Regiment

Accused M 7101 Pte. Francis David Day. Loyal Edm. Regt.
(No.) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in Italy (Country) on 11 Feb. 44. (Date)

	Rank	Name	Unit
PRESIDENT:	Major	J.B. Malkin	Seaforths of Can.
MEMBERS:	Lieut	J.G. Allen	Seaforths of Can.
	Lieut	D.L. Coventry	P.P.C.L.I.
JUDGE ADVOCATE: (if any)		N/A	
OFFICERS UNDER INSTRUCTION:	Lieut	D.A. MacDonald	P.P.C.L.I.
	Capt	J.R. Dawson M.C.	Loyal Edmonton Regt.

PROSECUTING OFFICER: Capt E.L. Boyd Lawyer? Ans No.

DEFENDING OFFICER: Lieut H.G. Field Lawyer? Ans No.

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (RsP 1, 2), 22(A)).

The President, in closed court (RP 22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (AA 49; RP 105) and constituted, that the accused is (~~are~~) amenable to Military Law, and that each charge discloses an offence. (RP 106).

The accused is (~~are~~) brought before the Court, and at 1210 hrs, the trial commences.

The Prosecuting Officer produces a Medical Certificate under KR (Can) 557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused: Do you object to N/A as interpreter? Ans

The interpreter is duly sworn.

Do you object to N/A as Shorthand Writer? Ans

The Shorthand Writer is duly sworn. (Forms of Oath on Page 'D')
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (RP 10)

President to accused
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (RP 26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused ~~has~~ (has not) elected trial by Court Martial (AA 46(8)).

(If special plea/s is/are made for separate trial on one or more charges (RSP 62(E), 103); or as to the jurisdiction of the Court (RP 34); or in bar of trial (RP 36); or as to accused's mental fitness to stand trial (AA 130, RP 57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each Charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (RP 112). He pleads as follows:

First Charge Guilty

Second Charge_____

Third Charge_____

Fourth Charge_____

Fifth Charge_____

Sixth Charge_____

Seventh Charge_____

Eighth Charge_____

(For procedure on alternative charges, see RP 37, fn 2)

Further proceedings are recorded on pages hereto attached.

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. RP 35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (RP 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (RP 37(B)) Ans No Sir

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (RP 37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (RP 37(C)). Ans Yes Sir.

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination).

5. President to Accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (RP 37(C)). Ans ~~Yes~~ No Sir

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

6. Statement of Character and Service (AFB.296) and Field Conduct Sheet (MFM.6) signed in the manner required by AA 163 (i) (h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked "M", and "O", initialled by the President and attached to the proceedings. (RP 46; Overseas RO 3131).

7. President to accused:
Q. Do you wish to address the Court on your Statement of Character, Service and Conduct in further mitigation of punishment? (RP 46(D)). Ans No Sir (No cross-examination). (Record address, if any, on separate sheet, initialled by the President and attached hereto).

8. The Court is now closed to consider sentence. (Record on Page 2 of AFA.3).

(Punishments, AA 44, KR (Can) 563 - 566; one sentence only awarded, RP 48). Sentence should be dated).

The sentence is not announced to the accused by the Court.

[signature]
(Signature of President)

PAGE 'B'

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President).

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (RP 39(A)). Ans_____

2. The Prosecutor's open ing address (if any) (RP 39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D').

3. The Prosecution is closed. (If submission that there is no prima facie case established, see RP 40 fn 1; RP 70 fn 1).

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (RP 40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (RP 40(D)(ii)(a)).

5. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans_____
Q. Do you intend to call any other witnesses in your defence? Ans_____
Q. Is he a witness as to character only? (RP 40(B)) Ans_____

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see RsP 40, 41 and 42).

8. The Court is now closed to consider the finding (RsP 43 and 117)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. (RP 117(B)).

10. Statement of Character and Service (AFB.296) and Field Conduct Sheet (MFM.6) signed in the manner required by AA 163 (1) (h) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings (RP 46; Overseas RO 3131).

11. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (RP 46(D)).
Ans_____ No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto).

12. The Court is now closed to consider the sentence (Record on Page 2 of AFA.3)
(Punishments, AA 44, MR (Can) 563 - 566; one sentence only awarded, (RP 48); sentence should be dated.

The sentence is not announced to the accused by the Court.

_____
(Signature of President)

Statement in Mitigation by Accused.

Sir, I have had very little illness since being in the Army. Last while in Sicily ~~in charge of~~ with a mule train a German mortar shell landed within 2 feet of me, & though not wounded I was very badly shocked. It was 3½ days before I had complete control of myself. I had been evacuated to 16 CCS. After 3 days I managed to talk my way back to the unit. On returning to the unit I was still very shaky & was kept from going up the line for a couple of days. Hostilities ceased, & I saw no more action until arriving in Italy, & was under no shell-fire until near Termini, & found that I could carry on normally under fire. The next heavy shell-fire was about the 21st, when I was thrown off

my feet by a German ~~shell~~ ~~mine~~ demolition, & my bayonet went into my knee. I was evacuated, for shock & wounds. On the way to the hospital there was found to be a discharge from my penis which was believed to be venereal disease, but after investigation it was found not to be so. As soon as I could walk I left the Hosp. & went to C.B.R.D. & returned to the field unit about 8 days later, without any medical examination. On returning to the field I found myself very nervous & was unable to eat or sleep. I had a nervous breakdown about the 16 Jan. & the next morning went to the unit M.O. who gave me medicine. It helped, but I could not sleep well, & was very tired all the time. On the 30 Jan. there had been very

little shelling & being very tired & free from worry ~~I just~~ & having eaten I feel asleep in my trench. After arriving at my post & all being quiet & feeling tired I fell asleep.

J.M.

Statement as to whether or not
the accused wishes to have an
officer defend him at his trial
by F.C.C.M.

I desire to have Lieut H.G. Fields of The Loyal
Edmonton Regiment defend me at my trial by F.C.C.M.

F.D. Day

.....
(F.D. Day) Pte M7101

List of Witnesses for Prosecution and Defence

Prosecution:-

M16373 Sgt Purves, W.
The Loyal Edmonton Regiment
Canadian Army Overseas, CMF

M15869 Cpl Ryan, L.G.
The Loyal Edmonton Regiment
Canadian Army Overseas, CMF

Defence:-

M16955 Cpl Walker, R.
The Loyal Edmonton Regiment
Canadian Army Overseas, CMF

SUMMARY OF EVIDENCE in the case of M7101 Private Francis David DAY of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas CMF

By order of the Commanding Officer the evidence is taken on oath.

1st Witness Prosecution

M16373 Sgt Purves, W. of The Loyal Edmonton Regiment having been duly sworn states:-

I am M16373 Sgt Purves, W. of The Loyal Edmonton Regiment. On the night of 30 Jan 44 I warned Pte Day for his turn on guard. We had been warned that a Jerry patrol was between the Seaforth's and the Pat's so I told him to be on the alert. He stated that Cpl Walker had already warned him so I watched until he went on the post then went away. This would xxx be about ten minutes to nine. I returned with Cpl Ryan about twenty minutes to ten and found Pte Day sleeping on his post. I unloaded his tommy gun, then woke him up. Immediately I asked him for the tommy gun and we had a dispute over it. After getting the tommy gun we took him up to Lieut Simmons who put him under open arrest.

Questioned by Officer Taking Summary

Q. 1 Do you recognize the accused as the man in question?
A. 1 Yes sir.

Q. 2 Why did you unload his tommy gun?
A. 2 I figured that if it were loaded and he was awakened suddenly he might fire it before he realized what was happening.

Cross Examined by the Accused

Q. 3 Did I not, as soon as I realized I was being taken off the post, hand the tommy gun over?
A. 3 No, you did not.

W. Purves
(W. Purves) Sgt M16373

2nd Witness Prosecution

M15869 Cpl Ryan, L.G. xxxx of The Loyal Edmonton Regiment having been duly sworn states:-

I am M15869 Cpl Ryan, L.G. of The Loyal Edmonton Regiment. About twenty minutes to ten on 30 Jan 44 Sgt Purves took me along with him to the post where Pte Day was doing hisshift. We found him asleep. Sgt Purves then took the tommy magazine off the gun and then woke Pte Day. Sgt Purves told him he was on a charge for sleeping on his post. He then asked Pte Day for the tommy gun which Pte Day refused to give. There was an arguement and we told him at least three times to turn over the tommy gun which in the end he did. We reported the matter to Lieut Simmons who instructed us to place him under open arrest.

Questioned by Officer Taking Summary

Q. 4 Do you recognize the accused as the man in question?
A. 4 Yes sir.

2nd Witness Prosecution (cont'd)

Q. 5 Had Pte Day gone without sleep for any great length of time?
A. 5 No sir.

The accused declines to cross examine this witness.

.....Cpl L.G. Ryan.....
(L.G. Ryan) Cpl M15869

3rd Witness Defence

M16955 Cpl Walker, R. of The Loyal Edmonton Regiment having been duly sworn states:-

I am 16955 Cpl Walker, R. of The Loyal Edmonton Regiment. Having been given the times for guard for my section I detailed them and at the same time warned my section that there was reported to be a Jerry patrol between the Seaforth's and the Pat's. Pte Day is in my section and was there when the section was warned. His time on guard was from 2045 hrs until 2300 hrs.

Questioned by Officer Taking Summary

Q. 6 Do you recognize the accused as the man in question?
A. 6 Yes sir.

Cross Examined by the Accused

Q. 7 Cpl Walker, do you think that I have been sleeping normally since returning from hospital?
A. 7 You mentioned to me that you haven't been sleeping well but there is no way I can prove whether you had been or not.

.....R. Walker.....
(R. Walker) Cpl M16955

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

Statement by the Accused

M7101 Pte Day, F.D. of The Loyal Edmonton Regiment having been duly sworn states:-

I am M7101 Pte Day F.D. of The Loyal Edmonton Regiment. On the night of 30 Jan 44 I was warned for guard by Cpl Walker, my time for guard being from 2045 hrs until 2300 hrs, later being told by him that a Jerry patrol was between the Pat's and the Seaforth's. Having slept very poorly for the last month I was feeling exceedingly tired. I sat by a warm fire till about ten minute

Statement by the Accused (cont'd)

to eight when I went to my slit trench and slept until awakened by Sgt Purvis who again warned me about a Jerry patrol. Going on my post I kept catching myself falling asleep. I got up, walked around, sat down again and the next thing I knew was that someone was shaking me. I got up not knowing who it was and evidently before I was fully awake Sgt Purvis warned me I was being taken off my post. As soon as I fully realized who it was and what was being done I gave my tommy gun to him.

F.D. Day
(F.D. Day) Pte M7101

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused on 2 Feb 44 and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

E.L. Boyd
(E.L. Boyd) Captain
The Loyal Edmonton Regiment
Officer Taking Summary

2 Feb 44
In the Field

No. M7101 Name DAY, F.D. Sqn., Battery, or Company Corps C.I.C. Date of enlistment 15 Sep 39 G.C. Badges Service or Proficiency Pay M.F.M. (A F B 122) 175M—2-41 (121) H.Q. 1772-99-161

Date of last entry in Company Conduct Sheet No. and date of last drunk 1 28 Aug 43 Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Calgary	2 Apr 40	Pte		AA10 Breaking in and out of Barracks		96 hrs deten.	2 Apr 40	Lt-Col	Elliot
				AA15(1) AWL and default while in detention	Cpl Stoddard	4 days D.P.	6 Apr 40	Lt-Col	Elliot
Kettering	4 Jun 40	Pte		AA15(1) AWL 23 hrs and 40 mins	Sgt Wade	14 days CB	5 Jun 40	Capt	Young
Oxted	2 Nov 40	Pte		AA15(1) AWL from 2330 hrs 2 Nov 40 until 2130 hrs 3 Nov 40	L/Cpl Gordon	3 days F.P.	4 Nov 40	Capt	Young
Pierpont	27 Nov 40	Pte		AA40 Left prisoner in his charge unguarded	CSM Wade Sgt Giles	14 days F.P.	28 Nov 40	Capt	Young
				AA15(1) AWL 2 hrs and 5 mins	Cpl Stewart				
~~XXXXX~~	~~XXXXXXXX~~ 41			~~XXXXXXXXXXXXXXXXXXXXXXXX~~					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Dec 41	Pte		AA15(1) AWL from 2230 hrs 25 Dec 41 until 0700 hrs 26 Dec 41	Cpl Pape	1 Day D.P.	27 Dec 41	Major Heaton	
Field	17 Jan 42	Pte		AA15(1) AWL from 2230 hrs 17 Jan 42 until1200 hrs 20 Jan 42	Cpl Pape	28 days Det.	21 Jan 42	Major Bury	
Field	26 Jun 42	Pte		AA15(1) AWL from 0800 hrs 26 Jun 42 until 0730 hrs 1 Jul 42	Sgt Harrington	14 Days D.P. 12 Days F.P.	3 Jul 42	Major Jefferson	
Field	21 Nov 42	Pte		AA15(1) AWL from 2200 hrs 14 Nov 42 until 1425 hrs 18 Nov 42	Cpl McMillan	12 Days Pay 7 Days D.P.	21 Nov 42	?	
Field	28 Jan 43	Pte		AA15(1) AWL from 0800 hrs 28 Jan 43 until 1300 hrs 30 Jan 43	Cpl Murphy Sgt Johnston Lt Johnson	Admonished	3 Feb 43	Lt-Col J.C. Jefferson	
Field	28 Aug 43	Pte	1	AA19 Drunkenness			30 Aug 43	Lt-Col J.C. Jefferson	

CERTIFIED TRUE COPY

(J.T. Harris) Capt & Adjt
The Loyal Edmn R

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

In lieu of

Number M7101 Rank Pte Name DAY, F.D. Regiment or unit The Loyal Edmn R

1. The following is a fair and true summary of the entries in the Regimental conduct sheets of the accused, exclusive of convictions by a Court Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AA15(1) four	times	AA15(1) nine	times
For	AA19 one	times	AA19 one	times
For		times	AA40 one	times
For		times	AA10 one	times

~~[illegible]~~

or,

~~[illegible]~~

NOTE:- ~~[illegible]~~

2. The accused has been previously convicted N/A

or,

Previous convictions of the accused by a court martial or a civil court of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time N/A

or,

The accused at the present time is under sentence for N/A

beginning on the N/A day of

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 12 days in military custody, making a total of 12 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 26 yrs 10 months

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 13 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 4 yrs 4 months

8. The accused is entitled to reckon 4 yrs service for the purpose of determining his pension etc.

9. The accused is ~~[illegible]~~ entitled to). State any military decoration or reward.
CANADIAN VOLUNTEER SERVICE MEDAL AND CLASP

10. If the accused is a warrant officer. The accused before he was made a warrant officer last held the regimental rank of N/A

11. In the case of an officer. The accused holds in the Permanent Force the rank of N/A dated _____ and in his regiment (or corps), the rank of _____ dated _____

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:-

N/A
Date of Promotion

In the rank of N/A years

In the rank of _____ years

In the rank of _____ years

NOTE:- If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number _____ Rank _____

Name _____ of _____ Unit
Regiment

NOTE:- A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date & Place of Trial	Charge upon which convicted	Sentence of the court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st day of February 1944 [signature] Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked _____ signed by the president, and annexed to the proceedings.

"JLM" Major

CERTIFIED TRUE COPY

H.J. McDougall CAPT
(H.J. McDOUGALL)

Spare copy.

EEE-46

Army Form A.3.

...dence to be PINNED here

PROCEEDINGS

Law, have committed ...

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ "BMH"

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~[I am unable to appoint:-~~

~~*(1) Three Officers to form the Court.]~~ "BMH"

~~*(2) A Field Officer as President.)~~

~~for the following reasons, namely:-~~

President.

Rank.	Name.	Regiment.
Major	J.L. Malkin	Seaforth Of C

Members.

Rank.	Name.	Regiment.
Lieut.	J.G. Conventry	P.P.C.L.I.
Lieut.	J.C. Allen	Seaforth of C
(W) Lieut	J.R. Heppell	P.P.C.L.I.

*Signed "B.M. Hoffmeister" Brig.
(B.M. Hoffmeister)
Commanding 2 Cdn Inf Bde.
Convening Officer.

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M7101 Private DAY, Francis David. Loyal Edmonton Regiment.	First Charge A.A. Sec6(2)(e) When on Active Service, When a Soldier acting as sentinel sleeping on his post	"JLM" Guilty	Guilty to serve imprisonment for a period of 1 year with hard labour 11 Feb 44 "JLM" Maj	I confirm the finding and sentence of the court. 12 Feb. "BMH"

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) "B. M. Hoffmeister" (Signed) "J. L. Malkin"
"B.M. HOFFMEISTER Brig"
Commanding 2 Cdn Inf Bde — Confirming Officer (d) — Major — President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 11th day of February 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses "JLM"
*(3. ~~The Interpreter.~~)
*(4. The officers under instruction)

were duly sworn.

Signed this 11 th day of February 1944.

"J.L. Malkin, Major"
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

"JLM" Maj.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. "BMH"

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 12 day of Feb 1944.

"B.M. Hoffmeister, Brig"
Confirming Officer.

Promulgated and extracts taken in the case of M7101 Pte Day, F.D.

(a) (Dated) 15 Feb 1944 (Signed) "A.D.Longhurst, Major" A/21/c L Edmn R

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CERTIFIED TRUE COPY
H.J. MacDougall CAPT
(H.J. McDOUGALL)

"JLM" Major
Spare copy.
EEE 4/6

Evidence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Ninth day of February, 1944. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 2 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, ~~being subject~~ to Military

11 Feb 44

The Court recommends that this man's case be investigated by medical authorities with a view to establishing whether or not he is suffering from any physical or mental complaint.

"J.L. Walkin"
Major
President.

for the following reasons, namely:—

President.

Rank.	Name.	Regiment.
Major	J.L. Walkin	Seaforth Of C

Members.

Rank.	Name.	Regiment.
Lieut.	J.G. Conventry	P.P.C.L.I.
Lieut.	J.C. Allen	Seaforth of C
(W) Lieut	J.R. Heppell	P.P.C.L.I.

*Signed "B.M. Hoffmeister" orig.
(B.M. Hoffmeister)
Commanding 2 Cdn Inf Bde.
Convening Officer.

CHARGE SHEET

"QLM" maj

The accused, U7101 Private Francis David DAY of the Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, CMF, when on Active Service, is charged with:-

First Charge
Sec 6(2)(e)
Army Act

When on Active Service

WHEN A SOLDIER, ACTING AS SENTINEL, SLEEPING ON HIS POST

in that he

In the Field at 2140 hrs 30 Jan 44, whilst on guard, was found asleep at his post.

Date 2 Feb 1944
In the Field

"E.W. Day"
(E.W. Day) Lt.-Col.
Cond The L Edmn R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

Date 2 Feb
In the Field

"H.W. Hoffmeister, Brig."
Commanding 2 Cdn Inf Bde

"JLH"
Maj.

MEDICAL OFFICER'S CERTIFICATE
(ER) (CLH)(Para 597)

I certify that I have this morning examined No. M7101
Rank Pte Name Day, F.D. of the Loyal
Edmonton Regiment and in my opinion he is fit/~~unfit~~ to
undergo trial by Court Martial.

"T.R Grainger, Capt"
(T.R. Grainger) Captain
Medical Officer i/c
The Loyal Edmonton Regiment.

Station In the Field

Date 11 Feb 44

"JLM" Major

Accused M/161 Pte Francis David DAY, Loyal Edm Regt
(No.) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in Italy (Country) on 11 Feb 44 (Date)

	Rank	Name	Unit
PRESIDENT:	Major	J.L. Malkin	Seaforths of Can.
Member:	Lieut	J.C. Allan	Seaforths of Can.
	Lieut	J.G. Coventry	P. P. C. L. I.
JUDGE ADVOCATE: (if any)		N/A	
OFFICERS UNDER INSTRUCTION:	Lieut	D.A. MacDonald	P. P. C. L. I.
	Capt	J.A. Dougan (MC)	Loyal Edmonton Regt.
PROSECUTING OFFICER:	Capt	E.L. Boyd	Lawyer? Ans, No
	Lieut	H.G. Field	Lawyer? Ans, No

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (RsP 17(E), 22(A).

The President, in closed court (RP 22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (AA 49; RP 105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (RP 106).

The accused is (are) brought before the court, and at 1310 hrs, the trial commences.

The Prosecuting Officer produces a Medical Certificate under KR (can) 597 (See CMHQ Circular Letter173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused: Do you object to N/A as interpreter? Ans

The Interpreter is duly sworn.

Do you object to N/A as Shorthand Writer? Ans

The Shorthand Writer is duly sworn. (Forms of Oath On Page "D")
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (RP 10)

President to accused
Do you object to be tried by me as President or by any of the Officers whose names you have Heard read over? Ans No Sir.

The President, Members, Judge-Advocate and Officers under Instructions are duly sworn (RP 26-27 (Forms of Oath on Page "D")

The Charge Sheet(s) is (are) initialled by the President.

"JLM" Maj

The Prosecuting Officer informs the Court that the accused (has not) elected trial by Court Martial (AA 46(8).

(If special plea/s is/are made for seperate trial on one or more charges (RSP 62(E),108); or as to the jurisdiction of the Court (RP 34); or in bar of trial (RP 36); or as to accused's mental fitness to stand trial (AA 130, RP 57), record such pleas and evidence (if any) on seperate sheet/s to be initialed by the President and attached to the proceedings.

Each Charge is read to the accused and he is asked as each charge is read whether he pleads Guilty or not Guilty (RP 112). He pleads as follows:

First Charge Guilty.

Second Charge _____

Third Charge _____

Fourth Charge _____

Fifth Charge _____

Sixth Charge _____

Seventh Charge _____

Eighth Charge _____

(For procedure on alternative charges, see RP 37, fn 2)

Further proceedings are recorded on pages hereto attached.

"JLM" Maj

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alternations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(B) and No Sir

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P. 37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (RP.37(C). Ans Yes Sir

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C). Ans No Sir "JLM"

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (A.F.B.6), signed in the manner required by A.C.I.163(i) (h) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked "M", and "C", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131)

7. President to accused;
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). And No Sir (No cross-examination)
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of A.F.B.3)
(Punishments, A.C.I.44, M.R.(Can)563-566; one sentence only awarded, R.P.48). Sentence should be dated)

The sentence is not announced to the accused by the Court.

"J.L. Malkin, Major"
(Signature of President)

"JLM" Maj

PAGE 'B'

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President)

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P.39(1). Ans _____

2. The Prosecutor's opening address(if any) (R.P.39(2)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D')

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn 1; R.P.70 fn1)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (R.P.40(D)(ii)(a)).

5. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans _____
Q. Do you intend to call any other witness in your defence? Ans _____
Q. Is he a witness as to character only? (R.P.40(B) Ans _____

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge- dvocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see Rs P 40, 41 and 42)

8. The Court is now closed to consider the finding (Rs P 43 and 117)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. R.P. 117(B)

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (A.F.W.6) signed in the manner required by A.A.163(1)(h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings, (R.P.46: Overseas A.O.3181)

11. President to accused:
Q. Do you wish to address the Court on the statements of Character Service and Conduct and in mitigation of punishment? (R.P.46(D). Ans _____. No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

12. The Court is now closed to consider the sentence (Record on Page 2 A.F.....3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48); sentence should be dated.

The sentence is not announced to the accused by the Court.

_____
(Signature of President)

"JLM" Maj

Statement in Mitigation by Accused.

Sir, I have had very little illness since being in the Army. But while in in Sicily with a mule train a German mortar shell landed within 2 feet of me, and though not wounded I was very badly shocked. It was 3 ½ days before I had complete control of myself. I had been evacuated to 16 CCS. After 3 days I managed to talk my way back to the unit. On returning to the unit I was still very shaky & was kept from going up the line for a couple of days. Hostilities ceased, & I saw no more action until arriving in Italy, and was under no shell-fire until near Vinchiature, and found that I could carry on normally under fire. The next heavy shell-fire was about the 21 Dec, when I was thrown off

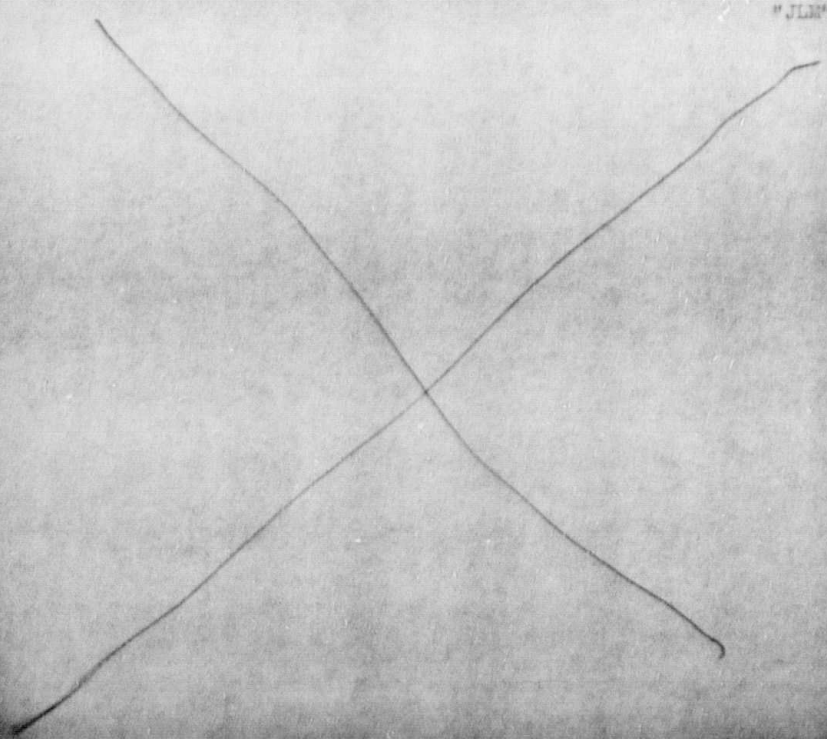
---"JLM"

my feet by a German demolition charge, and my bayonet went into my knee. I was evacuated, for shock and wounds. On the way to the hospital there was found to be a discharge from my penus which was believed to be venerial disease, but after investigation it was found not to be so. As soon as I could walk I left the Hosp, and went to C.B.R.D., and returned to the field unit about 8 days later, without any medical examination. On returning to the field I found myself very nervous and was unable to eat or sleep. I had a nervous breakdown about the 16 Jan. and the next morning went to the unit M.O. who gave me medicine. It helped, but I could not sleep well, and was very tired all the time, On the 30 Jan. there had been very

---
"JLM"

little shelling and being very tired and free from worry and having eaten I fell asleep in my trench. After arriving at my post and all being quiet and feeling tired I fell asleep.

"JLM"



No. M7101 Name DAY, F.D. Sqn, Battery, or Company — Corps C.I.C. — Date of enlistment 15 Sep 39 — Service or Proficiency Pay — MFM 6 (AFB 122) 40/P&S/126 (9428)

Date of last entry in Company Conduct Sheet — No and date of last drunk 1. 28 Aug 43 — Period not reckoning towards freedom from extra fine — Sheet No — Badges — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Calgary	2 Apr 40	Pte		AA 10 Breaking in and out of Barracks		96 hrs deten.	2 Apr 40	Lt-Col	Elliot
				AA15(1) AWL and default while in detention					
Kettering	4 Jun 40	Pte		AA15(1) AWL 23 hrs and 40 mins	Cpl Stoddard Sgt Wade	4 days D.F. 14 days CB	6 Apr 40 7 Jun 40	Lt-Col Capt	Elliot Young
Oxted	2 Nov 40	Pte		AA15(1) AWL from 2330 hrs 2 Nov 40 until 2130 hrs 3 Nov 40	L/Cpl Gordon	3 days F.P.	4 Nov 40	Capt	Young
Pierpoint	27Nov 40	Pte		AA40 Left prisoner in his charge unguarded	CSM Wade	14 days F.P.	28 Nov 40	Capt	Young
				AA15(1) AWL 2 hrs and 5 mins.	Sgt Giles Cpl Stewart				

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26Dec 41	Pte		AA15(1) AWL from 2230 hrs 25 Dec 41 until 0700 hrs 26 Dec 41	Cpl Pape	1 Day D.P.	27 Dec 41	Major	Beaton
Field	17Jan 42	Pte		AA15(1) AWL from 2230 hrs 17 Jan 42 until 1200 hrs 20 Jan 42	Cpl Pape	28 days Det.	21 Jan 42	Major	Bury
Filed	26Jun 42	Pte		AA15(1) AWL from 0800 hrs 26 Jun 42 until 0730 hrs 1 Jul 42	Sgt Harrington	14 days D.P.	3 Jul 42	Major	Jefferson
Field	21Nov 42	Pte		AA15(1) AWL from 2200 hrs 14 Nov 42 until 1425 Hrs 18 Nov 42	Cpl McMillan	12 days F.P. 12 days pay	21 Nov 42	?	
Field	28Jan 43	Pte		AA15(1) AWL from 0800 hrs 28 Jan 43 until 1300 hrs 30 Jan 43	Cpl Murphy	7 days D.P.	3 Feb 43	LtCol	J.C. Jefferson
Field	28Aug 43	Pte	1	AA19 Drunkenness	Sgt Johnston Lt Johnston	Admonished	30 Aug 43	Lt-Col	J.C. Jefferson
				CERTIFIED TRUE COPY "G.T Harris" (G.T. Harris) Capt & Adjt The Loyal Edmn R.					

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of N/A
Permanent Force
unit
..... dated ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of N/A years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....
Army
Name ..... of ..... Unit
Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7 day of February 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "G. Harris" Capt. signed by the president, and annexed to the proceedings.

"M"

M.F.B. 358
22M—5-41 (372-5)
II.Q. 1772-39-020
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M7161	Pte	DAY, F.D.	The Loyal Edmn R.

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AA15(1)	Four times	AA15(1)	nine times
For	AA19	One times	AA19	One times
For		times	AA40	One times
For		times	AA10	One times

"GH" Number of instances of gallantry or distinguished conduct

or.

"GH" There are no entries in the conduct sheets of the accused.

"GH" NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted N/A

or.

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. N/A

or.

The accused at the present time is under sentence for N/A beginning on the N/A day of

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 12 days in Air Force / military custody, making a total of 12 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is "GH" 26 yrs 10 months "GH"

6. The date of his ~~commission~~ attestation specified in his record of service is / attestation paper "GH" 13 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 4 yrs 4 months

8. The accused is entitled to reckon 4 yrs service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to an air force decoration, or air force reward (or is in possession of or entitled to). State any air force / military decoration or reward. "GH" CANADIAN VOLUNTEER SERVICE MEDAL AND CLASP

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force / military N/A

Statement as to whether or not
the accused wishes to have an
officer defend him at his trial
by F.G.C.M.

I desire to have Lieut H.G. Fields of The Loyal
Edmonton Regiment defend me at my trial by F.G.C.M.

"F.D. Day."
(F.D. Day) Pte M7101

SUMMARY OF EVIDENCE in the case of M7101 Private Francis David DAY of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas CMF

By order of the Commanding Officer the evidence is taken on oath.

1st Witness Prosecution

M16373 Sgt Purves, W. of The Loyal Edmonton Regiment having been duly sworn states:-

I am M16373 Sgt Purves, W. of The Loyal Edmonton Regiment. On the night of 30 Jan 44 I warned Pte Day for his turn on guard. We had been warned that a Jerry patrol was between the Seaforth's and the Pat's so I told him to be on the alert. He stated that Cpl Walker had already warned him so I watched until he went on the post then went away. This would be about ten minutes to nine. I returned with Cpl Ryan about twenty minute to ten and found Pte Day sleeping on his post. I unloaded his tommy gun, then woke him up. Immediately I asked him for the tommy gun and we had a dispute over it. After getting the tommy gun we took him up to Lieut Simmons who put him under open arrest.

Questioned by Officer Taking Summary.

Q. 1 Do you recognize the accused as the man in question?
A. 1 Yes Sir.

Q. 2 Why did you unload his tommy gun?
A. 2 I figured that if it were loaded and he was awakened suddenly he might fire it before he realized what was happening.

Cross Examined by the Accused

Q. 3 Did I not, as soon as I realized I was being taken off the post, hand the tommy gun over?

A. 3 No, you did not.

"W. Purves"
(W. Purves) Sgt M16373

2nd Witness Prosecution

M15869 Cpl Ryan, L.G. of The Loyal Edmonton Regiment having been duly sworn states:-

I am M15869 Cpl Ryan, L.G. of The Loyal Edmonton Regiment. About twenty minutes to ten on 30 Jan 44 Sgt Purves took me along with him to the post where Pte Day was doing his shift. We found him asleep. Sgt Purves then took the tommy magazine off the gun, then woke Pte Day. Sgt Purves told him he was on a charge for sleeping on his post. He then asked Pte Day for the tommy gun which Pte Day refused to give. There was an arguement and we told him at least three times to turn over the tommy gun which in the end he did. We reported the matter to Lieut Simmons who instructed us to place him under open arrest.

Questioned by Officer Taking Summary

Q. 4 Do you recognize the accused as the [redacted] in question?
A. 4 Yes Sir.

2nd Witness Prosecution (Cont'd)

Q. 5 Had Pte Day gone without sleep for any great length of time?
A. 5 No sir.

The accused declines to cross examine this witness.

"Cpl. L.G. Ryan"
(L.G. Ryan) Cpl M15869

3rd Witness Defence

M16955 Cpl Walker, R. of The Loyal Edmonton Regiment having been duly sworn states:-

I am 16955 Cpl Walker, R. of The Loyal Edmonton Regiment. Having been given the times for guard for my section I detailed them and at the same time warned my section that there was reported to be a Jerrypatrol between the Seaforth's and Pat's. Pte Day is in my section and was there when the section was warned. His time on guard was from 2045 hrs until 2300 hrs.

Questioned by Officer Taking Summary

Q. 6 Do you recognize the accused as the man in question?
A. 6 Yes sir.

Cross examined by the Accused

Q. 7 Cpl Walker, do you think that I have been sleeping normally since returning from hospital?
A. 7 You mentioned to me that you haven't been sleeping well but there is no way I can prove whether you had been or not.

"R. Walker"
(R. Walker) Cpl M16955

The accused was cautioned as follows:-

"Do you wish to make any sta tement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

Statement by the Accused

M7101 Pte Day, F.D. Of The Loyal Edmnoton Regiment having been duly sworn sates:-

I am M7101 Pte Day F.D. of The Loyal Edmonton Regiment. On the night of 30 Jan 44 I was warned for guard by Cpl Walker, my time for guard being from 2045 hrs until 2300 hrs, later being told by him that a Jerry patrol was between the Pat's and the Seaforth's Having slept very poorly for the last month I was feeling exceedingly tired. I sat by a warm fire till about ten minutes

---

Statement by the Accused (cont'd)

to eight when I went to my slit trench and slept until awakened by Sgt Purvis who again warned me about a Jerry patrol. Going on my post I kept catching myself falling asleep. I got up, walked around, sat down again and the next thing I knew was that someone was shaking me. I got up not knowing who it was and

Statement by the Accused (Cont'd)

evidently before I was fully awake Sgt Puruis warned me I was being taken off my post. As soon as I fully realized who it was and what was being done I gave my tommy gun to him.

"F.D. Day"
(F.D. Day) Pte M7101

I certify that the foregoing Summary of Evidnce consisting of three pages was taken down by me in the presence of the accused on 2 Feb 44 and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

"E.L. Boyd"
(E.L. Boyd) Captain
The Loyal Edmonton Regiment
Officer Taking Summary

2 Feb 44
In the Field

List of Witnesses for Prosecution and Defence

Prosecution:-

M16373 Sgt Purvis, W.
The Loyal Edmonton Regiment
Canadian Army Overseas, CMF

M15869 Cpl Ryan, L.G.
The Loyal Edmonton Regiment
Canadian Army Overseas, CMF

Defence

M16955 Cpl Walker, R.
The Loyal Edmonton Regiment
Canadian Army Overseas, CMF

5 B 8 H

Cpl Day F.H.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K47768 Gnr Frederick Horace DAY, Westmr R(AT)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~Awaiting CM (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the ranks and to forfeit 30 days pay.

(Sgd) W M W Shaw Capt — Judge-Advocate, if any. — 10 Feb 45 — Date awarded. — (Sgd) [illegible] Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence of the Court

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

(Sgd) [illegible] Lieut Col

Date 10 Feb 45 — Commanding 12 Can Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K47768 Gnr Day F.H.	12 Feb 45	[illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT C.M.H.Q. as No. 5384

FIELD GENERAL COURT-MARTIAL

CFA68 (To Issue of AFA31 40-P & S/1898 (14/6/44))

4/388

Convened by Order of Brig J S Lind Comd 12 Can Inf Bde dated 9 Feb 45

RECEIVED 27 MAR 1945 JAG-Branch C.M.H.Q.

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substantive rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K47768	Gnr	Frederick Horace	DAY,	Westmr R(AT)

PROCEEDINGS OF TRIAL.

At (place in country) Italy on (date(s)) 10 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~ DMWS, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Ordsr, CF A25, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50. RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~As Pte Iaw is absent: Do you object to~~ ~~as interpreter? As~~

~~The interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer? As~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No, Sir. (2)

(1. RP 110. 2. If no objection, waiting member returns (~~if any~~). If objection, see procedure AA 51, RP 25, 71, 16, MML p 742.)

A7. The President, Members, JA, ~~Court-martial mess-waiter, if any~~ DMWS are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D J Bastke	4 PLDG
Member	Capt	W H Ackhurst	12 Cdn Inf Bde
Member	Lt	R J Michener	Lt R S R
Judge-Advocate	Capt	W M W Shaw	HQ 5 Cdn Armd Div
Prosecutor	Lt	W C Brumpton	Westmr R(AT)
Defending Offr	Lt	R E ~~Monnerey~~ Monnery	"

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI p 33.)

A8. The accused before arraignment makes(s) (no) ~~X~~ plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~adjourns~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No, Sir.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~(a) The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by son of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*c*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, *117*(*B*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (*a*), *RP* 45, 120(*A*). 2. AA 54(2), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes, Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 40 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, I do with to.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), *RP* (20(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-56, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 359, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(1), *KR Can* 564. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K-47768 Corporal Frederick Horace DAY, The Westminster Regiment (Motor) a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, did absent himself without leave from his unit, The Westminster Regiment (Motor) from 1200 hrs 25 January 1945 until he surrendered at 1200 hrs 2 February 1945.

(G.C. Corbould, DSO) Lt-col
Comd
The Westminster Regt. (M)

In the Field
8 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J C H Lind) Brig
Comd 12 Cdn Inf Bde

8 Feb 45

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA3)
40/PA3/1097 (2569)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K 47768	Cpl		Frederick Horace	DAY	WESTMR R(M)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~s~~ set forth in the Charge Sheet~~s~~ attached and on (*date*) 9 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence~~s~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	D J BURKE		4 PLDG

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO 12 Cdn Inf Bde Wksp RCEME		
Capt or Lt	to be detailed by CO Lan & Ren Scot R		

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	to be detailed by CO WESTMR R(M)		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	W M W SHAW		HQ 5 Cdn Armd Div

On Active Service in the Fd

in ITALY (Country.)

(J S H Lind) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 9 Feb 45

Commanding 12 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT.

K.R. (Can) Para. 807.

I certify that I have this morning examined

No K-47765 Rank G[illegible] Name DAY, F.H.

Unit [illegible] Regt (M)

and in my opinion he is fit ~~[illegible]~~ to undergo trial by

Court Martial.

Station In the Field.

Date [illegible]

[illegible] Capt

R.C.A.M.C.

Character Evidence

Lt J P Cook – Westmr R duly sworn states:

"Was pl comd from Oct 41 to approx Jun 43 – during time accd outstanding member – military bearing & devotion to duty ideal – was a dvr – ock a standard in regt – never had any trouble with accd & he is of value to any regt & particularly this regt – was a good example to men in unit.

Cross Exam – Nil.

Court – have not had accd under comd during action – understand he has taken over duties of pl sgt in action – was a credit to pl – was see comd when went OS.

R. P. 83(B) complied with

2nd witness: Lt J. Oldfield – Westmr R duly sworn states:

"I pl – have had this pl since May – have known accd 1½ yrs & in my pl since May – has been in every action with exception of short time when wounded – last Sept had several cas in pl & for a time was necessary for accd to take over duties of pl sgt – carried out duties well – always steady, capable and absolutely reliable in action – would like to have him back in my pl – was made NCO in Aug – only a week NCO when took over pl."

Cross examination – Nil

R. P. 83(B) complied with.

3rd Witness: Maj: DDB Mackenzie-Westmr
Regt duly sworn states:
"2/c regt for 2 yrs comd A Coy of which
accd member - during that time found
accd hardworking, capable soldier
in my estimation is an exemplary soldier.
Cross Examination - nil.
R.P. 83(B) complied with.

Plea in Mitigation - accd as you have
heard has been NCO only short time most
of time in action did not realize how
serious offence was - when realized returned
immediately - enlisted 1940 & been best
soldier - NCO in Aug & shortly after had
to take over as pl sgt until Offs came up -
during time discharged duties faithfully -
ask Court to take this into consideration
when considering sentence.

W.M.D. Shaw Capt

THE WESTMINSTER REGIMENT (MOTOR) 3 Feb. 45.

"A" COMPANY.

Summary of Evidence in the case of K47768 Cpl. Day F.H., "A" Coy., The Westminster Regiment (M), C.A., C.M.F.

The Commanding Officer directs that the evidence be taken on oath.

First Witness: K47387 Sgt. Chapman F.J. "A" Coy., The Westminster Regiment (M), having been duly sworn states:

I am K47387 Sgt. Chapman F.J., "A" Coy., The Westminster Regiment (M), and was at all times materiel hereto. At 1200 hours on 25 Jan. 45 on calling a platoon parade, found that K47768 Cpl. Day F.H. was absent. I then reported his absence to the C.S.M. I did not see him again until the afternoon of 2 Feb. 45.

The accused declines to cross-examine the witness.

Second Witness: K67865 Pte. McLeod K.G., "A" Coy., The Westminster Regiment (M), having been duly sworn states:

I am K67865 Pte. McLeod K.G., "A" Coy., The Westminster Regiment (M), and was at all times materiel hereto. At 1200 hours 2 Feb. 45 K47768 Cpl. Day F.H. entered the Orderly Room and requested me to make a note of his arrival and the time of his reporting to the Company. I did so and reported the same to the C.S.M. at the earliest opportunity.

The accused declines to cross-examine the witness.

The accused was questioned and cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used in evidence.

Accused: I have nothing to say.

F H Day

I certify that R.P.4 (C),(D),(E), and (F) have been complied with.

Taken by me in the field, in the presence and hearing of the accused, this 3rd day of Feb. 45.

J M Hume Lieut.

J.M. Hume (Lieut.)

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K47960	Cpl	DAY F.H.	The Westminster Regt. (M)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	• Within last 12 months.	•Since Enlistment.
For	A.A. Sec 15(1) 1 times	1 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

• The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

~~Nature of duties of early withdrawal under~~ NAR

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Particulars of conviction by court martial & sentence, award under section 47 of the~~ NAR

~~Army Act, or conviction by civil court under section 73 of the Army Act are as follows:~~ NAR

3. The accused is not under sentence at the present time, *or* ~~The accused is the person dealt with under section 71~~ NAR

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 0 days in military custody, making a total of 0 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ NAR attestation paper is 31 years

6. The date of his ~~attestation~~ NAR specified in his ~~attestation~~ NAR attestation paper is 6 Jul 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 6 mos

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 6 mos service.

9. The accused is entitled to reckon 4 yrs 6 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to *(state any military decoration or reward)* Can Vol Service Medal and Clasp

11. *(If the accused is a warrant officer.)* The accused before he was made a warrant officer last held the regimental rank of dated

12. *(In the case of an officer.)* The accused holds in the army the rank of dated and in his regiment (*or* corps or department) the rank of dated

"C"

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. K47768 Rank Cpl Name Day F.H. of Western K(a) Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

SBK

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19th day of Feb. 45

SBK Sutton Capt.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of Corporal 5 mos. years, 23 Aug 44.

In the rank of _____ years, _____

In the rank of _____ years, _____

(*Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No K47768 Name DAY F. H. Sqn, Battery, or Company Corps C. I. C. Date of enlistment 6 JUL 40 GC Badges Service or Proficiency Pay

MFM 6 (AFB 122) 40/P&S/136 (5438)

Date of last entry in Company Conduct Sheet No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Signature OC Company, etc J K Mahony, Major Character.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 5 Oct 43. Last entry 5 Oct 41. No cases of Drunkenness									
Field	15 Apr 44	Pte		AA Sec 15(1) AWL 1500 hrs 15 APR 44 till 1500 hrs 19 Apr 44 (4 days)	Sgt. Head C.L.J. Documentary	Forf 4 days pay	6 May 44	Lt. col. G.C. Corbould	Forf 4 days FR 1 149(2) Total forf 8 days.

Certified true copy from Regimental Books in my custody

7 Feb 45.

[illegible] Capt & Adjt

(PTO)

LIST OF WITNESSES

For prosecution:

K47387 A/Sgt Chapman F.J. The Westminster Regt. (M)

K67865 Pte McLeod H.G., The Westminster Regt. (M)

For defence:

nil.

I hereby acknowledge receipt ~~acknowledge~~ of one copy of the Charge Sheet and one copy ~~receipt~~ of the Summary of Evidence of my forthcoming trial by Field General Court Martial.

F.H. Day
(F.H. Day)

I desire the Convening Officer to detail an officer to defend my at my forthcoming trial by Field General Court Martial.

F.H. Day
(F.H. Day)

amws

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

W. I.

Gen. DAY, H.

B.31950, Gnr. DAY, Harold
2 C.A.R.U.

W. 1.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Nineteenth day of January, 19 43

Whereas it appears to me, the undersigned, an officer in Command of "C" Group, Cdn Reinforcement Units, Canadian Army, Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*(and that it is not practicable to delay the trial for reference to a superior qualified officer)~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*(I am unable to appoint:—~~

~~*(1) Three Officers to form the Court;~~

~~*(2) A Field Officer as President)~~

~~(for the following reasons, namely:—)~~

* Omit if not applicable.

Proceedings Reviewed [signature] Reviewing Officer [signature] 1 Feb 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
LT.-COL.	D.L. REDMAN	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
MAJOR	J.H.R. THOMSON, RCA.	3 C.A.R.U.
CAPTAIN	J.G. MOONEY, RCA.	2 C.A.R.U.
LIEUT.	J.T. MCEVOY, RCA (Waiting Member).	2 C.A.R.U.

*Signed [signature] Brigadier.

Commanding "C" Group, C.R.U.

[signature]

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.31950 Gnr. DAY, Harold R.C.A. 2 C.A.R.U.	FIRST CHARGE A.A. Sec. 15(1).	Guilty	Guilty except that he surrendered to and was not apprehended by the Military Police	
	SECOND CHARGE A.A. Sec. 18(4).	Guilty	Guilty	Confirmed
	THIRD CHARGE A.A. Sec. 10(3).	Guilty	Guilty	

Sentence

To undergo Detention for a period of Fifteen (15) months and to be put under stoppages of pay until he has made good (a) the sum of £4-12-5 set forth in the 2nd Charge (b) the sum of £2-10-3 the expenses of his apprehension

See Charge Sheet Attached.

20 Jan 1943

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary) :—

(Signed) J. Stewart Brigadier. (Signed) [signature] Lt Col

Commanding "C" Gp. Cdn Reinf Units.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 20th day of January, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 20th day of January 1943

[signature] Lt Col
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ Yes,

Signed this 21st day of January 1943.

J. Stewart
Confirming Officer.

Promulgated and extracts taken in the case of B-31950 Gnr Day. Harold R.C.A. 2 CARU.

(a) (Dated) 21 Jan 43 (Signed) [signature]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

94. Wt. 28092/1218 70m 2/42 W. & Co., Ltd. Gp. 748/2

CHARGE SHEET

The accused No. B 31950 Gunner Harold DAY, Royal Canadian Artillery, a soldier on the strength of No 2 Canadian Artillery Reinforcement Unit, Canadian Army (Overseas) while on Active Service, is charged with :-

FIRST CHARGE
Army Act
Sec 15 (1)

While on Active Service, Absent Without Leave, in that he, at Superior Camp, Field, absented himself without leave from 2200 hours, 9th September 1942, until apprehended by the Military Police at the Y.M.C.A. Peter Street, Manchester, at approximately 2200 hours, 6 January 1943, thereby incurring a cost of apprehension to the amount of £2.10.3.
(absent 119 days)

SECOND CHARGE
Army Act
Sec 18 (4)

Stealing Public Property, in that he, at Superior Camp, Field, on or about 9 Sep 42, stole a .38 calibre pistol number 845780 and 23 rounds of .38 pistol ammunition, the property of the Canadian Government, on charge to Captain C.D. Jewell, R.C.A. to the value of £4.12.5.

THIRD CHARGE
Army Act
Sec 10 (3)

Resisting an escort whose duty it was to have him in charge, in that he at Lower Richmond Road, Putney, on 10th September 1942, at 1520 hours, while under escort of H 29066 L/Cpl Anderson, G.S. Corps Military Police and B 11146 L/Cpl Barry, G.L. Corps Military Police, resisted the escort by threatening them with a loaded revolver.

Dated this 16th
day of January, 1943
at Ludshott, Hants.

(C.E. de Pencier) Lt-Col. R.C.A.
A/Commanding Officer
No 2 Cdn Arty Reinf Unit
Cdn Army (Overseas)

To be tried by Field General Court Martial.

Brigadier.
Commanding "C" Group, Cdn. Reinf. Units.
(Convening Officer).

BORDON, Hants.
19 Jan 43.

2CAHU Form #92

MEDICAL CERTIFICATE

I certify that I have this day examined No. B31950 Gnr. Day. H.

and find him free from infectious or contageous diseases, and

fit to undergo ~~detention~~ trial by FGCM.

Dated at ~~Quebec Barracks.~~ Superior Camp.

0940 hrs 20. Jan 43.

J. B. Nicholson Capt.
(Medical Officer)
No. 2 Cdn. Arty. Holding Unit
Canadian Army (Overseas)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT 2 C.A.R.U. SUPERIOR CAMP LUDSHOTT, HANTS.
ON THE 20th DAY OF JANUARY 1943

The accused. R. 319.50 CHR. DAY H. ..... Unit. 2 C.A.R.U. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 & 23.

The accused is brought before the Court.
The Medical Certificate is presented to the Court.
The order convening the Court is read by the President and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President. LT.-COL. D.L. REDMAN V.D. ..... Unit. H.Q.C.R.U. .....

Members. MAJOR. J.H.R. THOMSON ..... Unit. 3 C.A.R.U. .....

CAPT. J.G. MOONEY ..... Unit. 2 C.A.R.U. .....

The officers under instruction are duly sworn:-

MAJOR. W.J. ANDREW ..... 2 C.A.R.U.
LIEUT. R.J. MACEWAN ..... Unit. "
LIEUT. G.C. EVANS ..... "
" L.V. McCULLINAN ..... Unit. "
" J.T. McEVOY ..... "

Prosecutor. LIEUT. J.D. MACDONALD ..... Unit. 2 C.A.R.U. .....

Defending Officer. MAJOR J.K. McCULLAGH ..... Unit. 2 C.A.R.U. .....

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B)
The Summary of Evidence is read.
The Prosecutor is sworn and produces MFB 355 and MFM 6.
The Court complies with R.P. 46(B). ~~[illegible]~~

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment~~
(b) ~~calls witnesses as to character~~
(c) ~~calls witnesses in mitigation of punishment~~
(d) addresses the Court by his Defending Officer

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Statement in mitigation of punishment by the Defending Officer attached hereto.

[signature]

(OVER)

Statement in mitigation of punishment in the case of B31950 Gnr Day H.

The accused was born in Winnipeg Oct 2-1921 his father served in the last war and was a gas casualty, causing his death when the accused was 14 years of age, his mother died very soon after of broken heart leaving the lad entirely alone in the world.

He was to have been placed in an orphanage, this was distasteful and Day took to the road, wandering about the country working at odd jobs of farming, tinsmith's apprentice and as a waiter in a construction camp. He had no close friends.

He joined the Edmonton on Jul 3/41 at Toronto and landed in England in March 1942. This boy had no home life, none of the training or environment that most of us are blessed with, he received no mail for a long time until he wrote to a former Sergeant who had befriended him then he received letters from people who were sorry for a lonely soldier.

He had no crime record while in Canada, some six charges in England

but following his last crime he had decided to try to go straight. Unfortunately he did not have the moral strength nor the background to combat the influence of a stronger personality in his associate at work in the person of Gnr Brooks.

The accused was prepared to become an army clerk and was prepared to go on a course, but Brooks decided to go A.W.L. and talked the accused into it; admittedly he was wrong

As to the charge of stealing the pistol, the accused has admitted taking it, but there is a strong element of doubt that he could think up an action such as this without prompting by some one, the accused states that at the time he had had a few glasses of beer and is confused as to what actually took place.

He admits pulling the pistol out of his pocket and threatening the Provost Sgt. but here again he was influenced by a stronger personality, this is not enough

but one must remember that the accused was labouring under extreme excitement and probably fear.

The accused finally decided after wandering about the country that he would eventually be caught, so he went to the Y.M.C.A. in Manchester had the manager phone the Provost Corps. and gave himself up.

He feels that he has played a mean trick on Capt Jewell who had befriended him and wants to try to make amends, he submits to the mercy of the court and is prepared to take his punishment.

Further the accused has stated that when he has paid his debt, he will try really hard to become a good soldier and has expressed the wish to be allowed to become a cleth a was intended.

MM

J.K. McCullagh Major
"C" Bty. "J" Trg. Wing 2 C.A.R.U.

20 Jan 42

SUMMARY OF EVIDENCE

in the case of

B 31950 Gnr Day, Harold, No 2 Cdn Arty Reinf Unit, a soldier of the Canadian Army placed on Active Service.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

1st WITNESS D 36456 Bdr Newby, C.G. on the strength of "p" Wing No 2 Cdn Arty Reinf Unit having been duly sworn states :-

On the 9th September 1942, I called the roll as hut N.C.O. in Hut #3, 2 C.A.R.U., and found the accused B 31950 Gnr Day, H. absent. Thinking that he was working in the Battery Office I marked him present. On taking the Reveille Roll Call on 10th September 1942 I found that the accused was still absent. Therefore he was marked absent until his return.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

Bdr. Newby C.G.

D 36456 Bdr Newby, C.G.

2nd WITNESS B 6305 S/Sgt Nicol, A.R. on the strength of Administration Wing, No. 2 Cdn Arty Reinf Unit, having been duly sworn states as follows :-

On the 11th January 1943 at 1000 hrs, I was instructed by the Adjutant of Regimental Headquarters, No. 2 C.A.R.U. to pick up B 31850 Gnr Day, the accused, at White Hill Police Station, Bordon. I brought him back to the Guard Room where he was confined. Gnr Day was in civilian clothes at the time.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

A R Nicol

B 6305 S/Sgt Nicol, A.R.

3rd WITNESS Captain Charles Dean Jewell, R.C.A. a Reinforcement Officer of "p" Wing No 2 Cdn Arty Reinf Unit, having been duly sworn states as follows :-

On the 9th September 1942, I was Adjutant of "p" Training Wing, No. 2 Cdn Arty Reinf Unit. At approximitely 1230 hrs this date I left the Office and went to the Mess for dinner, leaving my revolver, holster, and 24 rounds of ammunition in the pouch, on the back of my chair. While at lunch I was taken ill and told Lieut R.J. McEwen, my assistant that I would not return immediately to my office and for him to carry on. I did not return to the office that afternoon. The following morning September 1942, I went to my office at 0800 hrs. I looked at the back of my chair and did not see my revolver so I asked Sgt King and Gnr Nosky if they had seen my revolver. Gnr Nosky said he saw the webbing or rather that he saw it in the bottom drawer of the filing cabinet. I went to the filing cabinet, opened the drawer and found the web but the revolver and 24 rounds of ammunition were gone from the webbing.

JWW

3rd WITNESS (cont'd)

I searched the office but could not find any trace of the revolver. Later in the day when one of the clerks was getting supplies from the filing cabinet he found one round of .38 calibre ammunition in the corner of the bottom drawer. On making inquiries I learned that Gunner Day and Gunner Brooks, both employed in the office were A.W.L. I later had to pay the sum of £4.12.6 for the revolver and ammunition.

THE ACCUSED DECLINE TO CROSS-EXAMINE THIS WITNESS.

(C.D. Jewell) Capt. R.C.A.

4th WITNESS

Y.38667 Gnr Nosky G.W. on the strength of "p" Wing No.2 Canadian Artillery Reinforcement Unit , having been duly sworn states as follows:-

On the morning of 10th September 1942 I went to the filing cabinet in "p" Wing Headquarters to get a pass book for a bombadier from "C" Sty I noticed webbing, revolver case and belt in the bottom drawer. I thought that Capt. Jewell had left it there. When he came in he asked where his revolver was and I told him it was in the drawer, and took revolver case out, but it was empty.

THE ACCUSED DECLINE TO CROSS-EXAMINE THIS WITNESS

Y.38667 Gnr Nosky G.W.

5th WITNESS

R.6221 Sgt. King A.E. on the strength of "p" Wing No. 2 Canadian Artillery Reinforcement Unit, having been duly sworn states as follows:-

On the 9th September 1942 I was a Sergeant in "p" Wing office. I left the office about 1230 to go to lunch, at 1.15 P.M. I returned and noticed that Capt. Jewell's web belt and holster was lying on the chair I didnt pay any attention to it as we expected him back from lunch any minute. I left for supper about 5 O'Clock I belisv Gnr Nosky was in the office when I left. I returned about 6.30 and worked about an hour and during then Gnr's Brooks and Day came in the office They were both there when I left, I am not sure whether Gnr. Simi the Janitor, was there when I left

THE ACCUSED DECLINE TO CROSS-EXAMINE THIS WITNESS

R.6221 Sgt King A.E.

6th WITNESS

George Henry Verey, Police Constable in the Hants Constabulary stationed at Greyshott having been duly sworn states as follows:-

At 9.45 A.M. on the 10th of September 1942 I received a report of this case and proceeded to 2 C.A.R.U., R.C.A Greyshott. I made inquiries, I visited the Adjutants office at "p" Wing where it came to my knowledge that the .38 Smith and Wesson Revolver No. 847780 complete with 24 rounds of ammunition had been left in the holster at

6th WITNESS (Cont'd)

back of a chair by the owner Captain Jewell at 1230 P.M. the previous day, and at 8 A.M. the next morning it was discovered that the ~~xxxxxxxxxxxx~~ weapon and the ammunition was missing, on making inquiries it came to my knowledge that two men Gnr B.48603 Fred Carson Brooks and B.31950 Gnr Harold Day had been seen in the office during the afternoon of the 9th and again late that evening. At 4.15 P.M. on Sat.9th January 43 I saw B.31950 Harold Day in custody Cannon Row Police Station London I said to "I am a police Officer from Greyshott and on making inquiries respecting a 38 Smith Wesson Revolver the property of Captain Jewell which was stolen from 2 C.A.R.U. Royal Canadian Artillery Superior Camp Greyshott, I cautioned him he made no reply I then escorted him to Whitehill Police Station I cautioned and charged with the offence he replied "I admit everything I took the revolver". He was then locked up at 12.0 1205 P.M. the following afternoon I again saw Day at Whitehill Police station, He said that he wished to make a statement I cautioned him and he made a statement which I wrote on the requisite form and he read over and signed.

(COPY ON HANTS CONSTABULORY FORM AFFIXED MARKED "D"

THE ACCUSED DECLINE TO CROSS-EXAMINE THIS WITNESS.

George Henry Verey

QUESTIONS ASKED BY OFFICER TAKING SUMMARY OF EVIDENCE

Q. Was there anyone in the station when you got the statement from Day?

A. Yes, Sgt Pullman and two other officers-

Q. Did you use the regular form of caution

A. Yes.

Q.D Did Gnr Day understand the caution- did he volunteer the statement fully.

A. Yes.

7th WITNESS

Major J. Rowley D.A.P.M.
Having regard to the exigencies of the service the attendance of the above witness in my opinion cannot readily be procured, the appended certificate of surrender and expense voucher marked exibit "A" purporting to be signed ~~for~~ him is produced and is read to the accused

The accused does not demand attendance of this witness.

8th WITNESS H.29066 L/Cpl Anderson G.S. Royal Canadian Prowal Corps.

Having regard to the exigencies of the service the attendance of the above named witness, In my opinion cannot readily be ~~xxx~~ procured, The appended letter marked exibit "D" Purporting to be signed by him ~~xxx~~ is produced and read to the accused.

The accused does not demand attendance of this witness.

9th WITNESS B.48608 Gnr Fred Carson Brooks

Having regard to the exigencies of the service the attendance of the above named witness cannot readily be procured the appended statement given to the

6th WITNESS
(Cont.d)

Royal Canadian Provost Corps and purporting to be signed by R.48608 Gnr Brooks F.C. and marked exibit "C' is produced and read to the accused.

The accused does not demand the attendance of the witness.

J.D. Macdonald Lt R.C.A.
(J.D. Macdonald) Lieut R.C.A.

QUESTION TO ACCUSED

Do you wish to make any statement or give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but what you say or any evidence you give will be taken down in writing and may be given in evidence

Answer by accused
I have nothing to say.

THE ACCUSED DOES NOT WISH TO CALL WITNESSES

I certify that the foregoing Summary of Evidence consisting of 4 pages was taken down by me in the presence of the accused at superior camp Indshott this 16 Day of January 1943 and that Rules of Procedure ~~xxx~~ 4 (C) (D)(E)(F) and (G) were complied with.

J.D. Macdonald Lt R.C.A.
(J.D. Macdonald) Lieut R.C.A.
Officer Detailed to take this summary of evidence.

CHARGE 8653

Army Form B 252
See King's Regulations

ROYAL CANADIAN ARTILLERY
NO. 2. C.A.R.U.
"ANTI TANK"
LUBEHOT, NO. HESELMERE, SURREY

Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. A-31950 Rank ONR

Name DAY. H

Place

Date of Offence

OFFENCE WHILST ON ACTIVE SERVICE - ABSENT FROM UNTIL SURRENDERING TO THE MILITARY POLICE AT THE Y.M.C.A, PETER STREET, MANCHESTER ON WEDNESDAY 6th JANUARY 1942 ABOUT 22-00 HOURS.

Names of Witnesses:—

NO. 7696399 - L/CH. C. McCABE C.M. POLICE
NO. 783994 - L/CH. V. GREENSLADE C.M. POLICE

Signature of O.C. Battery, Squadron, Troop or Company } [signature]
P.M. Lancs. & Border District

Punishment Awarded }

By whom Awarded }

Adjutant.

P.T.O.

CERTIFICATE OF SURRENDER UNDER SECTION 163 (1) (j) A.A.

I, Major J Rowley ... certify that Number B 31930 (rank) ... Gnr. .....

(name) ... Day H. ..... of ..... Coy. ..... Bn. The No. 2 S.A.R.H. ...

Canadian Artillery ..... Regiment, surrendered himself to Number ... 7690399 (rank) ... L.C. ...

(name) ... McCabe C. ..... Corps of Military Police, at ... 22.00 ... hours on

the ... 6th ..... day of ..... January ..... 1943. as a deserter (or absentee without

leave.).

J Rowley Major.

D.A.P.M. East Lancashire District.

Headquarters,
East Lancs. District Provost Coy.,
Drill Hall, Ardwick Green,
Manchester.

Date. ... 7th January 1943 .....

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No B31950 Rank Pte Name Hay, H Unit 2 C A R U

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit ~~from~~ London from Manchester

Date	Particulars	Amount		
9 Jan 43	Escorts return fare from LONDON To Manchester	1	8	2
	Prisoners single fare to LONDON From Manchester		14	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Diet~~, Meals, Bus fares		8	0
	Total £	2	10	3

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

S D [illegible] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-43
40/F & S/483

HANTS CONSTABULARY

Petersfield Division.

10. January, 1943.

Grayshott Station.

Report from P.C.344. G.H.Verey.

Subject re .38 Smith & Wesson Revolver No.845780 stolen from No.2 C.A.R.U. Superior Camp, Grayshott, on the 9th September, 1942.

Beg to report

Sir, I beg to submit the following copies of statements obtained at the time.

1st Witness. Capt.Charles Dease Jewell, states, "I am Adjutant of 'P' Wing, No.2 C.A.R.U. Royal Canadian Artillery, 'Superior Camp', Grayshott".

"About 12.30.pm on the 9th inst, I left my office to go to lunch. I left my .38 Smith & Wesson revolver in the holster on the back of my chair. Immediately after lunch I did not feel well, so did not return, and instructed my assistant, Lieut. R.J.MacEwen to carry on. I did not visit the office again that day.

At 8.00.am the following morning, the 10th inst, I returned to the office, and as I could not see the revolver or the holster, I asked my two clerks, Sgt King and Gnr Nosky if they had seen the weapon. Gnr Nosky then said that it was in the bottom drawer of my cabinet. I went there and saw the holster, but on further examination discovered that the revolver had been taken and the ammunition pouch empty. I made a further search but the only thing I found was one round which had fallen in a corner of the drawer in the cabinet. I then reported the loss to Major G.Rankin. On making further enquiries I learned that Gunners Brooks and Day, who worked in my office, and had been seen there at 7.30.pm on the evening of the 9th, had not been seen since. They are now officially absent without leave. The value of the revolver and ammunition is approximately £7."

2nd Witness. Lieut.Robert John MacEwen 'P' Wing, No.2 C.A.R.U. Royal Canadian Artillery, 'Superior Camp', Grayshott, states,

"On the 9th of September, 1942, I was acting as Assistant Adjutant. I was working in the Adjutants Office in 'P' Wing during the morning with Capt.Jewell. Round about 12.30.pm I left for lunch. I had previously noticed Capt.Jewells revolver in the holster hanging on the back of his chair. During lunch time I saw Capt.Jewell in the Officers mess, he told me that he did not feel well and asked me to carry on his duties. I returned to the office about 1.30.pm and saw the revolver was still hanging on the back of the chair. I finished duty at 5.00.pm and left the office. The revolver was still there then."

3rd Witness. Sgt.B.6231. Melvin KING 'P' Wing, No.2 C.A.R.U. Royal Canadian Artillery, 'Superior Camp', Grayshott, states.

"I am Orderly Room Sergt, of 'P' Wing. Capt,Jewell is the Adjutant. I was in the office at about 12.30.pm on the 9th of September, 1942, when I saw Capt,Jewell leave for his lunch. I then left a few minutes later for mine. On my return to the office about 1.10.pm I saw that Capt.Jewell had not returned, I also saw that his revolver was hanging across the back of his chair, it was in the holster. I did not pay any more attention to the weapon as I expected Capt,Jewell to return any minute. However he did not return that day at all. At 5.00.pm I left for supper and returned about 6.30.pm. The other man in the office then was Gnr Simi, the sanitor. I worked until about 7.30.pm, just before this time Brooks and Day came in, Day was on duty in the office until 8.00.pm I left a few minutes after 7.30.pm. I know definitely that Brooks and Day were in the office then but cannot swear if Simi was or not

p.t.o.

Statements continued.

4th Witness. Gnr No.R.38667 George Wiltold Nosky, states, "I am employed as a file clerk in the Adjutants Office, 'P' Wing, No.2.C.A.R.U. Royal Canadian Artillery, 'Superior Camp', Grayshott'.

"During the morning of the 9th of September, 1942, I was employed in the office, and left about 12 noon, as I was on a half days leave. I cannot saw whether or not Capt.Jewells revolver was in the office when I was there. I returned to duty at the office about 7.45.am the following morning, soon after that I had occasion to go to the filing cabinet, when I saw in the bottom drawer a revolver holster attached to the web belt and ammunition pouch. I thought it was Capt.Jewells property as he normally carried a revolver in the course of his duty. I did not examine the holster. A few minutes later Capt. Jewell came in. He said, "Where is my revolver" or words similar to that. I then went to the filing cabinet and took out the holster and handed it to him. It was then discovered that the revolver was missing, also the ammunition. Some time later on again going to the cabinet I found one round of revolver ammunition and handed this to Sgt King".

5th Witness. Gnr No.M.653 Alfred Simi, states, "I am employed as a Janitor in 'P' wing, No.2.C.A.R.U. Royal Canadian Artillery, 'Superior Camp', Grayshott.

"At 12.30.pm on the 9th of September, 1942, I went to the Adjutants office to clean up. On entering I saw Brooks and Day in the office. Brooks was fitting Capt, Jewell's revolver on his waist. I said to him."Dont do that, because if Capt, Jewell comes you will get into trouble". Brooks kept on playing with the revolver. I finished my work and left the office about 1.00.pm. Both Brooks and Day were still there then. I did not see what Brooks did with the revolver. I returned to the office about 7.00.pm to do more cleaning, both Brooks and Day were again in the office. I commenced my duties and cannot swear whether or not I saw the revolver then. I left about a half - hour later. Sgt King, and Brooks and Day were still in the office".

6th Witness. George Henry Verey, states, "I am a Police Constable in the Hants Constabulary stationed at Grayshott".

"At 9.45.am on the 10th of September, 1942, I received a report of this case, and proceeded to No.2.C.A.R.U. Royal Canadian Artillery, 'Superior Camp', Grayshott, and made enquiries. I visited the Adjutant's office at 'P' wing where it came to my knowledge that the .38 Smith & Wesson revolver, No. 845780, complete with 24 rounds of ammunition had been left in the holster, on the back of a chair, by the owner Capt.Jewll at 12.30.pm the previous day, and at 8.00.am the next morning it was discovered that the weapon and the ammunition was missing. One round of ammunition was later found and handed to Capt.Jewell. I made a thorough search in and around the office but could find no trace of the weapon or the ammunition. On making enquiries it came to my knowledge that two men, Gunners No.B.48606 Fred Carson Brooks, and B.31950 Harold Day, had been seen in the office during the afternoon of the 9th, and again later that evening. They have not been seen since and are now officially absent without leave from their Unit. Both Brooks and Day were employed in the office. I made further enquiries in the district but could find no trace of the weapon or the missing men.

At 4.15.pm on Saturday, the 9th of January, 1943, I saw Gnr No.B.31950 Harold Day, in custody at Cannon Row Police Station, London. I said to him, "I am a Police Officer from Grayshott, and am making enquiries respecting a .38 Smith & Wesson revolver, the property of Capt.Jewell which was stolen from No.2.C.A.R.U. Royal Canadian Artillery, 'Superior Camp', Grayshott. I cautioned him. He made no reply. I then escorted him to Whitehill Police Station where he was seen by Sgt. Pullman. I cautioned and charged Day with the offence. He replied, "I admit everything. I took the revolver". He was then locked up. At 12.05.pm the following afternoon I again saw Day

HANTS CONSTABULARY

Petersfield Division

Grayshott Station. 10. January, 1943.

Report from P.C.344. G.H.Verey.

Subject re.38 Smith & Wesson Revolver No.845780 stolen from No.2.C.A.R.U. 'Superior Camp', Grayshott on the 9th of September, 1942.

Statement of P.C.344 G.H.Verey, continued.

- in the cell at Whitehill Police Station. He said that he wished to make a statement. I cautioned him and he made a statement, (copy below) which I wrote on the requisite form and he read over and signed.

Harold Day Gnr No. B.31950, No.2 C.A.R.U 'Superior Camp', Grayshott, states:-

"I am a Gunner No.B.31950 Royal Canadian Artillery, No.2.C.A.R.U. 'Superior Camp', Grayshott.

"On the 9th of September, 1942 I was engaged as a runner in 'P' wing Orderly room. Somewhen during the afternoon I saw Capt. Jewell's revolver in the holster on the back of a chair. I took the revolver but left the holster behind. I also took 24 rounds of .38 ammunition from the ammunition pouch on the holster. Later I met Gunner Fred Brooks and we left Camp. We hitch hiked to London, and from there to Newcastle. I left Brooks in Newcastle. I then proceeded north to Glasgow. On Monday the 4th of January, 1943, I threw the revolver which was fully loaded with 6 rounds of ammunition, in the Manchester Canal. I also threw away at the same time the remaining 18 rounds I did not fire the revolver at any time. On the 6th of January, 1943 I gave myself up to the Military Police at Manchester."

Below is a copy of statement made by Gunner No.B.48608 Fred Carson Brooks, on the 6th of October, 1942.

Gunner No.B.48608 Fred Carson Brooks, 'P' wing 'B' Battery, No.2 C.A.R.U, Royal Canadian Artillery, 'Superior Camp' Grayshott, states:-

"I am a filing clerk in the Orderly Room of 'P' wing, 'B' Battery, 'Superior Camp', Grayshott. I was employed in the office all day on the 9th of September, 1942. Gunner Day was also employed in the same office as a runner. Approximately at 11.30.am that day I went to dinner, and returned to the office about 11.45.am to let Sgt.King go to his dinner. I cannot remember whether Day was there then , or not, but he was in the office with me at 12.30.pm. I then saw Capt.Jewell's revolver in the holster on the back of his chair. I took the weapon out of the holster and examined it. I did not attempt to fit the holster round my waist. I dont think Day touched it. After I finished examining the weapon I replaced it in the holster. Gunner Simi, the janitor was in the office all this time. At 4.30.pm I finished duty and left for supper. I dont remember if Day went with me or not. Actually I was officially finished at the office for that day, but I returned at 5.05.pm. I believe Day was in the office then as his duties carried him on until 8.00.pm to look after the telephone. Gunner Simi came in about 7.00.pm. After I had returned at 5.05.pm I put the weapon in the filing cabinet, in the bottom drawer. We generally put anything of value in there and lock it up. The keys of the cabinet are then hidden behind the black - out pole, in the office. The men

p.t.o.

- in the office would know where the key was hidden but strangers would not. About 7.45.pm I left the office while Day was there. I had only got a short distance away when Day caught me up. Whilst we were in the office I told Day that I was going to take a short holiday, he then said that he would come along with me or words to that effect. I was all ready to go then but he was not. I waited about for him to get ready. About 8.15.pm we both left the Camp, and started on our way to London. Whilst on our journey Day produced the revolver that I had previously locked up in the cabinet. I did not know that he had it with him until that moment. The next evening whilst in Lower Richmond St, Putney, two Military Policemen on motor cycles stopped us and asked us for our passes. We showed them, and they became suspicious of them, actually we made out the passes ourselves back at Camp. They told us to go with them, Corporal Anderson, one of the Military Policemen, told us to get on the back of their machines. I got on the back of Anderson's, it was then that Day produced the revolver. I just forget what happened then, but we both beat it up the street. We stayed around London that night, then started to hitch hike north. We arrived in Newcastle on the 17th of September. During that evening we both went to a Y.M.C.A. we had been there about 4 hours when I went outside leaving Day upstairs. I was then challenged by a Military Policeman who asked me for my pass. I showed him a genuine one issued to me for Aldershot Command. He was not satisfied and took me into custody. I have not seen Day since. He had the revolver in his possession whilst in the Y.M.C.A. I was later escorted back to 'Superior Camp'. I would like to add that there was definitely no shots fired at any time whilst we were in Putney where the Military Police stopped us, but we did run through a private house to escape.

P.C.344.

To. Sergt 52.T.H.Pullman.

Whitehill.

To. Supt.V.E.Stanley.

PETERSFIELD.

Sir,

Respectfully submitted.

T H Pullman Sgt, 52.

Previous Sheet destroyed as of 9 Jan 42 Certified True Copy (Sgd) S.W. Williams Major. 8 Aug 42.

M.F.M. 6
(A.F.B. 177)
(TSM—7-41 (1219-20)
H.Q. 1772-39-1662

No. 331950 Name DAY H

Date of last entry in Company Conduct Sheet

Sqn., Battery, or Company

No. and date of last drunk

Corps R.C.A.

Period not reckoning towards freedom from extra fine

Date of enlistment 9 Jul 41

Sheet No.

G.C. Badges

Signature O. Company, etc. S.W. Williams Major

Service or Proficiency Pay

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 May 42	Gnr.		AWL 13 hrs 19 mins A.A. Sec 15(1)	L/Sgt Magee Bdr Noonan	3 Days C.B.	4 May 42	W.F. Blair Maj	Forf 1 days pay FR&I 149.1(a)
Field	12 May 42	Gnr.		AWL 12 hrs 12 May 42 to 0320 hrs 21 May 42 absent 8 days 15 hrs 20 mins (A.A. Sec 15(1)	L/Sgt Magee Bdr Noonan	14 days Detention	22 May 42	S.W. Williams Maj.	Forf 9 days pay FR&I 149.1(b)
Field	6 June 42	Gnr.		(1) Using insubordinate language A.A. Sec 8(2) (2) Disobeying lawful Command A.A. Sec 9(2)	Bdr Faulger Sgt Berry Sgt New Bdr Watt	28 days Detention	8 Jun 42	C.O. P. Wring	" " " " 149.1(c) Forf 28 days pay FR&I 149.1(b)
	Released			From detention 3 Jul 42 2 days remission					
Field	17 Jul 42	Gnr.		AWL 2300 hrs 17 Jul 42 to 1900 hrs 18 Jul 42 Absent 20 hrs A.A. Sec 15(1)	Sgt. Magee	3 days F.P. 5 days Pay FR&I 149(2)	20 Jul 42	A.Cf. C.E. Boston	Forf 1 days pay FR&I 149.1(a)
Field	3 Aug 42	Gnr.		AWL from 1400 hrs 3 Aug 42 until 1335 hrs 4 Aug 42 Absent 23 hrs 35 mins A.A. Sec 15(1)	Sgt. Magee	10 days C.B. Forf 10 days Pay	5 Aug 42	A.Cf. C.E. Boston	Forf 1 days pay FR&I 149.1(a)

CERTIFIED TRUE COPY as of 16 Jan 43

R.L. Allely Capt.
(R.L. Allely) Captain, RCA.,
Officer i/c Records,
No 2 Cdn Arty Reinf Unit.

(P.T.O.)

With reference to my pending trial by Court Martial, I wish to be represented by Major H.K. McCollough RCA 2 CARU.

16 Jan 43

James Harold Day

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B. 31950	Gunner	Day, Harold	2 Cdn Arty Reinf Unit

1. The following is a fair and true summary of the entries in the Regimental ~~Service and General and Squadron, Battery Conduct sheets or Company~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. SEC 15 (1) FOUR (4)	times	FOUR (4)	times
For	A.A. SEC 8 (2) ONCE (1)	times	ONCE (1)	times
For	A.A. SEC 9 (2) ONCE (1)	times	ONCE (1)	times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 10 days in ~~Air Force~~ military custody, making a total of 10 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~re~~ attestation paper is 21 yrs 4 mos 14 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 9 JUL 41

7. The service which the accused is allowed to reckon towards discharge is 1 (A) 365 yrs

8. The accused is entitled to reckon 1 (A) 365 yrs service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or air force reward ~~(or is in possession of or entitled to)~~ military. ~~State any air force decoration or reward.~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force~~

[signature] Col

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ ~~Permanent Force~~ ~~unit~~ ~~dated~~ ~~, and in his regiment (or corps), the rank of~~ ~~dated~~ .

~~12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—~~

Date of promotion.

~~In the rank of~~ ~~years.~~

~~In the rank of~~ ~~years.~~

~~In the rank of~~ ~~years.~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number B 31951 Rank GNR Name DAY H. of V CARU Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16 day of January 1943 [signature] RETURNS DANGER

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

KKK-59 (case #2)

GNR- DAY H

See W-1 for 1st case.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.31950 Gnr DAY, H. 2 CARU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
~~2nd~~			
~~3rd~~			
~~4th~~			
~~5th~~			
~~6th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

"R" ~~Accused was convicted on the~~ ~~Finding(s) was(were)~~ (1) (Date)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of eighteen (18) months and to be put under stoppage of Pay until he has made good £0-8-6 the expenses of his return to his unit

(Sgd) ..... 6 May 1944 (Sgd) "D. L. Redman"

Judge-Advocate, if any. Date awarded. President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I remit the [illegible] and further orders~~ "RRR"

(1. AA 57A. Delete if not used.)

Date 9 May 44 (Sgd) "B.R.Ker" Col.
A/Cpmmanding "C" Group
Commanding Cdn Reinforcement Units.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B31950 Gnr DAY, H.	10 May 44	"G.W.Currie" Lt.

Par II #99 d/11 May 44. "R.L. Alleby" Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Received
17 May 1944
JAG Branch
CMHQ.

RECORDED AT CMHQ IN AB 160 KKK - 59

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 43-P.S.S.-1608 (2864)

Convened by Order of Colonel B.R. Ker, E.D. A/Comd "C" Gp, CRU dated 5 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.31950	Gnr		Harold	DAY	2 CARU

Certified true copy of original proceedings herein.
H. C. Day Capt

PROCEEDINGS REVIEWED
"W.C. Inch" 17 May 44
Lieut.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL. 24 Aug 44

J.A.G. Rev. 4

"R" Held in the Fd in (country) England on (date) 6 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

"R" A1. The President, Members, ~~sitting together~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for seals and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

"R" A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~&~~ attached thereto.(1)

"R" The Court is satisfied that it is properly convened and constituted(2), accused is ~~now~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

"R" A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1330 hours trial commences.

"R" A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

"R" ~~The Prosecutor informs the Court that accused desires to be tried by court-martial instead of being dealt with summarily under~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

"R" ~~The President is advised~~ Do you object ~~to be interpreted~~ to Interpreter? Ans

"R" ~~The interpreter is sworn~~ Do you object ~~to be shorthand writer~~ ~~The shorthand writer is sworn~~(1).

(1. RP 72. Delete, if none employed.)

A5. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 19, 71, 98, MML p 742.)

"R" A7. The President, Members ~~sitting together~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. Redman	~~HQ~~ CRU
Member	Capt	A.W.D. Swan	1 CACRU
Member	Lt.	R.E. Forbes	2 CACRU

"R" ~~Judge-Advocate~~

Prosecutor	Lt.	B. Gilmour	2 CARU
Defending Offr	Lt.	E.H.H. Kroeger	2 CARU

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 31)

"R" A8. The accused before arraignment make(s) (no) ~~XX~~ plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AE rank and name of the accused making the plea.)

"R" A9. The accused is (~~not~~) arraigned ~~upon the~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

"R" A10. The Court ~~adjourns~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ~~3~~ 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

"R" B1. The President ~~XXXXXXX~~, complies with RP 35(B) by explaining to the accused the nature and meaning "R" of the charge~~XX~~(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the "R" sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge~~XX~~ call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the "R" charge~~X~~. (1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

"R" B3. ~~The Court considers the accused's statement (5). The Court decides (not) to allow accused to change his~~
"R" ~~plea to Guilty to the charge(s). The accused is (not) to proceed as in para~~
"R" ~~Court may be closed to consider the statement. Delete whole or part not used.)~~

"R" B4. On the charge~~X~~ to which the plea~~X~~ of Guilty is ~~XX~~ not changed the President records finding~~X~~ of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (2).)

"R"

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and marking an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.) "R"

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(A).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

"R" E2. The Prosecutor produces Statement~~XX~~ as to Character and Particulars of Service(1), and certified true "R" copy (~~XXXXX~~ of Conduct Sheet~~X~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(d) (g) (h), and (ii) they purport "R" to refer to (a) soldier~~X~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(2)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

"R" E3. President to accused : Do you wish to address the Court on the Statement~~X~~ and Conduct Sheet~~X~~, and in mitigation of punishment ?(1) Ans. By Def. Offr - see att.

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(3), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which "R" is dated and signed by him ~~XXXXXXXXXXXX~~(2) "R"

(1. When several accused tried separately see RP 94fn. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its gotwas, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 126, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 320, 563-566. Overseas AO 309, 2323, MML p 90, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 132. Where accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 31950 Gunner DAY, Harold "P" Trg Wing, No 2 C.A.R.U., a soldier of the Cdn Army (O), is charged with:-

1st Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 2359 hours 8 Jan 44 until apprehended at 1230 hours 26 Apr 44, thereby incurring costs of apprehension and return to unit in amount of £0:8:5. Total absence: 108 days, 12 hours and 31 minutes.

"Mackenzie Waters"
(Mackenzie Waters) Colonel RCA,
Commanding Officer,
No 2 Cdn Arty Rft Unit.

Huron Camp,
Bramshott, Hants.,
3 May 44.

To be tried by Field General Court Martial.

"B.R. Ker Colonel
A/Commander "C" Group, Cdn Reinforcement Units.
(Convening Officer)

Bordon, Hants.
5 May 44.

"DLR"

FIELD GENERAL COURT-MARTIAL

CF 195 (In lieu of A.F.A.3)
40/P&S/1607 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.31950	Gnr		Harold	DAY	2 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (date) 5 May 44 endorsed by me, "To be tried by Field General Court-Martial". "BRK"

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; [and that it is not practicable to delay the trial for reference to superior authority] "BRK"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person and to consist of the Offrs appointed or detailed hereunder.

4. [As directed by Appointing Authority / Officer Commanding Troops] "BRK" attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [No Judge Advocate to be detailed] "BRK"

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman, V.D.		HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	detailed by CO	1 CACRU
Lieutenant	detailed by CO	1 CACRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in			
	ENGLAND	"B.R. Ker"	Colonel
	(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)

Date 5 May 44

A/commanding "C" GROUP, CDN FRT UNITS.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"DLR"

Medical Officers Certificate
K.R. (Can) para 557

I certify that I have this [redacted] examined No B 31950
Gunner DAY, H. of No 2 C.A.A.R.U. and in my opinion he is fit
to undergo trial by Court Martial.

No 2 C.A.A.R.U.
6 May 44

?. Kasian Capt.
(Medical Officer)

"DLR"

PLEA IN MITIGATION

Case of B.31950 Gnr. DAY, H. - 2 CARU.

I would like to draw to the attention of the Court, the following facts.

(1) That the accused is young and that his mental condition is upset. That upon arriving back at Camp. He felt that his efforts to go to the field were being frustated. The combination of these factors were to much for him. He sought the easy way out by going A.W.L. and I would the Court to

"E.K.H. Kroeger Lt."

E - 3

""DLR"

Certificate in accordance with Army Act. Section 163 (1) (ii)

I certify that No. B/31950 Rank Gnr. Name [redacted]

Unit No. 2 C.A.R.U. was arrested at 1230 hrs

at Friar St. Reading on the 26-Apr-44

Signature of Provost Marshall, A.P.M. or other Officer into whose custody the above mentioned person was taken on arrest.

"W. Taylor"
A. P. M. Major.
(159(H.Q) Provost Coy.

A.C.I.2253 of 1942

"DLR" Exhibit "B"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B31950 Rank Gnr Name DAY, H, Unit 2 C.A.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London from Reading

Date	Particulars	Amount		
26 Apr 44	Escorts return fare from LONDON To Reading		5	7
	Prisoners single fare to LONDON From Reading		2	10
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		8	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

"R.J. Stinson" Lieut.
R.J. Stinson Lieut.
Adm. Officer -DPM's Br.
C.M.H.Q.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London

"DLR" Exhibit "C"

C.M.H.Q. 1000-55
40/P & S/482

Army Form B 115.

RECORD OF THE DECLARATION OF A COURT OF INQUIRY ON THE ILLEGAL ABSENCE OF A SOLDIER.

RECORD of the Declaration of a Court of Inquiry assembled at No 2 C.A.R.U. on the 31st of January 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Regimental Necessaries, or Clothing of No. B 31950 Gnr. DAY, H.

DECLARATION

The Court declare, that B 31950 Gnr. DAY, H., absented himself without leave from 2359 hours 8 Jan 44, is still absent, and that on the 31st Jan 44 was deficient, and is still deficient of articles to the value of £8:9:1.

Names of President and Members

PRESIDENT: Lieut. K.L. Tattrie, RCA, No 2 C.A.R.U.

MEMBERS: Lieut. M.H. Saunders, RCA, No 2 C.A.R.U.
Lieut. M.D. Kirk, RCA, No 2 C.A.R.U.

Signature of Commanding Officer (Mackenzie Waters) Colonel
C.O. 2 Cdn Arty Rft Unit.

Certified True copy.

2 May 44 "H.C. Edworth" Major
Signature of Officer having custody of the Original Record.
Adm Offr, CARU

"DLR"

Exhibit "A"

LIST OF EXHIBITS

"A" - Certified True Copy of Record of Declaration of a Court of Inquiry.

"B" - Certificate in accordance with Army Act, Section 163(1)(jj), signed by Major W. Taylor.

"C" - Expense Voucher, reference K.R. & O (Can) 639, signed by Lieut. R.J. Stinson.

LIST OF WITNESSES

FOR THE PROSECUTION:

Major W.G. Petrie, RCA

FOR THE DEFENCE:

---------N I L---------

"P" TRAINING WING
No 2 C.A.R.U.

Commanding Officer,
No 2 C.A.R. U.

PW/5-4-5
3 May 44

F.G.C.M. - B 31950 Gnr. DAY, H.

1. It is respectfully requested that an officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

"H. Day"
B 31950 Gnr. Day, H.

"P" TRAINING WING

PW/5-4-5
3 May 44

Commanding Officer,
No 2 C.A.R.U.

F.G.C.M. - Gnr. Day, H. B-31950

1. I acknowledge having duly received this date 3 May 44 a copy of the Charge Sheet and a copy of the Summary of Evidence concerning my forthcoming trial by Field General Court Martial.

"H. Day"
B 31950 Gnr. Day, H.

OFFICERS UNDER INSTRUCTION
COURTS ON 6TH MAY 44

Lt	W.D.	HARRISON	2 CACRU
Lt	T.O.	BROWN	2 CACRU
Lt	D.G.C.	EGGO	2 CACRU

"DLR"

SUMMARY OF EVIDENCE IN THE CASE OF
B 31950 Gunner DAY, Harold, No 2
Cdn Arty Rft Unit, a soldier of the
Canadian Army Overseas.

By direction of the Commanding Officer
the Summary of evidence is taken on oath.

FIRST WITNESS
For the
prosecution

Major W.G. Petrie, A/ Adjutant "P" Trg Wing, No 2 Cdn Arty Rft Unit, an officer of the Canadian Army Overseas, having been duly sworn, states:

"I produce
(a) CERTIFIED TRUE COPY of Record of Declaration of a Court of Inquiry, purporting to be signed by Major H.C. Edworthy, Administrative Officer, No 2 C.A.R.U., officer having custody of original document relating to the accused whom I now recognize. This Certified True Copy of Declaration of a Court of Inquiry is marked Exhibit "A" andannexed to the Summary.
(b) CERTIFICATE IN ACCORDANCE WITH ARMY ACT SECTION 163 (1) (JJ), purporting to be signed by Major W. Taylor, A.P.M. 169 H.Q. Provost Coy, relating to the accused whom I now recognize. This Certificate is marked Exhibit "B" and annexed to the Summary.
(c) EXPENSE VOUCHER, Ref:K.R.& O.(Can)839 to the amount of £0:8:5, purporting to be signed by Lieut. R.J. Stinson, Admn. Officer - D.P.M's Br. C.M.H.Q., relating to the accused whom I now recognize. This Expense Voucher is marked Exhibit "C" and annexed to the Summary."

"W.G. Petrie", Major RCA

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down before me in the presence and hearing of the accused, and that Rules of Procedure 4(e), (c), (d) and (f) have been complied with.

"W.F. Murphy, Lt."
(W.F. Murphy) Lieut., RCA
"P" Wing, No 2 Cdn Arty Rft Unit

Huron Camp,
Bramshott, Hants.,
3 May 44.

Officer detailed to take the Summary of Evidence.

Ex "A"

"DIR"

No B31950 Name DAY, H. Sqn, Battery, or Company Corps R.C.A. Date of enlistment 9 Jul 41 GC Badges

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Service or Proficiency Pay | Character

MFM 6 (AFB 122) 40/PAS/136 (5428)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 May 42	Gnr.		A.A.Sec.15(1) WOAS, AWL 13 hrs 19 minutes.	L/S Magee Bdr. Morgan	3 days C.B.	4 May 42	W.F. Blair Major	Fts. 1 days pay FRI 149 (1)(a)
Field Ex "C" "DLR"	12 May 42	Gnr.		A.A.Sec.15(1) WOAS, AWL from 1200 hours 12 May 42 until 0320 hours 21 May 42. Total absent 8 days. 15 hrs. 20 minutes	L/S Magee Bdr.Morgan	14 days detention	22 May 42	SW Williams Major	Fts 9 d.p. FRI 149(1)(a) fts 14 d.p. FRI 149(1)(b) fts 1 days pay FRI 149(1)(c)
Field	6 Jun 42	Gnr.		A.A.A.Sec 8(2) Using Insubordinate language.(2). Disobeying lawful command A.A.Sec.9(2)	Sgt.Berry Bdr.Watt	28 days detention	8 June 42	C.O. "P" Wing	Fts 28 d.p. FRI 149(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Released from detention 3 Jul 42 under remission. Earned 2 days Commandant D.D.								
Field	17 Jul 42	Gnr.		A.A.Sec15(1) WOAS, AWL from 2300 hrs 17 Jul 42 to 1900 hours 18 Jul 42. Total absence 20 hrs	Sgt.Magee	3 days F.P. Fts 5 days pay FRI149(2)	20 Jul. 42	Lt/ColC.G. Beeston	Forfeits 1 day pay FRI 149(1)(a)
Field	3 Aug 42	Gnr.		A.A.Sec.15(1)WOAS, AWL from 1400 hrs 3 Aug 42. until 1339 hours 4 Aug 42. Total absence 23 hrs 39 mins A.A. Sec.15(1)	Sgt.Magee	10 days C.B. Fts 10 days pay.	5 Aug 42	Lt-Col.C.G. Beeston	Forfeits 1 days pay FRI 149(1)(a)
Field	9 Sep 42	Gnr.		A.A. Sec.15(1) AWL 119 Days A.A. Sec.18(4) Stealing pistol value of £4.12.5 A.A. Sec 10(3). Resisting arrest	Bdr.Newby.G. S/S Nicol A. Capt.Jewell Gnr.Noelly Sgt.King G.H.Vore(Civil Police) L/C Anderson (CPC) L/C Brooks, F(CPC)	15 monthhs Detn placed under stoppages of pay (a)£4.12.5 (b)£2.10.3 cost of apprehension	19 Jan 43	FGCM	Pte 119 D.P.149(1)(a) " 456 d.p.149(1)(b) " 13 d.p.149(1)(c) Total Fts. 588 d.p.

Released from Detention Barracks on Nov 22,1943. Remission earned under Detention rules 147 days.

Certified true copy
6 May 44.

"W.G. Petrie"
(W.G. Petrie) Major RCA. officer having custody of original document.
A/Adjt "P" Trg Wing. No 2 CARU

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B 31950	Gunner	DAY, Harold	No 2 Cdn Arty Rft Unit.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special [illegible] gallantry or distinguished conduct recorded on the Field Conduct Sheet [illegible] also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Within last 12 months Since completion of 6 months service. times.

For A.A.Sec.15(1)NIL Five (5) times.

For A.A.Sec(8)(2)NIL One (1) times.

For A.A.Sec18 (4)NIL One (1) times.

For A.A.Sec. (3)NIL One (1) times.

"WGP" Date of first entry in Field Conduct Sheet.

"WGP" Date of last entry in Field Conduct Sheet.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

"WGP" *3. The accused at the present time is under sentence for

"WGP" beginning on the day of

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 7 10 days in military custody, i.e., Nil days in open arrest, 7 10 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 22 years, 214 days.

6. The date of his attestation is 9 Jul 41

"WGP" calling up for military service

7. The service which the accused is allowed to reckon is 2 years, 299 days

[State the military decorations (if any) held by accused.

"WGP" 8. The accused is in possession of:

"WGP" 9. If the accused is a warrant officer or N.C.O.: The accused has served continuously,

"WGP" without reduction, to the present date. "WGP" Date of Promotion

"WGP" In the substantive rank of

"WGP" In the war-substantive rank of

"WGP" In the acting rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Ex "B"

"DLR"

(21114) Wt.4670/668 100,000 4/42 A.& E.W.Ltd. Gp.698
(22450) Wt.29276/1873 60,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	Field 19 Jan 43	A.A.SEC.15(1) A.A.Sec.18(4) A.A.Sec.10(3)	15 months detn.	147 days remitted under Detention rules.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6th day of May 1944

"W.G. Petrie"
(W.G. Petrie) Major, RCA.
A/Adjt "P" Trg Wing, No 2 CARU

5A-84

Cpl. Day. A.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: No A 50321 Sgt (A/Sgt) H.R. Day Essex Scot.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required (or further charges, accused charged jointly, special findings, etc.)
1st	AA 12 (1)(a)	NOT GUILTY	NOT GUILTY	Noted Sentence Brig Comd 4 Cdn Inf Bde 28 Mar 45
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) N/A

(1. insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of days, of which~~ days were spent in hospital.(1) N/A

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) Asst Judge Advocate Capt 28 Mar 45 (Sgd) T R Wilcox Major President. (RP 45, 50)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date (Sgd) Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5A-84

RECEIVED 8 APR 1945 AAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPASE (to lieu of AFA51 AB/P & B/1688 (6000) 4/38B

Convened by Order of BRIG F N CABELDU Comd 4 Cdn Inf Bde dated 20 Mar 45

ACCUSED.

(For the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apppmt, A/rank or A/apppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R ~~or A~~/Appmt.	Full Christian Names.	Surname.	Unit.
A-50321	(a) (b) (A/Sgt) (A/Sgt)	HERBERT RONALD	DAY	E ~~EX~~ SCOT

PROCEEDINGS REVIEWED 14 Apr 45 [illegible] Colonel

REVIEWING OFFICER HQ 3 CDN INF BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 21 MAR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevent fmns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ N/A

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter?~~ Ans N/A

~~The Interpreter is sworn.~~(1) Do you object to Sgt Burke K.V. as shorthand writer? Ans No Obj.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Obj.(1)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 15, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	T R Wilcox	R Regt C.
Member	Capt	N.V. Howarth	RHLI
Member	Capt	G.T. Galbraith	RHLI
Judge-Advocate	Capt	A.P.L. DesRosiers	2 Cdn Inf Bde
Prosecutor	Lieut	S. Fiddes	Essex Scot
Defending Offr	Major	The Duke of Argyll D.W.	Essex Scot

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 32.)

A8. The accused before arraignment makes(s) (no) (~~a~~) plea N/A (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule. N/A

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D N/A

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President *or* JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a seperate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No Sir.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (and (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), ~~and allowed on the.....charge~~, and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Give evidence on oath. Do you intend to call witnesses on your behalf? Ans Yes. Are they witnesses as to character only? Ans No

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 60(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later~~.

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)

(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)

(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 136, 192, *RP* 46-50, 69, 118, 119(4), *KR Con* 308, 330, 563-566, *Overseas KO* 308, 2323, *MML p* 60, 753-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1E), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A-50321 Cpl. ~~[illegible]~~ (A/Sgt) DAY Herbert Ronald, a soldier of the Canadian Army, Overseas, 1st Bn., Essex Scottish Regiment on active service is charged with;

~~When on active service:~~

FIRST CHARGE
Army Act
Sec. 12 (1) (a)

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE;

in that he,

in the field on 1 Mar 45 at approximately 1400 hrs, when he was taking part in an attack against the enemy with intent to avoid taking further part in said attack left the attack and reported to his Pl HQ at approximately 1430 hrs 1 Mar 45. Total time absent - 30 mins.

(J E C PANGMAN) Lt.Col
Officer Commanding
ESSEX SCOTTISH REGIMENT

In the Field

14 Mar 45

To be tried by Field General Court Martial.

In the Field

19 March 45

.....Brig
Comd
4 Cdn Inf Bde.

12

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-50321	CPL	(L/Sgt) (A/Sgt)	HERBERT RONALD	DAY	ESSEX SCOT

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Mar 45 endorsed by me, (~~or by an offr of my staff or me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior (state to whom)~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint in these offrs to form the Court, (1) a Bd Offr as President, for the reasons I have attached hereto~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Unit.)
Maj	T R Wilcox (Must be named. RP 106.)	R Regt C

MEMBERS.

(Rank.)		(Unit.)
	To be detailed by CO RHLI	
	To be detailed by CO RHLI (Named or detailed. RP 106.)	

WAITING MEMBER.

(Rank.)		(Unit.)
	To be detailed by CO R Regt C (Named or detailed, if any. RP 106.)	

JUDGE-ADVOCATE.

(Rank.)		(Unit.)
Capt	A P L Des Rosiers (Must be named, if any. RP 106.)	2 Cdn Inf Div

On Active Service in the Fd

in GERMANY (Country.)

Date 20 Mar 45

(H N CHEELDS) (Signed personally. RP 105 fn 2.)

BRIG (Rank.)

Commanding 4 CDN INF BDE Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for words and notes for use on trial.)

4/38A (AFA86 (To Shd of AFA) 40/F & S/1807 (4021))

48

I certify that I have this morning examined A50321 Sgt DAYH .R. and that he is fit to undergo trial by Field General Court-Martial.

In the Field

21 MAR 45

C.A. Richardson Capt
(CA Richardson) Capt
RCAMC

TRANSCRIPT OF EVIDENCE IN THE TRIAL BY FGCM OF A-5032I CPL (L/SGT) (A/SGT) DAY, H R, ESSEX SCOT, HELD ON 21 MAR 45.

First Witness for the Prosecution, Capt A J Hodges, Essex Scot, being duly sworn, is examined by the Prosecutor.

Q.1- Will you tell us in your own words what happened on 1 Mar 45 ? With reference to this case?

A.1 - On 1 Mar 45 B Coy, of which I am OC, was ordered to put in an attack on part of the Hochwold Forest. Sgt Day was Mobile Fire Controller with our Coy, in the 3-inch mortar Platoon. I received my orders at about 1500 hrs and at that time I specified that Sgt Day would accompany Coy HQ. At 1400 hrs we crossed the start line. I don't remember seeing him after we formed up because I was at the front of Coy HQ and didn't look back once we started to see who was with us. When we reached our objective Sgt Day was not with us.

Q.2 - Did Sgt Day report to you at any time?

A.2 - No, he did not.

Cross-examined by the Defending Officer.

Q.3 - Capt Hodges, did you work with Sgt Day before this particular attack?

A.3 - Yes.

Q.4 - This particular day, he was with you at the O Gp?

A.4 - That is right.

Q.5 - Had he been with your Coy prior to this particular operation at 1400 hrs?

A.5 - Yes, he had been with us for several days.

Q.6 - Was he previously attached to your Coy as MPC?

A.6 - He had been working with B Coy since the start of the operation.

Q.7 - Before you started off on the attack you looked around and didn't notice him. Were you confident of the fact that he was there and would be there to do the job?

A.7 - Yes, I was.

Q.8 - Did you particularly want him on this attack because of other jobs he had done?

A.8 - Up until this time I had worked with Sgt Day in A and B Coys and he had always done a very fine job. As a matter of fact I had asked for him to be MPC with the Coy.

Q.9 - For this particular operation and for previous attacks?

A.9 - No, I had asked for him for this operation and for the operation before.

Q.10 - At what stage in the battle did you find out Sgt Day was not with you?

A.10 - I found out as we were advancing to our objective, 100 to 200 yards from where we crossed the start line.

Q.11 - What time did you personally find out he was not with Coy HQ, approximately?

A.11 - About 1430 hrs, when we started to consolidate.

Q.12 - What was the nature of the opposition in this particular area?

A.12 - Until we actually hit the woods, it was all small arms fire. After we got into the woods there were 88's and mortars.

Q.13 - Prior to your attack there was heavy enemy opposition in the nature of small arms and mortar fire?

A.13 - Yes, the Coys preceding us had got quite heavy opposition.

The Prosecutor declines to re-examine the witness.

Questioned by the Court.

Q.14 - You mentioned Sgt Day was with you in an earlier

operation. I would like you to give us the whole phase of this thing, how long he was with you, etc.?

A.14 - On the night of 28 Feb 45 we moved on to objectives, and B Coy moved on to an area just short of the Hochwold. We encountered no opposition and got on quite easily. At the same time, on our right, A Coy moved up and took a position on the left of the road which leads into the Hochwold Forest. They had some opposition but eventually took the position. On the morning of 1 Mar 45 our C and D Coys put in an attack on the Hochwold. They started off from A Coy position which I would say was about 4 or 5 miles outside the forest itself. The ground betweenA Coy position and the forest was pretty flat and they had several trench systems wired. C and D Coys on account of heavy opposition, had a number of casualties. They managed to take up positions just on the fringe of the Woods. C Coy went into the woods on the left of the road and D Coy into a few houses on the right of the road, which runs through the forest. B Coy was given the job of moving through C and D Coys and taking the woods on both sides of the road. We had quite a bit of opposition from MGs on the left front which caused most of our casualties. Once we hit the woods it was not too bad, there was a little mortaring and a few 88's and a little small arms fire. That is about all I can tell you.

Q.15 - You mentioned something about Sgt Day working with you in A Coy. Were you in A Coy on the night of 28 Feb 45?

A.15 - No , this wasduring the time we spent at Groesbeck. I was 2 i/c of A Coy during the month of Jan up until the time this attack started. We sat for a month in one spot and Sgt Day was MPC with the Coy.

Q.16 - Was Sgt Day with B Coy during this whole operation in the Hochwold Forest which you described?

A.16 - Yes.

In the opinion of the Court and JA it is not necessary to comply with RP 83(8).

The witness withdraws.

Second witness for the Prosecution, A-50288 A/Sgt Carter, J B, Essex Scot, being duly sworn is examined by the Prosecutor.

Q.17 - In your own words will you tell us what happened on 1 Mar 45 with reference to this case? Do you recognise the accused?

A.17 - Yes, sir, Sgt Day, there (indicating accused). On 1 Mar 45 approximately 200 yards from our forming up position, I was quite near Sgt Day. He told me he could not go any further. He asked me if I would report to Capt Hodges for him.

Q.18 - Did you report to Capt Hodges?

A.18 - Yes, sir.

Cross-examined by the Defending Officer.

Q.19 - Sgt Carter, At this particular time when Sgt Day asked you if you would report to Capt Hodges for him, would you say he was nervous, or rather that his nerves were rather upset at the time because of the heat of battle?

A.19 - Yes, I would, sir.

Q.20 - His nerves were definitely upset?

A.20 - Yes, sir.

Q.21 - How soon was it approximately after Sgt Day told you that you reported to Capt Hodges?

A.21 - Before I could see Capt Hodges it would be approximately 10 minutes.

Q.22 - At the time Sgt Day reported to you was Capt Hodges in the immediate area, in sight?

A.22 - Capt Hodges at the time, sir, was just up about 50 yards

or so, and I had to run to catch up to him after speaking to Sgt Day.
Q.23 - In this particular phase, the first phase of the battle, how was the enemy opposition in this area?
A.23 - Strong, sir.
Q.24 - Of what nature?
A.24 - Small arms.

The Prosecutor declines to re-examine the witness.

Questioned by the Court.

Q.25 - The attack went in I understand at about 1400 hrs. Is that right?
A.25 - Yes, sir.
Q.26 - The O Gp was held around 1300 hrs?
A.26 - Yes, sir.
Q.27 - When did Sgt Day tell you he could not go on any longer, in relation to when you started across the start line?
A.27 - You want the time, sir?
Q.28 - How much time had passed or how many yards had you gone?
A.28 - I can't give you the time, but it was approximately 200 yards past the forming up position past the start line in the direction of the enemy.
Q.29 - After you got started he mentioned to you he could not go on?
A.29 - Right, sir.
Q.30 - Would you say he was sick?
A.30 - He seemed quite upset.
Q.31 - Sick or nervous?
A.31 - Nervous, I would say.
Q.32 - What exactly did the accused tell you?
A.32 - He spoke to me and he said, I can't go any further, will you report to Capt Hodges for me.
Q.33 - Can you add anything to that or was it just words to that effect?
A.33 - Words to that effect, sir.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

Third Witness for the Prosecution, Capt J R Learn, Essex Scot, being duly sworn, is examined by the Prosecutor.

Q.34 - Do you recognize the accused?
A.34 - Yes, that is Sgt Day, there (indicating accused).
Q.35 - Will you tell us in your own words what happened on 1 Mar 45?
A35 - On 1 Mar 45, the day of the attack in question, I was called to the CO's O Gp and told the position of the attack. We were then in front of the Hochwald Forest. I was told that B Coy was one of two Coys going into the attack on the forest. In the course of the conversation the CO ordered me to find an MPC to report to B Coy before 1400 hrs. I saw Capt Hodges, OC B Coy, and asked him if he had any preferences as to an MPC. He asked me if Sgt Day was available and I told him that he was and he then asked to have Sgt Day report to him before 1400 hrs. I then contacted Sgt Day, gave him my orders and told him to report to Capt Hodges. I saw him leave and I returned to my Platoon HQ. I was OC Mortar Platoon. I was there shortly after 1400 hrs controlling a shoot from my HQ, it was approximately 1420 hrs to 1430 hrs, after the attack had started, and Sgt Day reported to me saying he had returned from B Coy. At that time I noticed Sgt Day was very pale and sobbing. I asked him what had happened and he stated that his nerves had broken and that he could not carry on with his job. I thought that in the condition that

he was in he could no longer carry on and consequently, as the MO at that time had his hands full, I despatched him with a vehicle that was going to A Ech of our unit, sir.

Cross-examined by the Defending Officer.

Q.36 - Capt Learn, how long have you been with the Mortar Platoon of the Essex Scot?
A.36 - Itook over the Mortar Platoon approximately 15 Aug 44, sir.
Q.37 - Was Sgt Day a member of the Mortar Platoon?
A.37 - Yes, he was i/c of No 3 Section when I took over. As far as I know he landed with the Mortar Platoon in France.
Q.38 - Since August, all through the battles to the present time, Sgt Day has been a member of your Platoon, working with you?
A.38 - That is correct, sir.
Q.39 - What would you say of his character? And his work?
A.39 - A very good one, I would say. He has always done a very good job. I would say 60% of the time Sgt Day was in charge of the section. During that time he was not he acted as MFC and my personal opinion is that he has gone into as many attacks as the average Platoon Comd, or as the average Coy Comd. I never had a complaint from any Coy Comds as to his work with them and as far as I know he has done his job for them as well as he has done his job for me. He has always done a good job, sir.
Q.40 - You mentioned an O Gp before the attack. Was Sgt Day asked for by name?
A.40 - Yes, by Capt Hodges.
Q.41 - You stated that at approximately 1420 hrs Sgt Day reported back to you. Where were you?
A.41 - I was at my Platoon HQ, about 1500 yards from the target which was B Coy objective.
Q.42 - Did he report to you in a formal manner?
A.42 - He came direct to my command post in the centre of my position and called me aside.
Q.43 - In your capacity as Morar Platoon Comd since August you feel that you are acquainted with battle neurosis as apart say from straight fear?
A.43 - As qualified as any other Platoon Comd.
Q.44 - And through your experience you think Sgt Day's condition was defenitely a neurosis condition?
A.44 - Yes, sir.

The Prosecutor declines to re-examine the witness.

Questioned by the Court.

Q.45 - Capt Learn, was there any prior indication from Sgt Day that his nerves were going?
A.45 - I can't say. He came back to me physically and mentally unfit for front line service. But I had been in England for two months before this attack.
Q.46 - Why didn't you send him to the MO as soon as he reported back to you?
A.46 - Because at the time Sgt Day was in such a condition I didn't want the other men to see him and inasmuch as the MO had his hands full with actual blood casualties. I thought it better to get him out of the way.
Q.47 - I realize that. But it would certainly not hurt the casualties to see Sgt Day in that condition or in any state even if he had to wait a couple of days for the MO to see him. In the second place, Sgt Day appears to be a hell of a good NCO, a good Sgt, and his whole future army history stands on the result of this court-martial. What we should have before us now is medical evidence as to his condition. If he was a battle exhaustion case he should have gone to a hospital, not a court-martial.

It is very unfortunate.

A.47 - It is my fault, sir.

Q.48 - I sympathize with you and can understand your position. But you should understand that this evidence is very important. A man's future hangs on it. There is only one way to get the proper evidence and that is for the MO to examine the man and testify that it was a bttle exhaustion case or he was scared. It leaves this Court in a very difficult position in deciding this case with no medical evidence at all. I realize that as an ordinary officer you are quite well qualified to judge. But I would like something m re from a qualified MO. That is all. Thank you.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

Fourth Witness for the Prosecution, Capt C J Jeffrey, Essex Scot, being duly sworn, is examined by the Prosecutor.

Q.49 - Capt Jeffrey, do you recognize the accused?
A.49 - Yes, that is Sgt Day (indicating accused).
Q.50 - Were you the officer detailed to takt the summary of evidence in this case?
A.50 - Yes.
Q.51 - Would you identify this document?
A.51 - Yes, this was a statement handed to me by Sgt Day on the day I took this summary of evidence.

The Defending Officer declines to cross-examine the witness.

Questioned by the Court.

Q.52 - Did you in fact take this summary?
A.52 - Yes, sir.
Q.53 - Did you warn the accused before taking that statement?
A.53 - Yes, I gave him the warning under RP 4, read it out to him and then explained to him the meaning of it.

The statement is produced in evidence, read, signed by the President, marked exhibit A and attached to the proceedings.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

D-4 PAGE 1

The Defending Officer submits the following motion.

Mr President and Members of the Court, it is definitely the opinion of the defence that there is no prima facie case against the accused either by the evidence of the prosecution or in any proof by the prosecution. The charge as it is worded here in the opinion of the defence does not apply in any way, to the actions of Sgt Day on 1 Mar 45 (reads the charge). True he did not take further part in the attack but as far as desertion goes there I submit it has no connection at all. In his statement, which I think is quite clear, he is very frank and tells exactly what happened. There was no intent on his part. Likewise, the evidence for the prosecution has proved no intent. In my cross-examination of witnesses, of Capt Hodges particularly, on this attack, it is quite clear that Capt Hodges had asked Sgt Day to act as his Mobile Fire Controller for his Coy. Although Sgt Day, having gone 200 or 300 yards from the FUP finds he could not go on, and although he cannot find his Coy Comd, he does the next best thing before pulling out. He asks Sgt Carter to get word to Capt Hodges and then he reported to his Pl Comd. Also, as the charge is framed, the total time absent, ~~mmm~~ thirty minutes, was the time spent by Sgt Day from the time he gave those instructions to Sgt Carter until he reported to his Pl Comd, Capt Learn, at Pl HQ, near TAC Bn HQ. In my cross-examination of Capt Learn, who is an experienced officer, having seen a lot of action, it was quite clearly brought out that Sgt Day's nerves had ~~gone~~ given way and for that reason Capt Learn sent him back to A Ech. At that time Capt Learn did the only thing he could do there. The whole area at that time was more or less front line and the best thing to do was to get him out and back to proper rest and proper care as soon as possible. At that time Capt Learn had no suspicions at all of desertion or any charge at all involving Sgt Day. So the thirty minutes involved there, it is obvious to the defence and I think the Court will bear witness, is not desertion. So in submitting these facts to your attention I would like the Court to consider these facts with regard to the charge. No intent has been proved, no desertion has been proved, and this case or rather charge as framed has not been established. As an experienced Coy Comd myself I believe this to be a case of battle nerves. We all know that MFCs do get into the thick of battle very often. Also, as Sgt Day said in his statement, during this two~~e~~week period he had had very little sleep or food, particularly during the last 36 hours. During this attack the Bn lost 27 officers and over 500 ORs. That was pretty steady going. Also during his time on this continent he has had no leave but one 48-hrs.

The Prosecutor declines to reply to the motion.

JA

On the point of law, I can point out that so far as intent is concerned, you cannot prove intent, what is going on in a man's mind. The only way intent can be proven is by the circumstances of the case. And as a general rule in law a man is presumed to intend the natural consequences of his acts.

First Witness for the Defence, the accused, A-50321 Cpl (L/Sgt) (A/Sgt) Day, H R, Essex Scot, being duly sworn, is examined by the Defending Officer.

Q.54 - Sgt Day, would you tell the Court in your own words the facts leading up to this particular battle in which you took part and what happened?

A.54 - For about 4 or 5 days previous to the date mentioned, 1 Mar 45, I had been attached to B Coy at Capt Hodges' request. The night before the attack we had put in an attack with little opposition on the fringe of the Hochwold Forest. The previous day and night I had had practically no sleep because, as someone was overworked, I was manning an 18 set and you can't do that and sleep. Next morning I was ordered to report back to the Mortar Pl which I did. The mortars were in action and I kept busy there all morning until Captt Learn warned me I was going in with B Coy to the attack in the Hochwold Forest. He told me to report to the RVP which was at A ~~Hqrs~~ Coy position. I waited there for an hour at least until B Coy ~~xxxxxxxxxx~~ came through and formed up. During that time we were mortared heavily in A Coy. I attended the O Gp with the Platoon Officers for this attack, and with the Anti-Tank representative, got the necessary information, and proceeded out to form up. We formed up and the attack began. There was a lot of MG fire and sniper fire, during this period, and things were growing steadily worse. My nerves were getting the best of me until I reached a point where I could not carry on with my duties. At which time I asked Sgt Carter to report the fact to Capt Hodges that I could not go on. I then did the best thing I thought I could do in the circumstances and reported to Capt Learn at Pl Hq. I told him what had happened. He then sent me to A Ech. At no time at all before the attack or during the attack did I have the intention of deserting from this action or disobeying orders. I think anybody who has been in action will agree that after a certain amount of battle a breaking point is reached. During 8 months in action I have never had any complaints at my work. If I had had desertion in mind on this occasion I certainly would not have waited at the forming up point for one hour or started the attack if disobeying orders had been my intent. From the time I went to pieces until I reported to A Ech I did the best things I could think of under the circumstances and just carried out Capt Learn's instructions from there.

Q.55 - Sgt Day, from the time y u left B Coy to report to Capt Learn, how long would that be?

A.55 - I can't say, sir, the matter of time. It could have been any time from 15 minutes to one-half hour.

Q.56 - At any time did Capt Learn suggest taking you to the MO?

A.56 - He never mentioned the MO at any time, sir.

Q.57 - You you have been willing to go if he had told you?

A.57 - Yes, sir.

The Prosecutor declines to ~~pa~~ cross-examine the witness.

Questioned by the Court.

Q.58 - Was B Coy in a forward area during the 36 hours previous to to this attack?

A.58 - Yes, sir.

Q.59 - Did you have to pass the RAP to go to Capt Learn?

A.59 - Our RAP and Mortar position were about 100 yards apart. As I remember the RAP was in a house facing the main road and behind a large building. One thing I might add, sir, my only job in that particular attack was to lift our fire if it was laid too close. I could not lay it against the enemy in the bush because I could not see them. Mortars were a minor phase in the general attack.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

Second Witness for the Defence, H/Capt J Cardy, Chaplain (P), Essex Scot, being duly sworn, is examined by the Defending Officer.

Q.60 - Will you please give the Court your name and rank?
A.60 - Yes, I am H/Capt J Cardy, padre of the Essex Scot.
Q.61 - Do you recognise the accused?
A.61 - Yes.
Q.62 - On 1 Mar 45 were you with A Ech?
A.62 - Yes, coming back from leave.
Q.63 - During the battle, would you give the Court any details?
A.63 - Well, I worked with the RAP and helped with the casualties.
Q.64 - On this particular day at A Ech did you at any time see Sgt Day?
A.64 - Yes, I saw him I think just after he got back there.
Q.65 - Could you give us the approximate time?
A.65 - I think it was after lunch. I am not sure. Yes it was in the afternoon.
Q.66 - When you saw him what condition was he in?
A.66 - I had just left HQ on the way to B Coy when I saw Sgt Day standing there. I went up to him to see if something was wrong. He looked sick. I asked him what was wrong. He told me he had been sent back. I took him over to the support coy and told the man there in the kitchen there to get him a good meal, put him to bed and not to let anybody ~~xxxxxxxx~~ bother him. He was tired out, and needing a rest.
Q.67 - You thought that was the best thing to do?
A.67 - I thought it was the only thing to do. I knew he was exhausted and needed treatment. I knew how the MO treated battle~~d~~exhaustion cases and I knew how to treat Sgt Day.
Q.68 - What can you tell us as to his character?
A.68 - I have known him ever since he has been with the regiment and I always found him 100% reliable. He has been a friend of mine and I have worked very close to him, in his platoon. I know he has done a good job in action. From what the boys have said.

The Prosecutor declines to cross-examine the witness.

Questioned by the Court.

Q.69 - In your opinion, from what you have observed around the RAP, was Sgt Day a battle exhaustion case?
A.69 - Yes. I might point out that you do not evacuate Sgts as battle exhaustion cases, or officers, because if you do you lose them. There is nothing medical about an exhaustion case. All the doctor does is look at the man. I have known Sgt Day longer than the MO has.
Q.70 - In your opinion, do you think Sgt Day would have been evacuated as a battle exhaustion case had he gone to the RAP?
A.70 - I am certain of it.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

Third Witness for the Defence, A-106131 Sgt Wilson, W J, Essex Scot, being duly sworn, is examined by the Defending Officer.

Q.71 - Sgt Wilson, do you recognise the accused?
A.71 - I do, sir.
Q.72 - As Sgt Day?
A.72 - Yes, sir.
Q.73 - What is your job in the Bn?
A.73 - I have a section of former pioneers.
Q.74 - I understand, Sgt Wilson, on 1 Mar, when the Bn took part

in the attack against the Hochwold Forest you were in A Ech?
A.74 - Yes, sir, I was LOB at the time.
Q.75 - During that day, did you see Sgt Day at A Ech?
A.75 - Yes, I seen Sgt Day the afternoon of the day we moved up to the attack.
Q.76 - Can you give me the approximate time?
A.76 - Yes, I am not just sure about it but would say between 4:30 and 5.
Q.77 - Do you know anything as to the circumstances why he was back at A Ech?
A.77 - No, I didn't at the time. But when I seen him I knew something was wrong. He looked completely beat.
Q.78 - Can you give us a little more detail regarding your opinion as to his, Sgt Day's condition?
A.78 - Well, when I first seen him I walked up to him and said, how are you doing. He looked bad. I asked him if he had a place to sleep. He said no. I said, come and sleep with me, in my slit. We were in slit trenches. We had tea, talked, then about 8 he said he guessed he would turn in. I allowed him to sleep until 1000 hrs next morning when A Ech was to move. The rest of us were up early but he was still asleep when I went to tell him we were going.
Q.79 - How long have you known Sgt Day?
A.79 - About 13 months now, sir.
Q.80 - How long have you been a Sgt?
A.80 Since 21 Jan 45.
Q.81 - As a fellow soldier, in the Support Coy, can you give us a brief description of Sgt Day's character?
A.81 - Well I think he has always made a pretty fine showing. He was at Groesbeck a month or month and a half out at B Coy, at the advanced outpost about 700 yards in front. He wasn't out of it much. I know the day we made the first attack up to the church, Sgt Day asked me if he could ride in my carrier but I didn't have room so he walked half-way. As far as I know he has always done a good job and been in there pitching.

The Prosecutor declines to cross-examine the witness.

No questions by the Court.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

Fourth Witness for the Defence, A-21124 CSM Woodiwiss, J E, Support Coy, Essex Scot, being duly sworn, is examined by the Defending Officer.

Q.82 - Do you recognize the accused?
A.82 - Yes, sir.
Q.83 - What is your job in the Bn?
A.83 - My job is to be in charge of ~~the Support~~ all NCOs and men in the Support Coy, for discipline and to see they carry out their duties, and also seeing that amn is supplied to the forward Platoons.
Q.84 - I understand that before being CSM of the Support Coy you were Mortar Platoon Sgt?
A.84 - Right, sir.
Q.85 - What can you tell us about Sgt Day?
A.85 - Sir, I have known Sgt Day ever since Sep 43. I trained with him in England and came to this country with him. He was at that time a L/Sgt, 2 i/c of my Section, I was Section Sgt. I have been in several battles with him, all through France. I became Platoon Sgt and had several dealings with him. He always carried out my orders. He was always willing to go up forward to any forward position. He never argued about anything. He even volunteered to go up an' take over

sections that were short of MFCs. I never had any complaints from any Coy Comd. He always had his men well trained. We have had about two complete turn-overs in the Platoon of MFCs, and it's no easy job. And it is always difficult to train a good mobile fire controller. And we were nearly always shorthanded with MFCs so they had plenty to do.

The Prosecutor declines to cross-examine the witness.

No questions by the Court.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

Fifth Witness for the Defence, Lieut W N McMillan, Essex Scot, being duly sworn, is examined by the Defending Officer.

Q.86 - Lieut McMillan, you are now IO of the Essex Scot?
A.86 - Right, sir.
Q.87 - Do you recognize the accused?
A.87 - Yes, sir.
Q.88 - You were formerly a rifle coy officer?
A.88 - Right, sir, No 7 Platoon, A Coy.
Q.89 - Did you work with Sgt Day as MFC in ~~them~~ your platoon?
A.89 - Yes, sir, he was MFC attached to my Platoon for 30 days at Groesbeck.
Q.90 - Were you a forward platoon at the time?
A.90 - Yes, sir.
Q.91 - Can you give the Court a few bried details as to Sgt Day's operations with you?
A.91 - Yes, sir, during the time that Sgt Day was with me up in that position he carried out his duties as MFC very well, to the best of his ability and everything satisfactorily. He was with me when this push started. We occupied the same house. He carried out his duties very very well at all times.

The Prosecutor declines to cross-examine the witness.

Questioned by the Court.

Q.92 - Was this position for 30 days in Groesbeck rather an exposed, nerve-wracking one in any particular way?
A.92 - Not particularly, with the exception of the last few days when mortar fire increased. The first part of the time up there was very quiet. The last two weeks movement had to be absolutely controlled and ~~ha~~ we had heavy casualties in the platoon.

In the opinion of the Court and JA it is not necessary to comply with RP 83(B).

The witness withdraws.

The Defending Officer makes the following closing address.

Mr. President and Members of the Court, I think I have brought forward all the witnesses possible in defence of the accused, both as to the facts and as to character. I now wish to sum up on this case and also to bring out a few facts of my own. With regard to that, I have served in the same regiment as the accused, Sgt Day, for the best short of five years, since 1940 in July. I have known Sgt Day not only in the regiment but also in high school prior to joining the army. We came to this regiment at approximately the same time. Sgt Day has been engaged in mortar platoon work with an infantry bn for the last five years. He came to the Essex Scot in Aug 43 having reverted from a confirmed Cpl from his regiment so that he arrived at this unit as a pte. He came into the mortar platoon of the

regiment here. In England he influenced his CO through his good work to recommend him for promotion to the rank of Cpl and recently he was promoted to L/Sgt and A/Sgt with the mortar platoon. He arrived with the regiment in France on 3 Jul 44 and from that day he has been in every battle, Caen, Fallaise, by the Seine River, Elbeouf and other actions all up through France, Belgium, Holland and Germany, right in there, with them. During this period he not only served asa senior NCO but particularly during the last few months he served as MH MFC and partly pinch hit in that job for others because of the very high casualties in MFCs. He has worked with any coy and every coy and was right on the bit whether on defence or on attack. That has been borne out by the witnesses on his behalf before the Court today. On this particular date, 1 Mar 45, on the attack on the Hochwold Forest, he was asked for by name by his Coy Comd concerne in this case, Capt Hodges. In summing up the evidence as given by the witnesses for the defence you have heard them all and I think it is quite clear to the defence, and I am quite sure to the Court, which must be influenced by the 100% record of Sgt Day through all the actions up to the present time, that Sgt Day has been going strong particularly during the last three weeks through three very severe battles. He was often called on because he was one of the most experienced MFCs we had. And in addition he volunteered at times for the job. I feel that the charge under which he is placed now is quite unfair. True, he was not take to the MO, but in any cases I have known as a Coy Comd myself, having dealt with a number of cases of this nature, I have never yet had a man walk to the MO. Usually he is taken or sent there by his superior officer. In this case, as a Sgt, his Platoon Officer felt it was advisable, with his experience, to send this Sgt back to A Ech. And that is the only reason why Sgt Day is here before you today. In closing I again ask the Court to consider all these facts as to Sgt Day's ability, record, and the circumstances. In this case he had just reached a point where you cannot expect flesh and blood to go further. In several ways it is not his fault that he is put on this charge. I will not ask the Court to give the accused th benefit of the doubt because I do not believe there is any doubt involved. I will say that the facts put forward on his behalf I suggest be accepted and considered in the final findings of the Court.

The Prosecutor makes the following closing address.

The prosecution rests this case on the evidence but would like to point out that a great part of the defence evidence has to do with mitigation of punishment.

The JA sums up as follows.

Mr. President and gentlemen, you are the masters of the fact and you are also masters of the law but I must point out that in this latter respect you should not disregard my advice unless on points of law unless for very weighty reasons. I also wish to remind you that the accused is presumed to be innocent until proven guilty beyond a reasonable doubt. By that I mean a common sense doubt arising out of the evidence and not based on fancy, imagination or undue sympathy. The onus rests upon the prosecution throughout the trial to prove the guilty of the accused and if you are not satisfied that the prosecution has proved that gu guilt then you are bound by law to find him not guilty. In this particular case we have a charge of desertion, going away without leave, and in going away having an intent either to desert His Majesty's Service never to return, or to avoid some particular service. It will be up to you to decide in this case whether hg leaving the Coy when it was in an attack is avoiding a particular service. In the event that you do accept the fact from the evidence that the accused did leave the coy during an attack, it will be up to you to decide whether it was desertion. To establish the fact of desertion you must have evidence of intent. Now of course, Intent cannot be proven by seeing what is in a man's mind. You have evidence of the accused himself which may enlighten

you element. But intend may be deduced from all the circumstances of the case and in any event it is a presumption of law that a man is assumed to intend the natural consequences of his actions. Now I wish to read to you para 17 on page 18 of MML, Chapter 3 (reads the citation to the Court. Now you will find also in MML that the question of distance and time absent are not essential or invariable factors in desertion. But as a final word I again want to remid you that you must be sure beyond a reasonable doubt that the accused went away to escape or avoid doing an attack before you can find him guilty. Also, under Army Act Section 56, in a case of desertion, the Court are allowed to bring in special findings of guilty on the lesser charges of attempting to desert or absence without leave.

Mr. President, are there any further matters on which you wish me to advise the Court?
A. - No.
Mr. Prosecuting Officer, are there any further matters on which you wish me to advise the Court?
A. - No, sir.
Mr. Defending Officer, are there any further matters on which you wish me to advise the Court?
A. - No.

I wish the the services of Major D.W. McIntyre to defend me at my trial if he is available. If he is not available I wish the services of an officer detailed by the Adjutant

Mitchfield
10 March

H.R. Day

SUMMARY OF EVIDENCE

— IN THE CASE OF —

No. A-50321 - L/Sgt (A/Sgt) - Herbert Ronald DAY, 1st Bn. Essex Scottish Regt, (CA(O), a soldier of the Cdn. Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution:- Capt. A. J. Hodges, 1st Bn Essex Scots Regt (CA(O), having been duly sworn, states:

"I am Capt. A. J. Hodges, Coy Comd. of "B" Coy, of the Essex Scots. Regt (CA(O). On 1 Mar 45, "B" Coy was ordered to put in an attack on a section of the 'Hochwald' Forest. A.50321 A/Sgt Day HR was detailed as M.F.C. In my orders, I specified that A/Sgt Day would travel with Coy H.Q. Soon after crossing the Start Line, Sgt Carter, of the A/tk Pl. reported that A/Sgt Day ~~[illegible]~~ was not with us. I haven't seen Sgt Day since the Coy was in the F.W.P. until this date."

Question to Witness by Officer taking Summary.

Q.1 - "Did A/Sgt Day report to you at any time or give reasons why he did not go with you into the attack?"

A.1 - "No."

Questions to Witness by Accused

Q.1 - "Did Sgt Carter report to you that I had not left the F.W.P. or that I was no longer with you?"

A.1 - "Sgt's Carter's exact words were, "Sgt Day," said. 'Tell Capt. Hodges that I can't go on.'"

In the Fd.
4 Mar 45

[illegible]

SECOND WITNESS For the Prosecution:- A-80288 A/Sgt, Carter, J.B. 1st Bn Essex Scots Regt. CA(O), having been duly sworn, states:-

"I am A.80288 A/Sgt Carter, J.B, in Command of No. 1 Sec. of the A/Tk Pl., Essex Scots Regt. CA(O). On 1 Mar 45, A.80321 A/Sgt. Day, H.R and I left with Capt Hodges of "B" Coy into an attack with his Coy. H.Q. At approximately 300 yards ~~beyond~~ our start line, Sgt. Day appeared to be nervous and broken-up and told me to report to Capt. Hodges that he just couldn't go on any further.

Questions by Officer taking Summary to Witness

Q.1 - "Did Sgt Day give you any explanation or reasons why he couldn't go on with the attack?"

A.1 - "He told me that his nerves had got the better of him."

The Accused declines to cross-examine this witness

In the Field
4 Mar 45

J Carter A/Sgt.

THIRD WITNESS for the Prosecution:- Capt J.R. Learn, 1st Bn Essex Scots Regt CAC, having been duly sworn, states:

"I am Capt J.R. Learn, O.C Mortar Pl of the Essex Scots Regt CAC. At Approx 1300 hrs, 1 Mar 1945, I order A-80321 A/Sgt Day, H.R. to report to "B" Coy H.Q. and act as Mobile Fire Controller with that Coy. The Coy was due to attack at 1400 hrs. of that date. Shortly after this time, Sgt

Third Witness (Cont'd)

Day reported to me at my H.Q. stating that at the last moment his nerves had broken and that he was unable to go thru with the task detailed to him. At the time, I noticed that Sgt Day was, in my opinion, mentally and physically unfit for front line service so I therefore sent him to "A" Echelon of our unit. He was very pale and sobbing at that time."

The accused declines to cross examine this witness

In the fd.
4 Mar 45

J R Learn

The accused having been duly warned in accordance with R.P. 14(c), says:

"I herein transmit this written statement in my defence."
(Statement Attached as App. "A")

In the Fd.
4 Mar 45

H R Day

The Accused declines to call witnesses in his defence at this point.

Certified that R.P. x have been complied with

In the Field
4 Mar 45

C J Jeffrey, Capt.
Officer detailed to take Summary

App "A"

CANADIAN LEGION WAR SERVICES Inc.

ON ACTIVE SERVICE

CANADIAN RED CROSS OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

Ex 'A' AD

In The Field
4 March 45

A5032 Sgt H.R. Day

The following statement I make voluntarily in connection with the summary of evidence taken by Capt Jeffries

On the afternoon of March 1st 45 I at approximately 1200 hrs was ordered by my platoon commander Capt J.R. Learn to report to Capt Hodges C.C. of B Coy I contacted Capt. Hodges at the F.O.P. and attended his orders group

He ordered me to travel with Coy HQ in the attack which I proceeded to do. After travelling approximately

PLEASE WRITE ON BOTH SIDES

- Page 2 -

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

AD

200 yards across a field directly in front of the Hoch Wald Forest during which time my nerves were growing steadily worse I finally completely went to pieces & felt I could no longer do my job as M.F.C. I called Sgt Carter & ~~a~~ told him to tell Capt Hodges I could not go on I then reported to Capt Learn at my Plt. H.Q. & he ordered me to our A Echelon.

Previous to B Coy's attack I had been going with little food or sleep for 36 hours. At no time

PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES INC.
CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES
ON ACTIVE SERVICE
CANADIAN Y.M.C.A. OVERSEAS
THE SALVATION ARMY CANADIAN WAR SERVICES

did I have the slightest intention of wilfully disobeying the orders given ~~by~~ to me by either Capt Hodges or Capt Dawn until as I previously mentioned I broke down.

A.R. Day.

PLEASE WRITE ON BOTH SIDES

SUMMARY OF EVIDENCE

In the case of A-50321 L/Sgt (A/Sgt) Herbert Ronald DAY, of the 1st Bn., Essex Scottish Regiment, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: For the Prosecution

Capt. A.J. Hodges, 1st. Bn., Essex Scottish Reg't., Canadian Army Overseas, having been duly sworn, states:
"I am Capt. A.J.Hodges, Coy Comd of "B" Coy of the Essex Scotthis Reg't., Canadian Army Overseas. On 1 Mar 45, "B" Coy was ordered to put in an attack on a section of the Hochwald Forest. A-50321 A/Sgt. Day H.R. was detailed as M.F.C. In my orders, I specified that A/Sgt Day would travel with Coy H.Q. Soon after crossing the Start Line, Sgt. Carter, of the A/Tk Pl reported that A/Sgt. Day was not with us. I haven't seen Sgt. Day sincethe Coy was in the F.U.P until this date."

QUESTION TO WITNESS BY OFFICER TAKING SUMMARY.
Q.1 - "Did A/Sgt Day report to you at any time or give reasons why he did not go with you into the attack?"
A.1 - "No."

QUESTIONS TO WITNESS BY ACCUSED.
Q.1 - "Did Sgt. Carter report to you that I had not left the F.U.P. or that I was no longer with you?"
A.1 - " Sgt's Carter's exact words were,"Sgt Day said,"Tell Capt. Hodges that I can't go on."

Sgd. A.J.Hodges, Capt.

SECOND WITNESS: For the Prosecution

A-50288 A/Sgt. Carter, J.B. 1st. Bn., Essex Scottish Reg't., Canadian Army, Overseas, having been duly sworn, states:
"I am A-50288 A/Sgt. Carter, J.B. in Command of No. 1 Sec of the A/Tk Pl., Essex Scottish Regiment. On 1 Mar 45 A-50321 A/Sgt. Day H.R. and I left with Capt. Hodges of "B" Coy into an attack with his Coy H.Q. at approximately 200 yards beyond our start line, Sgt. Day appeared to be nervous and broken up and told me to report to Capt. Hodges that he just couldn't go on any further.

QUESTIONS BY OFFICER TAKING SUMMARY TO WITNESS.
Q.1 - "Did Sgt Day give you any explanation or reasons why he couldn't go on with the attack?"
A.1 - "He told me that his nerves had got the better of him."

The accused declines to cross-examine this witness.

Sgd. J.B.Carter A/Sgt.

THIRD WITNESS: Capt. J.R. Learn, 1st. Bn., Essex Scottish Reg't., Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

"I am Capt. J.R. Learn, O.C. Mortar Pl of the Essex Scottish Reg't., Canadian Army Overseas, At approx 1300 hrs 1 Mar 45, I ordered A-50321 A/Sgt. Day, H.R. to report to "B" Coy H.Q. and act as Mobile Fire Controller with that Coy. The Coy was due to attack at 1400 hrs of that date. Shortly after this time, Sgt. Day reported to me at my H.Q. stating that at the last moment his nerves had broken and that he was unable to go through with the taks detailed to him. At the time, I noticed that Sgt. Day was, in my opinion, mentally and physically unfit for front line service so I therefore sent him to "A" Echelon of our unit. He was very pale and sobbing at that time.

The accused declines to cross-examine the witness.

Sgd. J.R. Learn, Capt.

The accused having been duly warned in accordance with R.P. 4 (e), says:

"I wish to submit this written statement in my defence."

(Statement attached as App. "A".)

Sgd. H.R. Day A/Sgt.

The accused declines to call witnesses in his defence at this point.

Certified that R.P.4 have been complied with, and that the foregoing evidence, consisting of two pages was taken down by me in the presence of the accused.

In the Field
4 Mar 45

Sgd. C.J. Jeffrey, Capt.
Officer detailed to take the Summary.

App. "A".

STATEMENT BY THE ACCUSED.

A-50321 Sgt. M.R. DAY .

The following statement I make voluntarily in connection with the summary of evidence taken by Capt. Jeffrey.

On the afternoon of 1 Mar 45 I, at approximately 1300 hrs, was ordered by my platoon commander, Capt. J.R. Learn, to report to Capt. Hodges, O.C. of "B" Coy. I contacted Capt. Hodges at the F.U.P. and attended his orders group.

He ordered me to travel with Coy HQ in the attack which I proceeded to do. After travelling approximately 200 yards across a field directly in front of the Hochwald Forest during which time my nerves were growing steadily worse. I finally completely went to pieces and felt I could no longer do my job ~~XX~~ as M.P.C. I called Sgt. Carter and told him to tell Capt. Hodges I could not go on. I then reported to Capt. Learn at my Pl HQ and he ordered me to our "A" Echn.

Previous to "B" Coy's attack I had been going with little food or sleep for 36 hours. At no time did I have the slightest intention of wilfully disobeying the orders given to me by either Capt. Hodges or Capt. Learn until as I previously mentioned, I broke down.

Sgd. M.R. Day

00-58
PTE DAY J.C.

B-1
[illegible] maj
00-[illegible]

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this TWENTY-EIGHTH day of AUGUST, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 6 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[illegible]

Proceedings Reviewed 1 Oct 43
F. Tutscale Capt
Reviewing Officer (HQ) CMHQ

(87)

President.

Rank.	Name.	Regiment.
Major	P. Sauve	Fus M R

Members.

Rank.	Name.	Regiment.
Capt	To be detailed by O.C. S Sask R	
Capt	To be detailed by O.C. Camerons of C	
WAITING MEMBER Lieut	To be detailed by O.C. Camerons of C	

*Signed [signature]
(G.A. McCarter) Brigadier,
Commanding 6 Cdn Inf Bde.
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M-19865 Pte JAMES CHESTER DAY Camerons of C	FIRST CHARGE A.A. Sec 15 See charge sheet attached.	Guilty	Twenty eight days detention 28th day of August 1943.	Confirmed G. A. McCarter Brig. 6 Cdn. Inf. Bde. 3 Sep 43.

Jmsy

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) G. A. McCarter (G.A. McCarter) Brigadier, Commanding 6 Cdn Inf Bde. (Signed) J. McNaughton major Fus MR. Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twenty eight day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
* ~~(3) The interpreter~~ Jmsy
* ~~(4) The officers under instruction~~ Jmsy

were duly sworn.

* Omit if not applicable.

Signed this 28th day of August 1943

J. McNaughton major
President of the Court Martial.
Fus MR.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ G. A. M.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 3rd day of September 1943.

G. A. McCarter
Confirming Officer
Brig.
6 Cdn. Inf. Bde.

Promulgated and extracts taken in the case of

(a) (Dated) 4 Sep 43 (Signed) G. P. Hilde, Capt. & Adjt. Camerons of Canada.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B-2.

CHARGE SHEET

H-19865 Private Day, James Chester of the Queen's Own Cameron Highlanders of Canada, a soldier in the Canadian Army Overseas is charged with:-

FIRST CHARGE
A.A. Sec 15

While on Active Service, Absence without leave,

in that he,

in the field did absent himself from his unit from 1200 hrs 19 Aug 43 until apprehended by the Cdn Provost Corps in London at 0215 hrs 23 Aug 43.

In the Field
25 Aug 43

A.T. Law Lt-Col
(A T Law)
Comd Camerons of Canada

To be tried by Field General Court Martial

In the Field
28 Aug 43

(N.S. Bergman), Capt.,
B.C. 6 Cdn Inf Bde.
for and at the direction of
G.A. McCarter, Brigadier,
Commander 6 Cdn Inf Bde.

I hereby acknowledge receipt of a copy of this Agreement and
agree to be bound by the terms hereof.

(Signature of Executive)

(Date)

I hereby acknowledge receipt of a copy of this Agreement and
agree to be bound by the terms hereof.

(Signature of Executive)

(Date)

I hereby acknowledge receipt of one copy of
and one copy of the Charge Sheet.

(H-1)

I request that an officer be appointed to

(H-1

28 Aug

H 19865 Pte Day C

A

~~Field~~ Court Martial & is fit to under go General

H Marant Capt

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held ~~at~~ in the field, on the 28th day of August 1943 by order of Brigadier G. A. McCarter

Commanding 6 Cdn Inf Bde

dated the 28th day of August 1943

President.

Major P. Sauvé Fus M R

Members.

Capt A. M. Matheson S Sask R

Capt D. Dodge Camerons of C

Waiting: Lt L.P. Beech Camerons of C

Trial of* , ~~Judge Advocate~~ [illegible]

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court. [illegible]

~~The Court satisfy themselves that~~ ~~is not available~~ [illegible] to serve owing to

, ~~waiting member takes his place as a member of the Court.~~ [illegible]

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt J. J. Power, Camerons of C.

Counsel‡ or defending officer† Lt W. B. Gunn, Camerons of C.

At 1415 o'clock the Trial commences.

The order convening the Court is read, and is marked R-1, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt.W16838/78. 25,000 pts. 4/43. R. & H., Ltd. G627/11. Forms A 9/22.

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the ~~first~~ charge against you, which you have heard read? *Question to the accused.*

Answer. Yes

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to the first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

COUNTER NUMBER 542084

HOUR 1845

OPERATOR'S INITIALS GH.

RELIEVING OPERATOR KL

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness ?

Answer.

Question. Do you intend to call any other witness in your defence ?

Answer.

Question. Is he a witness as to character only ? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecuting counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iii) and 41 (A) ii) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence ?

Answer. The accused in his defence says†

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again:]~~ jury

The accused H-19865, Pte James Chester Day
is found guilty of absence without leave

†The summary (or abstract) of evidence is read, marked B-3
signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Leo

Answer. ~~The accused in mitigation of punishment says:—~~ jury

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~ jury

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused

Answer.

Evidence as to character

No

E

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

Finding.*

~~The Court is closed for the consideration of the finding.~~ Jmcy

~~The Court find that the accused~~

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

~~*The Court being re-opened, the accused is again brought before it.~~ Jmcy

Lt J. J. Power, Cameroons of C is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, I produce Ul FB 355 and Ul FM 6 of the accused

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked B 4 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

~~Cross-examined by the accused.~~ Jmcy

[Instruction.—If by reason of the nature of the service of the accused on a departmental corps, in otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused H-19865, Pte James Chester Day, Canadian of C. to undergo detention for twenty eight days.

Sentence. Detention for twenty eight days

Signed in the Field, this 28th day of August 1943.

J.M. Mann major,
President.

B-3 Summary of Evidence

SUMMARY OF EVIDENCE

In the case of H-19865 Private Day, James Chester of the Queen's Own Cameron Highlanders of Canada, a soldier in the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence been given under oath.

FIRST WITNESS — H-20530 Cpl Parynuik, T., Camerons of Canada, Cdn Army Overseas, having been duly sworn states:-

I am H-20530 Cpl Parynuik, T., Camerons of Canada, Canadian Army Overseas. On 19 Aug 43 I was acting Coy Orderly Sergeant when I checked at 1200 hrs for the return of Private Day, J.C. from a 24 hour pass, I found him to be absent.

The accused declines to question the witness.

SECOND WITNESS — H-19503 L/Cpl Emmons, M.J., Camerons of Canada, Canadian Army Overseas, having been duly sworn states:-

I am H-19503 L/Cpl. Emmons, M.J., Camerons of Canada, Canadian Army Overseas. In line with my duties as a Regimental Police on 23 Aug 43 at 1530 hrs I took into custody H-19865 Private Day, J.C. from a member of the Cdn Provost Corps.

The accused declined to question the witness.

In the Field
25 Aug 43

J.J. Power Lieut
(J.J. Power)
Camerons of Canada

B-4 Jim Mauk maj. pres.

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-19865	Pte	Day, J.C.	Camerons of Canada

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	one charge AA Sec 15	times	2 charges AA Sec 15	times
For	one charge AA Sec 11	times	one charge AA Sec 40	times
For		times	one charge AA Sec 11	times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for [illegible] day of [illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for ..... days in civil custody, and ..... days in military custody, making a total of ..... days in custody, of which ..... days were spent in hospital.

5. The present age of the accused according to his record of service is ~~[illegible]~~ 32 yrs 7 mths

6. The date of his ~~[illegible]~~ attestation specified in his record of service is ~~[illegible]~~ 5 Dec 39

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 8 mths 21 days
3 yrs 8 mths 21 days

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

~~9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.~~
military military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25 day of Aug 43 A. J. Cayden Capt
(A. J. Cayden)
Adjt Camerons of C

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Last sheet destroyed 5-5-40

M.F.M. 6
(A.F. B.122)
40/F & S/5136 (2065)

No. H-19865 Name Day, J.C. Regt., Battery, or Company "B" Corps Camerons of C Date of enlistment 5-12-39 O.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ft Obsorne Brk	23/3 41	Pte		AWL in that he was absent from 0700 hrs 23-3-41 to 2355 hrs to 23-5-41 (Absent 16 hrs 55 mins)	Sjt McKenzie L/C. Third	3 days CB	24-3-41	Maj J. Troop	Forf 1 days pay
Denton	29-12-41	Pte		Out of Bounds	Doc'y	7 days CB	21-12-41	Major Ross	
In the Field	26-4-42	Pte		Failing to comply with an order	Cpl Murphy	14 days CB	28/4/42	Maj Law	
In the Field	2-6-43	Pte		WOAS absence in that he was absent without leave from 0600 hrs 6 Jun 43 to 1500 hrs 10 Jun 43 (Absent 4 days 9 hrs) AA Sec 15	L/C Jankila	5 day pay 14 days CB	14/6/43	Lt-Col A.T. Law	Forf 5 days pay

Certified True Copy.
(A J Ayden) Capt.
SOCHK.

(PTO)

Last sheet destroyed 5-5-40

M.F.M. 6
(A.F. B.122)
40/P & /S136 (2965)

No. H-19865 Name Day, J.C. Sqn., Battery, or Company "B" Corps Camerons of C Date of enlistment 5-12-39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ft Obsorne Brk	23/3 41	Pte		AWL in that he was absent from 0700 hrs 23-3-41 to 2355 hrs to 23-5-41 (Absent 16 hrs 55 mins)	Sjt McKenzie L/C. Third	3 days CB	24-3-41	Maj J. Troop	Forf 1 days pay
Denton	20-12-41	Pte		Out of Bounds	Doc'y	7 days CB	21-12-41	Major Ross	
In the Field	26-4-42	Pte		Failing to comply with an order	Cpl Murphy	14 days CB	28/4/42	Maj Law	
In the Field	2-6-43	Pte		WOAS absence in that he was absent without leave from 0600 hrs 6 Jun 43 to 1500 hrs 10 Jun 43 (Absent 4 days 9 hrs) AA Sec 15	L/C Jankila	5 day pay 14 days CB	XXXXXX XXXXX 14/6/43	Lt-Col A.T. Law	Forf 5 days pay

Certified True Copy.
[signature]
(A J Ayden) Capt.
SOCHC

(P.T.O.)

572 36-8-40

GGG·28

PTE DAY J.C.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H.19865 Pte James Chester DAY - 2 CIRU - Camerons of C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.Sec 12(1)(a)	not Guilty	not Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~(1: insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)~~ beginning on (date) (1)

Time in confinement awaiting present trial ~~a total of~~ days, of which days were spent in hospital.(2)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EZ.)

~~Sentence Awarded by the Court:~~

(Sgd) 21 mar/44 [signature] Col
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers, see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd)
Date Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. GGG 28

FIELD GENERAL COURT-MARTIAL

(PAM (In lieu of AFB 23) 401 P & R (1868 (2864))

Convened by Order of Col M.K. Greene, A/Comd "A" Gp, CRU, dated 17 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H.19865	Pte	James Chester	DAY	2 CIRU (Camerons of C)

PROCEEDINGS REVIEWED
W.C. Bach Lieut
31 Mar 44 Rev 3
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 21 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number bearing reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. ~~At 10.30~~ 1230 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.(1)~~ Do you object to as shorthand writer? Ans
The shorthand writer is sworn.(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir
(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. REDMAN	HQ CRU
Member	Capt	D.F. Stacey	2 C.I.A.U.
Member	Capt	J. Duchaine	6 C.I.A.U.
~~Waiting Member~~ ~~Judge Advocate~~			
Prosecutor	Lt	G.P.P. Grant	2 C.I.A.U.
Defending Offr	Lt	M.C. Bates	2 C.I.A.U.

~~Questions by President~~: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See Dif p 3.)

A8. The accused H19865 Pte James Chester DAY before arraignment makes(s) (no) ~~No~~ plea.(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GB), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~respectively~~ on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 12

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete which or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO - I'M.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. I'll Give Evidence. Do you intend to call witnesses on your behalf ?
Ans. NO SIR. Are they witnesses as to character only ? Ans.....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATT
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

D9. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D10. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecution produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas AO 109, 2323. MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused H-19865 Private James Chester DAY, Queen's Own Cameron Highlanders of Canada, on strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE ATTEMPTING TO DESERT HIS MAJESTY'S SERVICE

Sec.12(1)(A) Army Act

in that he

at Laurentide Camp on the 13th of March, 1944 after having been duly warned to proceed on draft, with intent to avoid so proceeding, absented himself without leave from Muster Parade from 0640 hours, 13th of March, 1944 until he surrendered to L-84083 Cpl. Ruth, R. A. at 0815 hours 13th of March, 1944.

Total absence - 1 hour, 35 minutes.

W. J. Bingham Lt.Col.

(W. J. Bingham) Lt.-Col.
A/Commander 2 C.I.R.U.

Laurentide Camp,
Witley, Surrey.
16th March, 1944.

To be tried by Field General Court Martial.

M. K. Greene

(M. K. Greene) Col,
A/Comd,
"A" Gp Cdn Rft Units,
C.A.(O).

17 Mar 44
Witley, Surrey.

FIELD GENERAL COURT-MARTIAL

CFA65 (In lieu of AFA3)
40/FAS/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H.19865	Pte		James Chester	DAY	2 CIRU (Camerons of C)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(since)~~ committed the offence set forth in the Charge Sheet attached and on (*date*) 17 Mar 44 endorsed by me, ~~(or by an offr of my staff for me,)~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. ~~XXXX

Medical Officer's Certificate
K.R. (Can) Para. 557.

I certify that I have this morning examined, H19865 Pte Day, J.C
(No.) (Rank) (Name)

of 2CIRU (QOCH) and in my opinion he is fit/Unfit to under go trial by Court Martial.

Station Witley, Surrey,

Date 21 Mar 44

Wm Spittel Capt
(Medical Officer)

OFFICERS UNDER INSTRUCTION

Lt	R M	GRAINGER	2 CIRU
Lt	A	LAVORE	6 CIRU
Capt	K M	TUBMAN	1 CBOW
Lt	G	LAPALME	6 CIRU
Lt	P E	MONIER	6 CIRU
Lt	R	LIBOIRON	6 CIRU
Lt	R	BELISLE	6 CIRU
Lt	F L	COSMAN	2 CIRU
Lt	R F	BRUCE	2 CIRU

Case of

H.19865 Pte James Chester DAY 2 CIRU (Camp of C)

PROSECUTION

1st Witness

Lt JE ORR, 2 CIRU, having been duly sworn, states:

On Sunday 12 Mar at approximately 1100 hrs I was Mustering Officer. At about 1100 and 1115 hours I called the roll of the draft. Pte Day was present on the parade. The method of calling the draft is to give the man's surname and he reports back his number and initials. Rechecking my sheet I found the only man absent at the end of my muster was a C&MS Blanko whose absence was reported to the A/2IC. That is all, Sir.

Defending Officer declines to cross-examine.

Questions by the Court:

Q. What was the name of the draft?
A. It was for Exercise "ZIPPER", Sir.

Q. Was it a field draft?
A. Yes, that is, it was going to a regiment in the field in the UK as reinforcements. I did not know the accused by sight before that parade. When each man answered his name he fell out and formed up again on another piece on the parade square.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B).

THE WITNESS WITHDRAWS.

2nd Witness

Lt JG FEE, 2 CIRU, having been duly sworn, states:

On Sunday 12 Mar 1944, I was acting in the capacity of warning officer and I called out Pte Day's name and he answered by his number and his initials. I then proceeded to warn the group who were proceeding on Exercise "ZIPPER" and explained the warning. The warning consists of five parts. I have in my hand the warning and nominal roll which I had on parade. The warning which I read is contained in paras (i) to (v) inclusive.

DOCUMENT MARKED EXHIBIT 1 BY THE COURT.

Cross examined by the Defending Officer

Q Did you ask for questions or anything?
A Yes, I took the first four paragraphs and then asked for any questions. Then I took the fifth para and read it and asked again for any questions.

Prosecutor declines to re-examine.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B).

THE WITNESS WITHDRAWS.

3rd Witness

Lt J GARVSIDE, 2 CIRU, having been duly sworn, states:

At approximately 0630 hours on the 13 Mar as Asst Records Offr I was mustering a draft of men for Exercise "ZIPPER". I came to Pte Day's name on the list, called it, and he did not answer it. I called his name three times and on none of those occasions did he answer. The draft left this camp for its destination on the morning of the 13 Mar at 0745 hours. The accused did not go with that draft.

Cross-examined by Defending Officer:

Q Mr Gartside, did you check with the Orderly Sgt?
A I did not make any inquiries from the Orderly Sgt to ascertain [redacted] where the accused was. My duty is only to read the nominal roll on parade. Major Knox the OC of the Despatch Coy was present on the parade at the time the accused failed to answer his name and I drew his attention to the fact that the accused was absent.

The Prosecutor declines to re-examine this witness.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B).

THE WITNESS WITHDRAWS.

4th Witness

L.64083 Cpl RUTH RA, 2 CIRU, having been duly sworn, states:

On the morning of the 13th March, 1944, I was acting as Orderly Sgt and I went around to waken the men. All the men had been warned the day before on the morning parade and an afternoon parade at which I was present that they were to be up next morning at 0415 hours in order to turn in their blankets, have breakfast and then proceed to get ready to fall in on parade at a certain hour I can't definitely remember now. On that morning I proceeded to "B"7 Hut and personally woke Pte Day and told him to get up out of bed, as I did the rest of the men. I woke him again later and asked him if he was on draft and he told me no and as I did not have a list of the men that were on draft, with me, I went on with my duties. I got him up later and took his name and number and reported it to the Orderly Room. This was all after I learned that he was on that draft. On the parade the afternoon before I heard every man answer to his name that was called out and to the best of my knowledge there were no absentees.

Cross-examined by Defending Officer

Q On the morning of the 13 Mar when you first wakened Pte Day, did he get out of bed and put his feet on the floor?
A No, Sir.

The Prosecutor declines to re-examine this witness.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(B).

THE WITNESS WITHDRAWS.

THE PROSECUTION IS CLOSED

DEFENCE

The accused, H.19865 Pte James Chester DAY, 2 CIRU, having been duly sworn, states:

I was present on the parade on the morning of 12 Mar when the draft was warned. When I went to bed on the night of 12-13 I had my kit packed ready to go with the draft in the morning. I have no recollection of the Cpl or anyone wakening me on the morning of the 13 Mar 44. The first time I was fully awake was when I heard them saying they were going to clear the hut. I don't know what time that was then. When I wakened up there was one man in the hut where I was sleeping and if I am not mistaken there were three or four others. Their kits were there. I had no reason not wanting to go with that draft. I was at Dieppe with the Camerons. I came to the reinforcement unit through hospital on account of stomach trouble.

Cross-examined by Prosecutor:

Q Is that the first occasion on which you had slept in? 8.15 is rather a late hour for a soldier to get up is it not?

A No, Sir, I have slept in like this several times and quite often lately.

Defending Officer declines to re-examine this witness.

Questions by the Court:

Q Had you been drinking the night before?

A On the night of the 12 Mar I had been to the canteen and I might have had 5 or 6 pints of beer to drink. I was first warned for this particular draft on the morning of the 12 Mar 44. I went to bed just about midnight on the night of 12-13 March 44. Ever since I came from the field I have been sleeping more soundly and on a number of occasions I have been told later that I was shook in bed, still I have no recollection of it.

XXXXXXXXXXXXXXXXXXXXX

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH THE PROVISIONS OF RP 83(D).

THE DEFENCE IS CLOSED

PROSECUTOR ADDRESSES THE COURT ON THE FINDING

I have presented documentary evidence as well as four witnesses as showing that Pte Day was duly warned for draft and that on the morning of the 13 on the Muster Parade he was absent. According to the last witness he was called before the draft went out and was called again when the hut had to be cleared at 0815 in the morning. The witness himself says he has no recollection of being called. As I see it he was duly warned, was called, failed to get up and he therefore missed the draft, and on those facts the Prosecution rests its case.

DEFENDING OFFICER ADDRESS THE COURT ON THE FINDING

The case is to proove intention of desertion by hiding himself, etc., so that he would not go to the field. This man himself has been at Dieppe, has served in the field, and has no reason for not wanting to go back to the field. As far as I see it I think it is only feasible that he went to bed late the night before after drinking, he may have been tired the next morning, and it is perfectly feasible that a person being wakened in the morning is not fact that he was awake just because he appeared to be awake. There is laxity in the company about these men being called

for draft. About the Cpl - he proceeded on duty without a nominal roll and yet he went into that hut without an NCO from the Camerons with him. I won't say he did not waken him, but he should have seen that all men are up and on their feet. The accused does not recollect being wakened. If he had of been wakened properly and had of been on his feet he would not have missed that draft.

THE COURT IS CLOSED TO CONSIDER A FINDING.

APPLICATION FOR DEFENDING OFFICER

I, H-19865 Pte. Day, J. C., desire to have an officer assigned to represent me at my trial by Court Martial.

I desire the services of N

Laurentide Camp,
Witley, Surrey.
16 Mar 44

20 to 40 hrs.

J. C. Day
(H-19865 J. C. Day) Pte.

1 Jet-58-98 2 2 5

RECEIPT OF SUMMARY OF EVIDENCE

I, H-19865 Pte. Day, J. C., Queen's Own Cameron Highlanders of Canada, 2 Canadian Infantry Reinforcement Unit, hereby acknowledge receipt of a true copy of the Charge Sheet in connection with the charge pending against me. I also acknowledge receipt of one true copy of the Summary of Evidence.

Laurentide Camp
Witley, Surrey,
16 Mar 44.

20 Mar

J. C. Day
(H-19865 J. C. Day) Pte.

1 Jan-58-9E

"F" COMPANY, 2 C.I.R.U.

Received at UHQ 1500 hrs 12 Mar 44 EX 1 A

TROOPS WARNED FOR DRAFT.

12 ~~6~~ March 44

1. [redacted] The u/m personnel or reinforcements are warned that they have been selected to proceed on a draft on any date after hours 1100 hrs. 12 Mar. 44 They must be ready to go when the draft is sent off.

WARNING OFFICER. Lieut. J.G. Fee SLI

(i) "You have been selected to proceed on a drart, and you are now warned that you must be present and ready to go when the draft is sent off."

(ii) "Any unauthorized failure on your part to go with the draft when it leaves will result in your being charged with desertion on active service."

(iii) "If you are convicted of desertion the Court has the power to sentence you to a maximum sentence of Penal Servitude for life."

(iv) "At some time prior to the departure of the fraft, a parade will be called on which you must be present and at which the exact date and time of departure will be told to you."

(v) "If you arrive at your destination deficient in any item of equipment you may be charged under A.A. 24 (2) and you will be liable for the cost of such deficient articles together with such other punishment as may be awarded."

NOMINAL ROLL. "A"

H1627	Pte	Anderson W.J.	H103609	Pte	Arkison F.D.
H46318	Pte	Bates G.J.M.	H9449	Pte	Bernard J.
H10707	Pte	Berard L.J.	H9593	Pte	Bird J.W.
[redacted]			H9933	Pte	Bremner A.
L2343	Pte	Carratt G.F.	L38172	L/Cpl	Clark M.R.
H8539	Pte	Compton F.	H8145	Pte	Craig J.K.
[redacted]			H19865	Pte	Day J.C.
H42177	Pte	Gilnutt A.H.	H100103	Pte	Gallant A.F.
H41919	Pte	Flom S.	H1810	Pte	Gillis J.V.
L104159	Pte	Gilpin A.E.	L105120	Pte	Grice H.N.
H17677	Pte	Grant G.H.	L6776	Pte	Gustilow J.
L105947	Pte	Isbister J.M.	L27851	Pte	Jess W.J.
L27614	Cpl	Johanson W.P.	H8777	Pte	Kent S.A.
[redacted]			L28346	Pte	Hooker J.H.
H42271	Pte	Mellick R.G.	H42336	Sgt	McNaughton F.F.
L67652	Pte	Newans G.H.	L105882	Pte	Nichols J.
H9877	Pte	Ritchie J.R.	H8252	Pte	Ritchot L.J.
H101861	Pte	Roberts S.L.	H20060	L/Cpl	Robertson L.E.
H9387	Pte	Rondeau E.J.	M103904	Pte	Schadeck E.
L106282	Pte	Serby J.	M463	Pte	Stokalko T.
H17768	Pte	Vermotte A.	L67374	Pte	White G.H.J.
H7172	Pte	Wilkinson F.D.	H45742	CSM	Wright F.B.
H105048	Pte	Dougherty J.W.	L102854	Pte	Bell C.H.
L105772	Pte	Bell J.F.	L105311	Pte	Benson C.H.
M104421	Pte	Bensley E.B.	H9285	Pte	Hutchison R.H.
H9497	Pte	Jacobson W.J.	L106065	Pte	Johnstone C.N.
H10081	Pte	Kirkham G.	H12573	Pte	Mann J.
M105573	Pte	McLarty A.K.	L106211	Pte	McLennan S.
L106043	Pte	MacNeil R.A.	M31448	Pte	Oraschuk A.
L67696	Pte	Sandoff J.E.	M105674	Pte	Sayna M.
H100917	Sgt	Spiller F.L.	L105849	Pte	Sutherland A.
L104310	Pte	Wagner O.A.	M106051	Pte	Whitlock H.T.
L13174	Pte	Rogel F.	H9612	Pte	Andrew E.J.
H45778	Pte	Brisson M.J.	H9832	Pte	Brown G.
L104577	Pte	Connery L.J.	L104760	Pte	Dixon T.V.
L104696	Pte	Dybvig G.R.	H9162	Pte	Gardiner G.D.
H9787	Pte	Gallant H.J.	H103545	Pte	Ireland G.N.
H9163	Pte	Komarnicky S.	H10041	Pte	Lilley G.
H70606	Pte	Loat N.J.	H103234	Pte	McCrorie M.J.
H195657	Pte	McKay G.A.	L86544	Pte	McKee W.E.
H195392	Pte	Nicklin H.A.H.			

H42[illegible]	~~L/Cpl~~	~~Roman A.O.~~	~~H46097~~	~~Pte~~	~~Silver W.T.~~
~~H[illegible]~~	~~Pte~~	~~Smock W.~~	~~H1127~~	~~Pte~~	~~Stone P.V.~~
~~H[illegible]~~	~~Pte~~	~~Sydorko M.~~	~~H[illegible]~~		

~~S[illegible]~~		
~~[illegible]~~	~~Pte~~	~~Reson N.~~
~~H9232~~	~~Pte~~	~~Tibbatts L.C.~~
H9232	PTE	TIBBATTS L.C.

WITNESSING OFFICERS AND N.C.O's
NOT PROCEEDING WITH DRAFT

Lieut. W.D. ORMISTON W.D. Ormiston Lt

Lieut. J.E. Orr J.E. Orr Lieut

L27548 L/Sgt Grandberg E. Grandberg (L/Sgt)

L27904 Cpl Green L.E. [signature]

WITNESSING OFFICERS AND N.C.O'S
X PROCEEDING WITH DRAFT

Major G.J. Graham [signature]

Capt. H.F. Bailey [signature]

H-[illegible]	Sgt	SPILLER F.L.	[signature]
~~L12180~~	~~C.S.M.S.~~	~~Blencowe J.C.~~	
H 42336	Sgt	McNaughton F.F.	[signature]
~~H45742~~	~~C.S.M.~~	~~Wright F.B.~~	

2. TROOPS WARNED FOR DRAFT

NOMINAL ROLL "A" (Continued)

M103674	Pte	Sayna M.	H100917	Sgt. Spiller F.L.
[illegible]	Pte	Sutherland [illegible]	L104310	Pte Wagner O.L.
[illegible]	Pte	Witlock H.T.	L13174	Pte Rogal F.
[illegible]	Pte	Andrew E.J.	H45778	Pte Brisson M.J.
[illegible]	Pte	Brown G.	L104577	Pte Connery L.J.
L104760	Pte	Dixon T.V.	L104696	Pte Dybvig G.R.
H9262	Pte	Gradiner G.D.	H9787	Pte Gallant H.J.
M103545	Pte	Ireland [illegible].N.	H9163	Pte Komarnicky S.
H10041	Pte	Lilley G.	H70606	Pte Lont W J.
M103234	Pte	McCrorie R.J.	M195657	Pte McKay G.A.
L66544	Pte	McKee W.E.	M195392	Pte Nicklin E.A.H.
H9232	Pte	Tibbatts L.C.		

WITNESSING OFFICERS AND N.C.Os
NOT PROCEEDING WITH DRAFT — Lieut. W.D. Ormiston, Lieut. J.E. Orr

L27548	L/Sgt	Grandberg E.
L27904	Cpl	Grogn L.E.

WITNESSING OFFICERS AND N.C.O.s
PROCEEDING WITH DRAFT — Major G.J. Graham, Capt. H.F. Bailey

H100917	Sgt	Spiller F.L.
H42336	Sgt	McNaughton F.F.

NOMINAL ROLL "B"

H42123	L/Cpl	Roman A.A.	H21135	Pte Smook W.
H1834	Pte	Syderko M.	L104117	Pte Esson N.
H46097	Pte	Silver W.I.	H1127	Pte Stone P.V.
H45547	Sgt	Cuff H.L.		

WITNESSING OFFICERS AND N.C.O.s
NOT PROCEEDING WITH DRAFT — Lieut. W.D. Ormiston, Lieut. J.E. Orr

H19090	CSM	McAmmond C.O.
L84083	Cpl	Ruth R.A.

WITNESSING OFFICERS AND N.C.O.s
PROCEEDING WITH DRAFT — Major G.J. Graham, Capt. H.F. Bailey

L12023	CSM	Campbell I.W.
H45547	Sgt	Cuff H.L.

[signature] Capt.
(ADJUTANT), 2 C.I.R.U.

"B"

DAILY ORDERS

PART 1

By
Lt.-Col W.J. Bingham, MC, VD,
A/Commander
2 C.I.R.U.

SPECIAL ORDER No. 64
Para 702

SPECIAL ORDER NO. 64
12 Mar 44

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702. TROOPS WARNED FOR DRAFT

The u/m personnel or reinforcements are warned that they have been selected to proceed on a draft on any date after 1100 hours 12 Mar 44. They must be ready to go when the draft is sent off.

WARNING OFFICER:-- Lieut. J.G. Fee (SLI)

(i) "You have been selected to proceed on a draft, and you are now warned that you must be present and ready to go when the draft is sent off."

(ii) "Any unauthorized failure on your part to go with the draft when it leaves will result in your being charged with desertion on active service."

(iii) "If you are convicted of desertion the Court has the power to sentence you to a maximum sentence of Penal Servitude for life."

(iv) "At some time prior to the departure of the draft, a parade will be called on which you must be present and at which the exact date and time of departure will be told to you."

(v) "If you arrive at your destination deficient in any item of equipment you may be charged under A.A. 24 (2) and you will be liable for the cost of such deficient articles together with such other punishment as may be awarded."

NOMINAL ROLL "A"

H1627	Pte	Anderson W.J.	M103609	Pte	Arkison F.D.
H46318	Pte	Bates G.J.H.	H9449	Pte	Bernard J.
H10707	Pte	Bernard L.J.	H9593	Pte	Bird J.W.
H9933	Pte	Bremner A.	L2343	Pte	Carratt G.F.
L38172	L/Cpl	Clark M.R.	H8539	Pte	Compton P.
H6145	Pte	Craig J.R.	H10865	Pte	Day J.C.
H42177	Pte	Dilnutt A.E.	M100103	Pte	Gallant A.F.
H41919	Pte	Flom S.	H1810	Pte	Gillis J.V.
L104159	Pte	Gilpin R.E.	L107120	Pte	Grice H.M.
H17877	Pte	Grant G.N.	L6776	Pte	Gustilov J.
L105947	Pte	Isbister J.M.	L27851	Pte	Joss H.J.
L27614	Pte	Johanson W.P.	H8777	Pte	Kent C.A.
L98346	Pte	Looker J.H.	H42271	Pte	Mellick R.G.
H42336	Sgt.	McNaughton P.F.	L67652	Pte	Newans G.H.
L105882	Pte	Nichols J.	H9877	Pte	Ritchie J.H.
H8252	Pte	Ritchot L.J.	M101861	Pte	Roberts S.L.
H20060	L/Cpl	Robertson L.E.	H9387	Pte	Rondeau E.J.
L103904	Pte	Schadeck E.	L106282	Pte	Serby J.
L463	Pte	Sokalko T.	H17768	Pte	Vermette R.
L67374	Pte	White G.H.J.	H7172	Pte	Wilkinson T.D.
L45742	CSM	Wright F.B.	M105048	Pte	Dougherty J.W.
L102854	Pte	Bell C.H.	L105772	Pte	Bell J.F.
L105311	Pte	Bunson C.H.	M104421	Pte	Hansley E.B.
H9285	Pte	Hutchison R.H.	H9497	Pte	Jacobson W.J.
L106065	Pte	Johnstone C.N.	M10081	Pte	Kirkham G.
L12573	Pte	Mann J.	M105573	Pte	McLarty A.K.
L106211	Pte	McLennan S.	L106043	Pte	MacNeil R.A.
M[illegible]440	Pte	Oraschuk A.	L67616	Pte	Sandoff J.E.

Certified true copy (P.S.O.)

[signature] Capt.
Adjutant, 2 C.I.R.U.

16 March 44

SUMMARY OF EVIDENCE

Summary of Evidence in the case of H-19865 Private James Chester DAY, Queen's Own Cameron Highlanders of Canada, on strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS For the Prosecution

Lieut. J. E. Orr, Regina Rifle Regiment, on strength of 2 Canadian Infantry Reinforcement Unit an officer of the Canadian Army Overseas, having been duly sworn states:-

I am Lieut. J. E. Orr, of Regina Rifle Regiment on strength of 2 Canadian Infantry Reinforcement Unit. On Sunday 12th March, 1944 at approximately 1100 hours I was mustering officer of Queen's Own Cameron Highlanders of Canada field draft. H-19865 Pte. Day, J. C. answered to his name by giving his regimental number, H-19865 and his initials, J. C.

The accused declines to cross-examine this witness.

.....J. E. Orr.....
(J. E. Orr) Lieut.

SECOND WITNESS For the Prosecution

Lieut. J. G. Fee, Saskatoon Light Infantry, on strength of 2 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn states:-

I am Lieut. J. G. Fee, Saskatoon Light Infantry, on strength of 2 Canadian Infantry Reinforcement Unit. On Sunday, 12 March, 1944 at approximately 1130 hours in the capacity of warning officer I warned part of the draft proceeding on exercise "Zipper". H-19865 Pte. Day, J. C. answered to his name by giving his number, H19865 and his initials, J. C.

Pte. Day J. C. was properly warned by me, by reading the warning order and explaining it. Said order being Exhibit "A".

The accused declines to cross-examine this witness.

.....J. G. Fee.....
(J. G. Fee) Lieut.

THIRD WITNESS For the Prosecution

Lieut. J. Gartside, South Saskachewan Regiment, on strength of 2 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn states:-

I am Lieut. J. Gartside, South Saskachewan Regiment on strength of 2 Canadian Infantry Reinforcement Unit. At approximately 0640 hours 13th March, 1944 I was mustering a draft of men who were being despatched to the Queen's Own Cameron Highlanders of Canada Field Unit that morning for exercise "Zipper", when I called for H-19865 Pte. Day, J. C. He did not answer. Following the usual procedure, I called his name three times and still he did not answer. After completing the muster I again called for Pte. Day, J. C. but he still did not answer. I then asked for all personnel whose names had not been called to fall out. Three other ranks came out, but Pte. Day, J. C. was not among them. I made certain that Pte. Day, J. C. was not on parade.

The accused declines to cross-examine this witness.

J. Gartside, Lieut.
(J. Gartside) Lieut.

FOURTH WITNESS For the Prosecution

Lieut. K. A. Gray, Regina Rifle Regiment, Assistant Adjutant 2 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn states:-

I am Lieut. K. A. Gray, Regina Rifle Regiment, Assistant Adjutant 2 Canadian Infantry Reinforcement Unit. I produce certified true copy of Part I Daily Order No. 64 dated 12 March, 1944 (marked exhibit "B") with the name of H-19865 Pte. Day, J. C. on page one as having been duly warned for draft.

The accused declines to cross-examine this witness.

Kenneth A. Gray Lt.
(K. A. Gray) Lieut.

FIFTH WITNESS For the Prosecution

L-84083 Cpl. Ruth, R. A., unposted, on strength of 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states:-

I am L-84083 Cpl. Ruth, R. A., unposted, on strength of 2 Canadian Infantry Reinforcement Unit. On the morning of the 13th March, 1944 I was acting as Orderly Sgt. and it was my duty to have all men on draft for exercise "Zipper" wakened by 0415 hours 13th March, 1944. I went to H-7 hut in which H-19865 Pte. Day, J. C. was supposed to have been sleeping. I personally woke Pte. Day, J. C. and asked him to get up. A short while later, still finding him in bed, I again warned him to get up. I asked Pte. Day if he was not on draft and he answered "no", "he was not", and not having the list I proceeded with my duties. The next time I saw Pte. Day, J. C. was after the draft had left at approximately 0615 hours, 13th March, 1944 when I went back to hut H-7 and discovered Pte. Day, J. C. still in bed. I told him to get up as I had to clear the hut, this he did. I took his name and number and reported back to "Y" Company Orderly Room.

The accused declines to cross-examine this witness.

R. A. Ruth Cpl.
(L-84083 R. A. Ruth) Cpl.

The accused was cautioned as follows:-

"Do you wish to make any statement or give evidence on Oath. You are not obliged to say anything or given evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

.....
(E. B. Hutcheson) Capt.
Officer Detailed to Take
The Summary of Evidence

Laurentide Camp,
Witley, Surrey.
16th March, 1944.

2508 - Ple Day L. 7.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Twenty- first day of January, 19 42

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of Fourth Canadian Infantry Brigade, , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~[I am unable to appoint :—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

* Omit if not applicable.

In my opinion, military exgencies, namely the dispersion of units, and difficulties of communication and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	Brian S. McCool	R.Regt.C.

Captain to be detailed *Members.*

Rank.	Name.	Regiment.
Captain to be detailed by Comd 4 Cdn.Inf.Bde.		H.Q. 4 Cdn.Inf.Bde.
Subaltern to be detailed by O.C. R.Regt.C.		R.Regt.C.
Waiting Member Subaltern to be detailed by O.C. Regt.C.		Kent Regiment.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (C.B. Topp) Brigadier,
Commanding 4th Canadian Infantry Brigade.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.67445 Private Leonard Frederick DAY - 1st Bn. The ROYAL REGIMENT OF CANADA Canadian Army (Active)	FIRST CHARGE. A.A. Sec 15 (1) Absenting himself without leave. SECOND CHARGE. A.A. Sec 24 (2) Losing by neglect his clothing and regimental necessaries. SEE CHARGE SHEET ATTACHED.	Guilty not guilty	Guilty on both charges 60 days detention forfeits (A.W.L.) 14 days pay 10 " (clearance) 60 days (detention) total forfeitures 14 days 14 days (detention) plead under stoppages in the amount of $10-8 (Clothing) $12-3 (Equipment) $2-10 (Small Arms) total $1-9-9	I confirm the finding and sentence but vary it to read "60 days" detention and to be put under stoppages of pay amounting to $1-9-9" the forfeitures being extinguished. [illegible] Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— no

(Signed) [illegible] (Signed) Brian S Hue Col major
(C.B. TOPP) Brigadier. *President.*
Commanding 4th Canadian Infantry
Convening Officer (e) Brigade.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23 day of Jan 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 23 day of Jan 1942

Brian S Hue Col major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what confirmation. I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 24th day of January 1942

[illegible] Brig
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) JAN 26 1942 (Signed) LT.-COLONEL, COMMANDING 1st BATTALION THE ROYAL REGIMENT OF CANADA C. A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

MEDICAL OFFICER'S REPORT

I certify that No. B67445 Pte. Day S.F.

of Royal Regt of Canada is in a Good state of health,

and fit to undergo Trial by Court martial.

P M Spence Capt Reame
Medical Officer

Station Sor the Field

Date 23 Jan 42

M. F. B. 246
20M—5-40 (4380)
H.Q. 1772-39 480

CHARGE SHEET

The accused, No. B67445 Pte. Leonard Fredrick DAY, 1 Bn The ROYAL REGIMENT OF CANADA, a soldier of the Canadian Army, Active Force, is charged with:

FIRST CHARGE
Army Act
Sec 15(1)

Absenting himself without leave

in that he

at WINCHELSEA BEACH, Sussex, on the 29th November 1941, did absent himself without leave from 1700 hours until he surrendered to the Canadian Provost Corps in London, at 2115 hours on the 13th January 1942 and that the cost of returning him from London to his unit, under escort, was fourteen shillings and eight pence (£-/14/8).

SECOND CHARGE
Army Act
Sec 24(2)

Losing by neglect his clothing and regimental necessaries

in that he

at MAYFIELD, Sussex on the 17th January, 1942 was deficient of one Cape, A/G. value of twelve shillings and three pence (£-/12/3), and one set of Mess Tins, value two shillings and ten pence (£-/2/10).

(G. Hedley Basher)
Lieut-Colonel, Commanding,
1 R. REGT. C., CANADIAN ARMY.

In the Field,
19 Jan. 42.

Proceedings of Court Martial 23 Jan 42
Cranesden Manor, Mayfield

president Major Brian S. McCool 1 Bn R. Regt C.
Capt C.P. Wilkinson 4 C.I.B.
Lt. W.C. Patterson 1 Bn R. Regt C.

The Court opened.

All regulations governing procedure were observed.

The accused Pte Day was arraigned and pleaded guilty to the first charge and " not " " " second " .

Accused was warned as to the implication of his plea "guilty".

prosecution evidence.

1st witness C.Q.M.S. Norley, sworn, states
I inspected the accused's kit and found it deficient the caps A C & mess tins, value (total) 15/1.

Cross examination and re-examination did not add any thing to above.

defense.

Accused, warned by court, elected to give evidence and, sworn, states

page 2.

I left the Cape A/C and mess tins when I went A.W.L., at the head of my bed. I have not seen them since.

cross-examined.

Accused said that at the time, he did not care what happened to them.

The defending officer asked for a recess. This was allowed.

Court opened.

The defending officer stated that the missing articles might be in Coy. q.m. stores as surplus.

Prosecuting officer in reply stressed the duty of all soldiers to look after their equipment and the deliberate purpose of the accused to go A.W.L.

Court closed for finding

Court opened.

prosecuting officer filed A.F.B 296 and M.F.M 6, admitted by defending officer

page 3.

accused appearing in mitigation of punishment stated, he had been married 8 months, had been with his wife 3 weeks, her wife had been ill, his last leave had been in August, he had gone A.W.L. for 6 days in November and had then forfeited his next privilege leave, now requested his action court closed for sentence.

page 163.

Certified a true record

Brian MacCool
major

page 3.

accused appearing in mitigation of punishment stated, he had been married 8 months, had been with his wife 3 weeks, his wife had been ill, his last leave had been in August, he had gone A.W.L. for 6 days in November and had then forfeited his next privilege leave, now regretted his action.

Court closed for sentence.

page 163.

Certified a true record

Brian MacCool
Major

Abstract of Evidence in the case B 67445, Pte Leonard T. Day, 1st Bn. The Royal Regiment of Canada.

1st Witness B 66541, Sgt. E. Peaks, 1st Pl. 'C' Company, 1st Bn The Royal Regiment of Canada states I am the platoon sergeant of the accused Pte L. Day. At 1900 hrs on the 29th of November 1941 I called the roll of the members of the guard and Day was absent although duly warned for guard. I made a search of the billets but could not find him. Since that time until 14 January, 1942 I had not seen the Pte Day, nor had he at anytime during that period answered to his name at any roll call.

E Peaks Sgt

2nd Witness B 66830, P.S.M. C.J. Loudon, 1st Pl. 'C' Company 1st Bn The Royal Regiment of Canada states I am the Platoon Sergeant major of the Platoon in which Pte Day is a member. During the period from the 22nd of December until the 30th of December, 1941 I called the roll of the platoon in the absence of Sgt Peaks who was on leave. At no time during that period did I see Pte Day nor did he report to me.

C.J. Loudon, P.S.M.

Documentary Evidence.

Exhibit 1. Certificate of D.A.A.G.M. given pursuant to Army Act section 163 (1)(gg) certifying to the surrender of B 67445, Pte Day L.F. at 2115 hrs on 13 Jan 1942 in London. Certificate marked Exhibit 1 to this Abstract of Evidence.

Exhibit 2. Certificate of Expenses incurred returning B 67445, Pte Day L.F. from London to this unit under escort. Total Fourteen Shillings and eight pence. Marked Exhibit 2 to Abstract of Evidence.

(2) Abstract of Evidence in the case of B 67445, Pte Leonard F. Day. cont.

3rd Witness B66692, C.Q.M.S. Morley, R.J. 'C' Company 1st Bn The Royal Regiment of Canada states that I am the Quartermaster Sergeant of 'C' Company. On the 17 January, 1942 I completed the equipment clothing and kit of Pte Day. I found that he was short of two articles namely a cape Anti gas and a set of mess tins. The value of the cape is twelve shillings and three pence and the mess tins two shillings and ten pence.

J Morley C.Q.M.S.

This Abstract of Evidence taken at Maryfield this 19th day of January, 1942 by me.

D M Rose Lieut.

Ref: K.R.& O.(Can.)539

Regt. No. B-67445

Rank Private.

Name Day L.F.

Regt. Royal Regt. of Canada.

Unit: "C Coy.

The following expenses were incurred in apprehending and returning the M/N soldier to his unit from London

DATE	PARTICULARS	AMOUNT		
14 Jan.42	Escort return fare from London to Eastbourne	0.	9.	9.
	Prisoners single fare to London from			
	Prisoners Single fare from London to Eastbourne	0.	4.	11.
	Escorts expense for bed, meals, bus fares and meals for the prisoner.	Nil	.....	.....
	TOTAL ---------- £	0.	14.	8.

I certify that the above statement of expenses is correct and that the amounts are fair and just.

M. C. Byers Lt
Capt.
for O.C. No 6 Prov. Coy.
Canadian Provost Corps.

Ex. 2. To Abstract of
Evidence in case of
B 67445, Pte Day L.F.
Dyckson Lt.

Certificate in accordance with the Army Act Section 163 (1) (JJ)

I certify that REG'T.NO. B-87445 ...RANK... Pte. NAME.. Pay. L.F. .....

UNIT "C". Coy., Royal Regt. of Canada surrendered at PLACE... London .....

.....at HOUR.. 2115 ...on DATE. 13 Jan 42 ....and that at the time of his

arrest he was wearing military uniform.

Signature of Provost Marshal, A.P.M. or other officer into whose custody the above named person was taken in arrest.....A.P.M.

CANADIAN MILITARY POLICE
LONDON AREA

Ex 1. To Abstract of
Evidence in case of
B 67445. Pte Day Lt.
Dur Rose Dt.

(Substitute for: AFB 296)

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE

OF ACCUSED

Regtl No. B.67445 Name Pte. DAY L.F. Unit 1 R. Reg't C.

Age 21 Married or Single M. No. of Dependents One

Date of Attestation 27 Mar 40

No. of days spent in Close Arrest (to date of trial) 9 day 12 hrs 45 min

Civil Nil Military 9 day 12 hrs 45 min Hospital Nil

Dates of Promotions, Appointments and Confirmation of Rank

(A Certified True M.F.M.6 must accompany this form)

Date 23 Jan 1942

J C Anderson Lieut Adj
Offr i/c Records

M.F.M. 6
A.F.B. 177
50031—4-20 (1703)
(L.) 1772-45-17

No. B67445 Name DAY. L.F. Sqn., Battery, or Company "C" Corps R.Regt.C. Date of enlistment 27/3/40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. J.G. Housser, Capt. For O.C. "C" Coy.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	5Apr 41	Pte		Sec.11 Neglecting to obey a Regt Order.Switched on Electric Lights in Barrack Room No.2"C" Block at or about 2235hrs.5 Apr. 41	L/Cpl.Orpen	4 Days C.B.	7/4/41	Lieut. Housser	
Aldershot	23 May 41	Pte.		Sec.40A.A.Charged with neglect etc. In that he had a dirty rifle at Platoon Inspection	L/Cpl.Orpen	2 days. C.B.	26/5/41	Lieut. Housser	
Camberley	17 Aug 41	Pte.		A.W.L. Sec.15(1) from 2300 hrs 17 Aug.41 to 2330 hrs. 17Aug.41	L/Sgt.Crabtree L/Cpl.Frost	5 daysC.B.	18 8/41	Capt. Housser	
Camberley	18 Aug 41	Pte.		A.A.Sec.40,Conduct to the Prejudice of good order etc.	L/Sgt.Crabtree	7 daysF.P.	18/8/41	Lt-Col G.R. Basher	Forfeits 7 days Pay for F.P.

(P.T.O.)

87236-8-4-Pt

Place	Date of offence	Rank	Class of character-ter	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order suspending execution	By whom awarded	Remarks
Camberley	15-9-41	Pte		AA Sec 15(1) AWL from 2359 hrs 6-9-41 to 0215 hrs 11-9-41	Sgt. Lee Sgt. Lloyd	Awarded forfeiture of 8 days pay	16-9-41	Lt-Col G.H. Basher	Forfetis 5 days pay for AWL. 8 days pay for award Placed under stoppages of pay to make good cost of returning to unit £3/12/10½ and 5/ police reward.
Winchelsea	18-11-41	Pte		AA Sec.40, Conduct etc. appearing for guard mounting at 2200 hrs unfit for duty by previous indulgence in alcohol	Sgt. Peaks E.	7dys C.B.	18-11-41	Major P.B. West	

CERTIFIED TRUE & CORRECT COPY

J.C. Anderson

(J.C. Anderson) Lieut.
A /Adjutant.

S12 36-8-42

4E-1105

PTE DAY L.F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B67445 Pte Leonard Frederick DAY - 3 CITR - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for No (1) beginning on (date)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which 7 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for Ninety Days (90)

(Sgd) Judge-Advocate, if any. Date awarded: 9 Nov 44 (Sgd) President (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding of the Court but commute the sentence to read "to forfeit all indemnity pay for a period of 90 days" and I confirm the sentence as Commuted

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 13 Nov 44 (Sgd) (GSN Gostling) Brig Commanding "A" Gp Cdn Rft Units CAO Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B 67445 Pte Leonard Frederick DAY, CIC, 3 CITR	15 Nov 44 Pt II DO 13d dated 17 Nov 44	(A. [illegible] Geisler) Lt., 3 CITR

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 24 NOV 1944 HQ No 83 Sub Area

RECORDED AT CMHQ IN AB 160, 4E-2-115.

FIELD GENERAL COURT-MARTIAL

(PAGE (In lieu of AFA3) (C.A.F.O. 8/1008 (1944))

Convened by Order of Brig GSN Gostling, DSO Comd "A" Gp CRU dated 6 NOV 44

ACCUSED.

(To be typed if two or more charged jointly: see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B67445		Leonard Frederick	DAY	3 CITR CIC

PROCEEDINGS REVIEWED

[illegible] Lieutenant-Colonel Capt.
26 Nov. 44

REVIEWING OFFICER, JAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 9 November

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~3A, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (a/e) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (a/e) brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (a/e) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ no interpreter? Ans

~~The Interpreter is sworn.(1)~~ Do you object to Lt A M Ancess as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~3A, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	E M MILLER, ED K C	HQ CRU
Member	Capt	J R Stainton	3 CITR
Member	"	W S Bury	3 CITR
~~Judge-Advocate~~			
Prosecutor	Lieut	A M Nance	3 CITR
Defending Offr	Lieut	R J MacDonald	3 CITR

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused B67445 Pte DAY, L F before arraignment make(s) (no) (a/) plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 120(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or be one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~sum~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans ..... [5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 38(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... [1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(5) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy ~~(copies)~~ of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.[3]
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans .....[2]
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.[2]
(*1. When several accused tried separately see RP 71(D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2322, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 139. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B 67445 Private Leonard Frederick DAY, Canadian Infantry Corps, on the strength of No 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with,

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Absented himself without leave,

Section 15(1) Army Act — in that he,

In the Field, absented himself without leave from 0730 hours 16 September 1944 until being apprehended by the C.M.P. at Y.M.C.A. Strand at London at approximately 0245 hours 24 October 1944. Total Absence 37 days 19 hours 15 minutes.

(J.B. Weir) Colonel
Commander
4 Cdn Inf Rft Unit.

IN THE FIELD
27 OCTOBER 1944

To be tried by Field General Court Martial.

(G.S.T. Gostling) Brig
Comd
"A" Gp Cdn Rft Units
C.A. (O)

Field
8 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B67445	Pte		Leonard Frederick	DAY	3 CITR CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Nov 44 endorsed by me, ~~as by an offr of my staff for me~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~;
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the court; (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate to act at the Offr mentioned here under.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	E N MYLES, ED		MI CBR

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CC 3 CITR		
Lt	to be detailed by CC 3 CITR		

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by CC 3 CITR		

JUDGE ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.)

brigadier (Rank.)

Date 5 Nov 44

Commanding "A" Gp Cdn Prt Units CA(O)
(G S N Gostling)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (F.A.66 (to incl of AF A2) W.P. & S. 1/45) (8883)

77

Medical Officer's Certificate. 4C/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. B67445 Pte. Day. L. F. of #3 C.I.T.R. and in my opinion, he is to undergo trial by Court Martial.

Station Field

Date 9 Oct - 1944 (Sgd.) J.D. Thompson Capt (Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

CASE OF

B.67648 Pte DAY IF 3 CIRU CIC

STATEMENT BY ACCUSED
(OF OATH)

My main reason for going AWL Sir was that I got out of dtn in July of this year and was on a charge about a week after that in 4 CIRU and while in front of the Col, Col Melherson, I asked to be sent to France because there was a draft going out with a lot of friends on it and I wanted to get to France. I was in dtn when D-day came. Another reason was I had not seen my wife in 8½ mths and a baby daughter I had not seen in quite a while also. I was locked up in this Holding Unit undergoing dtn for 28 days and there were lots of drafts going out and I couldn't go. Col Melherson told me that I had to wait for a week or so and then he would see what my outcome was then. I waited that week and there was nothing doing so I asked diff offrs to get me leave and they couldn't get it for me so I got fed up with nothing doing around here and I took off. I've not had a leave since Nov 43, Sir, any kind of a leave at all, weekend, midnight pass, 7 days or anything. I'd like to go to France as a Rfn in some Inf Regt preferably in the regt I came o/s with, the Royal Regt of Canada. I spent 4½ mths with them in Iceland before I came to England and my service from then on has been trg and AWL. It is not the Army that scares me, Sir, I can stand anything they can hand out, but it's just that I would like to see my wife every 3 months, and I'd like to see that baby and bring it up right so that it will know me when

I come home every 3 mths instead of every year or so, and then too, I want to go to France and do something besides being in dtn. I am a fully qualified infantryman and I am also a AA gunner. During the time I've been in dtn I've had 20 days remission on the 60 days sentence and on the 9 and 7 months charges which ran together I had 4 months remission.

NO CROSS-EXAMINATION

QUESTIONS BY THE COURT:

Q. Were there people getting passes in Sep 44 before you went AWL this time?

A. Yes, but I couldn't get a pass until I came back from a fd of action, and I couldn't get to a fd of action.

Q. What was the civil charge?

A. THAT was for breaking and entering, Sir, a silly thing. Myself and 2 other fellows escaped from the Gd Room and we were hard up and thought we could make some money quick. ~~[illegible]~~ We did not steal anything however.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RM 83(B).

'Day'

PLEA IN MITIGATION
(BY DEF OFFR)

The accused enlisted in Mar 40 and he has also stated that he is most anxious to get to France, Sir, and has asked to be sent on a draft and I think that those 2 points show that he is anxious to be a good soldier. His record is chiefly offences of ANL and he has explained those by his wish to get home to see his wife and baby girl. He has spent quite a lot of time in dtn already but he went 2 yrs after his first dtn xxxx without a serious offence. I believe that if he were given a chance he could prove himself to be a good soldier, Sir, and to be able to give a lot more service to his country than what he has, and I'm sure he'd make something of himself if given an opportunity of joining a unit in France.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B 67445 Pte Leonard Frederick DAY, Canad ian Infantry Corps, on the strength of No 4 Canadian Infaintry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS

For the Prosecution

Capt E.T. Stewart, General List, on the strength of No 4 Canadian Infantry Reinforcement Unit, an Officer of the Canadian Army Overseas, having been duly sworn, states:

I am Capt E.T. Stewart, and an Adjutant, 4 Cdn Inf Rft Unit. I present herewith, marked Exhibit "A", Certified True Copy of the Record of the Declaration of a Court of Inquiry which shows that the accused, B 67445 Pte Day, L.F., absented himself without leave from 0730 hrs 16 Sep 44. I also present, marked Exhibit "B", Certificate in accordance with the Army Act, Sect. 137 (1)(jj), which shows that the accused, whom I now recognize, was arrested at Y.M.C.A. Strand at 0245 hrs 24 Oct 44.

E.T. Stewart
(E.T. Stewart) Capt.

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

A.J. Geisler Lt.
(A.J. Geisler) Lt,
Officer Detailed to Take Summary.

IN THE FIELD
27 OCT 1944

Ex A
839

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 11th day of October 19 44 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. B 67545 Pte. Day, L.F. C.I.C.,

DECLARATION

The Court declare, that No. B 67445 Pte. Day, L.F., (C.I.C), illegally absented himself without leave from No. 4 Cdn Inf Rft Unit, at 0730 hrs. on the 16th day of September, 1944, and that he is still so absent, and that on the 10th day of October, 1944, he was deficient and is still deficient of the following articles:-

ARTICLES	Vocab Value £ s d	Appsd Value £ s d	ARTICLES	Vocab Value £ s d	Appsd. Value £ s d
Anklets Web	0 4 5	0 3 4			
Battle Dress Blouse Serge	2 7 0	1 14 8			
Battle Dress Trousers Serge	1 4 1½	0 18 1			
Boots Ankle prs.	2 8 10	1 16 2			
Caps F.S.	0 2 6	0 1 10½			
Drawers Cellular	0 1 11	0 1 5			
Greatcoat	2 10 7	1 17 11			
Jersey Pullover	0 8 0	0 6 0			
Shirt Angola	0 9 1	0 6 9½			
Socks Woollen Prs (3)	0 5 0	0 3 9			
Badge Cap.	0 5 4½	0 3 4½			
1 Kit Bag	0 4 7	0 3 5			
1 Braces	0 1 4	0 1 0			
1 Brass Cleaning	0 0 2	0 0 2			
1 Brush Button	0 1 2	0 0 10½			
1 Brush Cloth	0 2 2	0 1 7½			
1 Brush Shaving	0 1 6	0 1 3			
1 Cap Comforter	0 1 6	0 1 1½			
1 Dressing F.F.	0 1 1	0 0 9½			
1 Towel Hand	0 1 5	0 1 0½			
1 Belts Waist	0 3 6	0 2 4			
1 Braces Right	0 1 4	0 1 0			
1 Haversack	0 1 8	0 1 0			
1 Tins Mess	0 1 7	0 1 7			
1 Blanket G.S. 1098	0 13 9	0 13 9			
1 Sheet Ground	0 13 2	0 13 2			
1 Shore Canvas	0 11 5	0 8 6½			
TOTAL:	£ 13-9-2	£10-11-1½			

Names of President and Members: Major C.C.L. Gammon President
Capt. J.B. Gough Member

In the Field
12 Oct 44.

Signature of Commanding Officer "J.E. Weir Col."

Certified true copy B T Stewart Capt
Signature of Officer having custody of original record

Certificate in accordance with the Army Act, Sect.163(1)(jj).

I certify that No B.67445 Rank PTE Name L.F.DAY.

No. 4. C.I.R.U. ALDERSHOT. Unit, was arrested at Y.M.C.A. STRAND.

at 02.45 hrs. on 24 OCTOBER 1944.

C.I.R.U.,
Whitehall, S.W.1.
Date 24 OCTOBER 1944.

Assistant Provost Marshal,
London District,
~~Into whose custody the above~~
~~named person was taken on arrest.~~

Ex B

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
6 67445	Private	Day, L.F.	40.I.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For A.A. Sec 40 ..... 1 ..... times.

For A.A. Sec 15(1) ..... 16 ..... times.

For ~~Ag~~ ..... ~~nil~~

For ~~Ag~~ ..... ~~nil~~

Date of first entry in Field Conduct Sheet 22 Aug 41

Date of last entry in Field Conduct Sheet 11 Oct 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~The accused has not undergone any sentence of~~ ~~imprisonment or~~ detention ~~or~~ ~~Ag~~

*Strike out if not applicable

4. The accused has been awaiting trial on the present charges for 0 days in civil custody; and for 15 days in military custody, i.e., ... Nil ..... days in open arrest, 15 days in close arrest; of which ..... Nil ..... days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation ~~[illegible]~~ is 7 Mar 40

7. The service which the accused is allowed to reckon is 4 yrs 6½ months

8. The accused is in possession of † Nil

State the military decorations (if any) held by accused.

~~9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date—~~

~~Ag~~ Date of Promotion.

~~In the substantive rank of~~

~~In the war substantive rank of~~

~~In the acting rank of~~

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

R.C.
Adj. 7/Z

Wt. 13479/2857 35,000 5/44 H 432 T. Lod. Forms/B 296/War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	3 Feb 42 Field	A.A. Sec 15(1)	60 days detn	
F.G.C.M.	24 Jan 44 Field	A.A. Sec 15(1)	9 months detn	
F.G.C.M.	27 Jan 44 Field	A.A. Sec 15(1)	7 months detn	
Civil Court	3 Feb 44 Field	Civil Offence	1 days imprisonment	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

A. J. Gaylor Lt A/Adjt
Officer having Custody
of Regimental Books.

Signed this.....day of.....

No. B67445 Name DAY L F | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136/13412

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 18	18-8-41	Pte.		A.A. Sec 40		7 days pay 7 days F.P.	22-8-41		
Field 6	6-9-41	Pte.		A.W.L.		13 days pay forf £1-12-10½ & 0-5-0	24 Sep 41		
Field Field 39	11-41	Pte		A.W.L. (21 days)		Kit & Eqpt. - £6-16-6	31 Dec 41		
Field 23	1-42	Pte		A.A. Sec 15(1)		60 days Detn. forf 115 days pay	3-2-42	F.G.C.M.	
Field 2	6-42	Pte		A.W.L.	Total forf.	51 days pay	5-6-42		
Field 23	6-42	Pte.		A.W.L.	forf.	1 days pay	4-7-42		
Field 24	8-42	Pte.		A.W.L.		15 days C.B.	26-8-42		
Field 22	9-42	Pte.		A.W.L.	forf.	10 days pay	23-9-42		
Field 29	11-42	Pte.		A.W.L.	14 days F.P. & 18 days pay		4-12-42		
Field 21	12-42	Pte.		A.W.L.	21 days Detn & 40 days pay		30-12-42		

(PTO)

572 36-85-4

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	17-5-43	Pte.		A.W.L.	14 days Detn & 28 days pay		2-6-43		
Field	6-8-43	Pte.		A.W.L.	27 days F.P. & 42 days pay		29-8-43		
Field	11-10-43	Pte.		A.W.L.	16 days F.P. & 18 days pay		26-10-43		
Field	30-11-43	Pte.		A.W.L.		6 days pay	3-12-43		
Field	4-12-43	Pte.		A.W.L.	9 mo Detn 243 days pay & Kit - £6-4-2½			F.G.C.M.	8-12-43
Field	24-1-44	Pte.		A.W.L.	7 mo Detn & 50 days pay		27-1-44	F.G.C.M.	
Field	24-1-44	Pte.		Civil Offende	1 days Imprisonment & 8 days pay		3-2-44		
Field	22-7-44	Pte.		A.W.L.		13 days pay	25-7-44		
Field	8-8-44	Pte.		A.W.L.	23 days pay & 10 days F.P.		12-8-44		
Field	17-8-44	Pte.		A.W.L.	27 days pay & 28 dys F.P.		24-8-44		
Field	16-9-44	Pte.		A.W.L.	Deficiency in Kit £13-9-2		11-10-44		

CERTIFIED TRUE COPY
[signature]
OFFICER HAVING CUSTODY OF REGIMENTAL BOOKS

1 Jet-8-95

This is to certify that I have received, free of charge, one copy of each of the following:

Charge Sheet
Summary of Evidence
List of Witnesses
List of Exhibits

(Day, L.F.) Pte. L. F. Day

#4 CANADIAN INFANTRY REINFORCEMENT UNIT, C.A.(C). 4C/24
.....27 October.....194.4..

I, No...B 67445 Pte. Day, L.F......, wish to have
(Rank) (Name)
an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of...Lt. Pallett.....
if he is available.

(Sgd.) .....L. F. Day.....
(Day, L.F.) Pte.

87236

LIST OF WITNESSES

In the case of B 67445 Pte. Day, L.F., C.I.C., on the strength of No 4 C.I.R.U.

FOR THE PROSECUTION

Capt. E.A. Stewart, General List, 4 C.I.R.U.

FOR THE DEFENCE

Nil

LIST OF EXHIBITS

In the case of B 67445 Pte. Day, L.F., C.I.C. on the strength of No 4 C.I.R.U.

Exhibit "A" - Certified True Copy of the Record of the Declaration of a Court of Inquiry.

Exhibit "B" - Certificate in accordance with the army Act Sec. 163(1)(JJ)

5 V-142
Pte. Day, L. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-67445 Pte Leonard Frederick Day

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To serve a period of 1 year detention

(Sgd) ..... Judge-Advocate, if any. 26 Oct 1945 Date awarded. (Sgd) " J.R. Carmichael " Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 31(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be kept in custody at Belgium Canada until further orders.~~(1) "JGS"

(1. AA 57A. Delete if not used.)

(Sgd) " J.G. Sprague " Brigadier

Date 3 Nov 45

Commanding Army Tps Area First Canadian Army

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B-67445 Pte Day, L.F.	7 Nov 45	" W Liscombe " Capt 13 CBR Bn

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA88. (To face of AFA81) 40/P 46 m (6568) 10/45 4/38B

Convened by Order of L.J. Flynn Lt-Col T/Comd 2 Cdn Base Rft Gp dated 25 Oct 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substantive rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-67445	Pte		Leonard Frederick	DAY	L-4 List CIC 13 CBR Bn

Certified true copy

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 26 Oct 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 38/91

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused. Do you object to~~ ~~the interpreter?~~ ~~Ans~~

~~The Interpreter is sworn.(1) Do you object to~~ ~~the shorthand writer?~~ ~~Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.H. Carmichael	13 C.B.R. Bn
Member	Capt	K.E. Teagle	CIC PE 13 CBR Bn
Member	Lt	D.R. Sanderson	CIC PE 13 CBR Bn
Judge-Advocate			
Prosecutor	Lt	C.H. Barr	13 C.B.R.Bn
Defending Offr	Capt	J.B. Clarke	13 C.B.R.Bn

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See (2) p 3.)

A8. The accused Pte Leonard Frederick Day before arraignment make(s) (no[t]) (~~a~~) plea

~~of~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 60(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do[es]) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes (his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ N/A

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....

(*1. RP 115. 2. RP 40(A), see 80(G). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 89E. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 113(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(*1. MFB 255 or AFB 296. 2. MFM 6. 2. RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 336, 343-346, Overseas RO 309, 1313, MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

JHC

MEDICAL OFFICER'S CERTIFICATE

(KR(Can)Para 557)

I certify that I have this day examined B-6/445 Pte DAY, L.F.

and in my opinion he is fit xxxxx to

undergo trial by Court Martial.

Station _____

"N C Sirent" Capt (Sgd)
M.O. 13 CBR Bn

Date 26 October

_____ Unit

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, is immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-67445	Pte		Leonard Frederick	Day	X-4 List CIC 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on ~~the~~ (*date*) 25 Oct 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint an Judge-Advocate (to act) the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J H Carmichael	XA List CIC, 13 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R E Teagle	CIC PE, 13 CBR Bn
Lt	D.R. Saundersen	CIC PE 13 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	W D Perry	CIC PE 13 CBR Bn

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

(Signed personally. RP 105 fn 2.) J. F. Flynn Lt-Col (Rank.)

Date 25 Oct 45

Commanding (J. F. Flynn) Lt-Col
T/Comd - 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAGS (1) (b) (ii) OF AFA1; AO 1 & 2/1947 (Gen))

(*See overleaf for acths and notes for use on trial.*)

"JHC"

CHARGE SHEET

The accused B-67445 Pte Leonard Frederick DAY X-4 List C.I.C., on strength of 13 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Group a soldier of the Canadian Army Overseas is charged with

Sec 15(1) Army Act — WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, at 1400 hrs on 12 July 1945 absented himself without leave until he was apprehended by the Canadian Provost Corps at Amsterdam at 1400 hrs on 2 October 1945.
(Total time absent 82 days)

In the Field
24 Oct 45

" M A Frank " Major
T/Commander
13 C.B.R. Bn., 2 C.B.R.Gp

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

In the Field
25 Oct 45

" L.J. Flynn " Lt-Col
T/Comd - 2 Cdn Base Rft Gp

PLEA OF MITIGATION "JHC"
B-67445 Pte Day, L.F.

Pte Day, has served in the Army since March 1940, and has served with the R.C.R. in N.W.E. since Dec 44, giving him quite a length of time in a theatre of operations.

Although hostilities have ceased, Pte Day wants to stay with the Army, and will volunteer for C.A.O.F., when he has served his sentence.

He has received no pay from the Army since Nov 1941 through being A.W.L. He admits that it is his own fault, but intends to soldier from here on. This is the first offence that has taken place on the continent, showing that up to now, he has tried to soldier, but being so far in debt, he figures that he will never be able to get out of it.

Pte Day was married in Apr 1941, and has one child. He has not heard from his wife for approx three months, and does not know where they are at present, this is continually on his mind and is bothering him a great deal. Besides this he received notice that his only brother had been killed with the airforce, this has also been on his mind.

In summing up, I would like the court to take into consideration the length of time that Pte Day has served in the Army, and now that hostilities have ceased, he would still like to carry on in the service, either C.A.O.F. or in the P.F. fault. Another point to bring out, is his family affairs what of his wife and child, there should be a recommendation in order that he could look after them to the best of his abilities.

" J E Clark " Capt

Ex "A" THC

7

SUMMARY OF EVIDENCE

In the case of B-67445 Pte Leonard Frederick DAY, X-4 List, Canadian Infantry Corps on strength of 13 Canadian Base Reinforcement Battalion, 2 Canadian Base Reinforcement Group a soldier of the Canadian Army Overseas

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

First Witness Lieut. J.H. Watson, Assistant Adjutant, Prosecution 13 C.B.R.Bn, 2 C.B.R.Gp, having been duly sworn, states:

I am Lieut J.H. Watson, Assistant Adjutant of 13 C.B.R.Bn, 2 C.B.R.Gp, and I produce

(A) A certified true extract of 1 Bn. R.H.C., Pt. II D.O. 42 d/1 Sept 45 showing the accused to have been absent from 1400 hrs 12 July 45.

(B) A certificate of the apprehension of the accused at Amsterdam at 1400 hrs on 2 Oct 45.

as exhibits "A" and "B" for the prosecution pertaining to the accused whom I now recognize and initialled by me for the purpose of identification.

The accused declines to cross examine the witness.

" J H Watson " Lieut

(J.H. Watson) Lieut

The accused was cautioned as follows:

Do you wish to make a statement or give evidence on oath? You are not obliged to make any statement or give any evidence unless you wish to do so but any statement you make or any evidence you may give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give any evidence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rule of Procedure 4 (C) (D) (E) and (F) has been complied with.

In the Field
22 Oct 45

" R V Swetnam " Capt

(R.V. Swetnam) Capt

Officer detailed to take the Summary of Evidence

"JHC" "JHW"

PART II ORDER EXTRACT FORM

TO: OC
13 CBR Bn

99/20/

5 Oct 19 45

EXTRACT FROM: Unit 1 BN THE ROYAL REGIMENT OF CANADA

Part II Order No. 42 dated 1 Sep 45

6 ABSENT WITHOUT LEAVE

(a) AWL from 1400 hrs 12 Jul 45 Still absent 1400 hrs 3 Aug 45
(22nd day)

B-67445 Pte Day, L.F.

Certified to be a true extract from the regimental books and documents in my custody

" G.E. Collins " Capt
Officer ic Records
Cdn Sec 2 Ech HQ 21 A Gp

The following documents are attached. Please acknowledge receipt on attached duplicate
required. Please forward same.

Originating Clerk's Initials

for

Officer in Charge
Canadian Section, G.H.Q., 2nd Echelon

ECH—6
40/P & S/1276 (3209)

"JHC" SCHEDULE "F" " JHW"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I CERTIFY THAT No B-67445 Rank Pte Name DAY LF

Unit Royal Regt of Canada was arrested at Amsterdam (Place)

at 1400 (hour) on 2 Oct 45 (date) and that at the time of his arrest he was wearing (military uniform) or xxxxxxxxxxxxxxxxx

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

O i/c "H N MacRitchie
(HN MacRitchie)

Ex "B"

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
B-67445	Pte	DAY, Leonard Frederick	X-4 List CIC 13 C.H.R.Bn

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		* Since Enlistment.	
For	A.W.L.	1 times	13	times
For	A.A. Sect 40	times	1	times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct Nil

or

There are no entries in the conduct sheets of the accused. Nil

2. The accused has not been previously convicted. Nil

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence of Nil
xxxxxxxxxxxxxxxxxxxxxxxx beginning on the day of xxxxxxxxxxxxxxxxxxxxxxxx Nil

4. The accused has been in confinement, awaiting trial on the present charges, for ..... days in civil custody, and 18 days in military custody, making a total of 18 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service Nil is 24 yrs 9 mos
attestation paper

6. The date of his attestation Nil specified in his record of service Nil is 27 March 1940
attestation paper

7. The accused is not allowed to wear any decoration or medal. Nil

8. The accused is entitled to reckon xxxxxxxxxxxxxxxxxxxxxxxx service. Nil

9. The accused is entitled to reckon xxxxxxxxxxxxxxxxxxxxxxxx service for the purpose of increase of pay. Nil

10. The accused is in possession of, or entitled to, the following decorations or military medals (or is in possession of or entitled to) (*state any military decoration or reward*). GVSM & Clsp

11. (*If the accused is a warrant officer*) The circumstances in which he was promoted warrant officer for meritorious service
bnbnbnbnbnbnbnbnbnbnbnbnb Nil

12. (*In the case of an officer*) The accused holds the appointment of xxxxxxxxxxxxxxxxxxxxxxxx and his service in that appointment or rank is reckoned from xxxxxxxxxxxxxxxxxxxxxxxx Nil

W 4,570/1189 20M. 3/40. P. Ltd. 774-1.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. T-67445 *Rank* Pte *Name* DAY LF of 13 C.B.R.Bn Regiment (or as the case may be).

(*INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	Field 29 Nov 41	AWL Sect 15(1) AA (Absent 46 days)	60 days detention	
F.G.C.M.	Field 24 Jun 44	AWL Sect 15(1) AA (Absent 44 days 1 hr 15 min)	9 months detention	
Civil	England 3 Feb 44	Attempted Theft	1 days imprisonment	
F.G.C.M.	Field 14 Feb 44	Escaping Close Custody	7 Mos detention concurrently with previous award	
		A.W.L. (22 hrs)		
F.G.C.M.	Field 16 Sep 44	A.W.L. Sect 15(1) AA	90 days detention	

"DHC"

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22nd **day of** October 45 " W Swetnam " Capt

53. The record has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ..... years. Date of Promotion

In the rank of ..... years.

In the rank of ..... years.

(*INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be collected from such source as are available and the paragraph inserted amended accordingly.*)

No. Name | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No Two | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Oct 43	Pte		AA Sec 15(1)(AWL 10 hrs 45 mins)		16 dys FP 16 dys pay FR&I 149(1)(b)	11 Oct 43		2 dys payFR&I 149(1)(a)
"	7 Nov 43	"		AA Sec 15(1) (AWL 22 hrs 46 mins)		forf 5 dys pay	30 Nov 43		
" 4 Dec43		"		FGCM (AWL 44 dys 1 hrs 15 mins)		9 months detn	24 Jan 44		Forf 234 dys Tot Pay
"	26Jan 44	"		Escaped (AWL 22 hrs)		7 months detn to run conc with sent 24 Jan 44	14 Feb 44		50 dys forf of pay
"	27Jan 44	"		Attempted theft		1 dys Imp is	3 Feb 44		Forf 1 dys pay and 7 dys pay conc with sent of 24 Jan 44.
"	10Jul 44	"		AA Sec 15(1) (AWL 1 dy 20 hrs 46 mins)		10 dys FP 10 dys pay FR&I 149 (1) (b) 11 dys pay 149(1)(c)(ii)			2 dys pay FR&I 149(1)(a) cost: £0-18-3d.

(PTO)

No B67445 Name DAY, Leonard Frederick | Sqn, Battery, or Company | Corps R. of C | Date of enlistment 27 Mar1940 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc | Character

	Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ex "C"	Field	18Aug 41	Pte		AA Sec 40		Forf 7 dys pay FR&I 149(1)(b)	18 Aug 41		
"JHC"	"	16Sep 41	"		AA Sec 15(1) (AWL 4 dys 1 hr 16 mins)			17 Sep 41		5 dys pay FRI 149(1)(a) £1-12-10d FR&I 172(8) £0-5-0d FR&I 758(2)
	"	29Nov 41	"		AA Sec 15(1) (AWL 46 dys)		60 dys detn 60 dys pay FR&I 149(1)(b)			46 dys pay FR 149(1)(a) £1-9-9 FR&I 158(2)
	"	23Jun 42	"		AA Sec 15(1) (AWL 4 hrs 55 min)					1 dys payFR&I 149(1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Aug 44	Pte		AA Sec 15(2)		28 dys FP 28 dys pay FP&I 149(1)(b)			
"	22Jul44	"		AA Sec 15 (1) (AWL 2 dys 18 hrs 1 min)		Forf 13 dys pay			Total forf 144 dys pay
"	16Sep44	"		FCCM (AWL)		90 dys detn			
"	12Jul45	"							
					Certified books and	to be a true extract from the regimental documents in my custody.			
						" G A Collins " Capt			
						Officer IC Records			
						Cdn Sec 2 Sch HQ 2nd Brit Army of the Rhine			

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26Jul 42	Pte		AA Sec 15(1) (AWL 7 hrs 45 mins)		14 dys CB and 14 dys pay FP&I 149(1)(b)			
"	12Sep 42	Pte		AA Sec 15(1) (AWL from 8 CCH)			22 Sep42		10 days pay FP&I 149(1)(a)
"	29Nov 42	"		AA Sec 15(1) (AWL 3 dys 14 hrs 15 mins)		14 dys F.P. forf 3 Dec42 14 dys pay FP&I 149(1)(b)			forf 4 days pay FP&I 149(1)(a)
"	21Dec 42			AA Sec 15 (1) (AWL)		21 dys detn & 21 dys pay FP&I 149(1)(b)	11 Jan 43		15 days pay FP&I 149(1)(a)
"	4 May 42	"		AA Sec 15 (1)(AWL 22 dys 6 hrs 35 mins)		28 dys pay FP&I 149(2)	12-5-42		23 days pay FP&I 149(1)(a)
"	17May 43	"		AA Sec 15(1) (AWL 13 dys 11 hrs)		14 dys detn 14 dys pay FP&I 149(1)(b)	2 May 43		14 days pay FP&I 149(1)(a)
"	7 Aug 43	"		Aa Sec 15 (1) (AWL 14 dys 20 hrs 16 mins)		27 dys FP 27 dys pay FP&I 149(1)(b)	19 Aug 43		27 days pay FP&I 149 (1)(a)

AAA-81 (cont#2)

PIE DAY L-F

Lic. E-250 for 1st case

AAA 87 (256)

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & R/1608 (2864)

Convened by Order of Brig J.R.Stewart Lough, DSO,MC,VD Comd "G" Gp C.R.U. dated 22 Jan 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.67445	Private	Leonard Frederick	DAY	~~Lorne Scots~~ C.H.Q. 5 CIRU

PROCEEDINGS REVIEWED

[illegible] Lieut

4 Feb 44 Rev 4

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ~~England~~ on (date(s)) 24 Jan 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(s)~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 49a(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the Interpreter~~ ~~as interpreter~~ ? Ans

The Interpreter is sworn.(1) Do you object to ~~as shorthand writer~~ ? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	T.W.HALL	1 CIRU
Member	Capt	C.C.TARDUCK	1 CIRU
Member	Lieut	E.D.PRICE	5 CIRU
Judge-Advocate			
Prosecutor	Lieut	A.A.ROSENBLUTH	5 CIRU
Defending Offr	Lieut	W.G.MCLEAN	5 CIRU

Questions by President: Is the Prosecutor a lawyer ? Ans. Yes Is the Defending Offr a lawyer ? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (5) and fn 2 were not followed. See [illegible] p 3.)

A8. The accused B.67445, Pte DAY, F.L. before arraignment make(s) (no) objection.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (severally) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Insers p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 8

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.67445 Private Leonard Frederick DAY, Lorne Scots, 5 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

A1 ~~personal under sentence for~~ ~~[illegible]~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which ~~nil~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for nine (9) months.

(Sgd) Judge-Advocate, if any. Date awarded 24 Jan 44 (Sgd) T.W.Hall Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 63. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding & sentence of the Court but remit the sentence to ninety (90) days detention.

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~

(1. AA 57A. Delete if not used.)

(Sgd) R.Stewart Lough

Date 26 Jan 44 Commanding [illegible] Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B.67445 Pte DAY,L.F.	25 Jan 44 (5 CIRU Pt. 11 Order No. 22 d/27 Jan 44)	[illegible] Pearson Lt-Colonel Commander 5 Can Inf Bde Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court de see RF* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No.(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on N/A charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 15(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If then is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by usn of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as refer to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 124 a and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(2) (b), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (a) they purport to be signed in the manner required by AA 163(3) (g) (h), and (b) they purport to refer to (a) soldier(3) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex C respectively.(4)

(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement of Service and Conduct Sheet, and in mitigation of punishment?(1) Ans. No.

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 360-366. Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41 (5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 364. 2. RP 58. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. B.67445 Private, DAY, Leonard Frederick, ~~Lorne Scots of Canada~~ Cameron Highlanders of Ottawa, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec. 18 (1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

did absent himself without leave from Tournay Barracks, Farnborough Hants, from 2200 hours 4th day of December 1943 until surrendering himself to the Military Police in London at 2315 hours 17th January 1944.

Total time absent 44 days 1 hour 15 minutes.

(A.S. Pearson) Colonel
Commander
5 Cdn Inf Rft Unit

In the Field
19th day of January
1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J.R. Stewart Lough) Brigadier
Commander "G" Group
CANADIAN REINFORCEMENT UNITS

22 Jan 44.

FIELD GENERAL COURT-MARTIAL

CFA46 (In lieu of AFA8)
40/FA8/1097 (2958)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of trnops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.67445	Private	Leonard Frederick	DAY	~~Lorne Scots~~ C.H. of O. 5 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 JAN 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable or desirable that for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I appoint the following Offrs to form the Court, the first-named to preside, for the reasons stated hereon.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I also appoint as Judge Advocate thereof the Offr so named hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	T.W. HALL WESTMR REGT	1 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by O.C.,	1 CIRU
A Captain	to be detailed by O.C.,	5 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Lt	to be detailed by O.C.,	5 CIRU

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 22 Jan 44.

J.B. Stewart Lough (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(J.B. Stewart Lough)
Commanding "G" Group, C.R.U.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. B-67445 Pte Day L.F.
(Rank) (Name)

of C. H. of O. and in my opinion he is fit to undergo

trial by Court Martial

Station

Date Jan 24m 1944

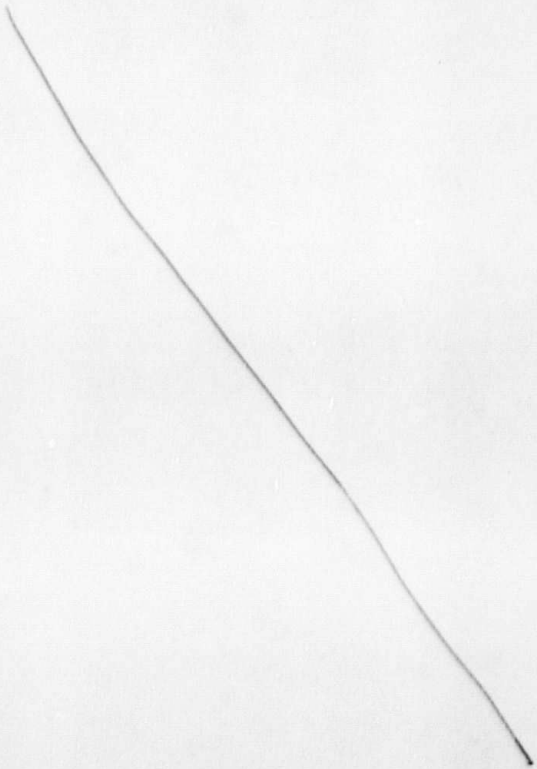
Sdg J A Grenville
(Medical Officer)

572 36-83-4 Ref

B.67445 Pte Day, L.F.

DEFENCE

"This man has been away 44 days and really has no excuse or reason. He is young, family type, married and has a child 9 months old. He wanted to see his wife so he went AWL in order to be with her, knowing that he would soon be drafted and might not see her again for some time. He begs the court to be lenient."



The defending officer waived notice of the Prosecuting Officer being a lawyer. RP 89.

Jas Hall Lt

As the Capt to be detailed by 5 CIBU as a member of the Court was late in arriving, the Court decided to swear in the waiting member and proceed on schedule.

Jas Hall Lt

Exhibit A

RECORD of the Declaration of a Court of Inquiry assembled at Tournay Barracks, Farnborough, Hants on the 28th day of December 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.67445, Pte Day, L.F., Lorne Scots, on strength of 5 Canadian Infantry Reinforcement Unit.

DECLARATION

The Court declare that No. B.67445, Pte Day, L.F., Lorne Scots, on strength of 5 Canadian Infantry Reinforcement Unit.

illegally absented himself without leave from Tournay Barracks, Farnborough, Hants at £200 hrs on the 4th day of December 1943, that he is still so absent, and that on the 6th December 1943 he was deficient, and that he is still deficient of the following articles:—

ARTICLES		Vocabulary Price	Approx VALUE	ARTICLES	VALUE
Blouse, BD	1	£1. 3. 6	£0.18. 6½		
Trousers, BD	1	1. 4. 1½	0.19. 1		
Bonnets, TOS	1	0. 2. 8	0. 2. 0		
Boots, ankle, prs	2	2. 8.10	1.18. 7		
Braces, prs	1	0. 1. 4	0. 1. 0		
Frog, bayonet	1	0. 0.10	0. 0. 7½		
Cover, mess tin	1	0. 0. 4½	0. 0. 3		
Sheet, ground	1	0.13. 2	0. 9.10		
Gloves, wool	1	0. 2. 1	0. 1. 8		
Jacket, sweater	1	0. 8. 0	0. 6. 0		
Overalls, blouse	1	0.11.10	0. 9. 0		
Shirts, flannel	2	0.18. 2	0.13. 8		
Socks, prs	4	0. 6. 8	0. 5. 0		
Towels, hand	2	0. 2.10	0. 2. 2		
Shirt, gym	2	0. 3. 2	0. 2. 6		
Short, gym	1	0. 1.11	0. 1. 5½		
Drawers, cello	2	0. 3.10	0. 2.10		
TOTALS		£8.13. 4	£6. 4. 2½		

C.W. Tétrault, Capt. Canadian Infantry Corps President
5 Canadian Infantry Reinforcement Unit

Signed at Tournay Barracks, Farnborough, Hants

Campbell Jr. Canadian Infantry Corps Member
5 Canadian Infantry Reinforcement Unit

this 31st day of December 1943

W. Stanley Sr. Canadian Infantry Corps Member
5 Canadian Infantry Reinforcement Unit

Signature of Commanding Officer [signature] Lt.

Certified true copy [signature]

Signature of Officer having custody of original record

M.F.B. 271
A.F.B. 111
2556—4-43 (750)
H.Q. 1772-15-487

Exhibit 2

CERTIFICATE UNDER THE ARMY ACT, SECTION 165 (1) (j)

I, . . . CAPT. (A.L.S. GRAYSON). D.A.P.M. LONDON AREA . . . . certify that

Regt. No. B.67445 . Rank PTE. . . . . Name . DAY L.F. . . . . .

Regiment . . . 5 C.I.R.U. . . . . .

. . . . . .

Stationed at . . . . . .

Surrendered himself to No A.3129 . Rank SGT. . Name BURROWS G.F. . . . . .

of the . . . . Canadian Provost Corps 6 Coy. . . . . .

on the 17th . days of Jan. 44 . . . . . 19 , at 2315 hrs. , hours

. . . . . AS AN ABSENTEE WITHOUT LEAVE . . . . . .

At the time of his surrender he was wearing (military uniform) ~~(civilian clothes)~~.

Signature of Provost-Marshall, Assistant Provost-Marshall, or other officer or the Commanding Officer of the portion of His Majesty's Forces, or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrender.

(Strike out part inapplicable).

LONDON,
17 JAN. 44.

L.S. Grayson

. . . . . Capt.,
(L.S. Grayson), D.A.P.M., C.M.P.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournay Barracks, Farnborough Hants on the 20th day of January 1944, preliminary to my Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

B/7445 Pte. Day, L.F.

(B.87445 Pte. DAY, L.F.)

Dated at Tournay Barracks
this 20th day of January 1944.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lieut M.J.P. Blaney G.R.C. if he is available.

B/7445 Pte. Day L.F.

(B.87445 Pte. DAY, L.F.)

Dated at Tournay Barracks
this 20th day of January 1944.

SUMMARY OF EVIDENCE

Exhibit A
C.M.70.

In the case of No. B.67445 Private, DAY, Leonard Frederick, Lorne Scots of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

FIRST WITNESS
For the
Prosecution

Lieut. W.W. Thom, Royal Canadian Artillery, Assistant Records Officer, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states.

I am Lieut. W.W. Thom, Royal Canadian Artillery, employed as Assistant Records Officer at 5 Canadian Infantry Reinforcement Unit. I produce a certified true copy of a Record of the Declaration of a Court of Inquiry which assembled at Tournay Barracks, Farnborough Hants, on the 28th day of December 1943, showing the accused whom I now recognize as absenting himself without leave from Tournay Barracks, Farnborough Hants, at 2200 hours on the 4th day of December 1943. This document is marked Exhibit "A". I also produce Certificate under the Army Act, Section 163 (1) (j) showing the accused whom I now recognize as surrendering to the Military Police in London at 2315 hours on the 17th day of January 1944 and that at the time he surrendered he was wearing military uniform. This document purporting to be signed by Captain L.S. Grayson, D.A.P.M. London Area, is marked Exhibit "B".

W.W. Thom

(W.W. Thom) Lieut.

The accused declines to cross examine this witness.

The accused having been warned according to Rule of Procedure 4 (E), reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E), (F) and (G) have been complied with.

(J.S. Dodd) Lieut.
Officer detailed to take
Summary of Evidence

In the Field
20th day of January
1944.

MFM 6 (AFB 122) 60/PARS/136.(3438)

No B67445 Name DAY L.F. | Sqn. Battery or Company | Corps C.I.C. | Date of enlistment 27Mar40 | GC Badges | Service or Proficiency Pay | Character

Company Conduct Sheet Date of last entry in 17May43 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29Jul 43	Pte.		A.A.Se c 15(1) AWL from 2359hrs 29Jul to 2015 hrs 13 Aug 42. (14 days 2 0 hrs 16 mins)		27 days F.P.& 27 days pay.	17Aug43		15 days pay 149(1)(a)
Field	9 Oct 43	Pte.		A.A.Se c 15(1) AWL from 2345hrs 9 Oct to 1030 hrs 10 Oct43. (10 hrs 45mins)		16 days F.P.& 16 days pay.	11Oct43		2 days pay 149(1)(a)
Field	2CNov43	Pte		A.A.Sec 15 (1) AWL from 2200hrs 10 Oct to 0730hrs 11Oct43.(9hrs) A.A.Sec 15 (1) AWL from 2359 hrs 28 Nov to 2245 hrs 29 Nov43. (22 hrs 46 mins)	Cpl.Windeyer Documentary	5 days forf	30Nov43	Lt. Col. Clingan	1 days pay 149(1)(a)

Certified true copy as taken from Documentary Evidence.
Records Officer 5 C.I.R.U.

(PTO)

MFM 6 (AFB 122) 60/PARS/136 (3438)

No B67445 Name DAY L.F. | Sqn. Battery or Company | Corps C.I.C. | Date of enlistment 27Mar40 | GC Badges | Service or Proficiency Pay | Character Exhibit C.

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte.		A.A.Sec 40		forf 7 days Pay.	18Aug41		
Field		Pte.		A.A.Sec 15 (1) AWL 4 dys 1 hr16mins		forf 8 daysPay Cost of Apprsh. £1-12-10. Police Reward £0-5-0.	16Sep41		5 days pay 149(1)(a)
Field		Pt e.		A.A.Sec 15 (1) AWL 46 days		60dys detn. Cost of appr. £1-9-9.	23Jan42	[illegible]	46 days pay 149(1)(a) 9 days pay 149(1)(c)(11)
				Granted a remission of 19 days pay.					
Field	4May42	Pte.		A.A.Sec 15 (1) AWL from 0630hrs 4May to 1230 hrs 26May42. (22 days 6 hrs)		28 day pay	2Jun42		23 days pay 149(1)(a)

(PTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fie ld		Pt e.		A.A.Sec 15 (1) AWL 4 hrs 55mins		1 days pay.	23Jun42		1 days pay 149(1)(a)
Field		Pte.		A.A.Sec 15 (1) AWL 7 hrs 45mins		14 days C.B.& 14 days pay	26Jul42		1 days pay 149(1)(a)
Field		Pte.		A.A.Sec 15 (1) AWL from hospital		10 days forf.	22Sep42		
Field	29Nov42	Pte.		A.A.Sec 15 (1) AWL from 0700hrs 29Nov to 2 115 hrs 2 Dec 42. (3 days 14 hrs 15 mins)		14 days F.P.& 14 days pay.	3Dec42		4 days pay 149(1)(a)
Field	21Dec42	Pte.		A.A.Sec 15 (1) AWL from 2200hrs 21Dec to 1835 hrs 9 Jan43. (18 days 21 hrs 25 mins)		21 days detn.	11Jan43		19 days pay 149(1)(a)
Field		Pte.		A.A.Sec 15 (1) AWL 13 days 11hrs		14 days detn.	17May43		14 days pay 149(1)(a)

Certified true copy as taken from documents in my custody.

Records Officer 5 C.I.R.U.

S12 36-8-43

Sheet B 4A

M.F.B. 358
22M—5-41 (373-3)
H.Q. 1772-39-626
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-67445	Lt.	Lay, L.F.	4 C.I.R.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	A.B. CC 15/- Fine	5 times A.B. CC 15/- Fine 1 times
For	times	A.B. 64 (2) Fine 1 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil.

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ Section 47 of the Army Act and dispensations with trial under ~~A.F.A. 74~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The ~~accused at the present time is under~~ sentence for ..... beginning on the ..... ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 7 days in ~~Air Force~~ military custody, making a total of 7 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 23 yrs.

6. The date of his ~~commission~~ specified in his ~~record of service~~ attestation paper is 27 May 40

7. The service which the accused is allowed to reckon towards discharge is 1 yr 11 mths

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). ~~State any air force decoration or reward.~~ ~~military~~

10. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer last held ~~Air Force~~ the ~~regimental~~ rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit ..... dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank Pte Name [illegible] of [illegible] Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F. G. C. M.	[illegible] 23 Jan 42	AA. Sec 15[illegible]	[illegible]	19 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24th day of [illegible] [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Exhibit B signed by the president, and annexed to the proceedings.

[illegible] Major

CCC 72 (Case # 3)

PTE DAY L.F

See E-250 for 1st case
" AAA-81 2nd.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-67445 Private Leonard, Frederick DAY - Lorne Scots of C, 5 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 9 mos (90 days) Rumitted beginning on (date) 2-4 Jan 1944
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
10 mths Detention per a period of seven (7) months.

(Sgd) ~~Judge Advocate, if any.~~ 14 Feb 44. Date awarded. H.H. Smith Lt Col President (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Standing back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be and committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) J.R. Stewart Lough
Date 15 Feb 44 Commanding ~~Brigade~~ Corps Troops Group Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B.67445 Pte. Day, L.F.	15 Feb 44 5 CIRU D.O. Part II No. 36 d/ 16 Feb 44	(A.S. Pearson) Colonel Commander 5 Cdn Inf Bde Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

(271) CCC 72

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA31 40/P & S/1808 (2864))

Convened by Order of Brig J.R. Stewart Lough D.S.O., M.C., V.D. Comd "G" Gp CRU dated 12 Feb 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-67445	Pte	Leonard, Frederick	DAY	Lorne Scots 5 CIRU

PROSECUTION REVIEWED
J.R. Stewart Lt Col. 23 Feb 44
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 14 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~was~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~was~~ brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~was~~ fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (3).~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to Accused: Do you object to an interpreter? Ans~~
~~The Interpreter is sworn.(1) Do you object to the shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. Bagnall, V.D.	H.Q. C.R.U.
Member	Major	D. Forbes RP	1 C.I.R.U.
Member	Capt.	L.C. Fox RP	5 C.I.R.U.
~~Judge Advocate~~			
Prosecutor	Lieut	W.C. Campbell	5 C.I.R.U.
Defending Offr	Lieut	W.J. Lea	5 C.I.R.U.

~~Questions by President~~: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DH p 33.)

A8. The accused before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 122(E), 108), or as to the jurisdiction of the Court (RP 34, 25(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~was~~ arraigned ~~separately~~, on all charges in the charge sheet.(1) The accused does ~~does~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is advised and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form No. 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *non of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Yes.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the pleas of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, of submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP ~~155~~ 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Myself only.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy ~~extracts~~ of Conduct Sheets(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. AFB 255 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statements and Conduct Sheets, and in mitigation of punishment ?(1) Ans Yes, only by myself pending Offical (2) ATT. NOTE
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 2(d). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas RO 3(9), 2323, MML p 66, 732-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 344. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

20 35/124

CHARGE SHEET

The accused No. B.67445 Private Day, Leonard, Frederick, Lorne Scots of Canada, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec. 15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

In that he

while a soldier under sentence did absent himself without leave from Tournay Barracks, Farnborough, Hants, from 0600 hours on the 26th day of January 1944 until arrested at Richmond Surrey at 0400 hours on the 27th day of January 1944.

Total time absent 22 hours.

(A.S. Pearson) Colonel
Commander
5 Cdn Inf Rft Unit

In the Field
12th day of February
1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(J.R. Stewart Lough) Brigadier
Commander "G" Group
CANADIAN REINFORCEMENT UNITS

12Feb 44

Convening Officer

117

FIELD GENERAL COURT-MARTIAL.

CFA96 (In lieu of AFA3)
40/FAS/160T (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-67445	Pte			Leonard, Frederick DAY	Lorne Scots 5 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (date) 12 Feb 44 endorsed by me, "[redacted]" To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; [redacted]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D.L. REDMAN V.D. Calg Highrs	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	W. Rorke Calg Highrs	1 CIRU
Capt	To be detailed by O.C.	5 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	To be detailed by O.C.	5 CIRU

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 fn 2.)

Date 12 Feb 44

(J.R. Stewart Lough) Brigadier
(Rank.)
Commanding "G" Group Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS' CERTIFICATE
K.R. (Can) para 537

I certify that I have this morning examined No. B.37445 Pte (Rank)
DAY, L. (Name) of 5 Cdn Inf Rft Unit and in my
opinion he is fit ~~unfit~~ to undergo trial by Court Martial.

Station : Tournay Barracks,
Farnborough Hants.

Date: 14 Feb 44

Sdg [signature] Capt.
(Medical Officer) RCAMC
5 Cdn Inf Rft Unit

SUMMARY OF EVIDENCE

In the case of No. B.67445 Private Day, Leonard, Frederick, Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut. W. W. Thom, Royal Canadian Artillery, Assistant Records Officer, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

"I am Lieut W. W. Thom, Royal Canadian Artillery, employed as Assistant Records Officer at 5 Canadian Infantry Reinforcement Unit. I produce a certified true extract taken from 5 C.I.R.U. Part II D.O. No. 22 dated 27th Jan 1944 showing the accused, whom I now recognize, as escaped from Unit Detention at 0600 hours 26 Jan 44. This document purporting to be signed by Capt Thomas R. Rogers, Adjutant, 5 C.I.R.U. is marked Exhibit "A". I also produce a certificate in accordance with Section 103 (m) of the Army Act, showing the accused, whom I now recognize, as being arrested by the Civilian Police at Richmond, Surrey, at 0400 hours on the 27th day of January 1944. This document purporting to be signed by Officer in charge of Richmond Police Station, and dated 8th Feb 44, is marked Exhibit "B". I have examined the regimental documents of the accused whom I now recognize and certify that on the 26th day of January 1944 he was a soldier under sentence.

W. W. Thom Lt
(W. W. Thom) Lt

The accused declines to cross examine this witness.

The accused having been warned according to Rules of Procedure 4 (E) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C), (D), (E), (F), and (G) have been complied with.

J. G. Dodd Lt
(J. G. Dodd) Lt
Officer detailed to take Summary of Evidence.

Ex "A"

In the Field
18th day of February
1944.

5 CANADIAN INFANTRY REINFORCEMENT UNIT
PART II ORDERS
ISSUED BY
COL. A.S.PEARSON, O.B.E., E.D. OFFICER COMMANDING

Last Order #21
d/26 Jan 1944

Sheet 3
This Order #22
d/27 Jan 1944

~~Sheet 4~~

7. ABSENTEES

(a) Escaped from Unit Detn. at 0500 hrs 26 Jan 44.

B.67445 Pte Day, L.P. (Lorne Scots)

(Sgd) (Thomas E. Rogers) Capt & Adjt
(Thomas E. Rogers) Capt & Adjt

CERTIFIED TRUE EXTRACT AS TAKEN FROM D.O. NO. 22 d/27 Jan 44.

W. W. Thom Lt

(W. W. Thom) Lt.

6245

FEB 12 1944

900

V.

Richmond

8th. February, 4.

O.C. 5th. Canadian Infantry Reinforcement Unit.

Pte. L. Day. No. B-87445.

Certificate in accordance with Section 167 (m) of the Army Act.

I certify that the person whose description is given below was arrested at Richmond, Surrey, at 4 a.m. on the 27th. January, 1944.

Regimental particulars of soldier referred to above.

(No. B-87445
(Rank. Private.
(Name. Day. L.
(Unit. 5th. Canadian Infantry Reinforcement Unit.

Description.

(Age. 22.
(Height 5'9"
(Complexion Fresh
(Hair Brown
(Eyes Grey
(Marked finger right hand missing

Signature of officer in charge of police station where the person was taken on arrest.

in charge of Richmond Police Station.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournay Barracks, Farnborough Hants on the 12th day of Febuary 1944, preliminary to my Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

B67445 Pte. Day. L.F.
(B.67445 Pte. Day, L.F.)

Dated at Tournay Barracks
this 12th day of Febuary 1944

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lieut O. J. Shea C.I.C. 5 C.I.R.U. if he is available.

B67445 Pte. Day. L.F.
(B.67445 Pte. Day, L.F.)

Dated at Tournay Barracks
this 12th day of Febuary 1944

NOTE E-3 14 Feb 44

Statement in Defence of B-67445 Pte Day L.F.

The court is asked to consider:

1) The accused was only absent 22 hours.

2) The accused was married (15 Apr 41) and has a daughter (14 Apr 43) both in Glasgow. He worries about both of them a good deal and tries to see his wife as much as possible. A long period of detention will cause her allowance to be cut off and only cause him further worry.

3) The state of this man's mind was disturbed by the promulgation of a severe sentence from the last FGCM. He broke detention because of what he considered his unjust and unfair treatment. As the charge was subsequently reduced by 3 months ~~and 2 of the former charges were quashed I submit that this is a strong~~

NOTE E-3 MP

point in mitigation of any punishment the court may consider at this time.

W.J. Shea 1st

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fie ld		Pt e.		A.A.Sec 15 (1) AWL 4 hrs 55mins		1 days pay.	23Jun42		1 days pay 149(1)(a)
Field		Pte.		A.A.Sec 15 (1) AWL 7 hrs 45mins		14 days C.B.& 14 days pay	26Jul42		1 days pay 149(1)(a)
Field		Pte.		A.A.Sec 15 (1) AWL from hospital		10 days forf.	22Sep42		
Field	29Nov42	Pte.		A.A.Sec 15 (1) AWL from 0700hrs 29Nov to 2 115 hrs 2 Dec 42. (3 days 14 hrs 15 mins)		14 days F.P.& 14 days pay.	3Dec42		4 days pay 149(1)(a)
Field	21Dec42	Pte.		A.A.Sec 15 (1) AWL from 2200hrs 21Dec to 1835 hrs 9 Jan43. (18 days 21 hrs 25 mins)		21 days detn.	11Jan43		19 days pay 149(1)(a)
Field		Pte.		A.A.Sec 15 (1) AWL 13 days 11hrs		14 days detn.	17May43		14 days pay 149(1)(a)

Certified true copy as taken from documents in my custody.

Records Officer 5 C.I.R.U.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Dec 43	Pte.		WOAS,A.W.L. from 0800 hrs 4 Dec 43 till surrendering to Civil Police in Lodnon at 0215 hrs 17 Jan 44. ABSENT 44 days 1 hrs 15 minute. A.A. Sec 15 (1)	F.O.S.M.	9 months detention	24 Jan 44	F.A.C.M.	Forf 45 days pay PRI 149 (1) (a)
						90 days remission by Commander "G" Group			

Certified true copy as taken from documents in my custody

Records Officer 5 C.I.R.U.

No B67445 Name DAY L.F. | Sqn, Battery or Company | Corps C.I.C. | Date of enlistment 27Mar40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/100 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte.		A.A.Sec 40		forf 7 days Pay.	18Aug41		
Field		Pte.		A.A.Sec 15 (1) AWL 4 dys 1 hr16mins		forf 8 daysPay Cost of Apprehn. £1-12-10½. Police reward £0-5-0.	16Sep41		5 days pay 149(1)(a)
Field		Pt e.g		A.A.Sec 15 (1) AWL 46 days		60dys detn. Cost of appr. £1-9-9.	23Jan42	F.C.C.M.	46 days pay 149(1)(a) 9 days pay 149(1)(e)(11)
				Granted a remission of 19 days pay.					
Field	4May42	Pte.		A.A.Sec 15 (1) AWL from 0630hrs 4May to 1230 hrs 26May42. (22 days 6 hrs)		28 day pay	2Jun42		23 days pay 149(1)(a)

(PTO)

No B67445 Name DAY L.F. | Sqn, Battery or Company | Corps C.I.C. | Date of enlistment 27Mar40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/100 (3438)

Company Conduct Sheet Date of last entry in 17May42 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29Jul 43	Pte.		A.A.Se c 15(1) AWL from 2359hrs 29Jul to 2015 hrs 13 Aug 43. (14 days 2 0 hrs 16 mins)		27 days F.P.& 27 days pay.	17Aug43		15 days pay 149(1)(a)
Field	90ct	43Pte.		A.A.Se c 15(1) AWL from 2345hrs 9 Oct to 1030 hrs 10 Oct43. (10 hrs 45mins)		16 days F.P.& 16 days pay.	110ct43		2 days pay 149(1)(a)
				A.A.Sec 15 (1) AWL from 2200hrs 10 Oct to 0730hrs 110ct43.(9½hrs)					
Field	28Nov43	Pte		A.A.Sec 15 (1) AWL from 2359 hrs 28 Nov to 2245 hrs 29 Nov43. (22 hrs 46 mins)	Cpl.Hindeyer Documentary	5 days forf	30Nov43	Lt. Col. Clingan	1 days pay 149(1)(a)

Certified true copy as taken from Documents in my custody.

Records Officer 5 C.I.R.U.

(PTO)

5

M.F.B. 355
22M—5-41 (572-2)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-67445	Pte	Day, L.F.	5 C I Rs.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	AA Sec 15 M ~~Twelve~~ Five (5) times	AA Sec 15 M Twelve (12) times
For	times	AA Sec 40 One (1) times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil.

or,

~~There are no entries in the conduct sheets of the accused~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. ~~The accused is not under sentence at the present time~~

or,

The accused at the present time is under sentence for 184 days rotation beginning on the 24th day of June 44

4. The accused has been in confinement awaiting trial on the present charges, for 8 days in civil custody, and 10 days in ~~Air Force~~ military custody, making a total of 18 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is Days 1 month

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper 27 Mar 40.

7. The service which the accused is allowed to reckon towards discharge is Nil

8. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). ~~State any air force decoration or reward~~ ~~military~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank~~ ~~Air Force~~ of

Ex. B. My

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... dated ..... (Permanent Force / unit), and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number B-67445 Rank Pte

Name Sieg L.F. of S.C.I.R.O. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which trial	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	UK 23 Jan 42.	AA Sec 15 (1)	60 Days Detention	19 Days.
F.G.C.M.	UK 24 Jan 44.	A.A. Sec 15 (1)	9 Mos. Detention	(90 Days Remitted by Com. No. 9 G.P.)

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14th day of February 1944. [illegible] S.C.I.R.O.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

CCC-150

PTE DAY L-F

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-67445 Private Leonard, Frederick DAY CIC - 5 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 22	Not Guilty	Not Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1+)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

~~Sentence Awarded by the Court~~:

(Sgd) ..... 18-Feb/44 (Sgd) ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RF 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1+)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFAA6 (in lieu of AFA3) (C.P.& R. 1604 (2004))

Convened by Order of Brig J.R. Stewart Lough DSO, MC, VD. Comd "G" Gp CRU dated 17 Feb 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-67445	Pte	Leonard, Frederick	DAY	CIC - 5 CIRU

PROCEEDINGS REVIEWED
W. E. Strick Lieut
29 Feb 44
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 18 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1)
The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1112 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the (1) (2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ [illegible] as interpreter? Ans ~~No~~
~~The Interpreter is sworn.~~ Do you object to Lt. F. Marcalin as shorthand writer? Ans No
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col.	D.L. Redman VD	1 CSRR
Member	Major	A.B.T. Paquet	1 CSRR
Member	Capt.	J.H. Paul	1 CSRR
~~Judge-Advocate~~			
Prosecutor	Lieut.	K.G. Campkin	5 CIRU
Defending Offr	Lieut.	A.H. Krieger	5 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2(c) p 3.)

A8. The accused ..... before arraignment make(s) (not) a plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made or support or opposite, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is ordered by the Conv Offr~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete words or parts not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO SIR.(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOT-KIT

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against~~ the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, ~~accordingly, the trial will~~ proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charge(s).~~(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans TO GIVE EVIDENCE. Do you intend to call witnesses on your behalf? Ans YES SIR. Are they witnesses as to character only? Ans NO SIR.

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.~~(1)

(1). The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. *MFB 351 or AFB 2161.* 2. *MFB 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7/10

(1. *When several accused tried separately see RP 74(5). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Reference AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 53. When accused already under sentence of imprisonment or detention see AA 44(1B), 96(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused R.67445 Private Day, Leonard, Frederick, Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec. 22

WHILE ON ACTIVE SERVICE, WHEN IN LAWFUL CUSTODY ATTEMPTING TO ESCAPE

in that he

while a soldier under sentence in the Guard House at 5 Canadian Infantry Reinforcement Unit attempted to escape at about 2230 hours 6 Feb 44 by making a hole in the ceiling of his cell and by also damaging the roof of the Guard House at 5 Cdn Inf Rft Unit thus incurring a cost of barrack damages to the amount of eighteen shillings and six pence.

.....
(A.B.Pearson) Colonel
Commander
5 Cdn Inf Rft Unit

In the Field
16th day of February
1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J.R. Stewart Lough) Brigadier
Commander "G" Group
CANADIAN REINFORCEMENT UNITS

17 Feb 44

Convening Officer

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1047 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-67445	Pte		Leonard, Frederick	DAY	CIC - 5 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXX] committed the offence[X] set forth in the Charge Sheet[X] attached and on (*date*) 17 Feb 44 endorsed by me, ([redacted]), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[X] should be tried by an ordinary General Court-Martial; [redacted]
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person[X], and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). *Delete the whole or part, if not applicable.*)

5. [redacted]
(RP 106(E). *Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Unit.)
Lt col	D.L. REDMAN, V.D. (Calg Highrs) (*Must be named. RP 106.*)	HQ CRU

MEMBERS.

Major	A.E.T. Pacquet (PPCLI)	1 CIRU
A Capt (Rank.)	To be detailed by O.C. (*Named or detailed. RP 106.*)	1 CGRU (Unit.)

WAITING MEMBER.

A Lt (Rank.)	To be detailed by O.C. (*Named or detailed, if any. RP 106.*)	5 CIRU (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(*Must be named, if any. RP 106.*)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 17 Feb 44

R Stewart Lough Brigadier (Rank.)
(*Signed personally. RP 106 fn 2.*)
(J.R. Stewart Lough)
Commanding "G" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICERS' CERTIFICATE
K.R. (Can) para 537

I certify that I have this morning examined No. B.67445 Pte. (rank)
DAY, L.F. (name) of 5 Cdn Inf Rft Unit and in my
opinion he is fit ~~unfit~~ to undergo trial by Court Martial.

Station : Tournay Barracks
Farnborough Hants.

Date : 18 Feb 44

Sdg [signature] Capt.
(Medical Officer) RCAMC
5 Cdn Inf Rft Unit

R.C.C.M. in the case of B67445 Pte DAY, Leonard, Frederick CIC - 5 CIRU

First Witness for the Prosecution:
C.53014 Sgt Beavis R.J., 5 CIRU having been duly sworn states:

On the 6th Feb 44 I was and still am the Sergeant in charge of the Regimental Police at 5 CIRU. At approximately 2230 hrs I was walking by the guardroom at 5 CIRU. Two patrols were ahead of me. I heard a noise coming from the roof of the guardroom. I stopped, turned my torch towards the roof and saw what appeared to be a small hole in the roof. I procured a ladder and got up on the wall and I turned my torch on to the roof and saw the hole broken through the slate. I sent Pte Cooper into the guardroom to have the corporal there check the cells. I then went into the guardroom and ordered the NCO in charge to procure handcuffs and he and I went into the cells where the accused and Pte Maynard and Pte Cooper were confined. I saw that there was a hole broken through the ceiling of the cell and there was plaster and broken lathe on the floor of the cell and under the bed of which Pte Day was lying on at that time. I ordered the corporal to put handcuffs on the soldiers which was done. When the corporal pulled the covers off Day, I saw that his hair and face and the sleeves of his shirt were covered with dirt and there were particles of plaster in his hair. Later I had a look in the yard where the roof with the hole slants down and there was a quantity of broken slate there similar to the slate on the roof. This was just below the hole in the roof. I took precautions to ensure that these three soldiers could not escape and reported the incident to the R.S.M.

Cross-examined by the Defending Officer:

I inspected the guardroom including the cell in question on the afternoon of the 6th Feb 44 at approximately 1500 hrs and it was in good condition. There was no hole broken through the ceiling. There were no freshly made cracks in the ceiling. The only clothing these soldiers had in the cells were their shirts and their underwear shorts. The shirt of the accused was all covered with dirt, dust and there were small particles of plaster around his shoulders.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH R.P. 83 (B)

Second Witness for the Prosecution:
C78018 Cpl. Herr P.L., 5 CIRU, having been duly sworn states:

I am a corporal of the Regimental Police at 5 CIRU and held that employment on the 6 Feb 44. On 6 Feb 44 at 1600 hrs I was in charge of the guardroom and continued in charge until 2359 hrs that date. I made an inspection of all rooms and cells before I took over. The cell in which the accused and Pte Maynard and Pte Cooper were confined was checked by me. The ceiling appeared to me to be O.K. At approximately 2230 hrs I sent two men out on patrol. One of them came back and told me he heard a noise in the guardroom. I looked through the peephole of the door in the cell and saw everyone in bed. I went out to the yard in the back and found broken slate. I then went and got a ladder. Sgt Beavis climbed the ladder and found some slate missing from the roof. I went back into the guardroom and found a hole in the ceiling of the cell in which the accused was confined. Sgt Beavis ordered me to handcuff the three men in the cell. There was plaster over the floor and also on both of the men in the cell, Pte Day and Pte Maynard. The slate which I have seen on the cement floor in the yard was directly under the hole which I saw in the roof.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH R.P. 83 (B).

Third Witness for the Prosecution:
D86442 Pte Cooper R.W., 5 CIRU, having been duly sworn states:

I am a member of the Regimental Police of 5 CIRU and was so employed on the 6 Feb 44. At 2230 hrs that evening I was sent out on patrol. As I was turning the corner of the guardroom I heard a noise on the roof. I stopped and Sgt Beavis arrived and I drew this noise to his attention. He ordered me back to the guardroom. Cpl. Herr, the NCO in charge and I checked the cell., that is he checked the cell and I stood in the main guardroom. After that we went out in the backyard and found several slates on the floor. From there we went outside and got a ladder and Sgt Beavis and Cpl Herr got up and shon the light on the roof. Afterwards I climbed up the ladder and I saw a large hole in the slates of the roof. Cpl Herr and Sgt Beavis went into the guardroom and I stood on the tip of the ladder to make sure noone got out that way. Afterwards I returned to the guardroom and went to the cell and found that the accused and Maynard were covered with bits of plaster and dirt on their hair, face and hands. I was then

detailed to stand guard at the door of the cell and all the occupants of the cell were handcuffed at the time. I saw dirt underneath the bed underneath the hole in the ceiling. The hole in the ceiling was big enough for a man to get through. I remained on guard at the door until the next shift took over at midnight.

Cross-examined by the Defending Officer:

I don't remember the condition of the ceiling in this cell before these events.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH R.P. 83 (B)

First Witness for the Defence:
The accused having been duly sworn states:

Q: On the night of Feb 6th, what time did you retire?
A: Approximately 2000 hrs.

Q: What did you do with your clothes?
A: Well sir, under orders from the corporal of the guard, I put me clothes outside the door of the cell.

Q: What did you have on at the time?
A: After that I had on a pair of shorts and a shirt.

Q: Then what did you do?
A: Went to bed sir.

Q: Then what happened?
A: Well, sir, we were lying there for a little while and Pte Maynard told me that there were pieces of plaster coming down from the roof.

Q: What side of the room were you sleeping at?
A: The opposite side.

Q: And who sleeps under the hole in the ceiling?
A: Pte Maynard.

Q: Then what happened?
A: I stood on Pte Maynard's bed. Pte Maynard asked me to come and stand on his bed so he could stand on my shoulders for the purpose of pulling the plaster down so it would not fall upon him when he fell asleep. Pte Maynard pulled the plaster down and I got a fair amount of it on me as I was directly underneath the hole and we cleaned off his bed as well as we could. We shoved the plaster from the blankets underneath his bed. I pulled down about 8 or 10 pounds of plaster.

Q: After the plaster was pulled down how big a hole did it leave in the ceiling?
A: About one and a half feet square.

Q: Then what did you do?
A: I went back to bed.

Q: What did Pte Maynard do?
A: He went back to bed too.

Q: Was anyone else in the room?
A: Pte Cooper. He had nothing to do with this.
I went to sleep. The next thing I know is that I was awakened and Cpl Herr put the handcuffs on me.

Q: Did you make any attemp to get out under the hole in the ceiling?
A: No sir.

Q: Did Pte Maynard make any attempt?
A: No sir.

Q: Did you put a hole in the roof?
A: No sir.

Cross-examined by the prosecutor:

I did not at the time notify the corporal that the ceiling was in a bad condition and that we were tearing it down.
IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH R.P. 83 (B).

detailed to stand guard at the door of the cell and all the occupants of the cell were handcuffed at the time. I saw dirt underneath the bed underneath the hole in the ceiling. The hole in the ceiling was big enough for a man to get through. I remained on guard at the door until the next shift took over at midnight.

Cross-examined by the Defending Officer:

I don't remember the condition of the ceiling in this cell before these events.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH R.P. 83 (B)

First Witness for the Defence:
The accused having been duly sworn states:

Q: On the night of Feb 6th, what time did you retire?
A: Approximately 2000 hrs.

Q: What did you do with your clothes?
A: Well sir, under orders from the corporal of the guard, I put me clothes outside the door of the cell.

Q: What did you have on at the time?
A: After that I had on a pair of shorts and a shirt.

Q: Then what did you do?
A: Went to bed sir.

Q: Then what happened?
A: Well, sir, we were lying there for a little while and Pte Maynard told me that there were pieces of plaster coming down from the roof.

Q: What side of the room were you sleeping at?
A: The opposite side.

Q: And who sleeps under the hole in the ceiling?
A: Pte Maynard.

Q: Then what happened?
A: I stood on Pte Maynard's bed. Pte Maynard asked me to come and stand on his bed so he could stand on my shoulders for the purpose of pulling the plaster down so it would not fall upon him when he fell asleep. Pte Maynard pulled the plaster down and I got a fair amount of it on me as I was directly underneath the hole and we cleaned off his bed as well as we could. We shoved the plaster from the blankets underneath his bed. I pulled down about 8 or 10 pounds of plaster.

Q: After the plaster was pulled down how big a hole did it leave in the ceiling?
A: About one and a half feet square.

Q: Then what did you do?
A: I went back to bed.

Q: What did Pte Maynard do?
A: He went back to bed too.

Q: Was anyone else in the room?
A: Pte Cooper. He had nothing to do with this.
I went to sleep. The next thing I know is that I was awakened and Cpl Herr put the handcuffs on me.

Q: Did you make any attemp to get out under the hole in the ceiling?
A: No sir.

Q: Did Pte Maynard make any attempt?
A: No sir.

Q: Did you put a hole in the roof?
A: No sir.

Cross-examined by the prosecutor:

I did not at the time notify the corporal that the ceiling was in a bad condition and that we were tearing it down.
IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH R.P. 83 (B).

Second Witness for the Defence:
D82517 Pte Maynard, F. 5 CIRU having been duly sworn states:

Q: On the night of Feb 6th 1944, what time did you retire?
A: Approximately 2000 hrs, sir.

Q: Where were you at the time?
A: I retired to my cell in the guardroom in 5 CIRU.

Q: What did you do with your clothes?
A: We put our boots and out pants outside the cell and the cell door was locked.

Q: Then did you go to sleep?
A: Yes sir. We did not go to sleep right then.

Q: What did you do after you laid down?
A: We were talking a bit and then the plaster started falling on my face and I called Pte Day over to assist me in taking down the plaster because it was annoying and I was afraid of getting it in the face.

Q: Did you notice any falling plaster before this night of Feb 6th 44?
A: No sir, not apparently. We noticed it just before we went to bed. It was hanging down about an area of 18 inches.

Q: When you went to bed and what happened?
A: When I went to bed, the plaster started to fall down and I asked Pte Day to come over and assist me in taking it down. He came over. I got on his shoulder and pulled it down. I pulled down all that was hanging, about 18 inches. and it weighed approximately 10 pounds. I just threw the plaster at the head of the bed. I cleared the plaster off the bed and put it underneath the bed. I got plaster and dirt from pulling it down all over my hair and face, and shirt.

Q: After the plaster was put under the bed what did you do?
A: After that I went to sleep. We did know anything more until the lights came on and the corporal and the sergeant came in and put the handcuffs on us.

Q: Did you make a hole in the roof of the guardhouse?
A: No sir.

Q: Did you make any attempt to get out of the cell?
A: I made no attempt whatever to get out of the cell.

Q: Did you have any intention of escaping?
A: No intention whatsoever.

Q: Do you know anything about the hole in the roof?
A: No sir. I know nothing about the hole in the roof. The hole in the roof is just a hole. I just saw the light coming through. The hole was put in there for the purpose of a chimney or an air vent, I think. I saw this about the first or second day I went in there about the 27 Jan 44. There was a hole in the middle of the ceiling a sort of an air vent about 3" in diameter through which I saw the hole in the roof.

Third Witness for the Defence:
C.725 Pte Cooper H.J., 5 CIRU, having been duly sworn states:

On the night of the 6 Feb 44 I was confined in a cell in the guardroom of 5 CIRU together with the accused and Pte Maynard. At 2000 hrs we put out clothes outside our cell door. The door was locked and we went to bed. I was sleeping in my shirt and shorts. After I went to bed, the plaster was taken down. I could swear to it. There was noise.

Q: Did you see the ceiling previous to the day 6 Feb?
A: Well sir. It was cracked at the right-hand corner where the hole was later.

Q: What happened after you heard the noise, did you go back to sleep?
A: I went to sleep. I slept. I do not know how long. Then someone pulled the covers off me and I was handcuffed.

The prosecutor declined to cross-examine the witness.

Closing address by the Prosecutor: made after D of Officers address

As far as the prosecution is concerned, we have to rely on the facts brought before the court by the witnesses for the prosecution. I want to state that the accused did not make any mention or notification to the corporal in charge of the guard that the ceiling of the cell was about to give way and that they tore it down themselves. They did not notify the corporal of the guard to that effect.

Defending Officers sums up as follow:

I should like to point out to this court that the accused appeared before a courts-martial on Monday 14 Feb to face a charge of a previous escape for which he was tried on Monday 14 Feb. This occurrence is alleged to have taken place on the 6 Feb and the prosecution has had no knowledge of this attempted escape from that date and permitted the accused to stand trial without any reference to the attempted escape on the 6 Feb 44, the result being that the accused is up on two cours-martials instead of one. This in my opinion is irregular and unfair to the accused. This is a charge brought by the prosecution agains the accused on which there is no direct evidence of the offense. The prosecution are relying on circumstantial evidence to convict the accuse and in order to make that evidence hold it is essential that they produce facts in which they press these steps by which the accused has been able to commit the alleged offense, so that reasonable people would be led to the inescapable conclusion that the accused is guilty. Now in this particular case, certain facts have been brought out by the prosecution which in the opinion of the defence leave open serious omissions in the prosecution's case. The first point brought out in evidence is that the accused were without any clothing except their underwear. It is the month of February and this alone should lead reasonable men to infer that the accused are no so foolhardy as to escape without any clothing. There is no attempt on the part of the prosecution to prove that the hole in the ceiling was covered up so as to make possible a future escape maybe two or three days hence. The next, the prosecution in order to make out their case would have to show that the hole in the roof was made by the accused and to show that it was possible to do so. There is nothing in the prosecutor's case to say that the accused could have reached the roof from the position of the bed. The prosecution have shown that only the undershirt of the accused and his hair was covered with plaster and dirt but no evidence has come out that the shorts have been similarily covered and no dirt is reported on the shorts which is consistant with the evidence that plaster has fallen down upon the accused as a result of it having been pulled down from above. There is no evidence as to the size of the hole in the roof and no part of the prosecutions case shows it is large enough for the accused to have escaped Now the defence rest their case not only upon the prosecution's lack of evidence but also on the evidence brought out by witnesses for the accused to the effect that all evidence corroborates each other and there is no variation in the evidence and the accused bring forth reasonable evidence to support their contention. The accused have given an explanation which might be reasonably true and the court are entitled to give the accused the benefit of the doubt and should not convict him unless they are certain beyond reasonable doubt that his explanations are untrue.

No recovery by the British Govt. from Ala Fross

(To be prepared in triplicate)

Army Form P1923
(Outside Sheet)

BARRACK DAMAGES.

Exhibit A

Voucher No. 274

REQUISITION and ESTIMATE of the Repairs, &c., to Buildings at Towns & Barracks Mallaton Farms

occupied by 5th E. I. R. Unit and noted at the

* R. E. Inspection taken the 8th

day of February 1944

* Insert "Monthly," "Periodical (maintenance)," or "Marching out," as the case may be.
(See Regulations for Engineer Services, Part I., as to regimental arrangements for execution of repairs).

No. of Item	Name of Building and Room	Particulars of Damages, &c.	Net Price at which each Article can be repaired or replaced	Amount £	s.	d.
	Guard Room					
1	Cell No 3	Renew patch 1 - Plaster Ceiling			6	0
2	" "	Refix E.L. Conduit to wall			2	10
3	" "	Renew Patch 1 Slates in roof			9	8
				£	18	6
	Allocation Statement					
	Chargeable to Troops £ — 18.6	Chargeable to Public Nil		£	18	6
	K.A. CWF					
	WO/F375					
		Carried forward				

(41264) 10000 1/44 Tom 8/42 H.T.C. 764/12
(20044) 10000 1/43 H.T.C. 764/12

A. I ACKNOWLEDGE that the Repairs detailed herein have become necessary in consequence of neglect or wilfulness by the unit under my command.

Officer Commanding [signature] Col.
Comd. 5 Cdn. Inf. Rft. Unit.

Date 16 Feb 44

B I CERTIFY that the above amount is a just and true estimate of the expense of making good the damage listed on the reverse, caused by..... and that the items have been compared with the notebook signed by the Unit's representative at the inspection.

F.C. Chick for D/C R.E.
Marlborough Lines

Date 16 Feb 44

C. I AGREE with this estimate of cost.

Officer Commanding [signature] Col.
Comd. 5 Cdn. Inf. Rft. Unit.

Date

NOTE.—The amount of this claim, with one copy of this form and Army Form P 1921 attached thereto, will be forwarded to the Command Paymaster within seven days of the date hereof.

BARRACKS.

19

D. I CERTIFY that the damages charged to the (relieved on by the)* under my command, have been repaired and replaced according to the details given in this Report, in a proper and efficient manner to the best of my judgment.

**Cross out this portion of the Certificate when not applicable.*

Date

Commanding the

SUMMARY OF EVIDENCE

In the case of No. B.97445 Private Day, Leonard, Frederick, Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

No. C.53014 Sgt Beavis, R.J., Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am No. C.53014 Sgt Beavis, R.J., Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, employed as sergeant in charge of the Regimental Police of 5 Can Inf Rft Unit. At approximately 2230 hours 6 Feb 44 I was walking down the road by the Guard House. Two of the Regimental Police were in front of me. I heard a noise on the roof of the Guard House. I stopped and looked up to see what caused the noise and sent one of the Regimental Police Private Cooper, R.W., into the Guard House to have the Corporal check the cells to see that everything was all right. I procured a ladder and I got up on the wall, turned my flashlight on to the roof and found that there was a hole broken through the slate on the roof. I immediately ran into the Guard House and told the Corporal to get handcuffs and we went into the cell which was occupied by the accused, whom I now recognize. I immediately had the accused handcuffed and I noticed that a hole had been made in the ceiling of the cell by tearing away the lathes and plaster, and also that the accused was covered in dirt and bits of plaster.

C 53014 Sgt Beavis R.J.
.....
(No. C.53014 Sgt Beavis, R.J.)

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

No. C.78018 Corporal Hurr, F.L., Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am No. C.78018 Cpl. Hurr, F.L., Canadian Infantry Corps, on the strength of 5 Can Inf Rft Unit, employed on the Regimental Police at 5 Can Inf Rft Unit. At approximately 2230 hours 6 Feb 44 I was on duty in the Guard House at 5 Can Inf Rft Unit as Corporal in charge of the Guard. At approximately 2230 hours I sent two of the Regimental Police on patrol, one of whom, Pte Cooper, R.W., came back in to the Guard House and reported that he had heard noises outside on the roof of the Guard House. I checked the cells, found all prisoners in bed, covered up, and checked the exercise yard and found several slates on the ground. These slates were not there when I came on duty at 1600 hours. At Sgt Beavis request I secured a ladder and took it outside around the corner of the building and put it up against the wall. Sgt Beavis was there and he climbed the ladder. After Sgt Beavis I climbed the ladder and turned my flashlight on, and noticed a hole in the roof. We immediately returned to the Guard Room and entered the cell occupied by the accused, whom I now recognize, and on looking up at the ceiling found a hole where the plaster had been torn down and I noticed a lot of dirt and plaster on the floor under the head of a bed. I also noticed that the accused, whom I now recognize, was covered with dirt and bits of plaster. Sgt Beavis immediately ordered the accused to be handcuffed.

C 78018 Cpl Hurr F.L.
.....
(No. C.78018 Cpl. Hurr, F.L.)

The accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE

In the case of B.67445 Private Day, Leonard, Frederick, Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

THIRD WITNESS FOR THE PROSECUTION

No. D.86442 Pte. Cooper, R.W., Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am D.86442 Pte Cooper, R.W., Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, employed on the Regimental Police of 5 Cdn Inf Rft Unit. At approximately 2230 hours 6 Feb 44 I was detailed for patrol by Cpl Herr, P.L. I had just left the Guard House along with Pte Mulhern, W.E. when I noticed a noise on the roof of the Guard House. I immediately drew this to the attention of Sgt Beavis, the Sergeant in Charge of the Regimental Police, who at that time was approaching the Guard House. Sgt Beavis immediately examined the roof of the Guard House and ordered me back to the Guard Room. I accompanied Cpl Herr in the examination of the yard and noticed a number of slates on the floor of the exercise yard in the Guard House. I then re-entered the Guard Room and entered the cell occupied by the accused, whom I now recognize. I noticed that a hole had been made in the ceiling. Sgt Beavis immediately ordered the accused handcuffed. I also noticed that the accused was covered with dirt and bits of plaster, and dirt had fallen on the ground of the cell and was hidden under the head of the bed.

D86442 Pte. Cooper R.W.
(No. D.86442 Pte Cooper, R.W.)

The accused declines to cross-examine this witness.

FOURTH WITNESS FOR THE PROSECUTION

Lieutenant W. W. Thom, Royal Canadian Artillery, Assistant Records Officer, 5 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Lieutenant W.W. Thom, Royal Canadian Artillery, Assistant Records Officer, 5 Cdn Inf Rft Unit. I produce Army Form P1923, Voucher Number 274, showing the Barrack Damages caused to a cell in our Guard Room occupied by the accused, whom I now recognize, as eighteen shillings and six pence. This document purporting to be signed by F.C. Chick for the D.C.R.E. Marlborough Lines is submitted as Exhibit "A". I have also examined the Regimental Documents of the accused, whom I now recognize, and can certify that at 2230 hours on the 6th of February 1944 the accused was a soldier under sentence.

W W Thom Lieut.
(W.W. Thom) Lieutenant)

The accused declines to cross-examine this witness.

The accused having been warned according to Rules of Procedure 4 (E), reserves his defence.

SUMMARY OF EVIDENCE

In the case of B.67445 Private Day, Leonard, Frederick, Canadian Infantry Corps, on the strength of 5 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C), (D), (E), (F), and (G) have been complied with.

J. D. Dodd (Lieutenant)
Officer detailed to take Summary of Evidence.

In the Field
18th day of February
1945.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Tournay Barracks, Farnborough Hants on the 16th day of Febuary 1944, preliminary to my Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

B 67445 Pte. Day L.F.
(B.67445 Pte. Day, L.F.)

Dated at Tournay Barracks
this 16th day of Febuary 1944.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of H. A. H. Kreiger C. & C. S.C.I.R.U. if he is available.

B 67445 Pte. Day L.F.
(B.67445 Pte. Day, L.F.)

Dated at Tournay Barracks
this 16th day of Febuary 1944.

DD-40

PTE DAVE G.R.

F-78253 Pte.DAYE,Gerald Robert
Cape Breton Highlanders
No.7 Cdn.Reinforcement Units

Army Form A.3. DD-40

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this tenth day of April, 1943

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army (Overseas), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

~~[I am unable to appoint:—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~

Proceedings Reviewed

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lieut. Col.	D. L. Redman, V.D.	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
A Major	from	3 CIRU
A Captain	from	3 CIRU

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Colonel
Commanding "D" Group, Cdn.Rft.Units
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
	First Charge A.A.Sec.15(1) -:- Second Charge A.A.Sec.40 -:- Third Charge A.A.Sec.40	Guilty Guilty Guilty	Guilty Guilty Guilty	
F-78253 Pte.DAYE, Gerald Robert C.B.Highrs. 7 C.I.R.U.	Sentence To undergo detention for a period of forty five (45) days and to be put under stoppages of pay until he has made good £0-8-5 the expenses of his apprehension and return 13th April 1943 [illegible]			Confirmed [illegible]
	See Charge Sheet attached			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [illegible] Colonel (Signed) [illegible]
Commanding "D" Gp.,C.R.U.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
~~2. The witnesses~~
~~(3. The interpreter)~~
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 13th day of April 1943.

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

[illegible]
President of the Court Martial.

* See footnote (b) on page 762 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ [illegible]

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 13 day of April 1943.

[illegible]
Confirming Officer.

Promulgated and extracts taken in the case of F 78253, Pte Daye G.R. C.B. Highrs 7 C.I.R.U. No 60 d/15 April 43

(a) (Dated) 14 April 43 (Signed) [illegible] CAPT ADJT 7 CON INF REINF UNIT

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No F 78253 Private Gerald, Robert, DAYE, Cape Breton Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas), is charged with:-

FIRST CHARGE
Sec 15 (1)
ARMY ACT

When on Active Service, absenting himself without leave,

in that he,

at Haig Hutments, Crookham, Hants, absented himself without leave from Roll Call at 0800 hours, 30th day of March 1943, until apprehended by the Military Police in Friar Street, Reading at 1900 hours 3rd April 1943, thereby incurring cost of apprehension in the amount of 8 Shillings and 5 Pence.

Total absence - 4 days, 11 hours.

SECOND CHARGE
SEC 40
ARMY ACT

When on Active Service, conduct to the prejudice of good order and military discipline,

in that he,

at Reading, when apprehended by Military Police at 1900 hours, 3rd April 1943 was improperly wearing Corporal's Chevron's to which he was not entitled.

THIRD CHARGE
SEC 40
ARMY ACT

When on Active Service, conduct to the prejudice of good order and Military Discipline,

in that he,

on 3rd April 1943 did make false entries in his Pay Book (M.B.M. 1) purporting them to be genuine.

J. R. Calkin Col.
.....
(J.R. Calkin) Colonel
Commander
7 Cdn. Inf. Rft. Unit.

In the Field
7th day of
April 1943

To be tried by Field General Court Martial

G. Hedley Basher
.....
(G. Hedley Basher) Colonel
Commander
"D" Group, Cdn.Rft.Units

In the Field
10 Apr.43

7 Cdn. Inf, Reinf, Unit

13- April-43

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can.) Para 557

I certify that I have this day examined No. F-78253 Pte. Daye G.R. Cape Breton Highlanders, 7 Cdn. Inf, Reinf, Unit., and in my opinion he is fit ~~or unfit~~ to undergo trial by Court Martial.

Leipzic Barracks
Date 13-4-43.

.....
MEDICAL OFFICER
7 Cdn. Inf, Reinf, Unit.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT LEIPZIG BARRACKS, CROOKHAM, HANTS.
ON THE 13th DAY OF APRIL. 1943

The accused. E. 18 253 PTE. DAYE G.R. ..... Unit. C.B.H. ... 1 C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22&23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President. LT. COL. D.L. RED MAN. VD. Unit. H.Q. C.R.U. .....

Members. MAJOR W.F. KEMP ..... Unit. 3 C.I.R.U. .....

CAPT. D.R. LADORA .... Unit. 3 C.I.R.U. .....

The officers under instruction are duly sworn:-

LIEUT. J.L. McGEE 1 C.I.R.U.
LIEUT. C.K. MUCLALY ..... Unit. 1 C.I.R.U. .....

LIEUT. I.L. McINTYRE ..... Unit. 1 C.I.R.U. .....

Prosecutor. CAPT. W.R. MOORE ..... Unit. 1 C.I.R.U. .....

Defending officer. LIEUT. L.E. DONKIN. Unit. 1 C.I.R.U. .....

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
MW The Prosecutor produces ~~MFB 355~~ AFB 296 and MFM 6.
The Court complies with R.P. 46(B)

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment.~~
MW (b) ~~calls witnesses as to character.~~
(c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.
MW The President complied with CAO RO-3262
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE, and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in mitigation is attached

[signature]

13 Apr. 43.

Convening Officer,
Headquarters "C" Group.
Canadian Reinforcement Units.

Re. F.G.C.M. F. 18253. Pte Davis G.R. C.B.H. 7.C.I.R.U.

1. This soldier is now only 20 years of age. He was 18 when he joined the army. The entries in his M.F.M. 6 are not of a serious nature. He and another young soldier went A.W.L. on the 30th March, went to Reading and foolishly put up stripes and had entries made in their pay books for promotions. They were arrested after 4 days.

2. This accused enlisted in Cape Breton in the Armoured Corps, went to Camp Borden, and was posted to the 6th. Hussars, Montreal. He is interested in Armoured Corps work, he had, before enlisting in May 1941, spent some four months in a cold storage plant, working in the Storage Diesel plant.

3. He said he was transferred to the Cape Breton Highlanders in September 1942, he does not know why, but as far as he knows it was not on account of any fault of his. He states he is most anxious to get back into the Armoured Corps. He is a young soldier of good appearance. He understands he has to undergo punishment for this offence, but I respectfully suggest that enquiries be made to see if he could be transferred to the

Armoured Corps on his release.

LT. COL.
(D. L. REDMAN, V.D.)
PRESIDENT.

FCCM:- 518250 Pte Daye GR.
C.A.H. TCIRU.

Day

This man enlisted in the 6 Hussars a ~~[illegible]~~ Montreal Regt on ~~[illegible]~~ May 1941. In Sept 1942, he was transferred by CMHQ to the Cape Breton Highlanders against his wishes. He pleaded before Company Commander to get transfer back to Hussars but could get no satisfaction. The Hussars are willing to take this man back as soon as he can obtain his release from the CBH.

The object in going AWL was to try to get transferred.

He is a single man, and prior to enlistment studied diesel engineering at a technical school.

This man apparently got on with the wrong company.

Good M.F. M.6.

M

SUMMARY OF EVIDENCE

In the case of No F 78253 Private Gerald, Robert, DAYE, Cape Breton Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas).

By direction of the Commanding Officer, this SUMMARY OF EVIDENCE, is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

F 59970 A/Cpl. Mill, G.J., North Nova Scotia Highlanders, on strength of 7 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am F 59970 A/Cpl. Mill, G.J., North Nova Scotia Highlanders, on strength of 7 Canadian Infantry Reinforcement Unit. I was Company Orderly Corporal for "C" Company 7 Canadian Infantry Reinforcement Unit on the 30th day of March 1943, when the roll was called F 78253 Pte. Daye, G.R. was absent. The roll call was held at 0800 hrs. This evidence relates to the accused whom I now recognize. I placed his name on the Absentee Report.

.....G.J. Mill.....A/Cpl
(F 59970 G.J. Mill)

(The accused declines to cross examine this witness)

SECOND WITNESS FOR THE PROSECUTION

7690435 L/Cpl. Reed, E. of 159 (H.Q.) Provost Coy. C.M.P.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the loss of time involved, attendance of this witness cannot in my opinion be readily procured.

.....Capt.
(Officer taking Summary)

(The accused does not demand the attendance of this witness for cross examination)

THIRD WITNESS FOR THE PROSECUTION

7689232 L/Cpl. Evans, N. of 159 (H.Q.) Provost Coy. C.M.P.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the loss of time involved, attendance of this witness cannot in my opinion be readily procured.

.....Capt.
(Officer taking Summary)

(The accused does not demand the attendance of this witness for cross examination)

SUMMARY OF EVIDENCE

FOURTH WITNESS FOR THE PROSECUTION

Capt. W.R. Moore, West Nova Scotia Regiment, on strength of 7 Canadian Infantry Reinforcement Unit, having been duly sworn states:

" I am Capt. W.R. Moore, West Nova Scotia Regiment, on strength of 7 Canadian Infantry Reinforcement Unit. I produce Certificate in accordance with A.A. Sec 163 (1) (jj) relating to the accused whom I now recognize. This document is marked Exhibit "A". I produce C.M.H.Q. form 1000:55 relating to the accused marked Exhibit "B". I also produce Paybook, M.B.M.1, relating to the accused, marked Exhibit "C"

W.R. Moore
.....Capt
(W.R. Moore)

(The accused declines to cross examine this witness)

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E), reserves his defence.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E), (F), and (G), have been complied with.

.....Capt
(Officer taking summary)

In the Field,
6th day of
April 1943.

CHARGE

COPY.

M.P/R 214
Army Form B 252
See King's Regulations

C.B. Highlanders.
(7. C.I.R.U.)

Regiment
~~Battery~~
~~Squadron~~
~~Troop or~~
~~Company~~

CHARGE against No. F.78253 Rank. Trooper

Name DAYE. G.R.

Place ALDERSHOT. Date of Offence ?

OFFENCE W.O.A.S. (1) ABSENT from ? until apprehended by the Military Police in FRIAR STREET, READING, on the 3rd./APL/43 about 19.00 hours. (2) Irregular Conduct. i.e:- Wearing Corporal's Chevrons. (3) Irregular Conduct. i.e:- Making false entries in his M.B.M.L. (Page 6)

S12 36-3

Names of Witnesses 7690435 L/Cpl. Reed. E.
7689232 L/Cpl. Evans. M.
(159(H.Q.) Provost Coy. C.M.Police)

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

COPY.

Statement of **EVIDENCE** in the case of:-

No. F.78253 Tpr. DAVE. G.R.
C.B. Highlanders,
No.7 C.I.R.U.
ALDERSHOT.

Sir,

At READING on the 3rd. APRIL 1943 about 19.00 hours, I was on duty in FRIAR STREET where I saw the a/n Trooper. He was wearing Corporal's Chevrons. I stopped him and asked to see his Pass but he could not produce one. I then asked him how long he had been a Corporal and he replied:- "It is in my pay-book".

Not being satisfied, I then conducted him to Military Police H.Q. READING, and upon examining his M.B.M.L. I saw that entries had been made on Page 6 in regard to promotions. I contacted his Unit by telephone and was informed that the particulars of the a/n Trooper were as above and that he was ABSENT. He then admitted having falsified his M.B.M.L. himself.

He was detained pending the arrival of an escort.

Sgd. E. REED. L/Cpl.
159(H.Q) Provost Coy.
C.M.Police.

READING.
3rd/APL/43

Sir,

I have read over and corroborate the above statement.

REMARKS

Sgd. H. EVANS. L/Cpl.
159(H.Q) Provost Coy.
C.M.Police.

READING.
3rd/APL/43

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, Ewshott, Hants, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Ewshott, Hants
this 9th day of April
1943.

F.78253 G.R. Dove

(2) I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Leipzic Barracks, Ewshott, Hants preliminary to my Court-Martial.

Dated at Ewshott, Hants
this 9th day of April
1943.

.....

(3) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Capt. C. L. Putman
if he is available.

Dated at Ewshott, Hants
this 9th day of April
1943

F.78253 G.R. Dove

"EXHIBIT"-"A"

Certificate in accordance with Army Act, Section 186 (4) (iii).

I certify that No. F.78263 Rank Tpr Name DAVE. G.R.

Unit C.B. Highlanders No.7 C.I.R.U. was arrested at BEARING

at 19.00 hours on the 3rd/APRIL/1943

Wearing Military Uniform

Signature of Provost Marshal, A.P.M. or other Officer into whose custody the above mentioned person was taken on arrest.

Major. A.P.M.

180(T.A) Provost Coy.

EXHIBIT "B"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. F78253 Rank Tpr. Name Haye, G.R. Unit C B High 7CIRU

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Reading

Date	Particulars	Amount		
	Escorts return fare from LONDON To Reading		5	7
	Prisoners single fare to LONDON From Reading		2	10
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		8	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] [signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483

[signature]

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F 78253	Private	Gerald, Robert, DAYE	C.B. Highrs - 7 C.I.R.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheets mentioned should be produced at court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1941.

* The number therein stated should correspond with the number or entries in the conduct sheets, no allowance being given to the most serious offence in each year and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 40	1 times	2 times.
For A.A. Sec 15 (1)	2 times	2 times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct,~~ ~~nil~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, or

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ ~~nil~~ beginning on the ~~nil~~ day of ~~nil~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 10 days in military custody, making a total of 10 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 yrs 166 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 1 yr 328 days

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 328 days

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 328 days service.

9. The accused is entitled to reckon 1 yr 328 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~or is in possession of or entitled to claim any military decoration or reward.~~†

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. (*In the case of an officer.*) ~~The accused holds in the army the rank of~~ dated ~~and in his regiment (or corps or department) the rank of~~ dated

(*1.8250) W 11402/144, [25,000 6/41 A.&E.W.Ltd. Gp.488

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F 78253 Rank Private Name Gerald, Robert, DAYE of C.B. Highrs 7 C.I.R.U. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~7th~~ 13 day of April 1943

H.J. McDougall Lieut.
(H.J. McDougall) Lieut.
Records Officer - 7 Cdn Inf Rft Unit.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No. F78253 Name Daye A. R. Sqn., Battery, or Company Corps Dw. HQ Sqn (6H) 5 Cdn Armd Div. Date of enlistment 5.5.41 G.C. Badges Service or Proficiency Pay M.P.A.C.

Date of last entry in Company Conduct Sheet 9/10/42. No. and date of last drunk N.1 Period not reckoning towards freedom from extra fine N/a Sheet No. 2. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet No 1 destroyed after six months service.					
Field	12/9/42	Tpr.		Conduct to the prejudice of good order and Military Discipline, in that he whilst on duty in the Mess & Mess, refused to obey an order in an insubordinate manner. Sec. 40 A.A.	Sgt Rainey	4 Days Ostn	12.2.42	Major A. T. Pallen	Forfeits 4 Days Pay
Field	13/4/42			Conduct to the prejudice of good order and Military discipline in that he when ordered to report to Sgt Mess refused	Sgt MacCauley Tpr. La Flamme	96 hours Detention	13.4.42	Major A. T. Paterson	

[signature] Certified True Copy 7 June 43

Lieut Pay Officer

872 36-8-5

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dismissing with trial	By whom awarded	Remarks
Field	13/8/42	Spr.		absenting himself from his place of duty in that he whilst on duty as night picquet was absent from his post from 2015 his until 2245 his necessitating his being replaced. 2 hrs 45 mins.	Cpl A	7 Days Pay 7 " Forf Pay	17-8-42	Major R Cottrell	
Leipzic Bks	12/2/43	Pte		awh C Haige Sec. 15(1) 8 hrs. 30 mins.	Sgt Jefferson	2 Days F.P.	Lt Col Jervis	2 Days Forfeits 1 Day [illegible]	
Haig Bks	28 Mar 43	Pte		A A Sec 15 Absent from Tattoo 1 hr and absent from parade 45 mins	Cpl Mill GJ & CSM Petrie A	7 days C B	29 Mar 43	Rt Samson Capt	

Certified True Copy
[illegible] Lieut
7 April 43 Records Officer
7 C I R U

8-C3-93 6 2 8

5 T- 8
Cpl. Daye, J.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F.78905 Cpl John Raymond DAYE - 1 Can Subsist Regt

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be Reduced to the Ranks and to forfeit all Pay during pay per a period of Thirty (30) Days.

(Sgd) ..... 11 SEP 45 (Sgd) .....

Judge-Advocate, if any. Date awarded. President (or his OC)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 790.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1) (Sgd) .....

(1. AA 57A. Delete if not used.)

Date 13 Sep 45 Commanding F. Gp CRU Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Sign. type of Offr.
F 78905 CPL DAYE, J.R.	15 SEP 45	[illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 150, p 57-8

REC'D (1) 24 SEP 1945 CANADIAN S.H.Q.

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFAB) 40/P & R/1698 16(44) 4/38B

Convened by Order of Brigadier J.E.Sager Comd "F" Gp CRU dated 7 Sep 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.78905	Corporal		John Raymond	DAYE	1 Can Sub Wksp RCEME

FINDINGS REVIEWED

AUTH 25 Sept 45

[illegible] Capt.

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 11 SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused~~ : Do you object to ..... ~~as interpreter ?~~ Ans .....

~~The Interpreter is sworn~~.(1) Do you object to C/14167 Sgt BRADBRIDGE as shorthand writer ? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO, SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT COL	D L REDMAN	HQ CRU
Member	CAPT	A C HOLLAND	ICGRU
Member	LIEUT	O P QUINN	ICGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT	D R C BEDSON	1 SUBWKSP RCEME
Defending Offr	CAPT	A E LAKE	1 SUB WKSP RCEME

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans NO, SIR[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 2 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (*) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(B). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(F).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(B). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans NO-SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (~~copies~~) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier of having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[3]
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans NO, SIR, I'M A FIRST TIME OFFENDER[2]
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.[2]
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366. Overseas MO 109, 1203. MML p 90, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, Regimental Number, F-78905 Corporal John Raymond DAYE, on strength of 1 Cdn. Sub-Workshop, RCEME, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE

Sec.15(1) AA.

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at Crookham, Hants, absented himself without leave from 0745 hours 20 Aug 45 until surrendering himself at Unit Guard Room at 0815 hours 30 Aug 45.
(Total time absent - 10 days, 30 minutes.)

Crookham, Hants.,
4 September 1945.

(B.J. Highfield) Major,
Officer Commanding,
1 Cdn. Sub-Workshop, RCEME.

To be tried by Field General Court-Martial.

7 Sep 45

(J.E. Sager) Brigadier,
Commander,
"P" Group, C.R.U.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.78905	Corporal		John Raymond	DAYE	1 Cdn Sub Wksp RCEME

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Sep 45 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-Col	D.L. Redman, VD	Hq CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

A Capt	from and to be detailed by OC	1 CCRU
A Lt	from and to be detailed by OC	1 CCRU
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

~~WAITING MEMBER.~~

~~(Rank.) (Named or detailed, if any. RP 106.) (Unit.)~~

~~JUDGE-ADVOCATE.~~

~~(Rank.) (Must be named, if any. RP 106.) (Unit.)~~

On Active Service in the Fd

in England (Country.)

J.E. Sager
J.E. SAGER (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 7 Sep 45

Commanding "F" Gp, C.R.U.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 3) 60/P & R/1697 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE.
K.R.(Can) para.527

I certify that I have, this morning, examined

No. F-78905 Corporal John Raymond DAYE ..... on the strength of
(Name) (Rank)

1 Sub - Workshop, R.C.E.M.E. and in my opinion he is Fit to undergo

trial by Court Martial.

STATION. Crookham, Hants.

DATE. 11 Sep 45

Medical Officer
R.C.A.M.C.

Sept 11th 45.

Plea of Mitagation

The accused, Cpl John Raymond Daye, Regt'l number F-78905, joined the R.C.O.C., June 19th, 1941, came overseas Jan 10th 45 and was employed at #1 C.B. Workshop as A.F.V. Fitter "B" until he was posted to #1 C.S. Workshop on Aug 14th 45. He had been advised previously, by his sister, of his father's illness, and this has been a source of worry to him for the past four months. His father, who is 74, apparently has spinal trouble necessitating him being confined in a cast. Due to his father's age, Cpl Daye feels he may pass away before he is able to return home. He has been advised by the Asst Adj of the Unit to secure medical certificates from Canada, confirming the seriousness of his father's condition, so that his case may be brought to the proper authorities. Supplementary to this trouble Cpl Daye received on the 16th Aug, a letter from his girl in Canada, stating she had met another man, and wished to sever connections with him. Since they had been going together for four years, and before leaving Canada, an understanding has been reached whereby they would be married on his return home, he felt very badly about it. It was due to this, coupled with the worry over his father, that caused him to go A.W.L. Cpl Daye realizes the seriousness of the charge laid against him and pleads guilty accordingly. He feels he should be punished for the crime he has committed, but asks the Court to consider that he acted under stress, caused by his father's illness and loosing the girl he hoped to marry.

F-3

17

Summary of Evidence in the case of F-78905 Corporal John Raymond Daye, No. 1 Cdn. Sub-Workshop, RCEME, a soldier of the Canadian Army Overseas.

FIRST WITNESS: B-61569 S./Sgt. Apted, R.A., No. 1 Cdn. Sub-Workshop, RCEME, a soldier of the Canadian Army Overseas, having been duly sworn, states:

On 20 Aug 45 I was acting as Sergeant in charge of 5 Platoon, "C" Coy, No. 1 Sub-Workshop RCEME. When I called the roll at 0745 hrs on the date mentioned, I found that Cpl. Daye, J.R. of my platoon was not present on parade. I did not see Cpl. Daye ~~[illegible]~~ D.A.C.B., nor was he present on parade until he surrended at the unit guard room on 30 Aug 45. That is all I know of the matter.

The accused declines to cross-examine this witness

R. A. Apted

SECOND WITNESS: P-16428 CSM Lee, F.A., No. 1 Cdn. Sub-Workshop, RCEME, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am CSM of No. 1 Sub-Workshop, RCEME. On 20 Aug 45 it was reported to me that F-78905 Cpl. Daye, J.R. was absent from morning parade. To the best of my knowledge Cpl. Daye did not report back to the unit before he surrendered himself at the unit guard room at 0815 hrs 30 Aug 45. I produce a certificate pursuant to Section 163 (1)(J) of the Army Act, signed by the Commanding Officer of the unit (marked Appendix "A" and attached to the proceedings)

The accused declines to cross-examine this witness

F. A. Lee

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused declines to make a statement and reserves his defence

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D)(E) & (F) have been complied with.

D. R. C. Badson, Lieut.
Offr. detailed to take the Summary of Evidence

CROOKHAM, HANTS
4 SEP 45

APPENDIX "A"

~~SCHEDULE "G"~~

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (J)

I.....Major B.J. Highfield.....certify that

Reg. No.F-78905..Rank....Cpl....Name....Days, J.R.....

Regiment.....R.C.E.M.E.....

Unit.....1 Cdn. Sub-Workshop, R.C.E.M.E.....

Stationed at.....Church Crookham, Hampshire.....

Surrendered himself to No.H-66693..Rank...Cpl...Name..Evans, J.

of the.....Regimental Police.....

on the..30th...day of...August....1945, at..0815 hrs.....

.....AS AN ABSENTEE WITHOUT LEAVE.....

at the time of his surrender he was wearing (military uniform)

Signature of Officer Commanding.....B.J. Highfield..... MAJOR.

.....COMDG. 1 CDN. SUB WORKSHOP, R.C.E.M.E.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F78905	Cpl.	DAYE, J.R.	No.1 Cdn Sub-Workshop

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.W.L. 4 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 30 Jan 42

Date of last entry in Field Conduct Sheet 22 Jun 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~NONE~~ as C.C.B.

~~XXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 11 th day of September 1945

D.R.C. Bedson

(D.R.C. Bedson) Lieut.

No. R-78905 Name DAVE John Raymond Sqn, Battery, or Company — Corps RCAF Date of enlistment 1st Aug 41 GC Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 127) 40:P&S/136 (7010)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
London, Ont.	13 Aug 43	Pte	-	Original destroyed on completion of two years effective service clear on a regimental sheet					
London, Ont.	1943	Pte.	-	AWL from 0800 hrs 20 Jan 43 until 1800 hrs 22 Jan 43		7 Days pay & A.A.A. 3 (c)	22 Jan 43	Major L.T. Price	
London, Ont.	1944	L/Sgt		Sic. (AWOL from 0800 hrs 20 Jan 43 until 1800 hrs 22 Jan 43)	Documentary	Reduced to rank of Pte.	1943		
				Sic. (AWOL from 0800 hrs 20 Jan 43 until 1800 hrs 22 Jan 43)					
				AWL from 0800 hrs 20 Jan 43 until 1800 hrs 22 Jan 43		

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Sep 45	Pvt		Acts Prej. to Good Ord. and Mil. Discipline, in that he, while on duty as Sentry, did, at or near Co. Hq. Bldg. #1, Co. A, 1st. Bn., 398th Inf. Regt., APO 86, U.S. Army, commit some acts [illegible] to the prejudice of good order and military discipline, to wit: did [illegible] and did [illegible] and did [illegible] and

TRIAL BY COURT-MARTIAL

F-78906 Corporal John Raymond DAYE

List of Witnesses forthe Prosecution

P-16428 CSM Lee, F.A.,
No.1 Cdn Sub-Workshop, R.C.E.M.E.

B-61569 S/Sgt Apted, R.A.,
No.1 Cdn Sub-Workshop, R.C.E.M.E.

TRIAL BY FIELD-GENERAL COURT-MARTIAL

I, F-78905, Corporal John Raymond DAYE, desire the services of an officer to defend me at my forthcoming trial.

J.R. Daye.

Brookham, Hants
7 Sept 45

QQ-112
PTE DAYTON G.A.

141

M 16798 Private George Arther DAYTON
Loyal Edmonton Regiment No. 1 C.I.R.U.

QQ-112

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 14th day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "G" GROUP CANADIAN REINFORCEMENT UNITS C.A. (O), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [redacted]

*(1. [redacted]

*(2. [redacted]

[redacted]

13 Oct 43.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	A.S. PETTAPIECE	C.H. of O.

Members.

Rank.	Name.	Regiment.
A Major	to be detailed by O.C.	4 C.I.R.U.
A Lieutenant	to be detailed by O.C.	4 C.I.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.R. Stewart Lough
(J.R. Stewart Lough) Brigadier
Commanding "G" Group Cdn Rft Units
Convening Officer.

Arthur S. Pettapiece, Major

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M 16798 Pte George Arther DAYTON L. Edmn. R. 1 C.I.R.U.	First Charge A.A. Sec 15 (1) SEE CHARGE SHEET ATTACHED	Guilty	Guilty	I confirm the finding and sentence of the court but remit 90 days. Detention Sentenced to undergo detention for a period of eight (8) months and to be put under stoppages of pay until he has made good the sum of £2-19-2 in respect of the costs of his apprehension. 16 Sep 43 AHP

*I have satisfied myself that none of the Officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge before this Court Martial"

Arthur S. Pettapiece, Major
President of the Court

~~Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—~~
~~"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"~~
~~Answer (to be recorded on separate sheet if necessary):—~~

(Signed) J.H. Stewart Lough (J.H. Stewart Lough) Brigadier
Commanding "G" Group Cdn Rft Units
Convening Officer (s)

(Signed) Arthur S. Pettapiece, Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of September 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
~~2. The witnesses~~ AHP
~~*(3. The Interpreter)~~ AHP
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 16th day of September 1943.

Arthur S. Pettapiece, Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~ AHP

~~Signed this day of 19~~ AHP

~~President of the Court Martial.~~ AHP

*See footnote (b) on page 762 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~2(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ fr.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 18th day of September 1943.

DO 181
21 Sep 43

J. Stewart Brig.
Confirming Officer.
of Cmds. C.R.U.

Promulgated and extracts taken in the case of [illegible]
Promulgated in D.O. 181 d/21 Sep 43.
(a) (Dated) 20 Sep 43 (Signed) (J.H. Mothersill) A/Commander 1 Cdn. Inf. Reinf. Unit. Lt.-Col.

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, M-16798 Private George Arther DAYTON of the Loyal Edmonton Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE
SEC 15 (1)
ARMY ACT

When on Active Service, absenting himself without leave,

in that he,

at No. 1 Canadian Infantry Reinforcement Unit, absented himself without leave from 2030 hours on the 21st day of June 1943 until apprehended by the Civil Police at 1000 hours on the 9th day of September 1943, thereby incurring expense to the public in the amount of £2-19-2, the cost of apprehension.

Total absence: 79 days 13 hrs. 30 minutes.

Colonel
(C.W. Dawes) Commander,
No.1 Cdn Inf Rft Unit.

Barrosa Barracks,
Aldershot, Hants.

13th day of September 1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

14 Sep 43

(J.R. Stewart Lough) Brigadier
Commander "C" Group
CANADIAN REINFORCEMENT UNITS

Convening Officer

President

Medical Officers Certificate
K.R. Can. Para 557

I certify that I have this morning examined No. M16798 Pte

Dayton Q.A. and in my opinion he is fit to undergo

trial by Court Martial.

Station. 1 C.I.R.U.

Date. 16 Sep. 43

[signature] Lieut. [illegible]
(Medical Officer)
[illegible] Major

1 Jan 58-90

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Lille Barracks, Farnborough, Hants.
ON THE 16th DAY OF September 1943

The accused 17.16.298 Pte. Dayton, G.A. Unit 1 C1RU

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. A. S. Pettapiece Unit H.Q. C.R.U.

Members Maj. A. F. Macpherson Unit 4 C1RU

Lt. B. O. Rich Unit 4 C1RU

The officers under instruction are duly sworn:-

Lt. R. J. Cowin
J. C. Brampton
M. A. Hambly
L. E. Taylor
F. Bowick
1 C1RU

Lt. F. E. L. Forker Unit 5 C1RU

Lt. J. Sheldon Unit 5 C1RU

Prosecutor Lt. J. S. Moore Unit 1 C1RU

Defending Officer Lt. R. S. Bentine Unit 1 C1RU

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge~~(s)~~ and R.P. 35(B) is complied with. CHP
The accused does not desire to make a statement in reference to the charge~~(s)~~, R.P. 37(B). CHP
The Summary of Evidence is read.
The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6. CHP
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

~~(a) Makes a statement in mitigation of punishment.~~ CHP
~~(b) Calls witnesses as to character.~~ CHP
~~(c) Calls witnesses in mitigation of punishment.~~ CHP
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

~~SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and~~ ADDRESS OF ~~ACCUSED OR~~ HIS DEFENDING OFFICER. CHP CHP

attached hereto.

Arthur S. Pettapiece,
Major

Plea of Mitigation in the case of Pte Dayton.

The accused, Pte Dayton has been a soldier of the Canadian Army in England since 1940. He has been with his regiment for two years of this time, and his conduct during all this time, with the exception of a few small crimes has been good. This is the first time that he has ever appeared before a court martial.

Several months ago Pte Dayton was admitted to hospital, and, since that time, has spent over five months in hospital. Having been discharged, and sent to #1 C.I.R.U., he was given sixty days light duty. During this time he was present to see two drafts leave, for his unit, which he was excluded from, ~~because~~ due to his physical condition. It was on the occasion of having been taken off the second draft for medical reasons, that he took matters into his own hands, and committed the crime of AWL with which he is now charged.

During the period of his absence, he has been working with travelling shows in England, where he was apprehended by civil authorities. Those shows, cease in two weeks, to close up for the winter, at which time the accused ~~was~~ intended to return to give himself up to the military police, his health having improved to the state where he is now fit for service.

The accused, according to his own statement had at one time, 27 applications to transfer to a unite that were engaged actively in fighting the enemy. His attitude has been one of restlessness and frustration at this inactivity, quite understandable in the light of present day affairs, and which is felt by all of us here in England. I hope in with this in mind, I ask the leniency of the court with this mans punishment, not only because the reason for his offence is understandable, but also in order that he may be released for active service in the near future, which has been his only ambition since he joined the army.

Lille Bks.
Farnborough.
16 Sep 43.

R S Hunter Lt.
#1. C.I.R.U.

IMMEDIATE. Army Form O. 1617.

PART 1.

Certificate of Surrender to the Civil Police of a Deserter or Absentee without Leave.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Soldier's Unit,* stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military custody. Where a soldier's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Depot, who will arrange escort. This certificate will be handed to the escort on arrival.

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* Stations of Units and Depots are shown in the Monthly Army List.

53361 W2011/7125 5m 1/25 A.P.2130 Gp.121 Forms/O1617/4
53733 W2214/7438 5m 2/25

I CERTIFY that the man whose personal description is given below surrendered himself to* Detective Constable, No. 233, W.G. BROOK, at Barnstaple, at (hour) 10am on the 9th. day of September 1943, as being No. 4.16798 (Rank and Name) Private George Arthur DAYTON, a deserter (~~or absentee without leave~~) from 49th. Edmonton Aldershot, Regiment, and it appears to me from his confession that he is a deserter or absentee without leave.

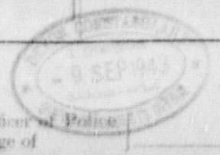
* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 28 Height 6'1" Feet Inches

Complexion Fresh Hair Dk. Brn. Eyes Brown.

Marks None

Probable Date and Place of Attestation	~~14.7.1942.~~ 14.7.1940. Edmonton, Alberta.
Probable Date of Desertion or beginning of absence, and from what place	May 1943, Aldershot Barracks.



Signature of Officer of Police in charge of

P. [illegible]
Superintendent.
Barnstaple. Station.

9th. September 1943 Date of Signature.

Army Form O. 1617.

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the soldier's unit, to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army Funds incurred by the Police in the case of No. of the Regiment, who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (i) (j).

I, . . . W. FERN. CAPT. D.A.P.M. LONDON AREA . . . . . certify that

Reg. No. M-16798. Rank Pte. . . . . Name Dayton.G.A. . . . . .

Regiment Edmonton Regt. No.1. C.I.R.U. . . . . .

Unit . . . . . .

Stationed at . . . . . .

Surrendered himself to No 233. . . Rank D.C. . Name Brook.W.G. . . . . .

of the . . . . . .

on the 9 . . day of Sept. . . . . 19 43 , at 1000 . . . . . hours

. . . . . AS AN ABSENTEE WITHOUT LEAVE . . . . . .

At the time of his surrender he was wearing (military uniform) or (civilian clothes)'

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrender.

(Strike out part inapplicable)'

London
11 Sept. 43

"B"

R. S. Crayson. Capt.
Capt.,
(W. Fern) D.A.P.M., C. M. H. Q.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No M 16798 Rank Pte. Name Hayton, G.R. Unit 1 C I R C
49 Edmn. Reg't

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Barnstaple, Devon

Date	Particulars	Amount		
11 Sept 42	Escorts return fare from LONDON To Barnstaple	1	8	9
	Prisoners single fare to LONDON From Barnstaple		14	5
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		16	0
	Total £	2	19	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L. S. Grayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/485(3287)

"C"

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Barrosa Barracks, Aldershot, HANTS, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Aldershot, HANTS,
this 13 day of
Sept 1943

G. A. Dayton

(2) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

~~I desire the services of~~ G A Dayton
~~if he is available.~~

1 Jet-58-4

RECORD of the Declaration of a Court of Inquiry assembled at 1 C.I.F.U.

on the 14th day of July 1943

for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No.M.16798 Pte Dayton, G.A.

DECLARATION

The Court declare that M.16798 Pte Dayton, G.A. did illegally absent himself without permission from 2030 hours on the 21st day of June 1943, and is still so absent; that on the 22nd day of June 1943, was deficient articles of kit (Listed as Appendix "A") amounting to £6-3-6½, and is still so deficient.

ARTICLES	NO	VOCABULARY PRICE £	s	d.	APPRAISED PRICE £	s	d
Bedves Cap	1	0	0	4	0	0	3
Blouses Serge	1	1	7	6	1	1	6
Trousers Serge Frs	1	1	7	11	1	1	9
Boots Ankle Frs	1	1	1	6	0	18	6
Brasses Button	1	0	0	2	0	0	2
Brushes Button	1	0	0	8	0	0	6
Brushes Hair	1	0	1	1	0	0	8½
Brushes Shaving	1	0	1	4	0	1	0
Brushes Tooth	1	0	0	4½	0	0	3
Cap Comforter	1	0	1	1½	0	0	9
Holdall	1	0	0	9	0	0	7
Housewives	1	0	2	3	0	1	8
Jersey Pullover	1	0	6	6	0	5	1
Knife Clasp	1	0	5	2½	0	4	1
Razor	1	0	1	10½	0	1	4½
Shoes Canvas Frs	1	0	8	10	0	7	7
Socks Frs	2	0	1	4	0	2	6
Towels Hand	2	0	1	11	0	1	4
Drawers Cell. Frs	2	0	4	1	0	3	2
Vest Cpm	2	0	3	0	0	2	4
Braces Web, Right	1	0	2	0½	0	1	7
Haversack	1	0	9	7	0	7	6
Eye-Shields A.G.	3	0	2	4	0	1	8
Ointment A.G.	1	0	1	2	0	0	9
Comb Hair	1	0	0	2	0	0	2
TOTAL		£6	15s	6d	£5	3s	6½d

Names of President and Members: President Capt D.L. Watts (Wester R.)

Members Lieut T.H. Adamson (Eden R.)
Lieut J.M. Tierney (Wester R.)

Signature of Commanding Officer [signature] Col.
(E.N. Dewey) Commander
1 Cdn Inf Reinf Unit

Certified true copy [signature]

Signature of Officer having custody of original record

"A"

SUMMARY OF EVIDENCE

In the case of, M16798 Pte Dayton G.A. of the Loyal Edmonton Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas):

By direction of the Commanding Officer, this Summary of Evidence is taken on oath:

ATTACHED AS AN APPENDIX:

(a) A certified true copy of a Record of a Declaration of a Court of Inquiry, purporting to be signed by Colonel C.W. Devey, Commander, No. 1 Canadian Infantry Reinforcement Unit, which relates to the accused.

(b) Certificate Under the Army Act, Section 163 (i)(j) purporting to be signed by W. Fern, Capt. D.A.P.M., C.M.H.Q., which relates to the accused.

(c) C.M.H.Q. 1000:55 Expense voucher, purporting to be signed by L.S. Grayson Capt., Officer Issuing Railway Warrant and Expense monies, No. 6 Area Provost Company, Canadian Provost Corps, London, which relates to the accused.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (e) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with:

(Officer detailed to take the Summary of Evidence)

Albuhera Barracks,
Aldershot, Hants.

13th day of September 1943.

M.F.M. 6
(A.F. B.122)
40/P & /S136 (2965)

No. M16798 Name DAYTON G.A. Sqn., Battery, or Company — Corps C.I.C. Loyal Edmn R — Date of enlistment 13-2-40 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet 7-4-40 — No. and date of last drunk Nil — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Witley	11-4-41	Pte		AA Sec 15 (1) awl from 2215 hrs 11 Apr 41 to 0745 hrs 12 Apr 41 Absent 9 hrs 30 mins.	Cpl Hogg	7 days C.B.		Capt J.H. Beatty	1 days Pay FR&I 149(1)a)
Field	17-11-41	Pte		AA Sec 40 con prej good ord and mil disc. i.e. failed to rise at Reveille	Sgt Inglis	3 days C.B.	19-11-41	Lt. A. Nicholl	
Field	20-1-42	Pte		AA Sec 40 con prej good ord and mil disc. i.e. failed to rise at Reveille	Cpl Tulloch	3 days C.B.	201-42	Major J.H. Beatty	
Field	28-7-42	Pte		AA Sec 40 con prej good ord and mil disc i.e. appeared on parade unshaven.	CSM Green	7 days C.B.	7-8-42	Capt. B.B. Taylor	

(P.T.O.)

S12 3E-3

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6-5-43	Pte		AA Sec 40 con prej good ord and mil disc i.e. did appear on parade unshaven.	CSM Bethell	5 days C.B.	6 May 43	Capt. R. Cross	

Certified true copy consisting of ONE sheet: Dated 16 SEP. 43

H F Arkinson Capt

(Officer having custody of original doucments)

Arthur S. Pettapiece, Major

572-36-8-3-43

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-629
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M16798	Pte	Dayton G.A.	Loyal Edmonton Regt. 1 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron Battery ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec 15 (1)	times	1 times
For A.A. Sec 40	1 times	4 times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act Air Force Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for ~~Air Force~~ days in civil custody, and 9 days in military custody, making a total of 9 days in custody, of which days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 28 yrs 145 days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 13 Feb 40

7. The service which the accused is allowed to reckon towards discharge is 3 yrs. 213 days.

8. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward ~~(or is in possession of or entitled to)~~. State any air force decoration or reward. military military

10. (If the accused is a ~~warrant~~ officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental book, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number..... Rank..... Unit..... Name..... of..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16th day of SEP. 43 Records Officer 1 CIRU

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

4F-22

Pt Pea E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E28284 Pte Everett DEA, 1 Cdn Gen Hosp, RCAMC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ _____ beginning on (date) _____ (1) A

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 37 days, of which Nil days were spent in hospital.(1) Ma

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for six months. Ma

~~6 months detention~~ Ma

(Sgd) _____ 23 Oct 44 (Sgd) J H Morgan Maj.

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

_____

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence but remit three months detention.

~~I direct that the accused be committed to prison or detention barracks until further ordered.~~ (1) Ma

(1. See RP 54. Delete if not used.)

(Sgd) _____

Date _____ Commanding _____ 29 OCT 1944 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
E28284 Pte Everett DEA, 1 Cdn Gen Hosp R.C.A.M.C.	3 Nov 44	J.A. Dalseon Lieut Adjutant 2 Cdn Reinforcement Units

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN

FIELD GENERAL COURT-MA

Convened by Order of Brigadier E.G. Weeks Comd Cdn Sec

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names	Surname
E28284	Pte	Everett	

PROCEEDINGS REVIEWED

J. Kilgour Capt. 30 NOV 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s))

RECORD FORM A—OPENING PROCEEDINGS AND

A1. The President, Members, waiting Member, ~~JA~~, if any, and Offrs under... Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED ON... BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all ... on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. ... will be made and given a number having reference to appropriate or preceding para number here... CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are here... provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Ch... The Court is satisfied that it is properly convened and constituted(1), accused is (... each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3...

A3. The Court is opened. The accused is (~~are~~) brought before the Court. A...

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to ... ~~The Prosecutor informs the Court that accused elected to be tried by court... summarily by the CO.~~ (1)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete...

A5. President to accused: ~~Do you object to~~ ... ~~The Interpreter is sworn.~~ (1) ~~Do you object to~~ ... ~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the ... President to accused: Do you object to be tried by me as President or by a...

Ans NO (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see p...

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, ~~if any,~~ ... ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	J.R.H. MORGAN
Member	CAPTAIN	T.H. SMELLIE
Member	LIEUT	R.S. WADUP
~~Judge Advocate~~	—	—
Prosecutor	CAPT	J.E. HARRY
Defending Offr	CAPT	D. DION

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Def...

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with ... 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when the Of...

A8. The accused: E 28284 PTE EVERETT DE...

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), ... (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness ... by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the ... evidence, if any, and finding are recorded per Notes. For forms of record see references ... and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the ... not object to any charge.(1) There is no amendment to be made to the Charge... pleas in Part I of the Schedule.

(1. RP 31, 112. See para 5 of instrs p 2. When more than one Charge Sheet are ... separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. ... make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after ... ceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS ...

RECORDED AT CMHQ IN AB 160 4F-23.

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier E.G. Weeks Comd Cdn Sec HQ 1 Rehd dated 15 Oct 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E28284 Pte Everett DEA, 1 Cdn Gen Hosp, RCAMC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of list see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) A

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 37 days, of which Nil days were spent in hospital.(1) Pte

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for six months

~~6 months detention~~ ptm

(Sgd) ..... 23 Oct 44 (Sgd) J.H. Morgan Maj.

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence but remit three months detention.

~~I direct that the accused be committed to prison or detention barracks until further order.~~(1) ~~AA 57A. Delete if not used.~~

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

29 OCT 1944

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E28284 Pte Everett DEA, 1 Cdn Gen Hosp R.C.A.M.C	3 Nov 44	J.D. Salesman Capt Adjutant 2 Cdn Reallocation Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PROCEEDINGS REVIEWED

J.A.C. Kufeyuelle Capt.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E28284	Pte	Everett	DEA	1 Cdn Gen Hosp RCAMC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 23 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2071

A1. The President, Members, waiting Member, ~~JA, if any,~~ and ~~Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnin RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 16, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? As ~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ~~The shorthand writer be sworn.~~(1) ~~a shorthand writer?~~ Any

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	J.R.H. MORGAN	C.I.C. 4 Bde
Member	CAPTAIN	T.H. SMELLIE	RCAMC 16 Gen Hosp
Member	LIEUT	R.S. WADUP	RCAMC 16 Gen Hosp
~~Judge-Advocate~~	—	—	—
Prosecutor	CAPT	J.E. HARRY	C.I.C. 1 Cdn Gen Hosp
Defending Offr	CAPT	D. DION	C.I.C. 4 Bde

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused E 28284 PTE EVERETT DEA before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

(L104)
AG-1-EG-44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E28284 Pte Everett DEA, 1 Cdn Gen Hosp, RCAMC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1) A
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 37 days, of which Nil days were spent in hospital.(1) A
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for six months. ~~6 months detention~~ JAm

23 Oct 44 (Sgd) J H Mcgregan Maj.
Date awarded. President. (RP 45, 50.)

(Sgd) Judge-Advocate, if any.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentence but remit three months detention.

~~I direct that the accused be released from close confinement and further ordered~~ E W
~~(1. RP 57A. Delete if not used.)~~

(Sgd) Chas F Weeks
C. F. Weeks Brig.
Asst. Adj. & Q. M. G. 1 Can.

Date Commanding 29 OCT 1944 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E28284 Pte Everett DEA, 1 Cdn Gen Hosp R.C.A.M.C.	3 Nov 44	J A Dalcourt Lieut Adjutant 2 Cdn Reinforcement Units

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 160

CFA96 (In lieu of AFA3) 47-P-M-S-1160B (2804)

FIELD GENERAL COURT-MARTIAL

Convened by Order (a) Brigadier E.C. Weeks Comd Cdn Sec GHQ 1 Echdated 16 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E28284	Pte	Everett	DEA	1 Cdn Gen Hosp RCAMC

PROCEEDINGS REVIEWED
Jack Kuegeuker Capt. 30 OCT 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 23 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2071

A1. The President, Members, waiting Member, ~~JA~~, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0930 hours trial commences.

A4. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 583(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? ~~Do you object to~~ as shorthand writer? ~~Do you object to~~ The Interpreter is sworn.(1) ~~Do you object to~~ The shorthand writer to be sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	J.R.H. MORGAN	C.I.C. 4 Bn
Member	CAPTAIN	T.H. SMELLIE	R.C.A.M.C. 16 Fd Amb
Member	LIEUT	R.S. WAOUP	R.C.A.M.C. 16 Fd Amb
~~Judge-Advocate~~	—	—	—
Prosecutor	CAPT	J.E. HARRY	C.I.C. - 1 C G H
Defending Offr	CAPT	D. DION	C.I.C. - 4 Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment, see RP 69 (B) and fn 2 were not followed. See Qs p 2.)

A8. The accused: E 28284 PTE EVERETT DEA before arraignment makes(s) (no) ~~no~~ plea. (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

L104
AG-1-E-44

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~ (1) The ~~Court decides (not) to advise~~ accused to ~~change his~~ (their) ~~plea(s) of Guilty to Not Guilty as~~ ~~charge(s). The accused is (are) so informed, and he (they) pleads~~ ~~change(s) his (their) plea(s) as~~ charge(s). ~~Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record. 3

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fn 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf RP 5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. MFR 255 or AFB 256. 2. AFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 1.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also (if any)~~.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 45. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 209, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

1710

CHARGE SHEET

The accused, E-26284 Private Everett DEA, R.C.A.M.C., a soldier of the Canadian Army Overseas on strength of No. 1 Canadian General Hospital, Canadian Army, C.E.F. is charged with:-

FIRST CHARGE A.A.Sec 15 (1)

W.O.A.S., absenting himself without leave

in that he

in the field absented himself without leave from 0700 hours 3 Sep 44 until 1030 hours 15 Sep 44.

(Total absence 12 days, 3 hours 30 minutes).

In the Field
1 Oct 44

(C.S. Thompson), Colonel, RCAMC,
Officer Commanding,
No. 1 Canadian General Hospital

To be tried by Field General Court Martial.

In the Field
15 Oct 44

(E G Weeks) Brigadier
Officer IC
Can Sec GHQ 1 Echn

FIELD GENERAL COURT-MARTIAL

CFA 55 (3rd Rev of AFA 8)
60/FM&R/1697 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit
E28284	Pte		Everett	DEA	1 Cdn Gen Hosp RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 Oct 44 endorsed by me, (~~or by my offr of my rank or above~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a PO Offr as President, for the reason I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	J.R.H. Morgan	CIC, 4 Bn 1 CBR Gp
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt or Lt to be detailed by OC 1 Cdn Gen Hosp RCAMC

Capt or Lt to be detailed by OC 1 Cdn Gen Hosp RCAMC
(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt or Lt to be detailed by OC, 4 Bn 1 CBR Gp
(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.)
(E G Weeks)
Brigadier (Rank.)

Date 15 Oct 44

Commanding Cdn Sec GHQ 1 Sch AAI
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
M.R. (G&N) Para 357

I certify that I have this morning examined No. E28284

PTE DEA. E ~~4 BN., 1 Side Base Sand Depot,~~

and in my opinion he is fit/~~unfit~~ to undergo Trial by Court Martial.

In the Field
OCT 23rd 1944.

[signature]
(A.A. Gressman) Capt.,
Medical Officer, 4 Bn, 1 C.B.W.D.

Plea for Mitigation.

8 July 40 joined the army N.K.
19 Apr 41. CMF 8 Mar 43. No leave since
Jan 43. Seven applications for leave
not granted. 1 Fld. Amb. at Ortona
Sole support of aged father.

Cross question -

1. Hospital most busy when
the accused went A.W.L.

[signature]

Exhibit "A"

Summary of evidence in the case of
F 28284 Pte. Everett DEA, R.C.A.M.C.
presently on strength of No. 1 Canadian General
Hospital, a soldier of the Canadian Army, C.M.F.

Per instruction of the Commanding officer the
evidence is taken under oath.

First witness for the Prosecution

J 98678 Staff Sergeant Davies, G.
Royal Canadian Army Medical Corps, on strength
of No. 1 Canadian General Hospital, C.M.F., having
been duly sworn states

I am Wardmaster of No. 1 Canadian
General Hospital. At 0700 hours 3 Sept 1944
I made my inspection of the hospital wards.
The accused, Pte. Dea E. whom I recognize,
was supposed to be on duty on Ward "L". I
looked through this ward. Pte. Dea was not
present. I searched the hospital and hospital
lines but could not find him. I have been
Wardmaster continuously since the 3 Sept. and
have inspected the hospital wards each day.
I did not see the accused Pte. Dea, after the
first time I missed him on Sept 3rd, until he
was returned, in arrest, to the hospital on
the 27th or 28th of September.

G Davies Sgt.

The accused declines to cross examine the witness.

~~Second Witness for the Prosecution~~

Attached herewith a Certificate of Surrender marked Exhibit "A". This certificate is in accordance with Section 163 (j) of the Army Act.

It describes the accused and pertains to him. It shows the accused to have surrendered himself to No. 3 Canadian General Hospital, R.C.A.M.C. at 1030 hours 15 Sept. 1944.

It purports to be signed by Daniel J. O'Keefe R.S.M. 3 Cdn. General Hospital,

John Harry Capt.
Officer detailed to take summary

The accused, having been warned in accordance with R.P. 4 (e), declines to make a statement.

Taken down by me, in the field, the second day of October 1944 in the presence of the accused. R.P. 4(c)(d)(e) and (f) complied with

John Harry Capt.
Officer detailed to take summary

NOTICE UNDER RP 76

TAKE NOTICE THAT RSM D J O'Keefe, No 3 Canadian General Hospital, RCAMC, will be called as a witness and will give evidence as follows:-

The accused, E26284 Pte Dea E, No 1 Canadian General Hospital, RCAMC, surrendered at No 3 Canadian General Hospital, RCAMC, MERCOGLIANO, at 1030 hours, 15 Sep 44.

TAKE NOTICE THAT G98672 S/Sgt Davies G, RCAMC, will give further evidence as follows:-

I produce certificate of surrender under AA Sec 163(1)(j) showing the accused, E26284 Pte Dea E, No 1 Canadian General Hospital, RCAMC, to have surrendered at 1030 hours, 15 Sep 44, at No 3 Canadian General Hospital.

CERTIFICATE UNDER AA 163(1)(j)

I certify that B28284 Pte Everett DEA, No 1 Cdn Gen Hosp, RCAMC, surrendered himself at 3 Cdn Gen Hosp at 1030 hours, 15 Sep 44.

J A Stewart Lt-Col.
Officer Commanding
No 3 Cdn Gen Hosp

Typed

410 Exhibit "C" JBM

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B 28284	Pte.	Everett DEA	No. 1 Cdn. General Hospital R.C.A.M.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers hereto stated should correspond with the number of entries in the conduct sheets, permission being given to the most favourable offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 79 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for NO days in civil custody, and 37 days in military custody, making a total of 37 days, of which NO days were spent in hospital.

5. The present age of the accused according to ~~his attestation paper~~ his record of service is 24 years 4 mo 8 days

6. The date of his ~~commission~~ attestation specified in his ~~attestation paper~~ record of service is 8 July 1940

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

~~8. The accused is entitled to deferred pay or gratuity in respect of~~

~~9. The accused is entitled to reckon~~ ~~service for the purpose of determining his pension~~

10. The accused is in possession of, ~~or entitled to~~ no military decoration or military award (*or* is in possession of *or* entitled to *(state any military decoration or reward)*) C.V.S.M. and clasp.

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

~~12. (In the case of an officer.) The accused holds in the army the rank of~~ ~~and in his regiment (or corps or department) the rank of~~ ~~dated~~

(*72847) 40 M 7/40 (7877) 250,000 10/42 A.G.W.W.Ltd. Gp.698
(28847) 50 L 3/40 (1287) 82,000 5/43

M.F.M. 6
(A.F.B. 122)
(1936—7-41 (1210-30)
H.Q. 1772-39-1652

No. E28284 Name DEA, E. Sqn., Battery, or Company Corps R.C.A.M.C. Date of enlistment 8 Jul 44 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 23 Jan 41 No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. H.M. Hunter, Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet No. 2 destroyed on completion of two years service without a regimental entry 23 Jan 1943. Last entry 23 Jan 1941.									"H.M.H."

Certified true copy of document in my possession.

(L.J. Quinn) Major, RCAMC, Registrar, No. 1 Cdn Gen Hospital.

(P.T.O.)

Exhibit 7 HMH

872-36-8-C-4

ZZ-129

SGMN DEADY T.J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-112091 Sigmn Terence Jerome, DEADY 1 CSRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 15(1)AA	Guilty	Guilty.	
2nd	Plea withdrawn	Plea of Not Guilty	Guilty.	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ____ beginning on (date) ____. (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for ninety (90) days

(Sgd) ____ Judge-Advocate, if any. 7 Jan 44. Date awarded. (Sgd) F.D. Tweedie Lt Col. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding ____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I Confirm the finding and sentence of the Court but mitigate the sentence to read "to undergo detention for sixty (60) days"

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) ____ Brig.

Date: 11/2/44 Commanding: B Group CRU. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 575.)

Accused: B/112091 Sigmn Deady T. Date: 2 Feb 44. Signature of Offr: [illegible] Capt

Published in No 1 CSRU Part II Order No 14 dated 17 JAN 44

L. Sykes Capt Adjt.

ALL DELETIONS AND ALTERATIONS [illegible] Unit.

ZZ-129

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P.A.S. 1698 (2004)

Convened by Order of P.R. Shields, Brig. Comd "B" Gp CRU dated 5 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-112091	Sigmn	Terence Jerome	DEADY	1 CSRU

PROCEEDINGS REVIEWED

W.C. Hyde Lieut.

7 Jan 44

REVIEWING OFFICER, JAG BRANCH

PLEA PAGE 5 6 2/4 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 7 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ____ as interpreter?~~ Ans ____ ~~The Interpreter is sworn.(1)~~ Do you object to Pte R.J. Eustace as shorthand writer? Ans No. The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt. Col.	F.D. Tweedie	H.Q. C.R.U.
Member	Capt.	J.S.M. Clark	1 CA & C R.U.
Member	Lieut	G. Reid	1 CE R.U.
Judge-Advocate			
Prosecutor	Lieut	W.S. Gilbert	1 C & R.U.
Defending Offr	"	H.S. Jeanerett	1 C & R.U.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ____ before arraignment make(s) (no) ~~the~~ plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, explain and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B - 2 - E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court sic see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty,(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No. .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

FOT. B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1) See para ... of Record Form D
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea of standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

~~C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)~~
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) FOT
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the FOT charge(s).(2) The Court is closed, and considers the submission.(3) The ~~Court is reopened~~, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and ~~that~~ accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Do neither. Do you intend to call witnesses on your behalf? Ans No. Are they witnesses as to character only? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

FOT. D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

FOT. D8. The President ~~announces the finding(s), if any, of Not Guilty,~~ and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

FOT. E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

FOT. E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP 249. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The accused, B112091 Signalman DEADY, T.J.(Royal Canadian Corps of Signals) , on strength of No.1 Cdn Signals Reinforcement Unit, a soldier of the Canadian Army Overseas,

is charged with,

FIRST CHARGE

Section 15 (1)
Army Act.

WHILST ON ACTIVE SERVICE, ~~ABSENCE~~ absenting himself WITHOUT LEAVE, bod

in that he,

in the Field, whilst undergoing Field Punishment, absented himself without leave from 2200 hours, 28 November, 1943, until surrendering himself to the Civil Police at Coventry at 2230 hours, 22nd December, 1943.

(Total Absence 24 days, 30 minutes)

(Cost of Apprehension (£0 - 18s - 6d), eighteen Shillings and six pence).

(W.O. Peffers) Lt.-col.,
Comdr., R.C. Signals Wing,
No. 1 Cdn Sigs Reinf Unit.

Delville Bks.,
Cove, Hants.
4 Jan 44

To be tried by Field General Court Martial.

5 Jan 44

(P.R. Shields) Brig
Comd "B" Gp
Cdn Rft Units

F.D.T.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-112091	Sigmn		Terence Jerome	DEADY	1 CSRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Jan 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [and that it is not practicable to delay the trial for reference to a superior qualified offr.]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col	F.D. Tweedie	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by	1 CASCRU
Lieutenant	to be detailed by	1 CERU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date 5 Jan 44

Commanding (P.R. Shields) Brig "B" Gp CRU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS' CERTIFICATE
K.R. (Can) para 557

I certify that I have this morning examined No. B.112091

Signn. DEADY, T.J. of No. 1 C.S.H.U.
(Rank) (Name)

and in my opinion he is fit to undergo trial by Court Martial.

Station Cove, Hants.

Date 7 Jan 44.

Sgd. .....
(Medical Officer)

FIELD GENERAL COURT MARTIAL

OF

B.112091. SIGMN. DEADY. T.J. 1 CBRU

Upon the Summary being read it is noted that there is no proof that the accused was undergoing Field Punishment at the time Absence without leave commenced.

The accused withdraws plea of GUILTY and pleads NOT GUILTY.

The prosecutor produces Record of Declaration of Court of Inquiry held on 30 December 43 declaring the accused to have absented himself without leave at 2200 hours 20 November 43.

Offered and received in evidence and marked Exhibit "A"

The prosecutor produces Certificate of Surrender showing that the accused surrendered himself to the Civilian Police at Coventry at 1030 P.M., 27 December 43.

Offered and received in Evidence and marked Exhibit "B".

The prosecutor produces Expense Voucher showing expense the expense of returning the accused to London from Coventry.

Offered and received in evidence and marked Exhibit "C".

The Prosecutor states that he has no evidence to produce that the accused was undergoing Field Punishment at the time the Absence commenced.

In the opinion of the Court it is unnecessary that R.P. 83 B. be complied with.

PLEA OF MITIGATION

The accused enlisted at Toronto in 1942. He took his basic training in Kitchener and from there after 2 months he went to Kingston. He started on operators Course and after 6 weeks with the Majority of his class was transferred to M.T. Fitters. He started training as a D.R. at that time they asked for volunteers for the gas Experimental Training Section at Ottawa, Deady offered himself as a human Guinea Pig for these experiments. When he returned to M.T. he had to start the course as D.R. over again. 6 weeks later a draft was going overseas, although his training was incomplete, he volunteered to come overseas, he was accepted and arrived in the U.K. in April, 1943 and started training as a D.R. He was sent to hospital as a result of infection, the result of an accident and spent 6 weeks in hospital. When he returned from hospital to 1 CBRU he had to start his basic training over and take T.S.C.R.T. When resuming training as a D.R. a little over a month later 150 D.Rs. were transferred to 1 Coy as operators. All the time it was this man's ambition to get into action, he applied for draft overseas from Canada and from the U.K. He felt that he had been shoved around and got nowhere in his training. Finally transferred to a line course, that is why Deady went AWL from the time stated, he says that he was fed up with being pushed around, all he wanted was to see some action and do something else than train. He had never done nothing but train and that this is his decrest wish, to get into action.

In the opinion of the court it is unnecessary that R.P. 83 B be complied with.

FIELD GENERAL COURT MARTIAL

OF

B.112091 SIGMN. DEADY. T.J. 1 CSRU

Exhibit "A"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Delville, Hks., Cove, Hants. on the 30th day of December 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-112091 Sigmn Deady, T.J., R.C. Sigs Wing, No. 1 Canadian Signals Reinforcement Unit.

DECLARATION.

The Court declare, that B-112091 Sigmn Deady, T.J., R.C. Sigs Wing, No. 1 Canadian Signals Reinforcement Unit, illegally absented himself without leave at 2200 hours at Delville Barracks, on the 28th day of November and that on the 27th day of December he was deficient, and that he is still deficient the items as set out, below:

	Quan	Full Price		3/4 Price	
Drawers Woollen	1	£0 5	4½	£0 4	1
Gloves Woollen	1	0 2	1	0 1	7
Shirts Woollen	2	0 10	9	0 8	2
Brushes, boot	1	0 1	3	0 0	11
Brushes, button	1	0 1	2	0 0	10½
Brushes, cloth	1	0 2	2	0 1	5½
Dressing, First Field	1	0 1	1	0 0	10
Knives, clasp and lanyard	1	0 3	10	0 2	10½
Towels, hand	1	0 1	5	0 1	1½
Badges, cap	1	0 0	6	0 0	6
Sheets, ground	1	0 13	2	0 9	10½
Outfit Anti-dim	1	0 0	1½	0 0	1½
Ointment, A.G.	2	0 1	4	0 1	4
Total		£2 - 4	- 3	£1 - 13	- 8½

Names of President and Members

President: Lieut. K.G. Jeanneret
Members : Lieut. W.A. Lencki
Lieut. W.T. Mead

Signature of Commanding Officer Colonel H.R. Tyner

CERTIFIED TRUE COPY.

L. Sykes Capt.

Signature of Officer having custody of the Original Record

(120581) W1.34514/1622 75,000 10/39 A.& E.W.,Ltd. Cp.479
(18443) W1.41725/702 225,000 1/40 Forms B115/56

Exhibit "B"

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(18471) Wt.16874/[illegible] 15,000 [illegible] S.& E.W.Ltd. Gp.[illegible] Forms/O.1617/13

I CERTIFY that the man whose personal description is given below surrendered himself to* Sgt. 17 Martin at Coventry at (hour) 10-30 P.M. on the 22nd. day of December 1943 as being No. B. 112091 (Rank and Name) Signalman Deady, Terence Jerome. a deserter (or absentee without leave) from C.S.R.V. Canadian Army Cove, Aldershot and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 20 yrs. Height 5 Feet 10½ Inches

Complexion Fresh. Hair Dark brown Eyes Blue.

Marks Tattoo R. Bicep "Ivy"

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	Toronto Ontario 29th April 1942.
Probable Date of Desertion or beginning of absence, and from what place	28-11-43

[signature] T/Insp.

Signature of Officer of Police in charge of ..... Station.

22 DEC 1943 FOLEBRILL STATION

..... Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of

No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

Exhibit "C"

Expense Voucher Re—

Ref: K.R. & O. (Can) 539

Reg. No. B 112091 Rank Sgmn Name Heady, T. J. Unit 1 C S R U

The following expenses were incurred in apprehending and returning the M.A. Soldier to ~~his Unit From~~ London from Coventry

Date	Particulars		Amount	
23 Dec, 43	Escorts return fare from LONDON To	Coventry	7	3
	Prisoners single fare to LONDON From	Coventry	7	3
	Prisoners fare from	To		
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares	(½ portion	4	0
		Total £	18	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L. S. Grayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40(P & S/483(3287)

LIST OF WITNESSES

Witness for the Prosecution

A/Capt R.F. Perrie, (A.C.C.S.), on strength of No.1 Canadian Signals Reinforcement Unit.

Witnesses for the Defence

NIL

STATEMENT BY THE ACCUSED IN ACCORDANCE WITH R.P 14(b)

I desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I request the services of ...Any Officer...

.....if he is available.

LIST OF EXHIBITS

EXHIBIT "A" Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier (A.F.B. 115).

EXHIBIT "B" Certificate of Surrender to the Civil Police of a Deserter or Absentee without Leave. (A.F.O.1617)

EXHIBIT "C" Expense Voucher (C.M.F.Q. 1000:55)

LIST OF WITNESSES

Witness for the Prosecution

A/Capt R.F. Ferrie, (R.C.C.S.), on strength of No.1 Canadian Signals Reinforcement Unit.

Witnesses for the Defence

NIL

STATEMENT BY THE ACCUSED IN ACCORDANCE WITH R.P 14(b)

I desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I request the services of ..Any Officer..

..... if he is available.

.....
(B-112091 Sigmn. Deady, T.J.)
No. 1 Cdn Sigs Reinf Unit.

LIST OF EXHIBITS

EXHIBIT "A"	Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier (A.F.B. 115).
EXHIBIT "B"	Certificate of Surrender to the Civil Police of a Deserter or Absentee without Leave. (A.F.O.1617)
EXHIBIT "C"	Expense Voucher (C.M.H.Q. 1000:55)

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B-112091 Sigmn. DEADY, Terence Jerome, Royal Canadian Corps of Signals, on strength of No. 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution.

A/Captain R.F. Ferrie, R.C. Signals, on strength of No. 1 Canadain Signals Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn, states as follows:

"I am A/Captain R.F. Ferrie, R.C. C.S., on strength of No. 1 Canadian Signals Reinforcement Unit. I hereby submit the proceedings and Declaration of a Court of Inquiry (Exhibit "A") held on 30 December, 1943, by order of Lt.-Col. W.O. Peffers, Officer Commanding, R.C. Signals Training Wing, No. 1 C.S.R.U., relating to the accused B112091 Sigmn. DEADY, T.J., whom I now recognize. Also A.F.O.1617 - Certificate of Surrender to the Civl Police dated 22 December, 1943 and signed by T/Insp. i/c of Foleshill Police Station, Coventry. (Exhibit "B"). I also submit form C.M.H.Q. 1000:55, an expense voucher of eighteen shillings and six pence (£0-18s-6d) in accordance with K.R.(Can) 539, stating the expenses incurred in apprehending and returning the accused, purporting to be signed by Captain L.S. Grayson, No.6 Area Provost Coy, Cdn Provost Corps, London (Exhibit "C")"

R.F. Ferrie
(R.F. Ferrie) A/Capt. & Adjt,
R.C. Signals Trng Wing,
No. 1 Cdn Sigs Reinf Unit.

The accused declines to cross-examine this witness.

The accused was cautioned as follows:- "Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement at this time.

I certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in the presence of and hearing of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

401

H.E. Gilbert
(H.E. Gilbert) Lieut.
Officer Detailed to take Summary of Evidence.

Cove, Hants.,
4 Jan 44

M.F.M. 6 (A.F. B.122) 40/P & /B136 (2965)

No. B112091 Name DEADY, T.J. | Sqn., Battery, or Company | Corps RCCS | Date of enlistment 29 Apr 42 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
PREVIOUS SHEET DESTROYED AFTER SIX MONTHS SERVICE, 29 Oct 42. Date of last entry 15 Oct 42, drunk- Nil									
Field	9 Jan 43	Dgm		AA 15(1) - Absent 2 days	L/Cpl. Campbell	14 days CB 14 days Pay	12 Jan 43	Major C.F. Wake	Frts 2 days pay (FRAI)
Field	12 Mar 43	Sgm		AA 40 - failing to report on Sick parade after reporting sick.	Cpl. Coulter	3 days CB	12 Mar 43	Capt R.F. Ardron	
Field	23 Mar 43	Sgm		AA 15(1) AWL 1 day, 6 hrs.		Admonished	26 Mar 43	OC 27 Bn	Frts 2 days pay
Field	24/5/43	Sgm		AA 15(1) AWL 21 days 1 hr, 10 min	Doc'y	28 days FP Frts 21 days pay	18 Jun 43	Lt.col W.G. Peffers	Frts 22 days p 4 days p (FRAI(1)(A)(C)(II))

(P.T.O.)

Page 2

No. Name | Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22 Nov 43	Sgm		AA 15(1) - AWL 2 days, 23 hrs, 40 mins.	Doc'y	7 days F.P.	27 Nov 43	Major R.J. Burgess	7 days Penal frt of pay 2 days pay frts under FRAI 149

CERTIFIED TRUE COPY
29 Dec 43

N. Ferrie Capt
Officer having custody of Original Document

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31/7/43	Sgm		AA 15(1) - AWL 9 days 2 hrs.	Doc'y	14 days CB	9/8/43	Lt.col W.O Peffers	10 days pay (FR&I)
Field	14 Aug 43			AA 15 (1)- AWL 6 hrs 40 minutes	L/Cpl.Stenning A/Cpl.Harlow	7 days Penal Forf. pay	16 Aug 43	Major F.J. Isbester	1 days pay (FR&I 149
Field	2 Sep 43	Sgm		AA Sec 9(2) -Disobey a lawful comd - did not leave Regt'l inst when told to do.	Cpl.Jensen,E. A/L/Sgt. Mitchell, W.	10 days FP 10 days pay	3 Sep 43	Major A Gillingham	
Field	24 Sep 43	Sgm		CHARGE I AA Sec 15(1) - AWL 16 hrs, 30 mins	L/Cpl. O'Keefe Doc'y	10 days FP on ch. I&II	30 Sep 43	Major A Gillingham	Frts 1 days pay FR&I 149(1)(a)
	25 Sep 43	Sgm		CHARGE II A.A.Sec. 9(2)- Did not return to camp when ordered to do so.	L/Sgt.Willis				Frts 10 days pay FR&I 149(2)
Field	5 Oct 43			AA 15(1) AWL - whilst a defaulter (Absent 3 hrs)	Cpl.Eedy,A	28 days Detn	6 Oct 43	W.O. Pefferslt.Gnl	

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-112091	Signalman	DEADY, T.J.	No.1 C.S.R.U.

1. The following is a fair and true summary of the entries in the Service and General Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~of summary awards under Section 47 of the~~ Air Force Act ~~Army Act and of cases in which trial has been dispensed with.~~

	Within last 12 months			Since enlistment or appointment		
For	A.A. Sec. 15 (1)	eight	times	A.A. Sec.15(1)	Eight	times
For	A.A.Sec.40	One	times	A.A. Sec. 40	One	times
For	A.A. Sec.9(2)	Two	times	A.A. Sec.9(2)	Two	times
For			times			times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~

or,

Previous convictions of the accused by a court-martial ~~or a civil court, of summary awards under Section 47 of the~~ Air Force Act ~~Army Act and dispensations with trial under~~ A.F.A. 73 ~~A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~xxxxxx days in civil custody, and~~ 12 days in Air Force military custody, making a total of 12 days in custody, ~~of which xxxxxxxxxxxxx days were spent in hospital.~~

5. The present age of the accused according to his ~~record of service is~~ attestation paper is 20 yrs, 4 months, and 11 days.

6. The date of his ~~commission~~ attestation specified in his ~~record of service is~~ attestation paper 29 Apr 42

7. The service which the accused is allowed to reckon towards discharge is one yr & 222 days

8. The accused is entitled to reckon 1 yr, 222 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (~~or is in possession of or entitled to~~) ~~State any air force decoration or reward.~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held~~ Air Force ~~the regimental rank of~~ B

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated: , and in his regiment (or corps) the rank of dated: .

12. The accused has served as a non-commissioned officer continuously without reduction to the present date:—

Date of promotion

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number B112091 Rank Sigmn. Name DEADY, T.J. of No. 1 Cdn Sigs Reinf Unit Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
NIL CONVICTIONS BY Field General Court Martial				

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this fourth day of January, 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

CCC-39

SPR DEAN A

CCC-39

FIELD GENERAL COURT-MARTIAL

(CFA86 (In lieu of AFA3) (O.P.S.R. 1668 (2864))

Convened by Order of Lt. Col R. K. Black Comd RE 2 Can C Tps dated 23 Dec 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-101953	Spr	Arthur Dean		30 Can Fd Coy RCE

PROCEEDINGS REVIEWED

21 Feb 44 Capt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED

Date 14 Mch 44 J. Lomer Lieut.

JAG FIRST CDN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Eng Land on (*date(s)*) 23 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Members~~ 35. JA, ~~if any, and Offrs under instr, if any~~ 35., assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) 35 attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1545 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to no interpreter? Ans~~

~~The Interpreter to sworn (): Do you object to as shorthand writer? Ans~~

~~The shorthand writer is sworn.~~ 25

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 98(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R. J. Hamilton	6 Can A Tk Regt RCA
Member	Capt	L. S. Waddell	4 Can Armd Bde Sigs RCCS
Member	Lt.	P. Connor	Lond & Welf. Regt.
Judge-Advocate	Capt.	G. H. Jennings	HQ 2 Can Corps.
Prosecutor	Lt.	R. M. P. Jones	30 Can Fd Coy RCE
Defending Offr	Lt.	B. C. Attenborough	30 Can Fd Coy RCE

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Govt. Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment where RP 89 (B) and fn 2 were not followed. See Dec p 3.)

A8. The accused ~~not~~ before arraignment make(s) (no) ~~no~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~on the charge sheet~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L-101953 Spr Dean, A. 30 Can Fd Coy RCE.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	
2nd	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning six (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer field punishment for 14 days.

(Sgd) Gordon H. Jennings Judge-Advocate, if any. 23 Dec 43 Date awarded. (Sgd) R. J. Hamilton President. (RP 94 Army.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date 29 Dec 43 (Sgd) W. Alex. Lowell Capt. Commanding 30 Can Fd Coy

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn b, 46(A), 51-54, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further (orders.)~~ ~~(1. As the Rules of the case)~~

(Sgd) R. Black Lieut Col

Date 28 Dec 43 Commanding HQ RCE 2 Can C Tps

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
L-101953 Spr. Dean, A.	29 Dec 43	W. Alex. Lowell Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty,(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with c. 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~his~~ (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st and 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st and 2nd charge(s), ~~and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans I shall give evidence . Do you intend to call witnesses on your behalf ?
Ans Yes Are they witnesses as to character only ? Ans No.
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the 1st and 2nd charge(s), being subject to confirmation, will be promulgated later.(1) ~~(or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.)~~
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true copy ~~extract~~ of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier ~~s~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(*1. MFR 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement and Conduct Sheet and in mitigation of punishment ?(1) Ans Yes sir
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) JA
(*1. When several accused tried separately see RP 240. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 40. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THE ACCUSED ELECTED TRIAL BY COURT MARTIAL.

CHARGE SHEET

The accused L101953 Spr. Dean, A., of the 30 Cdn Fd Coy, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec. 9(2) A.A. WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER -

in that he

in the Field at 0800 hours on 19 Dec 43, when ordered by B77044 A/L/Cpl. Russell, W.E. to report to the unit kitchen to work failed to do so.

SECOND CHARGE
Sec. 8(2) WHEN ON ACTIVE SERVICE USING INSUBORDINATE LANGUAGE TO A SUPERIOR OFFICER -

in that he

in the Field at 0800 hours on 19 Dec 43, when ordered by B77044 A/L/Cpl. Russell, W.E. to report to the kitchen to work replied "I will not. I will be hut orderly but I will not work in the kitchen" or words to that effect.

R Smallian

(R.J. Smallian) Major RCE
Commanding
30 Cdn Fd Coy

In the Field
22 DEC 43

To be tried by Field General Court Martial.

Lt-Col
(D.K. Black)
CRE 2 Cdn C Tps

In the Field
23 Dec 43

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/F&S/1697 (2563)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L101953	Sapper		Arthur	DEAN	30 Cdn Fd Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet ~~(s)~~ attached and on (*date*) 23 DEC 43 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person ~~(s)~~ and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	R.J. Hamilton	6 Cdn A Tk Regt RCA
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	L.G. Waddell	4 Cdn Armd Div Sigs
Lt	P. Easser	Lincoln & Welland Regt
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

Capt	G.H. Jermyn	HQ 2 Cdn Corps
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England		Lt-Col
(Country.)	(Signed personally. RP 105 fn.)	(Rank.)

Date 23 Dec 43 Commanding [signature] (D.K.Black)
Convening Officer.
(CRE 2 Cdn C Tps

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

23 DEC. 43

This is to certify that 11101953 Spr. Dean, A. was examined by me on the 23 Dec. 43 and is fit to undergo trial by court martial.

J. W. Weinstock Capt.

(J.W. Weinstock) Captain
Medical Officer

3. Prosecution

First witness

B-770444 A/L/Cpl. Russell, W.E. sworn, states

On 19 Dec 43 at about 0800 hrs I detailed Spr. Sloan A. to a fatigue which he refused by saying "I will not work in the kitchen but I will act as kitchen orderly" I repeated "do you refuse" his answer was "yes I refuse". I am giving the order I said "I will have to detail you for kitchen duty to-day"

A fatigue in the kitchen means general duties

Cross-examination

~~There was no involved~~

I said to

I in the kitchen when we were all having breakfast I said to Spr Sloan "I'm sorry but I must detail you for kitchen duty to-day ~~in the kitchen~~" his answer was not given in an insolent manner. He did not mention that he was in M.T. section.

By the Court

I did not say "you will report" I did it diplomatically as tactfully. I think he understood it was an order.

R.P. § 3(b) complied with.

Second witness

H 100706 A/L/Cpl. Smith, W.A. sworn, states

I was sitting in the mess hall eating breakfast at approximately 0800 hrs. L/Cpl. Russell came in and asked Spr Sloan to go and work in the kitchen. I don't know just what he said, something like "due to the shortage of help you'll have to go on the kitchen for the day". Spr Sloan said "no I won't work in the kitchen, I'll take kit orderly but I won't work in the kitchen." Cpl Russell said "you refuse the order" Spr Sloan said "yes".

No cross-examination

~~By the Court~~ N.T.

RP § 3(b) complied with.

Third Witness

B- 89287 C.S.M. West, W.S. sworn, states

When Spr. Mean was taken on strength of the Coy on 17 or 18 Nov. he was posted to H.Q. He was employed there under Cpl ~~[illegible]~~ Gibbs as a hut orderly and general fatigues. After a few days he approached me wanting to be sent on a diesel course. We haven't any diesel course vacancies and I paraded Mean to the O.C. Later I arranged with the Tpt. SgT. to have Mean taken on ~~for a~~ try out as D.R. or driver. He worked around the garage for a couple of days. Then a course came up for 6 D.R's and at the last minute one was rejected on medical grounds so we sent Mean along on the course. He was returned a few days later. In view of the report from the school Mean was transferred from the M.T. section.

The morning of the 18th Dec. I gave orders for Mean to report back to Cpl Gibbs ~~which he did~~.

Spr Mean was placed under arrest at 16 30 on 21 Dec. 43.

Cross examination

He could have been T.O.S. on 28th of Nov. I am not sure of the date.

R.P. § 3(b) complied with

Fourth Witness

B- 23257 Cpl Gibbs, A.B. sworn states

I am H.Q. Cpl. ~~[illegible]~~ morning of Sat. 18th Dec. I told Spr Mean that I had permission from SgT Trahan the M.T. SgT. to use him for any duties.

L/Cpl. Russell is L/Cpl of H.Q. Platoon in my absence I detail him to carry on my duties. I was away from ~~[illegible]~~ 1200 hrs Sat. until 2359 hours Sunday 19th Dec.

Cross examination

I went up to Spr Means quarters and informed him that I had permission from SgT Trahan to use him for different jobs. I gave Spr Mean orders to take down the blackouts, sweep the floors, clean up the toilets. He did so.

As far as I know he was an M.T. man.

I made no mention of work on Sunday.

R.P. § 3(b) complied with.

The Prosecution is closed.

D-4. Defending Officer's Motion for Dismissal

On the First charge the Prosecution has failed to prove that it was a lawful command in the eyes of the accused. ~~am~~ It was given as a request. The accused was not aware that Cpl Russell had any control over him as he was still attached to M.T. There is no evidence of insolent or insulting or disrespectful language before the Court. On that basis I move that both charges be dismissed.

Prosecuting Officer's Reply

The language is insubordinate in itself whether it is insulting or disrespectful or not. Cpl Smith's evidence shows that an order was given. Finally when Cpl Russell asked him if he refused to obey the accused said "yes". He did not say "you have no right to give the order". Even if Dean was not directly under Russell he would still have to take orders from him.

5 Defence

First Witness L-101953 Spr Dean, A. sworn states

I returned to the unit from D.R. course on Fri. 17 Dec. I reported to Sgt Trahan, the M.T. Sgt. at noon on Friday. I was paid at 1500 hrs and went back to the M.C. shop to work under L/Cpl Gorman. It was just about closing time and I didnt do any work. I did not receive any orders to report anywhere else.

On Sat 18 Dec. Cpl Gibbs asked me if I would help Spr Symes to wash out bath tubs and toilets. I said I would if it was all right in the shop because I was supposed to be there. He said Sgt Trahan said it was all right. I got down to the shop just before they were closing up on Saturday. L/Cpl Gorman told me they were closing up until Monday morning. I figured I was still under him.

~~I was told until~~ Monday night 20th Dec ~~Sgt~~ I was told to turn in my D.R. equipment ~~that I knew I was no longer with the~~ ~~Sgt~~ I went to L/Cpl Gorman who had heard nothing of it. I didnt see Sgt. Trahan until next day after dinner when he told me that I was through with the M.T. Sec.

On Sunday 19th Dec. in the kitchen L/Cpl Russell came over and asked me if I would work in the kitchen. He said "Will you work in the kitchen in Spr Coleman's place" ~~I said "no I [illegible]~~ I said "No I won't because I'm attached to the M.T. yet". He asked me if I was refusing his order. I said "yes if you call it that". He went away and I did not see him until Monday at noon. I asked him what he had done. He said he was going to see the Sgt Major

night after dinner and see what he was going to do about it and get it over with.

Cross-examination

I said I would do but ordinary duty. I didn't figure Cpl Russell had authority over me because I was still attached to the M.T. as far as I knew. I figured I would do a favour for him. I figured if I was taken off duty would let me know. I didn't really figure it was an order. ~~He~~ Cpl Russell just asked me "Will you work in the kitchen to-day in Spr Coleman's place." and "Do you refuse my order" I didn't figure it was really an order. He has given me orders before when I worked under him and gave them.

R.P. § 3(b) complied with.

Record Witness

C-2662 - A/L/Cpl Gorman D. sworn states

I am in charge of the M.C. shop. Spr Dean was working with me prior to 10 dec when he went on course. He came to work with me again when he returned from the course. He came on Saturday morning I have not yet been officially informed that he is no longer on M.T.

His work has been satisfactory in the shop.

No Cross examination

R.P. § 3 (b) complied with.

B-77044 L/Cpl Russell, W.E. recalled by the Court. states.

I did not say "Will you work in the kitchen in Spr Coleman's place" The accused said nothing about being attached to the M.T.

I picked Spr Dean because he had been delinquent that morning.

Defending Officer does not cross-examine
Prosecuting Officer does not re-examine

R.P. § 3(b) complied with.

H-100706 A/L/Cpl Smith, W.A. recalled by the Court. states

I did not hear L/Cpl Russell mention Spr Coleman.

The accused did not say "No I won't because I'm attached to the M.T. yet". He did not say anything about the M.T.

Defending Officer does not cross-examine
Prosecuting Officer does not re-examine

R.P. § 3(b) complied with.

Defending officers closing address

I have covered it before but I would just like to refer to the fact that Spr Dean did not figure he was disobeying a lawful command as he was in the belief that being under M.T. i.e. directly under L/Cpl Gorman that L/Cpl Russell did not have the right to put him on a kitchen fatigue. There was no intent to be insubordinate. I refer the court to the foot note 1 under Sec 9(2) and also under sec. 8(2) that the words must be used with insubordinate intent. They must be disrespectful or insulting.

Prosecuting Officers Reply

If he didn't consider it a lawful command why did he volunteer for but orderly. Secondly why did not he check up to see whose orders he was under. Third. He should have obeyed the order first and then complained. Finally, the words of themselves are insubordinate when he says "I won't do" something when ordered by a superior officer.

In the opinion of the Court and the Judge Advocate no summing up is required by the Judge Advocate.

Defending Officers Address in Mitigation

The accused has on A.W.L. on 4 Mar 43 and the previous entry is on 24 Sep. L/Cpl Gorman says he is obedient and a good worker. There are no charges of drunkenness or of a serious nature ~~of~~ on the conduct sheet. The accused elected trial by Court Martial.

LIST OF WITNESSES

FOR THE PROSECUTION

1.	B77044 A/L/Cpl. Russell, W.E.	30 Cdn Fd Coy
2.	H100706 A/L/Cpl. Smith, W.A.	30 Cdn Fd Coy
3.	B89287 CSM West, W.S.	30 Cdn Fd Coy
4.	B23257 Cpl. Gibbs, A.B.	30 Cdn Fd Coy

I do not desire the Convening Officer to detail an Officer to represent me at my forthcoming trial by Field General Court Martial.

.....

(L101953 Spr. Dean, A.)

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

A. Dean

(L101953 Spr. Dean, A.)

SUMMARY OF EVIDENCE in the case of L101953 Spr. Dean, A., 30 Cdn Fd Coy, Canadian Army Overseas, charged with Refusing to obey a Lawful Command given by his superior officer.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the prosecution

B77044 A/L/Cpl. Russell, W.E., 30 Cdn Fd Coy, sworn states:-

"I was on 19 Dec 43 and am still an A/L/Cpl., of Coy H.Q. 30 Cdn Fd Coy. I am aquainted with L101053 Spr. Dean, A., who has been for the last month a member of this H.Q. At 0800 hours on 19 Dec 43 I personally ordered L101953 Spr. Dean, A. to report to the kitchen for the purpose of working. He refused by saying "I will not, I will work as a hut orderly but not in the kitchen". I then asked him if he still refused to obey my order to work in the kitchen and he said yes. I then made other arrangements and reported the facts to the Coy Sergeant Major.

Cross examined by the accused:

Q. Did Spr Coleman ask you to put me on that job?

A. No.

Q. Did you know I was attached to the M.T. as a D.R?

A. No.

W.E. Russell

SECOND WITNESS for the prosecution

H100706 A/L/Cpl. Smith, W.A., 30 Cdn Fd Coy, sworn states:-

I was on 19 Dec 43 and still am an A/L/Cpl. in Coy H.Q., in charge of the R.A.P. of the 30 Cdn Fd Coy. At 0800 hours on 19 Dec 43 I was in the Men's Mess of Coy H.Q., 30 Cdn Fd Coy eating my breakfast. L101953 Spr. Dean, A. who I am aquainted with and who is also a member of Coy H.Q. 30 Cdn Fd Coy was seated directly opposite me at the next table. B77044 A/L/Cpl. Russell, W.E., who is also a member of H.Q. came into the mess and ordered Spr Dean to report to the kitchen to work. He, Spr. Dean, refused to do so, at the sametime saying he would work as a hut orderly but not in the kitchen. The L/Cpl. then again said are you refusing to obey my orders, to which Spr. Dean replied "Yes".

The accused declines to cross examine this witness

W A Smith

THIRD WITNESS for the prosecution

B89287 CSM West,W.S., 30 Cdn Fd Coy, sworn, states:-

"Sir, I was on 28 NOV 43 and am still Coy Sgt Maj of the 30 Cdn Fd Coy. I am aquainted with L101953 Spr. Dean,A. He was TOS of this Unit on 28 NOV 43 and was posted to Coy H.Q. He worked for a few days as a hut orderly but was unhappy in this work. He was then temporarily attached to the transport section under Sgt Trahan,V.C. with the understanding between this H.Q. and the NCO i/c tpt that if he was suitable he would be tested and posted as a Driver or D.R. On 10 DEC 43 six men of this unit were to proceed on a D.R's course but at the last minute one of the candidates was rejected on medical grounds and Spr. Dean,A. was sent in his place. Dean was retunned to this unit from this course on 17 DEC 43 as unsuitable. The tpt Sgt informed me in view of this report, he did not consider Dean as suitable for transport. I ordered him to have Dean,A. report to Cpl. Gibbs,A.B. on the following morning 18 DEC 43. (Cpl Gibbs is NCO i/c Works Section) This order was carried out insofar as Spr. Dean,A. did report to Cpl Gibbs on 18 DEC 43 and was employed on fatigues. A/L/Cpl. Russell,W.E. acts as 2 i/c to Cpl. Gibbs."

Cross examined by Accused:-

Q. Why was I not informed before 20 DEC 43 that I was taken off D.R.

A. You were temporarily attached to tpt section and sent on a course. Due to the report from the O i/c course, you were R.T.U. as unsuitable. This report arrived in this office on 18 DEC 43. I did not interview you, but informed Sgt Trahan,V.C. to have you report to Cpl Gibbs.

FOURTH WITNESS for the prosecution

B23257 Cpl Gibbs,A.B., 30 Cdn Fd Coy, sworn, states:-

"I was on 17 Dec 43 and still am a Cpl. in charge of works section 30 Cdn Fd Coy, I am aquainted with L101953 Spr. Dean, A. On 17 Dec 43 Sgt. Trahan, V.C. informed me Spr Dean would report to me for work on 18 Dec 43. I informed Spr. Dean of this and he did report to me on 18 Dec 43.

The accused declines to cross examine this witness.

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The accused: I desire to give evidence under oath.

The accused, L101953 Spr. Dean, A., 30 Cdn Fd Coy, sworn states:-

"On 19 Dec 43 I was in my room when I heard Spr. Coleman who was in the adjoining room say to L/Cpl. Russell "I want Sunday Off and you get someone to take my place" They followed me to the mess hall where he asked me to work in the kitchen that day. He should have known I was working in the M.T. and was not on duty driving that day. Sunday is a day off for the M.T. I did refuse to obey his order on that account. He then asked me if I was disobeying his order to which I replied yes if that's what you call it.

A. Dean.

I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 22 day of December 1943.

(H.M.P. Jones) Lieut.
Officer Taking Summary

No. L101953 Name Dean, A. Sqn. Battery, or Company Corps R.C.E. Date of enlistment 15 Aug 42 Badges Service or Proficiency Pay .20¢ MFM 6 (AFB 122) 40/P&S/136 (3428)

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24Sep 43	Spr		OLD SHEET DESTROYED IN ACCORDANCE WITH CARO 2084 Last entry dated 3 Dec 42 - Cases of Drunkenness - Nil					
Chilli-wack BC	4Mar 43	Spr		AA Sec 15(1) AWL from 0600 hrs 4 Mar 43 to 1400 hrs 5 Mar 43 (Absent 1 day 8 hrs	Cpl.Allen GE	4 Days C.B.	6 Mar 43	Major JWD Farrell	2 days Pay FR&I 149(1) (a)
				Certified True copy of MFM 6 held in my possession. R Smallin Major				Exhibit "B" [signature]	

(PTO)

872 36-8-43

Exhibit "A"

M.F.B. 555
22M—5-41 (572-2)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L101953	Spr.	Dean, A.	30 Cdn Fd Coy

1. The following is a fair and true summary of the entries in the ~~Service and Conduct~~ Regimental and Squadron Battery ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec.15(1) A.A.	times 1	times 3
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 74 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and two days in military custody, making a total of two days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to ~~his~~ attestation paper is 28

6. The date of his commission specified in ~~his~~ attestation ~~paper~~ attestation paper 15 Aug 42

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. ~~The accused is in possession of or entitled to an air force decoration, or air force reward not in possession of or entitled to. State any air force decoration or reward~~ military ~~military~~

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer was held the regimental rank of~~ Air Force

[signature]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force, and in his regiment (or corps), the rank of ..... unit dated .....

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Unit ..... Regiment ..... Air Force

Name ..... of .....

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23 day of Dec 43

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force

dated , and in his regiment (or corps), the rank of unit

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number Rank

Name of Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23 day of Dec 43

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

4X-146

Spr. Dean. a.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	not guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court : and to forfeit all ordinary pay for 28 days.
to suffer Field Punishment for twenty eight (28) days
and to be placed under Stoppages of pay in the amount of £2-5-0
to make good the damages.

5 Feb 45 (Sgd) F.K. Macdougall Maj
(Sgd) ..... Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirm, but remit 14 days' Field Punishment.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) E.L.B.
(1. AA 57A. Delete if not used.)

(Sgd) E. Lindsay Burns Maj Gen
Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L/10195 Gnr Dean H.	17 Feb 45	[illegible] Lieut

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no irregularities of procedure to justify withholding confirmation of these proceedings.

D.J.A.G. Cdn Sec. G.H.Q.

RECORDED AT CMHQ IN AB 160, 4X-146

FIELD GENERAL COURT-MARTIAL

CPA66 (To lieu of APA31) 40/P & R/1608 (40501) 4/38B

Convened by Order of Maj Gen E.L.M. Burns Comd 1st Cdn Inf Div dated 22 Feb 45

RECEIVED 16 MAR 1945 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED 20 Mar '45 R.G. Lindsay Capt

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed Minn, see (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number. (a) Permt R. (b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
L/10195 Gnr	Arthur	Dean	HQ Coy 2 Fd Regt RCE

(Signature) OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 5 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 22/55.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PDES OR JA. The Schedule referred to throughout is on p 4. Captions do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A85, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 09 00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~
~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	F.K. Macdougall	CAC. GCBR Bn.
Member	Capt	J.A. Baillargeon	Gen List attd Cdn Sec GHQ 1 Ech.
Member	Capt	E.B. Van Dine	RCASC. attd Cdn Sec GHQ 1 Ech.
Judge-Advocate			
Prosecutor	Capt	H.L. Cohen	RCE 2 Bn.
Defending Offr	no defending officer at request of accused.		

Questions by President : Is the Prosecutor a lawyer ? Ans N.C. Is the Defending Offr a lawyer ? Ans .....(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Gl p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~(further)~~ plea(s).(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~reviewed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 25(*B*) *fn* 6 *para* 2, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans no (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans on oath. Do you intend to call witnesses on your behalf? Ans yes. Are they witnesses as to character only? Ans no
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s), if any, of Not Guilty,~~ and states to the accused that the finding(s) of the Court on the 1st charge(s), being subject to confirmation, will be promulgated later.(1)
~~(2. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part 2 of the Schedule is dated and signed.)~~
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans yes. witness
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. *MFR* 315 *or* AF B 296. 2. *MAM* 5. 3. *RP* 46, *KR Can* 338. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans no (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything then or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*b*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 40. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 108, 119(*A*), *KR Can* 208, 330, 343-366, *Overseas R.O* 109, 2323, *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 367. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THE ACCUSED ELECTS TRIAL BY COURT MARTIAL

C H A R G E S H E E T

FIRST CHARGE
A.A. Sec 40

The accused, L101953 Spr Arthur DEAN, of HQ Coy 2 Battalion, RCE, a soldier of the Canadian Army Overseas is charged with:

WHEN ON ACTIVE SERVICE

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he, in the Field, on 15 Jan 45, drove WD Vehicle No. CL 4272545 in such a negligent manner as to become involved in an accident causing damage to said WD Vehicle to the extent of £2-5-0.

(J.P. CARRIERE) Lt Col RCE
Commanding Officer
2 Battalion, RCE

Fiel d
25 Jan 45.

To be tried by Field General Court-Martial

(E.L.M. Burns) Maj-Gen
GO i/c
Cdn Sec 1 Ech HQ 21 A Gp

In the Field
1 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court, RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-101953	Spr		Arthur	DEAN	HQ Coy 2 Bn RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~XXXX~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 Feb 45 endorsed by me, ~~XXXX

MEDICAL OFFICER'S CERTIFICATE

I certify that No. L101953 Spr DEAN A RCE Regiment,

is fit to undergo trial by Court-Martial.

.....
Signature of the Medical Officer

.....

1. L101953 Spr Dean A. 2 Bn RCE

First witness for the prosecution

M41376 A/Sgt Jaquish R.H. 2 Bn R.C.E. being duly sworn is examined by the prosecutor.

I am transport Sgt HQ Coy 2 Bn On 15 Jan 45 at 0800 hrs I detailed the accused Spr Dean to report to Spr Furzey who is a compressor operator in "A" Coy 2 Bn. I detailed him to hitch onto the compressor and take it and operator to "A" Coy at Dingham. ~~[illegible]~~

CoB ~~[illegible]~~

The weight of load he was ~~towing~~ carrying would be around a ton. Weight of the compressor was about 4000 lbs. It is a two wheel trailer. Around yard it was very icy and slippery but I do not know the condition of the roads.

No cross-examination

RP 83(B) complied with

Second witness for the prosecution

T/10704711 Dvr Gibbs L.F.J. ~~att~~ #1 Coy Army Tpt RASC being duly sworn is examined by the prosecutor.

I pulled up on side of road to wipe off ice on screen - stayed there a couple of minutes. I was standing on running board wiping ice off the screen when I was thrown off the running board

onto the side of road. On looking up I observed my vehicle approx 10 yds further up the road. Behind my lorry I observed the truck that had gone into back of me. I went to see damage to other truck and also that his radiator had been pushed back, also bumper bow was pushed into his offside front wheel. There was no damage to my lorry. The NCO with me asked accused if he was alright. The road was very icy at the time. Fine sleet freezing on wind screen also at that time.

No cross-examination

By the Court.

The accused was driving the vehicle that ran into me. It was on 15 Jan 45 bet. approx 0930 and 1000 hrs

RP 83(B) complied with

Third witness for the prosecution

B 28415 Spr Furzey A E. 2 Bn RCE being duly sworn is examined by the prosecutor.

I am Compressor Op. in "A" Coy. Morning 15 Jan 45 between 0900 hrs and 0930 hrs. Spr Dean had been detailed to drive me and the Compressor and Compressor tools to "A" Coy at 2 Bn R.C.E. stationed at

Deighan We were driving all clear
directions and in front of me was
an English vehicle parked near the
car tracks. Sgt Dean saw the vehicle
and geared down, started ~~braking~~
braking at appro 30 to 40 ft away
The roads were very icy and with
the heavy load we were the
vehicle would not stop. It was
impossible to turn out because of
on coming traffic. and accused's
vehicle skidded into rear of the
other one. I would say that we
were travelling about 20 m.p.h. when
we first saw parked vehicle. Weight
of load approx 2 ton. and the compressor
the same. The wind shield kept
continually icing up.

Cross-examination

It may have been 50 ft. when
we first saw parked vehicle. As I see
it now I think it was 40 ft. My
mind might have been fresher
when I said 50 ft before. The
bumper stowed in the radiator.
I don't recall you stepping off the
distance the truck skidded. I
remember you showing Sgt Burkitt
the skid mark

By the Court

Visibility conditions were very
bad due to moist freezing on the
wind shield. I was sitting in the cab.
RP 93(2) complied with.

4th witness for the prosecution

B 395780 A/Cpl Burkitt K.J. 2 Bn RCE. being duly sworn is examined by the prosecutor.

I am of Transport Sect. HQ Coy 2 Bn RCE On 16 Jan 45 I attended scene of accident and saw skid marks off the side of the road about 10 ft long. I could not tell of any more on crown of road because it was icy and there had been traffic

Cross-examination

The skid mark was off the side of the road.

By the Court

The skid seemed to have been caused by wheel being braked.

RP 83(B) complied with.

5th witness for the prosecution

Capt R.G. Chapman 24 LAD, RCEME attd 2 Bn RCE. being duly sworn is examined by the prosecutor.

I am OC 24 LAD attd 2 Bn RCE On 16 Jan 45 I inspected damage to CL 42725545 involved in an accident the The bumper and front coupling was damaged. No new parts required It was just matter of labour to repair the vehicle. I estimated 10 hrs labour required to repair same at cost of (8/-) eight shillings per hour. The OC 24 LAD attached to the unit has the authority to assess damage in these cases. He is the only one with authority.

Cross-examination If I remember correctly it was the left side of the coupling which was

damaged. I can't say just how much it was damaged. I just inspected it and considered it would take 15 hrs to repair. I know bumper would have to be taken off heated and straightened. It would require the services of a blacksmith. I estimate 15 hrs labour from past experience. I do not think 3 shillings per hour is too high. That is the price laid down. I haven't any proof on me that that is the price laid down.

By the Court

I consider the sum of £2-5-0 a fair price to repair damage.

RP 83(B) complied with

The accused objects to submission of Road Accident Report by prosecution. The objection is sustained by the Court and Road Accident Report not admitted.

Motion by accused

The accused submits that the prosecution has failed to establish a prima facie case and that the charge should be dismissed.

D6

Just witness for the defence

The accused L101953 Spr Dean A. 2 Cm R.C.E. being duly sworn states ~~is examined by~~

On morning 15 Jan 45 Sgt Jaquish detailed me to take Spr Furzey and his

compressor and tools to Dingham. We had to take 'star' diversion. The road was a very icy and there was kind of a mist freezing on the wind shield which the wiper would not wipe off. I was following a vehicle a ways ahead of me and I couldn't tell when it stopped. some distance ahead - it was too foggy. As soon as I saw it it was stopped I was fairly close to it I cannot say just how far. I geared my truck down and applied my brakes and the four wheels just skidded along on the ice and I bumped into the other truck. I could not swing out because of oncoming traffic. I estimate my speed about 20 m.p.h. My speedometer was not working and I am just guessing at the speed. This truck, I understand, had been in three accidents before I was assigned to it and the cowling and bumper were both bent when I took the truck over, and one brace on bumper was also broken when I took over. All I bent left hand of bumper and ~~cowling~~ corner of cowling and cut off rubber hose on radiator. I broke top of crank guide which took about 20 minutes to braze. I was about 5 min taking it off and the same putting it back on. I was 15 min taking bumper off. I helped the blacksmith about 1 hr. straightening it and

welding a crack where it had been broken before. One of the garage men Spr Barager took the Cowling off in about 1/2 hr. I was told it took 2 hrs to put cowling back on, and the bumper 1/2 hr to put back on. I have been driving most the time now for 15 yrs. This is my first accident with a vehicle. I think estimate of 15 hrs is too high, and that 3 shillings an hour is too high for a man making $1.50 per day and taking the responsibility of driving

Cross examination

The vehicle ~~in front~~ was about 100 to 150 yds in front of me when I first saw it. When I first saw that it was stopped I geared down and braked. I paced off the skid marks of my vehicle which were 36 paces long. The accident occurred about 1 mile out of Lankler as near as I can say. I did not stop to wipe off windshield. I could still see enough to drive.

RP 83(B) complied with

2nd witness for the defence

B 29882 Spr Barager A. 2 Bn R.C.E. being duly sworn is examined by the accused.

I removed the cowling in question I took all bolts out myself and had it ready to lift off. I asked Spr Dixon and ~~[illegible]~~ Wartford to help me to take it off. It took about 35 minutes to

take it off.

No cross-examination

RP 83(B) complied with

3rd witness for the defence

B 39700 Spr Thomas J H 2 Bn RCE being duly sworn is examined by the accused.

The bumper was brought in to be straightened. I did that and the crank bracket, and the guide as well. I gave it to the welder for necessary welding. I also straightened the bumper brackets that holds the bumper to the frame. The cowling that was on truck was changed for another one. It had a small dent which I straightened. That did not take long. The whole thing took about 2½ hrs.

Cross-examination

The accused helped me to straighten the bumper, one of the drivers helped me to straighten the bumper bracket.

RP 83(B) complied with.

4th witness for the defence

D 16381 Spr St Thomas P. 2 Bn RCE being duly sworn is examined by the accused

I welded the bumper of the truck. It took me about ½ hr.

No Cross-examination

RP. 83(B) complied with

Capt R.G. Chapman already sworn is recalled and questioned by the Court.

I know the vehicle driven by accused had been involved in an accident previously to one in question. It was put back on road in good shape about 10 days before last accident. I saw vehicle after it came back from wksp. and before it was in this accident. I don't know of any damage to truck that might have been caused by the first accident. I did not know that the right front motor hanger was broken before the second accident. I did not know the right hand brace of front bumper was broken before the accident. I noticed no bolts missing in transfer case. I don't think any record of time kept as to the repairs. The Bn repaired it.

R.P. 83(B) complied with

Accused does not wish to make a closing address.

Prosecution closing address

I submit prosecution proved vehicle travelling 20 m.p.h. roads icy, mist freezing on windshield. That speed was too fast under the circumstance and the accused therefore guilty of negligence

E1

L101925 Sgt Ward F.H. A Coy 2d R.C.E. being duly sworn states.

I have known accused on and off since we joined army 12 Aug +2. I have never known the accused to be involved in anything as long as I have known him.

R.P. 83(B) complied with

Accused declines to make plea in mitigation.

Army Form B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
410/935	Spr	DEAN A	2 Bn R C E

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or of distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL	times	1 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, nil

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. ~~The accused is not under sentence at the present time, or~~ The accused at the present time ~~is under sentence for~~ nil beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for ..... days in civil custody, and ..... days in military custody, making a total of ..... days, of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 29 yrs 11 mos.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 15 Aug 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 5 mos

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 5 mos service.

9. The accused is entitled to reckon 2 yrs 5 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of or entitled to (*state any military decoration or reward*)).

11. ~~(*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of~~ nil

12. ~~(*In the case of an officer.*)~~ The accused ~~holds in the army the rank of~~ ..... ~~dated~~ ..... ~~and in his regiment (or corps or department) the rank of~~ nil dated .....

(P2000) W1,344/4/1700 20,000 4/43 A.A.P.W.Ltd. Gp.698
(20000) W1,32/4/1499 20,000 2/44

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 1101453 Rank SPR Name DEAN A of 2 Bn R.C.E. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
F.G.C.M.	FIELD 23 DEC 43	(1) AA 4(2) (2) AA 8(2)	14 Days F.P.	Nil

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25 day of January 45

[illegible] Capt. Adjt.
2 Bn R.C.E.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of N/A years, Date of Promotion.

In the rank of years

In the rank of years

INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.

Reviewed in accordance with RO 2084 30 Dec 43

No L101953 Name Dean A | Sqn. Battery or Company | Corps RCE | Date of enlistment 15 Aug 42 | Badges Ex B | Service or Proficiency Pay 1.50 | MFM 6 (AFB 122) 40/P&S/136 (3436)

Company Conduct Sheet Date of last entry in N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Mar 43	Spr		Sec 15(1) AA AWL from 0600 hrs 4 Mar 43 to 1400 hrs 5 Mar 43 (absent 1 day 8 hrs)	Cpl Allen GE	4 days CB	6 Mar 43	Major JWD Farrell	2 days pay FRI 149(1)(a)
Field	21 Dec 43	Spr		Tried by FGCM 23 Dec 43 Charges:- (1) AA 9(2) (2) AA 8(2) FINDINGS Guilty on both charges SENTENCE 14 days Field Funishment - Spent in Unit Custody CONFIRMATION Findings and Sentence confirmed by CRE 2 Cdn Corps Tps 28 Dec 43 CLOSE ARREST In close arrest from 1630 hrs 21 Dec 43 to date of trial FORFEITURES Forf 2 days pay under FRI 149(1)(c)(i) total forf 2 days pay					

BLED FOR THE PURPOSE OF BLOOD DONATIONS 25 Oct 43

This is a certified true copy of document held in my custody ..... Major RCE (PTO)

572 36-5-4

LIST OF WITNESSES

PROSECUTION

1. M41376 A/Sjt Jaquish RH HQ Coy 2 Bn RCE
2. T/10704711 Driver Gibbs LFJ G Pl attached to #1 Coy Army Tpt RASC.
3. B28415 Spr Furzey AE A Coy 2 Bn RCE
4. B39580 A/Cpl Burkitt NJ HQ Coy 2 Bn RCE
5. Capt RG Chapman 29 LAD RCEME attached to 2 Bn RCE

DEFENSE

1. B29882 Spr Barager A HQ Coy 2 Bn RCE
2. B39700 Spr Thomas JH HQ Coy 2 Bn RCE
3. D16381 Spr StThomas P HQ Coy 2 Bn RCE

I do not wish to have an officer assigned by the convening officer to represent me at trial.

A. Dean

(LL01953 Spr Dean A)

Summary of Evidence in the case of L101953 Spr Dean Arthur, Royal Canadian Engineers, on strength H.Q. Coy 2 BN RCE, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

M41376 A/Sjt Jaquish RH, HQ Coy, 2 Bn RCE, having been duly sworn states:-

I am M41376 A/Sjt Jaquish RH, I am Tpt Sjt of 2 Bn RCE.

At approx. 0830 hrs on the morning of 15 Jan 45 I detailed Spr Dean to take his vehicle No. CL 4272545 and report to Spr Furzey, who is a compressor operator in A Coy 2 Bn RCE, who was attached to HQ Coy at that time. I told Spr Dean that he would load the compressor tools and hitch on the compressor which was an Ingersol Rand trailer type and proceed to A Coy located at DIEGHAM MR J678602. I provided him with a map and detailed a route as follows:- LANKLAER - ASCH - GENCK - HASSELT - DIEST - LOUVAIN - NOSSEGHEM - turn right at NOSSEGHEM X Rds MR J728582 - left at X Rds J727628 - straight on to DIEGHAM MR J678602.

The accused proceeds to cross-examine the witness.

Question 1 What was the state of the roads on the morning of 15 Jan 45 ?

Answer 1 I do not know the state of the roads but around our Tpt Park it was very icy and slippery.

R H Jaquish

(M41376 A/Sjt Jaquish RH)

SECOND WITNESS FOR THE PROSECUTION

T/10704711 Driver Gibbs LFJ of G Pl attached to #1 Coy Army Tpt RASC having been duly sworn states:-

I am T/10704711 Driver Gibbs LFJ of G Pl attached to #1 Coy Army Tpt RASC.

I drive vehicle No. L5266525 Dodge 3 Ton G.S. On 15 Jan 45 I made a trip from MAESEYCK to EYSDEN. About 1000 hrs I stopped on the road between LANKLAER and EYSDEN to wipe ice off my windshield. I stood on the running board on the ditch side of the vehicle to do this. About 3 minutes after we had stopped I was thrown off the vehicle onto the side of the road. I looked up and saw that my vehicle had been knocked ahead approx. 10 yds by a vehicle which had run into the back of it. The driver of this vehicle I now recognize to be Spr Dean. There was no damage done to my vehicle.

The accused proceeds to cross-examine the witness.

Question 1 Did you see the vehicle which hit yours before the impact ?

Answer 1 No I did not see it.

Question 2 What was the condition of the road at that time and place ?

Answer 2 The road was very bad. It was very icy.

Question 3 Are you a qualified Driver i/c ?

Answer 3 Yes I am.

Question 4 Did you look at the damage to my truck ?

Answer 4 Yes I did. The radiator was knocked bac causing the anti-freeze to leak out. The bumper was bent back on the off side wheel. That was the only damage I obser ved.

L. Gibbs

(T/10704711 Driver Gibbs LFJ)

THIRD WITNESS FOR THE PROSECUTION

B28415 Spr Furzey AE, A Coy 2 Bn RCE, having been duly sworn states:-

I am B28415 Spr Furzey AE, compressor operator in A Coy 2 Bn RCE.

On 14 Jan 45 I was attached to HQ Coy 2 Bn RCE. I received instructions that I would return to A Coy with my compressor and stores on the 15 Jan 45. About 0815 hrs 15 Jan 45 I was told that the winch truck ~~that~~ would take me and the compressor and tools to A Coy. We loaded the tools, hoocked on the compressor and started out about 0900 hrs. I was riding in the front seat with Spr Dean. The roads were very icy and the windshield tended to ice up due to a heavy fog. About 0930 hrs we were proceeding along the star diversion between LANKLAAR and KYSDEN. We were going about 20 m.p.h. when I saw a vehicle parked on the road along side the tram tracks about 50 ft ahead. Spr Dean saw the vehicle and geared down and applied his brakes but the truck just skidded on into the rear of the parked vehicle. There were vehicles coming in the opposite direction which did not allow us to swing out. The load of tools weighed approx. 2 ton and the compressor weighed about 3 ton. The damage I noticed was the front bumper of our truck was driven back on the radiator and the anti-freeze was leaking out profusely.

The accused declines to cross-examine this witness.

A. E. Furzey

(B28415 Spr Furzey AE)

FOURTH WITNESS FOR THE PROSECUTION

B39580 A/Cpl Burkitt NJ, HQ Coy, 2 Bn RCE having been duly sworn states:-

I am B39580 A/Cpl Burkitt NJ, a Tpt Cpl of HQ Coy, 2 Bn RCE.

At approx. 1015 hrs 15 Jan 45 I was told that there had been an accident involving one of our vehicles between LANKLAAR and KYSDEN and that I was to go to the scene of the accident and find out what had happened. I proceeded to the scene of the accident and found our vehicle parked against the tram line and that the other vehicle had left. Our vehicle could not be moved because the bumper was bent in against the left wheel. I noticed that there were skid marks from the ridge of the road to our vehicle and they were approx. 10 ft long. The vehicle may have skidded further because the ridge of the road was very icy and would not

show skid marks and if there had been skid marks they might have been covered up by traffic which had passed. The grill on the vehicle was bent and the radiator seemed to have been pushed back. I saw that the anti-freeze had drained out. The crash guide was broken, the bumper was badly bent and two braces were broken. I pulled the bumper off the wheel with the HUP I had and pulled the vehicle off the road I returned to camp, got a 3 ton vehicle and towed in the winch truck.

The accused proceeds to cross-examine the witness.

Question 1 Would the vehicle run under its own power after the accident ?

Answer 1 Yes. The vehicle could not be towed around the sharp corner leading into the Tpt Park so I drove it approx. 50 yds under its own power. There was no water or anti-freeze in the radiator.

W J Burkitt

(B39580 A/Cpl Burkitt WJ)

FIFTH WITNESS FOR THE PROSECUTION

Capt RG Chapman, OC 29 LAD, RCEME being duly sworn states:-

I am Capt RG Chapman, OC 29 LAD, RCEME attached to 2 Bn RCE.

Approx. 1000 hrs 16 Jan 45 I was asked to examine vehicle No. CL 4272545 Winch truck to assess damage done to it in an accident on 15 Jan 45. The damage consisted of a bent front bumperand the cowling was damaged. This would necessitate approx. 15 hrs labour at 3 shillings an hour. No materials were required for the repair job.

The accused proceeds to cross-examine the witness.

Question 1 How would you account for the fifteen hours labour required ?

Answer 1 You would have to take off the cowling straighten it and replace it. You would have to take off the bumper straighten it and replace it. Taking off and putting back the cowling would take up most of the time.

Question 2 Why is the charge 3 shillings an hour ?

Answer 2 It is the rate laid down by Canadian Government.

R G Chapman Capt

DOCUMENTARY EVIDENCE FOR THE PROSECUTION

I. Certified true copy of Road Accident Report made out at HQ Coy 2 Bn RCE on accident involving vehicle CL 4272545 Ford Winch 60 cwt which took place on 15 Jan 45.

Document marked exhibit "A"

The accused was cautioned as follows:- Do you wish to make any statement or to give any evidence upon oath ? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence.

The accused reserves his defense.

I certify that the foregoing summary of evidence consisting of 11 pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

(H L Cohen) Capt RCE

In the Field
24 January 1945

Summary of Evidence in the case of.
L101953 Spr. Dean. Arthur
H.Q. Coy 2 Bn. R.C.E.

By direction of the Commanding Officer the evidence is taken on oath.

First Witness for Prosecution

M41376 A/Sgt. Jaquish R.H. H.Q. Coy 2 Bn R.C.E. having been duly sworn states.

I am M41376 A/Sgt. Jaquish R.H. I am the Spt. Sgt. of 2 Bn R.C.E. at approx 0830 hrs. on morning of 15 Jan. 45 I detailed Spr. Dean to take his vehicle CL 4272545 and report to Spr. Hungry who is a compressor operator in A Coy 2 Bn R.C.E. who was attached to H.Q. Coy at that time. I told Spr. Dean that he would load the compressor tools and hitch on the compressor which was an Ingersoll Rand trailer type and proceed to A. Coy. located at Diegham M.R. J 678602. I provided him with a map and detailed a route as follows. Tonklaer, Asch, Gench, Wassell Dist Louvain, Nosseghem, turn right at Nosseghem x rds. M.R. J 728582, left at x rds J 727628. straight on to Diegham M.R. J 678602.

(over)

The accused proceeds to cross examine the witness.

Question 1. What was the state of the roads the morning of 15 Jan. 45.

Answer 1. I do not know the state of the roads but around our tpt park it was very icy and slippery.

J. Hoguiot.

2nd Witness for Prosecution.

T/10704711 Driver Gibbs L. H. J. of G. Pl. attached to #1 Coy Army Tpt. R.A.S.C. having been duly sworn states.

I am T/10704711 Driver Gibbs. L. H. J. of G. Pl. attached to #1 Coy Army Tpt. R.A.S.C. I drive vehicle no. L 5266525 Dodge 3 ton G.S. On 15 Jan 45 I made a trip from Maeseyck to Eyden. About 1000 hrs. I stopped on the road between Lanklaer and Eyden to wipe ice off my windshield. I stood on the running board on the ditch side of the vehicle to do this. About 3 minutes after we had stopped I was thrown off the vehicle onto the side of the road. I looked up and saw that my vehicle had been knocked ahead approx. 10 yds. by a vehicle which had run into the back of it. The driver of this vehicle I now recognize to be Spr. Dean. There was no damage done to my vehicle.

The accused proceeds to examine the witness.

Question 1. Did you see the vehicle which hit yours before the impact.

Answer 1. No I did not see it.

Question 2. What was the condition of the road at that time and place.

Answer 2. The road was very bad. It was very icy.

(over)

Question 3. Are you a qualified driver of C.

Answer 3. Yes I am.

Question 4. Did you look at the damage to my truck.

Answer 4. Yes I did. The radiator was knocked back causing the A/ Bridge to leak out the bumper bar was bent back on the off side wheel. That was the only damage I observed.

L. Gibbs

3d Witness for the Prosecution.

B 28415 Spr. Kurzey A.E. A Coy 2 Bn R.C.E.
having been duly sworn states.
I am B 28415 Spr. Kurzey A.E. compressor
operator in A Coy 2 Bn R.C.E.
On 14 Jan 45 I was attached to H.Q. Coy 2 Bn R.C.E.
I received instructions that I would return to A Coy
with my compressor and stores the 15 Jan 45. About
0815 hrs. 15 Jan 45 I was told that the winch
truck would take me and the compressor and the
tools to A Coy. We loaded the tools, hooked on the
compressor and started out about 0900 hrs. I was riding
in the front seat with Spr. Dean. The roads were
very icy and the windshield tended to ice up due
to a heavy fog. About 0930 hrs. we were proceeding
along the star division between Kanklaer and Lyndon.
We were going about 20 miles per hour when I
saw a vehicle parked on the road along side the
tram tracks about 50 feet ahead. Spr. Dean saw the
vehicle and geared down and applied his brakes but the
truck just skidded on into the rear of the parked vehicle.
There were vehicles coming in the opposite direction which
did not allow us to swing out.
The load of tools weighed approx. 2 ton and
the compressor weighed about 3 ton.
The damage I noticed was that the front bumper of
our truck was driven back on the radiator, the R/ Tridge
was leaking profusely.

(over)

The accused declines to cross-examine the witness.

B/24415

Spr. A. E. Furzey

4th Witness for Prosecution

B39580 A/Cpl. Burkitt N.J. H.Q. Coy. 2 Bn R.C.E.
having been duly sworn states.

I am B39580 A/Cpl. Burkitt N.J. a Tpt. Cpl. of
H.Q. Coy. 2 Bn. R.C.E.

Approx. 1015 hrs. 15 Jan. 45. I was told
that there had been an accident involving one of our
vehicles between Lankhaar and Eyden and that I
was to go to the scene of the accident and find out
what had happened. I proceeded to the scene of the accident
and found our vehicle parked against the tram line
and that the other vehicle had left. Our vehicle could
not be moved because the bumper was bent in against
the left wheel. I noticed that there were skid marks from
the ridge of the road to our vehicle and they were approx.
10 feet long. The vehicle may have skidded further because
the ridge of the road was very icy and would not
show skid marks and if there had been skid marks
they might have been covered by the traffic which had
passed.

The grill on the vehicle was bent and the radiator seemed
to have been pushed back. I saw that the A/Freezehad
drained out. The crank guide was broken, the bumper
was badly bent and two braces were broken.

I pulled the bumper off the wheel with the
H.V.P. Shad and pulled the vehicle off the road.
I returned to camp, got a 3 ton vehicle and towed in
the winch truck.

The accused proceeds to cross-examine the witness:

Question 1.

Would the vehicle run under its own power after the accident.

Answer 1. Yes. The vehicle could not be towed around the sharp corner leading into the tpt. park. so I have it approx. 50 yds. under its own power. ~~[illegible]~~ There was no water or A/Freeze in the radiator.

W J Burkitt

5th Witness for Prosecution.

Capt. R. S. Chapman. O.C. 29 L.A.D. R.C.E.M.E. having been duly sworn states.

I am Capt. R.S. Chapman O.C. 29 L.A.D. R.C.E.M.E. attached to 2 Bn. R.C.E.

Approx. 1000 hrs. 16 Jan. 45. I was asked to examine vehicle no. C.L. 4212545 Winch truck to assess damage done to it in an accident on 15 Jan. 45.

The damage consisted of a bent front bumper and the cooling was damaged. ~~The vehicle was not~~ This would necessitate approx. 15 hours labour at 3 shillings an hour. No materials were required for the repair job.

The accused proceeds to cross-examine the witness.

Question 1.

How would you account for the fifteen hours labour required.

Answer 1. You would have to take off the cooling straighten it and replace it. You would have to take off bumper, straighten it and replace it. Taking off bumper, straighten it and replace it. Taking off and putting back the cooling would take up the most time.

Question 2. Why is the charge 3 shillings an hour.

Answer. 2. It is the rate laid down by Cdn. government.

R.G. Chapman Capt

Documentary Evidence for Prosecution.

1. Certified true copy of Road Accident Report made out at H.Q. Coy. 2 Bn. R.C.E. on accident involving vehicle CL 4272545. Ford. Winch 60 cwt. which took place on 15 Jan. 45.

Document marked exhibit "A"

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or give evidence.

The accused reserves his defense.

I certify that the foregoing summary of evidence consisting of 11 pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c) (d) (e) and (f) have been complied with.

In the Field
24 Jan. 45.

[illegible] Capt.

5A-85

Spr. Dean. A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L-101953 Spr Dean A HQ Coy 2 Bn RCE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st CHARGE	GUILTY	GUILTY	
2nd CHARGE	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence/of~~ ..... (beginning on (date) .....) (1) Nil

(1. Insert sentence being served, or delete, if not applicable. See RP 46(5). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 215 days, of which Nil days were spent in hospital.(1) Nil

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

75 DAYS DETENTION AND PAY STOPPAGE OF £2.03

(Sgd) ~~[illegible]~~ 28 FEB 45 (Sgd) [illegible] Brig
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 780.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

------CONFIRMED------

~~I direct that the accused be sent to (state destination) for the execution of the sentence.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Brigadier
(J.R.R. Gough)
Commanding A Tps Area, First Can Army
Confirming Officer.

Date 2 Mar 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L 101953 Spr Dean A	6 Mar 45	[illegible] Lieut Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 8 APR 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 5TH R5 4388

FIELD GENERAL COURT-MARTIAL

Convened by BRIG. J.R.R. GOUGH Comd A TPS AREA dated 25 FEB 45
FIRST CDN ARMY

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/[illegible] or ~~sbstv~~ apptmt.	Full Christian Names.	Surname.	Unit.
L 101953	SPR / SPR	ARTHUR	DEAN	HQ Coy 2 Bn RCE.

PROCEEDINGS REVIEWED
10 Apr 45
[illegible] Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 28 FEB 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed. [illegible]

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~s~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~were~~ amenable to military law, and each charge discloses an offence.(3) [illegible]

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~were~~ brought before the Court. At 1030 hours trial commences. [illegible]

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ [illegible]

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ..... [illegible]
~~The interpreter is sworn.~~) Do you object to B3023 SGT GARDINER RE as shorthand writer? Ans NO SIR [illegible]
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, ~~are sworn~~.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: [illegible]

President	MAJ.	E.G. MOOGK	11 CDN FD PK COY RCE.
Member	CAPT	A.C. FERGUSON	5 CDN FD COY RCE
Member	LIEUT.	A.T. JORDAN	82 CDN FD COY RCE
~~Judge-Advocate~~			
Prosecutor	CAPT	R.C. PARIS	2 BN RCE
Defending Offr	CAPT	I.F. MORRISON	2 BN RCE

Questions by President: Is the Prosecutor a lawyer? Ans NO SIR Is the Defending Offr a lawyer? Ans NO SIR(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused L 101953 SPR DEAN A. before arraignment makes(s) (no) ~~no~~ plea(s) [illegible]
(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13(E), RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the submission made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. [illegible]

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C [illegible]

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge~~s~~.(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge~~s~~.(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO SIR. (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers~~ (In accused's statement (:) ~~The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly~~.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge~~s~~ to which the plea~~s~~ of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

~~B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.~~

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him ~~(those)~~ again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO SIR. (1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(no)~~ (no) opening address.(1) Nil.

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) SEE ATTACHED NOTES

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ Nil Nil Nil

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans NO SIR. Do you intend to call witnesses on your behalf ?
Ans NO SIR. ~~Are they witnesses as to character only ?~~ Ans Nil

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

SEE ATTACHED NOTES.

D7. The Court is closed to consider the finding~~s~~.(1) The findings of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) He (The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~ Nil Nil

(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~ Nil

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO SIR.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement~~s~~ as to Character and Particulars of Service(1), and certified true copy ~~(copies) of~~ Conduct Sheet~~s~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 16(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(2)

(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement~~s~~ and Conduct Sheet~~s~~, and in mitigation of punishment ?(1) Ans ADDRESS BY DEFENDING OFFICER (SEE NOTES)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Can 328, 330, 563-566, Overseas RO 3099, 2222, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(C), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

FIRST CHARGE
Army Act Sec 15(1)

The accused, L101953 Spr Arthur DEAN, of HQ Coy 2 Battalion, RCE, a soldier of the Canadian Army Overseas is charged with:-

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he, at STOCKHEIM, when in lawful custody, absented himself without leave from 2100 hrs 11 Feb 45 until 2115 hrs 12 Feb 45, on being apprehended by F25590 L/Cpl Burch, D., 7 Coy Cdn Provost Corps.

Absent 1 day 15 minutes.

SECOND CHARGE
Army Act Sec 24(2)

WHEN ON ACTIVE SERVICE

LOSING BY NEGLECT HIS CLOTHING

in that he, at STOCKHEIM, on or about 12 Feb 45 was deficient of one shirt, angola, drab, value two dollars and three cents.

(G.L. MACDONALD) A/Lt Col RCE
Commanding Officer
2 Battalion, RCE

Field
23 Feb 45.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(JRR Gough) Brig
Comd A Tps Area
First Cdn Army

In the field
25 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L.101953	Spr	Spr	Arthur	DEAN	HQ Coy 2 Bn R.C.E.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Feb 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.G. MOOGK	11 Cdn Fd Pk Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by OC 5 CdnFd Coy	
Lieutenant	To be detailed by OC 32 Cdn Fd Coy	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	To be detailed by OC 5 Cdn Fd Coy	

~~RESERVE/SUPPLEMENTARY~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

Date 25 Feb 45

R.Gough

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(JRR Gough)

Commanding A Tps Area, First Cdn Army

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAAS (To take place of AFAS 40 P & S/1897 (1400))

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

"I certify that I have this morning examined J101953 (number)

Gnr (rank) DEAN (name) 2 Battalion, RCE (Unit)

and in my opinion he is fit to undergo trial by Court Martial".

28 Feb 45

Capt RCAMC

2 Battalion, RCE

F.G.C.M.
Held At: GROESBEEK, HOLLAND
28-Feb.-45

EVIDENCE FOR PROSECUTION PARA. D3

FIRST CASE
Accused: L.101953 - Spr. DEAN, Arthur

1st Witness

F.1225 - Spr. BISHARA, C.D. - (Q.M. Staff) - After having been duly sworn in, gives the following evidence:
On February 12, Dean's kit was brought in and checked by me. At that time one shirt was missing which could not make a complete check of what he had on him at the time. When Spr. Dean arrived back I took the Part III of his service book and checked the balance of his stuff which he had on hand which found deficient one shirt angola.

Questions by Prosecutor:
Q.1 - When the kit was brought in to you was the kit checked and the shirt found missing?
A.1 - There was no shirt in the kit at the time.
Q.2 - And when Spr. Dean came back how many shirts did he have?
A.2 - He only had one at the time.
Q.3 - And how many should he have had?
A.3 - He just had one and should have had two.
Q.4 - When was the kit brought to you?
A.4 - On the 12th.
Q.5 - When you checked the kit were you alone?
A.5 - Yes sir, just Spr. Dean and myself.
Q.6 - A few days before had you checked his kit?
A.6 - No sir, I had not.

Questions by the Court:
Q.1 - How long since Spr. Dean's kit had been checked?
A.1 - His kit was checked by Cpl. Miller, at the time of the last charge against him.

2nd Witness

Captain B.G. Parle, having been duly sworn in gives the following evidence:
As Quartermaster of the 2nd Bn., I present this statement which sets the value of a shirt angola drab and is extracted from price scale of issue 1944. EXHIBIT "B"

Cross-examination by the Defence:
Q.1 - Is that the price of a shirt angola drab?
A.1 - Yes, that is the price.

3rd Witness

K.879848 - L/Cpl. MILLER, J.R. having been duly sworn in gives the following evidence:
Q.1 - You checked Spr. Dean's kit before going on leave?
A.1 - Yes, on or about the 7th of the month. I found his kit was correct.
Q.2 - Did he have two shirts?
A.2 - Yes, his kit was correct according to his Part III Service Book.

Cross-examination by the Defence:
Q.1 - Where did you check the kit?
A.1 - In the Guard Room.

(Continued Over)

(2 Continued)

Q.2 - And the accused was under close arrest?
A.2 - Yes.
Q.3 - Were there any other persons in the Guard Room at the same time?
A.3 - Yes, there were three or four other persons.

PARA D 6

Closing Address by the Prosecuting Officer:

I would like to point out one or two facts brought out in the evidence:- Firstly, the accused had two shirts about the 7th of February. Secondly, he had only one shirt when he returned from AWL. Apparently one shirt went missing some time between the 7th and the morning of the 12th when his kit was checked by the QM Storeman. The mere fact that the shirt may have gone missing while Spr. Dean was AWL does not relieve him of the responsibility of his own kit.

Closing Address by the Defending Officer:

The facts brought out by the Prosecuting Officer with regard to the time when the shirt may have disappeared is the fact that I too wish to stress. I would like to point out that during this period between the 7th of February and the 12th of February the Accused was under close arrest in the Guard Room along with other soldiers, as pointed out by Corporal Miller. I should also like to point out that according to the evidence the Accused's kit was left over night in this Guard Room the night the Accused is supposed to have gone AWL, but I submit that surely the Guards who evidently were lax in their duties in allowing the Accused to leave his quarters, might at least have turned in or looked after this soldier's equipment. In closing I would like further to point out that some person evidently took the kit from the Guard Room to the QM Stores and there is nothing to show that it would not have been possible for this person to have lost the shirt, and I see nothing in the evidence which would prove negligence against the Accused.

PARA E 5

Statement by the Defending Officer on behalf of the Accused:

I would like to submit to the Court, circumstances surrounding this case which I feel should be considered in mitigation of any sentence that may be passed on Spr. Dean. Spr. Dean, the Accused was involved in a traffic accident on or about the 15th of January, at which time he caused damage to a WD vehicle. He was brought up before the Colonel of the 2nd Bn. RCE on a charge of negligence and misguidedly did not elect to take the Colonel's punishment because he rightly or wrongly considered the charge unjust. He elected Court Martial on this charge and was meted out punishment as shown on "Exhibit C". The accused at that time had no defending officer to speak for him as he was newly arrived at the Bn. and did not know of anyone who might look after his interests. Since that time, while serving his punishment he has brooded considerably over this whole matter and still feels rightly or wrongly that he has been harshly dealt with but realizes that there is no appeal from a sentence passed by a Military Court. I would submit that consideration be given when sentence is passed on this charge of AWL one day and fifteen minutes. That is all I have to say.

exhibit "B"

Shirts, Angola Drab $2.03

"Certified that the above is extracted from "PRICED SCALES OF ISSUE 1943."

(R.C.PARIS) CAPT RCE
Quartermaster
2 Battalion RCE CA(O).

Exhibit "D"

Summary of Evidence in the case of
L101 953 Sgt. Dean, Arthur, Royal Canadian Engineers on strength of H. Q. Coy. 2 Bn. R.C.E. a Soldier of the Canadian Army Overseas.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath.

Documentary Evidence for the Prosecution.

1. Certificate of Apprehension signed by non. commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the accused was taken on apprehension.

(Document marked exhibit "A")

2. Certified Extract from "Prices Scales of Issues 1943"

(Document marked exhibit "B").

3. Certified copy of Casualty Return (Army form W 3010 A) submitted by 2 Bn R.C.E re the accused.

(Document marked exhibit "C")

First Witness.
for prosecution.

A44333 Spr. Martin M.L. ~~having been~~ HLC.
of B. Coy attached to Bn. H.Q. 2 Bn. R.C.E.
having been duly sworn states.

At approx. 2030 hrs on 11 Feb. 45
at H.Q. Coy. I was Regimental Policeman
in charge of Spr. Dean and Spr. Chester who
were under close arrest. I had to leave the
room where Spr. Dean and Spr. Chester were
held in custody to go to the lavatory. On
returning at approx. 2100 hrs. I found Spr.
Chester and Spr. Dean were missing. Spr. Ward
the other Regimental Policeman had returned. We
searched the area for Spr. Dean and Spr. Chester
and could not find them. I then reported
the occurrence to R.S.M. La Brash.

On the morning of the 12 Feb. 45
I turned the kit of Spr. Dean and the kit of Spr.
Chester into Q.M. Stores. I was present while
a kit inspection was made.

The accused declines to cross examine the witness.

M. L. Martin

Second Witness
For prosecution.

L101925 Spr. Ward F.H. of A Coy attached to Bn. H.Q. 2 Bn R.C.E. having been duly sworn states.

Approx. 2100 hrs. 11 Feb. 45 at H.Q. Coy. I was a Regimental Policeman. It was not my turn to stay with the prisoners and I was downstairs playing checkers. I had come out of the room when I met Spr. Martin who told me that the two prisoners were missing. Leaving Spr. Bourdges with the remaining prisoners we searched the area but did not find the two men. We reported that Spr Kleanand Spr. Chester were missing to A Sgt. Geary orderly Sgt. and to C.S.M. La Brash.

The accused declines to cross-examine the witness.

F.H. Ward

Third Witness.
for Prosecution.

B. 39681 A/C.S.M. La Brash L.R. of H.Q. Coy. 2 Bn. R.C.E. having been duly sworn states.

At approx. 2345 hrs. 11 Feb. 45. I was in my quarters at H.Q. Coy. when Spr. Martin M.L. reported to me that two men Spr. Dean and Spr. Chester were missing from the room in which they were confined.

I checked and found this statement to be true. I reported that the two men were missing to O.C. H.Q. Coy at approx. 0830 hrs. 12 Feb. 45.

The accused proceeds to cross examine the witness.

Question 1. Who was with you when Spr. Martin reported us missing?

Answer 1. Spr. Ward, Spr. Martin and Sgt. Searey.

J.R. LaBrash

Fourth Witness
for prosecution

K62231 A/S/Sgt. Geary A. H. of H. Q. Coy. 2 Bn R.C.E. having been duly sworn states.

On 11 Feb. 45 at H. Q. Coy I was Orderly Sgt.

At 2345 hrs. Spr. Ward and Spr. Martin reported to me that Spr. Dean and Spr. Chester had broken arrest. I reported this to C. S. M. La Brash.

On 14 Feb. 45 at ~~approx~~ 1400 hrs. I accompanied the C.S.M. to Turnhout to the Cdn. Provost Corps. Orderly Room. arriving at about 1655. A. Provost Cpl. took us to the civilian jail where we picked up Spr. Dean and Spr. Chester. We returned to H. Q. Coy and turned Spr. Dean and Spr. Chester over to our Regimental Police.

The accused proceeds to ~~cross~~ examine the witness.

Question 1. Did Spr. Martin and Spr. Ward report to you first on the night ~~of~~ left.

Answer 1. Yes.

— A.H. Geary — —

Fifth Witness
for prosecution.

F1225 Spr. Bishara S.D. of H.Q. Coy 2 Bn. R.C.E. having been duly sworn states.

I am technical storeman for H.Q. Coy. I work in both technical and clothing stores as necessary.

On the morning of the 12 Feb. 45 Spr. Martin brought in a kit which he said was Spr. Dean's. There was no shirt angola with the kit at that time. ~~Hearing that~~ When I heard that Spr. Dean had returned I checked the kit that he had with him and added it to the list of kit which had been turned in on the 12 Feb. 45. I checked this total list against his M.B.M. 1. Part III and found him to be deficient 1 shirt angola drab.

The accused declines to cross-examine the witness.

F1225 Spr Bishara S.D.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or give evidence.

The accused reserves his defence.

I certify that the foregoing summary of evidence consisting of 7. pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) (e) (f) have been complied with.

In the field.
18 Feb. 45.

H L Cohen Capt.

exhibit "A"

K 42203 Sgt. J.E. FAIRHOLM

L/101953 SPR. DEAN A.

ROYAL CANADIAN ENGINEERS

2 BATT. 1ST. CDN. ARMY

STOCKHOLM

WAS APPREHENDED BY F25597 Sgt. BURCH. D.

TURNHOUT DET. 7 CDN. PROVOST CORPS

ON THE 23rd DAY OF FEB. 45 AT 2115 HOURS

APPREHENSION

[redacted] apprehension.

J.E. Fairholm
7 CDN PROVOST

exhibit "B"

Shirts, Angola Drab $2.03

"Certified that the above is extracted from "PRICED SCALES OF ISSUE 1943."

(R.G.PARIS) CAPT RCE
Quartermaster
2 Battalion RCE CA(O).

(Margin for filing purposes.) exhibit "C"

Army Form W.3010A. (Books of 100.)

Serial No.

OTHER RANKS

Number of sheets to this return

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OFFICERS AND NURSES.

Personal No.	Rank	Name and Initials	Corps or Regiment	Casualty: Nature of Casualty	Casualty: Date	REMARKS
		PUNISHMENTS				
		On 5 Feb 45 tried by FGCM				
		Charge :- As 40				
		Findings :- Guilty				
		Sentence :- 14 days FP and forf of 28 days pay and to be placed under stoppages of pay in the amount of £2-5-0.				
		Confirmation :- Findings and sentence confirmed by GOIC Cdn Sec 1 Sch HQ 21 A Gp 8 Feb 45.				
		Close Arrest :- Nil				
		Forfaitures :- Forf 28 days pay under FR&I 149(2)				
		Stop of pay £2-5-0 under FR&I (0) (6&2)				
1101953	Spr	DEAN A				
		CERTIFIED TRUE COPY				

(Date) 11 Feb 45 194

(Signature and Appointment of Officer.)

2 Bn RCE (Unit.)

L of C 21 Army Gp. (Bde., Divn., Area, etc., with which unit is serving.)

Forms/W3010A/1

Exhibit "X"

M.F.B. 358
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 290

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L10195 3	SPR	DEAN A	2 Bn R C E

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	A W L times	ONE times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 73 A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ W/L ~~beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 9 days in ~~Air Force~~ military custody, making a total of 9 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 30 yrs

6. The date of his commission specified in his record of service is / attestation / attestation paper 15 Aug 42

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 6 mos

8. The accused is entitled to reckon 2 yrs 6 mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~no air force~~ military decoration, or air force reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. C.V. 5 M + CLASP

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the Air Force regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated , and in his regiment (or corps), the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— N/A Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank SAC Unit

Name [illegible] of [illegible] Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	23 Dec 43 [illegible]	A.A. 9 (a) A.A. 8 (a)	14 days F.P.	
F.G.C.M.	5 Feb 44	A.A. 40	28 days pay 28 days F.P. [illegible] pay of $2.50	14 days F.P.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. [illegible]

Signed this 29th day of February 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Exhibit "X" signed by the president, and annexed to the proceedings.

Reviewed in accordance with R.O. 2084 - 30 Dec 43

Exhibit "Y"

No. L101953 Name DEAN A | Sqn, Battery, or Company | Corps RCE | Date of enlistment 12 Aug 42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5418)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Mar 43	Spr		Sec. 15(1) AA AWL from 0600 hrs 4 Mar 43 to 1400 hrs 5 Mar 43. (Absent 1 day 8 hrs)	Cpl Allen GE	4 days CB	6 Mar 43	Major JWD Farrell	2 dys P FR&I149 (1) (a)
Field	21 Dec 43	Spr		Tried by F.G.C.M. 23 Dec 43 CHARGES: (1) AA 9 (2) (2) AA 8 (2)					
				FINDINGS: Guilty on both charges SENTENCE: 14 days Field Punishment - Spent in unit custody CONFIRMATION: Findings and Sentence confirmed by CRE 2 Cdn Corps Tps 28 Dec 43 CLOSE ARREST: In close arrest from 1630 hrs 21 Dec 43 to date of trial. FORFEITURES: Forf. 2 days pay under FR&I 149(1) (c) (i) total forf. 2 days pay.					
		Bled for the purpose of Blood Donations 25 Oct 43							

(PTO)

572 36-8-43

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Awarded CVSM & CLASP wef 15 Jan 44.					
Field	15 Dec 44	Spr		Tried by FGCM 5 Feb 45 CHARGE: AA 40 FINDINGS: Guilty SENTENCE: 14 days Field Punishment (spent in Unit Custody) forf 28 dys pay stop of pay in the amount of 2-5-0 CONFIRMATION: Findings & Sentence confirmed by GO IC Cdn Sec 1 Ech Hq 21 A Gp 8 Feb 45. CLOSE ARREST: Nil FORFEITURES: Forf 28 days pay underFR&I 149(2) Stop of pay 2-5-0 under FR&I (0) (862)					
				Certified True Copy of Original Document held in my Custody: [signature] Capt					

872 36-8-0 [illegible]

336 b. Ste. Dean, J.

A-56233 Pte. Dean, ~~L.D.~~ John
No.1 Cdn Ord Hldg Unit.

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

PROCEEDINGS REVIEWED

A.

Order convening the Court.

On Active Service, this 30th day of August, 19 43

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~*I am unable to appoint~~ —

~~*(1. Three Officers to form the Court)~~

~~*(2. A Field Officer as President)~~

~~*(3. Three Officers having more than one year's service).~~

~~[illegible]~~

President.

Rank.	Name.	Regiment.
Major	J.E. Sinclair	No.3 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.W. Wilkinson	No.2 Cdn Arty Hldg Unit
Lieutenant	F.H. Burns	No.2 Cdn Inf Hldg Unit
Lieutenant	R.P. Bingham	No.1 Cdn Arty Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A-56233 PTE. DEAN, John No.1 Cdn Ord Hldg Unit.	First Charge A.A. sec 22	Guilty	Guilty	Confirmed [illegible] Brig
	Second Charge A.A. sec 15(1)	Guilty	Guilty	
	Third Charge A.A. sec 11	Guilty	Guilty	
	Fourth Charge A.A. sec 40	Guilty	Guilty	
	Fifth Charge A.A. sec 40	Guilty	Guilty	
	See charge sheet attached.			
			To undergo detention for ninety (90) days. The Court recommends that accused be placed in No. 1 Neurological Hospital for observation.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [illegible] Brigadier (Signed) [illegible] Major
Commanding Cdn Base Units, Cdn Army. 3 Cdn Inf Div HQ
Convening Officer (*c*) *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Fifth day of September, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ The shorthand writer
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this Fifth day of September, 19 41.

[illegible] Major
President of the Court Martial.

C. Certificate in case of death sentences

* See footnote (*b*) on page 702 M.M.L. 1929.

[illegible]

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

*[illegible]

Signed this 18th day of Sept 1941.

[illegible] Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of A 56233 Pte Dean J.
(*a*) (Dated) 23 Sept 41. (Signed) [illegible]

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

MEDICAL OFFICER CERTIFICATE

I certify, that I Have this morning examined.

No. A 56233 Pte Dean J. D.

Of #1 C.O.H.U. And find in my opinion, He is fit to undergo trial ~~unfit~~

By Court Martial

Stationed New Martinegar Barracks

Date Sept 5th - 41

(R.S. Daymond) Capt. R.C.A.M.C.
M.O. for No.1. R.C.O.C. H.U.

CHARGE SHEET

The accused No. A.56233 Pte. Dean, ~~J.D.~~ John W. No. 1 Canadian Ordnance Holding Unit, a soldier of the Canadian Army Overseas, is charged with, while on Active Service:

"when in lawful custody escaping"

1st Charge Sec. 22 Army Act. — in that he at Martinique Barracks on 24 Aug. 41 when in lawful custody escaped.

"absenting himself without leave"

2nd Charge Sec. 15 (1) Army Act. — in that he at Martinique Barracks absented himself without leave from about 1400 hrs. 24 Aug. 41 until apprehended by the Canadian Provost Corps in London about 1945 hrs. 24 Aug. 41.

"neglect to obey Routine Orders"

3rd Charge Sec. 11 Army Act. — in that he at Waterloo at 1945 hrs. on 24 Aug. 41 was improperly dressed; that is, not carrying his respirator and steel helmet as required by C.A. R.O.(O) No. 234.

"conduct to the prejudice of good order and military discipline"

4th Charge Sec. 40 Army Act. — in that he at Bordon on 24 Aug. 41 failed to show his paybook when ordered to do so by a Military Policeman.

"conduct to the prejudice of good order and military discipline"

5th Charge Sec. 40 Army Act. — in that he on 24 Aug. 41 travelled on a train of the Southern Railway between Bordon and Waterloo without a ticket.

Bordon,
28 Aug. 41.

(HAROLD W. BAILEY) LIEUT. COL.
O.C. NO. 1 CANADIAN ORDNANCE HOLDING UNIT.

To be tried by Field General Court Martial

(F.H. Phelan) Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 30th day of Aug 41.

President F.G.C.M.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT BORDON ON THE 5TH DAY OF SEP. 41.

TRIAL OF:- No. A56233. PTE. J. D. DEAN.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) CAPT. E.M. MILLER (Unit) 1 C.O.H.U.

Defending Officer:- (Name) LIEUT. F.B. PERROTT (Unit) 1 RCASC H.U.

At 1700 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1.- No, sir.

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

Q2. ~~Do you object to acting as shorthand writer?~~

A2.-

~~The shorthand writer is duly sworn.~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- Yes, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Def. Officer for accused, stated accused been in army four mos. & has lengthy crime sheet. Is illiterate, always worked as farm labourer. Of no use to army, is constantly afraid & not amenable to discipline. Better for the service & more fair to accused if he were discharged.

Prosecutor produces MFM6. States accused's correct name is "John Dean."

Accused admits correctness of "John Dean" as his name & not "J. D. Dean"

Def. Off. again draws attention to illiteracy of accused as possible explanation of error in name.

[signature]
President

Summary of evidence in the case of A.56233 Pte. Dean, J.D. No. 1 Cdn. Ordnance Holding Unit By the direction of the C.O, The evidence is taken on oath.

First Witness: No. B.28025 L/Cpl. Talbot, W.A. sworn states: "On Sunday 24 Aug. 41 the accused, Pte. Dean whom I now recognize was delivered to my charge by the Regimental Police for duty in the kitchen of the mens mess, #1 Cdn. Ord. Holding Unit Martinique Barracks, Bordon. He was then a prisoner placed in my charge for work. About 1400 hours I missed Dean who had been working in the kitchen from about 0645 hours. I made a thorough search of the cook house and surrounding buildings but he was not to be found any where within the area of Martinique Barracks. I did not see him again until the evening of 26 Aug. 41 when he was brought in custody of R.P. When I last saw him he was dressed in Battle Dress without gaiters or cap.
The accused does not wish to question this witness.

W A Talbot L/Cpl

Second Witness: A.22006 L/Cpl. McNair, J., 7th Provost Coy., and
Third Witness: H.32047 L/Cpl. Oakden, J.T.7th Provost Coy.,

A written statement of the evidence of the marginally named witnesses purporting to be signed by each of these has been read to the accused and is included in this summary of evidence. Having regard to the exigencies of the service and expense and loss of time involved, the attendance of these witnesses can not in my opinion be readily procured.

E.M. Miller
(E.M. MILLER) (CAPTAIN)
No. 1 Cdn. Ord. Hold. Unit

Copy of Statement Exhibit 'A'

"On the 24 Aug. 41 around 1430 hrs. while on duty in the company of L/Cpl. Oakden, I had occasion to check the a/m mentioned soldier for being without a respirator or steel helmet and when I asked for his paybook he could not produce it."

Sgd. A.22006 L/Cpl. McNair, J.

I have read over and corroborate the above statement.

Sgd. H.32047 L/Cpl. Oakden, J.T.

Fourth Witness M.11861 L/Cpl. Sinclair, D.
Fifth Witness K.53481 L/Cpl. Bianchini, A.

A written statement of the evidence of the marginally named witnesses purporting to be signed by each of these has been read to the accused and is included in this summary of evidence. Having regard to the exigencies of the service and expense and loss of time involved, the attendance of these witnesses can not in my opinion be readily procured.

E.M. Miller
(E.M. MILLER) (CAPTAIN)
No. 1 Cdn. Ord. Holding Unit.

Fourth and fifth witness continued

COPY OF STATEMENT

Exhibit "B"

"At London on the 24 Aug. 41 at about 1945 hours, I was on duty at Waterloo Station in company with L/Cpl. Bianchini, when I was called to Platform 7 where I saw the a/m soldier. He was being detained by Mr. W. Dutch, ticket collector Southern Railway for travelling without his ticket or fare. The a/m soldier stated he had come from Bordon Hants. The a/m soldier was not carrying his respirator or steel helmet and not wearing his anklets web. He was handed over to me and on questioning him I found that he was A.W.L. I placed him under arrest and conducted him to Canadian Provost Corps H.Q. where I handed him over to the N.C.O. i/c of cells to be detained. Statement from W.Dutch attached.

London
24 Aug. 41. Sgd. M.11861 L/Cpl.Sinclair, D.

"I have read over and corroborate the above statement."

London
24 Aug. 41. Sgd.K.53481 L/Cpl.Bianchini, A.

Sixth Witness

W.Dutch ticket collector Southern Railway, Waterloo Station London.

A written statement of the evidence of the marginally named witness purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the exigencies of the service and expense and loss of time involved, the attendance of this witness can not in my opinion be readily procured.

E.M. MILLER (CAPTAIN)
No. 1 Cdn. Ord. Holding Unit.

COPY OF STATEMENT Exhibit "C"

This is to certify that the a/m soldier attempted to pass the barrier at Waterloo Station without producing a railway ticket.
He stated that he came from Bordon.

Waterloo Station
London 24-8-41 Sgd. W. Dutch
Ticket Collector
Southern Railway.

h Witness

H. Trigger Ticket Agent, Southern Railway will prove the receipt of Railway Warrant No. 354029 for railway ticket from Bordon to Waterloo Station and that the fare payable therefor ~~£~~ 3 shillings 8 pence.

A written statement of the evidence of the marginally named witness purporting to be signed by him has been read to the accused and is included in this summary of evidence. Having regard to the exigencies of the service and expense and loss of time involved, the attendance of this witness can not in my opinion be readily procured.

E.M. MILLER (CAPTAIN)
No. 1 Cdn. Ord. Holding Unit.

7th Witness continued.

COPY OF STATEMENT Exhibit "D"

"Railway Warrant No. 354029 was issued by Lt. Byers of No. 6 Provost Coy and Railway ticket was handed over to the Ry Coy re fare of above named.

Sgd. H. Trigger,
Southern Railway.

8th Witness

B.94259 Cpl. Sutherland, D.W. No. 1 Cdn. Ord. Hold. Unit sworn states. "I am N.C.O. i/c of the Guard Room No. 1 Cdn. Ord. Holding Unit Martinique Barracks Bordon. On 14 August 41 Pte. Dean, accused whom I now recognize was committed to the guard room to serve a sentence of 28 days F punishment. While serving this sentence he was on Sunday 24 Aug. 41 delivered to the cook house, mens mess Martinique Barracks for employment. He was not returned on that day and on 26 Aug. 41 at 1745 hrs. he was brought in under close arrest by the Canadian Provost Corps and returned to my custody in the guard room."

Sgd. B.94259 Cpl. Sutherland, D.W.

The accused does not wish to question this witness further.

The accused after being cautioned in accordance with R.P. 4 (E) does not wish to make any statement.

Taken down by me at Bordon this 27 Aug. 41 in the presence of the accused. R.P. 4 complied with.

E.M. MILLER (CAPTAIN)
No. 1 Cdn. Ord. Holding Unit.

CHARGE

Army Form B 252
(See King's Regulations)

R. C. S. C. Regiment

Battery
Squadron
Troop or
Company

CHARGE against No. [illegible] Rank Pte.

Name [illegible]

Place 1700 hrs 24 AUG 41 Date of Offence [illegible]

OFFENCE [illegible] without leave from [illegible] until apprehended by the Can. Provost Corps at Waterloo at about 11.10 hrs the 24 Aug. 41. (2) improperly dressed, i.e. not carrying his respirator [illegible] of steel helmet, not wearing his anklets web, at the same time, [illegible] place. (3) [illegible] travel from London to Lonsdale on Southern Railway without his fare on the 24th Aug. 41.

[signature] Capt. D.A.P.M.
CANADIAN MILITARY POLICE
LONDON AREA.

Names of Witnesses: L/Cpl. Sinclair, [illegible]

L/Cpl. Blanchard, Can. Provost Corps.

L/CPL. TALBOT 1 CON. ORD. HN.

Signature of O.C. Battery, Squadron, Troop or Company: Remanded to Co. [signature] Capt.

Punishment Awarded: remanded in custody for F.C.C.M.

By whom Awarded:

[signature] Adjutant. "B"

Exhibit [illegible]

Statement of **EVIDENCE** in the case of

A-56[illegible] Pte. Dean, J.D.
No. 4 Mobile Laundry, R.C.O.C.

Sir.

At London on the 24 Aug. 41 at about 19.45 hrs, I was on duty at Waterloo Station, in company with L/Cpl. Bianchini, when I was called to platform 7, where I saw the a/m soldier. He was being detained by Mr. W. Dutch, Ticket Collector, Southern Railway for travelling without his ticket or fare. The a/m soldier stated he had come from Bordon, Hants. The a/m soldier was not carrying his respirator or steel helmet and not wearing his anklets web. He was handed over to me and on questioning him I found that he was A.W.L. I placed him under arrest and conducted him to Gdn. Provost Corps H.Q. where I handed him over to the N.C.O. i/c of cells to be detained. Statement from W. Dutch attached.

D. Sinclair ...L/Cpl.
(M-11[illegible] Sinclair, D.)

London
24 Aug. 41.

Sir.

I have read over and corroborate the above statement.

A. Bianchini ...L/Cpl.
(K-[illegible] Bianchini, A.)

London
24 Aug. 41.

REMARKS

The m/r has no complaint -

[illegible] Capt

CHARGE #B221 Army Form B 252
(See King's Regulations)

R.C.O.C., H.U. Regiment
No.4 Mobile Battery / Squadron / Troop or Company

CHARGE against No. H56233 Rank Pte.

Name Dean, J.

Place Bordon Village Date of Offence 24-8-41

OFFENCE 1. W.O.A.S. Failing to comply with standing orders in that he was not carrying a respirator or steel helmet.
2. In that he failed to show his paybook when ordered to do so by a competent military authority. viz. a Military Policeman. Sec.11 A.A.

S. Dalton CAPT.
S. DALTON COMMANDING,
No.7 PROVOST COY. CDN. A. (O.)

Names of Witnesses

L/C. McHair, J. #7 Provost Coy.

L/C. Oakden, J.T. " "

Signature of O.C. Battery, Squadron, Troop or Company — Remanded to Co. [illegible]

Punishment Awarded

By whom Awarded

Adjutant

EVIDENCE

In the case of:
Pte. Dean, J.
Reg. No. H56233
R.C.O.C., H.U.

Sir;

On the 24-8-41 around 1430 hrs. while on duty in the company of L/C. Oakden, I had occasion to check the a/m soldier for being without a respirator or steel helmet and when I asked for his paybook he could not produce it.

J.A. McNair J. ....L/C.
McNair, J. A22006

I have read over and corroborate the above statement.

J. T. Oakden ....L/C.
Oakden, J.T. H32047

Disposition of this case to be returned to the D.A.P.M., C.B.U., H.Q.

REMARKS

Statement of EVIDENCE in the case of

Exhibit "C"

No.A 56233Pte DEAN.J.
R.C.O.C. HOLDING UNIT.
BORDEN.

Sir,

This is to certify that the a/n soldier attempted to pass the barrier at WATERLOO STATION without producing a railway ticket.
He stated that he came from BORDEN.

WATERLOO STATION
LONDON.24.8.41

W Dutch
Ticket Collector
Southern Railway.

Railway Warrent NO.354029 was issued by Lt Byers of No.6.Provost Coy and Railway ticket was handed over [illegible] Ry Coy Re fare of above named.

SOUTHERN RAILWAY
WATERLOO
25 AUG 1941
STATION MASTER'S OFFICE

Southern Railway.

D.A.P.M.
CANADIAN MILITARY POLICE
[illegible] AREA.

Exhibit "D"

F. G. C. M. -- A 56233, Pte Dean, J. D.

LIST OF WITNESSES

For the prosecution

1. B.28025 L/Cpl. Talbot, W.A., No. 1 Cdn. Ord. H.U.
2. A.22006 L/Cpl. McNair, J., 7th Provost Coy.
3. H.32047 L/Cpl. Oakden, J.T.7th Provost Coy.
4. M.11861 L/Cpl. Sinclair, D. C.M.P. London
5. K.53481 L/Cpl. Bianchini, A. C.M.P. London
6. Mr. W. Dutch, ticket collector Southern Rly.
7. Mr. H. Trigger, ticket agent, Southern Rly.

For the defence N I L

LIST OF EXHIBITS

(a) Statement of L/Cpls. McNair, J. and Oakden, J.T.
(b) " " " Sinclair, D. & Bianchini, A.
(c) " " Mr. W. Dutch
(d) " " Mr. H. Trigger

R.P.14

I, No. A.56233 Pte. Dean, J.D. ~~do not~~ desire to have an officer assigned to represent me at my trial by Court Martial. preferably Lieut Evans.

I acknowledge receipt of a copy of Charge Sheet dated 28 Aug. 41 and Summary of Evidence.

J D Dean

28 Aug. 41.

R.P.14

I, No. A.56233 Pte. Dean, J.D. ~~do not~~ desire to have an officer assigned to represent me at my trial by Court Martial. preferably Lieut Evans.

I acknowledge receipt of a copy of Charge Sheet dated 28 Aug. 41 and Summary of Evidence.

28 Aug. 41. J Dean

NA-56233 Name **Dean, John** | Sqn., Battery, or Company | Corps **No.4 MLAFD** | Date of enlistment | G.C. Badges | Service or Proficiency Pay | MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. **One** | Signature O.C. Company, etc. | Character

Place	Date of offence 1941	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Crookham	16 Jul.	Pte.		A.W.L. from 1200 Hrs. 16-7-41 to 0800 hrs. 17-7-41 (Total absence 20 hrs. 0 min.) Sec. 15(1) A.A.	Sgt.Field	Admonished	Jul 17/41	D.B.Shutt	Forfeits 1 day's pay under F.R. & I.
Bordon	25 Jul.	"		Found out of bounds without possessing a valid pass Sec. 15(3) A.A.	Documentary	7 days C.B.	28 July 41	Capt. A.Grandjean	
Bordon	27 Jul.	"		(1) Neglect to report for duty Sec. 40 A.A. (2) Absent from parade Sec. 15(2)	Sgt.Nash Cpl.Cagnon	on combined charges			
London	30 Jul.	"		A.W.L. from 2230 hrs. 30 July 41 to 1145 hrs. 5 Aug. 41 Total absence 5 days.13 hrs.15 min.Sec.15(1) A.A.	Documentary	Forfeits 6 days F.R. & I. Forfeits 6 dys. Pay XXX.A.A. 46-2	8-8-41	H.M.Bailey Lt.Col.	

P.T.O.

NA-56233 Name Dean, John | Sqn., Battery, or Company | Corps No.4 MLAFD | Date of enlistment | G.C. Badges | Service or Proficiency Pay | MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. One | Signature O.C. Company, etc. | Character

Place	Date of offence 1941	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Crookham	16 Jul.	Pte.		A.W.L. from 1200 Hrs. 16-7-41 to 0800 hrs. 17-7-41 (Total absence 20 hrs. 0 min.) Sec. 15(1) A.A.	Sgt.Field	Admonished	Jul 17/41	D.B.Shutt	Forfeits 1 day's pay under F.R. & I.
Bordon	25 Jul.	"		Found out of bounds without possessing a valid pass Sec. 15(3) A.A.	Documentary	7 days C.B.	28 July 41	Capt. A.Grandjean	
Bordon	27 Jul.	"		(1) Neglect to report for duty Sec. 40 A.A. (2) Absent from parade Sec. 15(2)	Sgt.Nash Cpl.Cagnon	on combined charges			
London	30 Jul.	"		A.W.L. from 2230 hrs. 30 July 41 to 1145 hrs. 5 Aug. 41 Total absence 5 days.13 hrs.15 min.Sec.15(1) A.A.	Documentary	Forfeits 6 days F.R. & I. Forfeits 6 dys. Pay XXX.A.A. 46-2	8-8-41	H.M.Bailey Lt.Col.	

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	11-8-41	Pte.		A.W.L. from 2230 hrs. 11-8-41 to 1700 hrs. 12-8-41	L/C.Stanley L/C.Sinclair	2 days for-feiture of pay	14-8-41	Lt.Col.Bailey	1 day [illegible] C.O.
London	12-8-41	"		A.A. Sec. 9 (2)	Cpl. Mitchell L/C.Conlon	28 days Fd.P.	14-8-41	Lt.Col.Bailey	

Certified true copy

[signature] Capt.
[illegible] No. Coy

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London	12-8-41	"		A.A. Sec. 9 (2)	Cpl. Mitchell L/C.Conlon	28 days Fd.P.	14-8-41	Lt.Col.Bailey	

Certified true copy

[signature] Capt.
[illegible] No. Coy

58A. Pte. Dean, J. C.

see also ~~58~~ 37 D and 71 D

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 12th day of September 19 41

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 6th Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*~~[I am unable to appoint:—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely:—~~]

In my opinion, military exigincies, namely: dispersion of units, difficulties of communication and other difficulties, render it inexpedient to follow those rules of procedure consistent with Appendix "A" to D.R.O. 772 on the trial of the accused persons named in the schedule hereto by a F.G.C.M. assembled pursuant to order of the Brigadier, 6th Canadian Infantry Brigade.

CERTIFIED TRUE COPY OF CONVENING ORDER, CHARGE SHEETS AND TRANSCRIPTS OF PROCEEDINGS

W C Newman

(W.C.Newman), Lieut., A.D.J.A., 2 Cdn Div.

President.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

Rank.	Name.	Regiment.
Major	P. Trudeau	Fus M R

Members.

Rank.	Name.	Regiment.
Capt.	F.H. McDougall	S Sask R
Lieut.	L.E. Clermont	Fus M R
Waiting Member: Lieut.	J.R. Hirsh	S Sask R

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J.P. Mackenzie) Brigadier

Commanding 6th Canadian Infantry Brigade

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L-12062 Pte. GRAHAM, W.H., S Sask R.	Conduct to the prejudice of good order and military discipline, in that he, at Hartley Row, on 6 Sep 41, when required to hand in emergency ration untampered with did hand in his emergency ration whose container had been wrongfully opened and part of contents thereof wrongfully missing, without complaint. (A.A. Sec 40)		CASE ADJOURNED TRIED ON FURTHER AFA 3	
L-12032 Pte. Dean, J.E., S Sask R.	First Charge: (A.A. Sec 41) Committing a civil offence--(See Charge Sheet attached)		Guilty	
	Second Charge: (A.A. Sec. 40) Conduct to the prejudice (See Charge Sheet attached)		Guilty To undergo detention for 90 days	"Confirmed" V.W.O.
L12785 Pte. Segal, R., S Sask R.	First Charge:- (A.A. Sec 8(2)) W.O.A.S. using insubordinate language(See Charge Sheet attached)		Guilty	
	Second Charge(Alternative) (A.A. Sec 40) Conduct to the prejudice (See Charge Sheet attached)		Charge withdrawn To undergo detention for 120 days.	"Confirmed but I remit sixty days of the sentence" "V.W.O."

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) ..... (Signed) "Paul Trudeau" Major

Commanding ..... *Convening Officer* (e) ..... *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of September 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

* Omit if not applicable.

*(3. The interpreter)

*(4. The officer under instruction)

were duly sworn. The shorthand writer

Signed this 19th day of September 19 41.

"Paul Trudeau," Major

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ..... day of ..... 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the charge be not committed to prison or detention barrack until further orders.)

Signed this 25th day of September 19 41.

"Victor W. Odlum"

Confirming Officer.
Comd 2 Cdn Dfv.

Promulgated and extracts taken in the case of

(a) (Dated) 6 Oct 41 (Signed) "P.C. Jardine" Captain Adjt. S Sask R

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20) M1. 28/41 1256 Thos. 2/41 W. & Co., Ltd. Gp. 741-2

CHARGE SHEET

The accused, No. L12032, Pte. Dean John Everett, S Sask R., a Soldier of the Canadian Army (Active(is charged with:

FIRST CHARGE A.A.Sec. 41 — COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, WHEN IN CHARGE OF A MOTOR VEHICLE ON A PUBLIC ROAD WAS UNDER THE INFLUENCE OF DRINK, CONTRARY TO SEC. 15 ROAD TRAFFIC ACT (1930)

in that he on 29 Aug 41 was, when in charge of DND vehicle No CZ4206513 on High Street, Camberly, under the influence of drink to such an extent as to be incapable of having proper control of the vehicle.

SECOND CHARGE A.A.Sec. 40 — CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he between Camberly and Hartley Row wrongfully used a DND vehicle No. CZ4206513 for his own private purpose without authority to do so.

"J. E. Wright" Lieut-Col.
S Sask R

To be tried by F.G.C.M.
"J.P. McKenzie" Brigadier
Comd 6 Cdn Inf Bde

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL, HELD AT CAMBERLY, ON FRIDAY 19 SEPTEMBER, 1941

TRIAL OF NO. LL2032, Pte. Dean, J. G., S. Sask. R.

PROSECUTOR: Lieut. R.A.F. Currie, S. Sask. R.

DEFENDING OFFICER: Lieut. S. Linton, S. Sask. R.

SHORTHAND REPORTER: D24030, S/Sgt. J. H. Spence, H.Q., 2 Cdn Div.

---

1. The Order Convening the Court is read to the accused.

2. The accused is asked the following questions:

Q Do you object to being tried by me as President, or by any of the Members of the Court whose names you have heard read?
A No, sir.
Q Do you object to having the evidence taken in shorthand by the S/Sgt?
A No, sir.

3. The President, Members of the Court and shorthand reporter are sworn.

4. The accused answers to his name and number and is duly arraigned.

5. The accused pleads "Not Guilty" to both charges as set out in the charge sheet.

6. R. P. 39(A) is complied with and the accused answers "No".

THE PROSECUTOR: There is one witness on one charge who is on leave at the present time and I would ask the Court and the defence if they would accept his sworn statement in the summary of evidence, if they would allow that to be written into the case, that is Major McRea's evidence. The second witness on the first charge is still travelling around the country, trying to get here, that is Pte. Trudel. I would like his statement to be written in.

THE DEFENDING OFFICER: As far as Major McRea's statement is concerned there is only one item in it that I object to and that is that he says "no further authorization was given to anyone for the use of this vehicle." The only objection that I have to that is that the vehicle had to be serviced and that the vehicle did make another trip for Major McRea after that time. As far as the rest of his evidence is concerned I am quite willing that it should be allowed but with that one thing in mind I would allow the whole statement, but the vehicle did have to be serviced and that a further trip was made for Major McRea, which makes a different time when the vehicle was actually in use, instead of 1730 hrs. to about 1845 hours, or an hour and fifteen minutes and it does have a bearing on what occurred, but as long as it is admitted by the prosecutor I am quite willing that the whole statement should go in.

THE PRESIDENT: I think it is one of the main points. If you don't agree with that you don't agree with the charge.

THE DEFENDING OFFICER: The only reason I object to that statement completely is on account of the fact that it may put Pte. Dean in a more serious light that he should be and it is evidently an error-- I am quite satisfied that it is an error.

The Prosecution and the accused formally admit the statement of Major J. A. McRea, as it appears in the summary of evidence. The defence feel that they would not be prejudiced by the absence of the witness. They do not wish to delay the Court until his return from the North of Scotland.

The Prosecution formally admitted that it was the automatic practice to gas the vehicle before returning it to the Company parking lines.

The 1st Witness for the Prosecution, M37279, Cpl. Q. E. Lawson, No. 2 Coy. Cdn Pro Corps., having been duly sworn, states:

Q 1 I want you to make your statement to the Court, explain who you are and what you were doing on the night of 29 Aug 41?
A 1 I am a Corporal in the Cdn Provost Corps. I was on foot patrol duty in Camberly on the night of 29 Aug 41, at about 2000 hours, in consequence of a report received I went along High Street and I saw Pte. Dean sitting at the wheel of a truck. He was drunk at the time
Q 2 What grounds have you for saying the accused was drunk?
A 2 He smelt very strongly of liquor and his speech was quite incoherent and when I took him out of the truck he could hardly walk.
Q 3 You say that he required assistance to get out of the truck?
A 3 Yes, sir.

CROSS-EXAMINED BY THE DEFENCE:

Q 4 What time did I understand you to say?
A 4 It was within a few minutes of 2200 hours.
Q 5 When you went down there was Pte. Dean troublesome at all?
A 5 Not a bit.
Q 6 He was quite good natured about it?
A 6 Yes, sir.
Q 7 Was he, to your knowledge, driving the car?
A 7 Not to my knowledge.
Q 8 And not creating any disturbance or objectionable in any way?
A 8 No, sir.

BY THE COURT:
Q 9 You can't say if Dean had been driving the truck?
A 9 No, sir.
Q 10 Did he say that he was alone?
A 10 He wasn't able to tell me, sir. He couldn't talk properly. I asked him if there was anybody with him and he said across the street at the Pub. I went across to the Pub across the street but there was nobody from the S. Sask. R. in the Pub at that time.
Q 11 So he was alone, to your knowledge?
A 11 Yes, sir.
Q 12 Was the motor running?
A 12 No, sir.

THE PROSECUTOR: That is the prosecution case, sir. If it please the Court I will dispense with the evidence of Pte. Trudel. If you notice the charge is made out it is an offence against the Road Traffic Act.

THE COURT: The evidence he gave in the summary is not admissible.

THE PROSECUTION IS CLOSED.

D E F E N C E

R. P. 40 is complied with and the accused elects to give evidence on oath, and to call a character witness.

The accused, L12032, Pte. J. E. Dean, S. Sask. R., having been duly sworn, states:

On the night of 29 Aug 41 I had got paid, after I had taken the Paymaster down to the Company H.Q. and I went down with a bunch of the boys to the Pub and had quite a few drinks and I got very much under the influence, I wasjust with the gang of fellows buying drinks back and forth, and I wasn't sober that night-- I was very much liquored up and I don't remember much of what happened afterwards, only that I remember being violently ill and I stopped the car and got out and I was sick and I got back into the car and sat there to try and clear things up a bit. That is about all I know about the case until the Corporal came along. I don't think there is any more I wish to say.

BY THE DEFENDING OFFICER:

Q 13 At the time you left Major McRae, that was approximately 1730?
A 13 Yes, that is when I dropped him at the Mess.
Q 14 Between the time that you left Major McRae and the time that you were paid, had you serviced the truck during that time?
A 14 No, sir.
Q 15 Did you service the truck after you were paid?
A 15 Yes, sir. Major McRae dismissed me and told me to have the vehicle gassed up and in proper running condition for the following morning.
Q 16 And then what time would you say it would be when you went to the Pub?
A 16 It was going on for 1900 hours.
Q 17 And you had eaten last at what time?
A 17 Lunch hour, sir, at noon, at 12 o'clock.
Q 18 In other words, about seven hours without anything to eat?
A 18 Yes, sir, when I went back after he dismissed me I went back to tthe Coy. H.Q. and from there I went over to the transport lines to service the vehicle and I found the Major's respirator in the truck so I took it up to the Officer's lines to him and coming back the Paymaster was there and he was going down to pay our Company so I drove him down.

CROSS-EXAMINED BY THE PROSECUTOR:

Q 19 You were alone in the truck when you took it out?
A 19 I don't remember much about taking the truck out.
Q 20 You were actually in charge of that truck?
A 20 Yes, sir.
Q 21 You are the one person who drove it?
A 21 Yes, sir.
Q 22 You do admit, then,being under the influence of liquor?
A 22 Yes, sir, very much.

BY THE COURT:

Q 23 At what time did you have the first drink?
A 23 It was after I had filled the truck up with gas, after 6:30.
Q 24 When you had gassed up your car and after you went for a drink you were free?
A 24 Yes, sir.

The 2nd Witness for the defence (character), W.O.II (R.S.M.) Campbell, S. Sask. R., having been duly sworn, states:

I am C.S.M. (W.O.II) H. Q. Coy., S. Sask. R. I have known Pte. Dean for, roughly, two years, he has served with me in the transport section of the S. Sask R. since its inception, he is a diligent soldier

an exceptionally good driver and a man whom you can sent out on a duty and you don't have to look down his collar. He is always on the job. The only time he has ever got into any trouble whatever is after having a drink or two; otherwise Pte. Dean is an ideal soldier.

CROSS-EXAMINED BY THE PROSECUTOR:

Q 25 You say after having had a drink or two?
A 25 Just that, sir, two or three drinks.

THE COURT IS CLOSED FOR CONSIDERATION OF FINDING.

THE COURT IS RE-OPENED AND THE ACCUSED AGAIN BROUGHT BEFORE IT.

The Prosecuter files certified copy of M.F.M. 6 and A.F.B. 296, which are formally admitted by the defence as being correct.

THE DEFENDING OFFICER: There are one or two things I wish to bring to the attention of the Court. As brought out by Sgt-Major Campbell, Pte. Dean has always been a good soldier, the only time he got into trouble was through drinking. In this case, the fact that Dean was kept on duty when he should have gone to the mess and had his supper certainly had a very great deal to do with what happened later on. Any man that does any drinking knows what happens in that case and actually he was on duty until about 1900 hours, which is not the time that any man should have to wait for a meal, that is certainly one of the things that has been a contributing factor. Up to the time that he went back to the vehicle lines and took this car-- if he did take the car-- up until that time he had only been fulfilling his normal duties and carrying on as any soldier would, and then he went to the Pub and proceeded to drink with the boys and it was after that time that things began to happen, and actually what did happen we don't know. And there is one other thing that I want to bring to the attention of the Court and that is that Pte. Dean has now been 22 days in detention on account of this charge, and that seems to me to be quite a long time to be waiting trial and I would ask the Court to take that into consideration when they are coming to their decision.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE.

CERTIFIED TRUE TRANSCRIPT OF SHORTHAND
NOTES TAKEN BY ME IN THIS TRIAL AT THE
TIME AND PLACE AFORESAID.

(D24030, S/Sgt. J. H. Spence.)

The accused elects trial by Court Martial

CHARGE SHEET

The accused, No, L12783, Pte. Segal, R., South Saskatchewan Regt., a soldier of the Canadian Army (Active) is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE, USING SUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER
A.A.Sec. 8(2)

in that he

at Hartley Row on 3 Sep 41, when ordered by Lieut, J.K.Kemp to pick up his feet when marking time, said "What do you think I am doing?" When told by Lieut Kemp not to address him in that manner, said "Do I owe you any money?" When told by Lieut. Kemp, "no" he said "well quit picking on me". Lieut Kemp then demonstrated how he required the marking time done, and told the accused that the feet must be fully six inches off the ground. The accused then turned to Lieut. Kemp and said "Did you measure the distance my feet were off the ground?" Lieut. Kemp replied "No," but I can see whether they are high enough off the ground or not." The accused then said, "You couldn't see anything."

SECOND CHARGE (Alternative) — CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,
A.A.Sec. 40

in that he

at date and place aforesaid wrongfully used the language aforesaid to said Lieut. J. E. Kemp.

("J.E.Wright" Lieut-Col.
Comd. S. Sask R.

TO BE TRIED BY F.G.C.M. "J.P. McKenzie," Brigadier
Comd 6 Cdn Inf Bde.

PROCEEDINGS OF A FIELD GENERAL
COURT MARTIAL, HELD AT CAMBERLY,
ON 19 SEPTEMBER, 1941

TRIAL OF NO. L12783, Pte. Segal, R., S. Sask. R.

PROSECUTOR: Captain J. A. Adam, S. Sask R.

DEFENDING OFFICER: Lieut. S. Linton, S. Sask. R.

SHORTHAND REPORTER: D24030, S/Sgt. J. H. Spence, H.Q. 2 Cdn Div.

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1. The Order Convening the Court is read to the accused.

2. The accused is asked the following questions:

Q Do you object to being tried by me as President, or by any of the Members whose names you have heard read over?
A No, sir.
Q Do you object to the S/Sgt taking down the evidence in shorthand?
A No, sir.

3. The President, Members of the Court and shorthand writer are sworn.

4. The accused answers to his name and number and is duly arraigned on the charges.

5. The accused pleads "Guilty" to the first charge and the second (alternative) charge is withdrawn by the prosecutor.

6. Rule of Procedure 35(B) is complied with.

7. The abstract of evidence is read.

8. The prosecuter files certified copy of M.F.M.6 and A.F.B.296 which are formally admitted as correct by the defence.

BY THE PRESIDENT:

Q 1 Do you have any declaration to make?
A 1 With regard to character, or to the case?
Q 2 Your character first, and after if you--
A 2 I have nothing to say as to character, as a matter of fact this is my first case of Court Martial. As far as my character is concerned I imagine Capt. Adams knows me as well as anybody.
Q 3 You can make a statement in mitigation of your sentence, or bring in any witnesses as to your character--
A 3 That morning when we came out to drill I had got up on the wrong side of the bed. A few days after being in detention I figured things out and I thought "this is all foolish" but it was too late to refer the case back to the C.O., but seeing as how it has come here, how it started, we had been getting officers coming from the Holding Unit, and we understand they come for training, and that certain morning it made it a little bit complicated and it was the cause of the argument, but I think Mr. Kemp was wrong in prolonging the argument. I believe if a man does wrong he should be caught up for it. Our platoon has been subject to a lot of training personnel that comes from outside our unit, and it just gets under your skin, it is just the army, I guess. That is all.

THE DEFENDING OFFICER: In pleading guilty, the accused throws himself on the mercy of the Court. I would like to point out that the accused was aggravated at the time by the events of the previous day and the subsequent conversation with Lieut. Kemp didn't help the matter. I suggest that the accused didn't, at the time, realize the seriousness of the offence, but I think there is one point that the conversation should have been stopped right away and not continued back and forth. The accused's conduct in the battalion has been good, and he has only two

minor entries on his conduct sheet. I would ask the Court not to give this man a heavy sentence.

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE.

CERTIFIED A TRUE RECORD OF THE PROCEEDINGS IN THE ABOVE TRIAL, TAKEN BY ME IN SHORTHAND AT THE TIME AND PLACE AFORESAID.

"J. H. Spence"

(D24030, S/Sgt. J.H. Spence)

21 Sep 41

XXX-34

GNR DEAN M.G

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 28411 GNR MICHAEL GERALD DEAN 6 BN 2 CBRD.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Not Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which —— days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

F.J.

(Sgd) ..... Judge-Advocate, if any. 21 Aug 44. Date awarded. Fernand Trudeau (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date .....

Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. XXX-34

FIELD GENERAL COURT-MARTIAL

CF 296 (In lieu of AF B31/40/P & S/1098 (4))

4/38B

Convened by Order of Brig. E.W. HALDENBY Comd 1 Can Base dated 18 AUG 1944

RECEIVED 26 SEP 1944 A.G. C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (A)/(T) and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Permt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 28411	GNR	Michael Gerald	DEAN	6 BN 2 CBRD

PROCEEDINGS REVIEWED 27 Sep 44

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 21st August 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed. F.J.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) F.J. The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1330 hours trial commences. F.J.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) F.J. The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1) F.J.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(E). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: F.J.

President	MAJOR	Fernand TRUDEAU CK	1 BN 1 CBRD.
Member	CAPT.	A.G. THOMAS	6 BN 1 CBRD
Member	LIEUT	J.F. MACDONALD	6 BN 1 CBRD
Judge-Advocate			
Prosecutor	LIEUT.	D. Johnston.	4 BN 2 CBRD.
Defending Offr	Capt.	G.R. Smith	6 BN 2 CBRD.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 33.)

A8. The accused is (~~not~~) before arraignment made(s) (no) ~~the~~ plea F.J. .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (severally) on all charges in the charge sheet.(1) The accused does (~~not~~) F.J. not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable (you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 37(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 37(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D or by* 2. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ~~whole~~ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the FIRST CHARGE charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
FJ
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.~~ FJ
The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(1. *AA* 54(3) (*d*), *RP* 43, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. *Evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB* 255 *or AFB* 294. 2. *MFM a.* 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of one punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 142, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 320, 563-568, *Changes RD* 309, 2322, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), (*d*)(*i*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of hearer after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A.28411, Gnr. Michael Gerald DEAN, a soldier of the Canadian Army Overseas, on strength 6 Cdn Base Rft Bn, 2 CBRD, is charged with:

FIRST CHARGE
A.A. Sec 8(2)

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER ~~[illegible]~~ EWH

in that he,

in the Field in ITALY, on or about 7 Aug 44, struck Sgt. S.W. NASH of the Regimental Police.

~~SECOND CHARGE~~
~~A.A. Sec 10(2)~~
~~(Alternative)~~

~~WHEN ON ACTIVE SERVICE, RESISTING AN ESCORT WHOSE DUTY IT WAS~~ TO HAVE HIM IN CHARGE, EWH

~~in that he,~~

~~in the Field in ITALY, on or about 7 Aug 44, while under escort of E.12150 Pte [illegible], P., and B.41116 Pte. COLOMBY, L.M., of 1 Cdn Convalescent Depot, resisted the escort by kicking and struggling.~~

11 Aug 44

E.W. Steuart-Jones
Lt.Col.
(E.W. Steuart-Jones),
Commanding,
6 Cdn Base Rft Bn - 2 CBRD

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

E.W. Haldenby

(E. W. HALDENBY) Brigadier
(~~[illegible]~~)
~~[illegible]~~ Commander
1 Cdn Base Rft Gp

In the Field
In Italy
18 Aug 44

Fernand Trudeau Major

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A28411	Gnr		Michael Gerald	DEAN	6 Bn 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached ~~thereto~~ on (*date*) 18 Aug 44 endorsed by me, (~~or by an offr of my staff for such~~)" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~.

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate the offr mentioned hereunder~~.

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	P. Trudeau (CIC)	1 Bn 1 CBRD

MEMBERS.

Capt or Lt to be detailed by OC 6 Bn 2 CBRD

Capt or Lt to be detailed by OC 1 Cdn Conv Depot

(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	Capt or Lt to be detailed by OC 6 Bn 2 CBRD	

~~JUDGE-ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 18 Aug 44

(Signed personally. RP 105 fn 1.) Brigadier (Rank.)

(E. W. HAMMOND)

Commanding 1 Cdn Base Sub Gp - CMF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAM5 (to 3Rd of AZA2) 40/P & S/1867 14491)

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICERS CERTIFICATE
(K.R. (Can) para 557)

I certify that I have this morning examined A/28411 fmr DEAN

of 6 Bn 2CBRD and in my opinion he is fit/~~unfit~~

to undergo trial by Court Martial.

Station Field

Date 21/8/44

Fernand Trudeau Major C McKellar Capt [illegible]
(Medical Officer)

[illegible]

G 18°48 Sgt. NASH S.W - Reg't Police Sgt No 1 Cdn
LON. DEPOT.

FIRST WITNESS: Being duly sworn states:

On the time and date of the charge I was on duty as Reg't police sgt. I walked down to the gate which is north of Conv. Depot after arriving there I met two officers they told me that there was a Cdn. soldier laying alongside of the road I took Pte Adams and Pte Collomby to investigate I found the said soldier laying on a low wall sound asleep. I woke him up and asked him if he had a pass he said yes and started to walk away. Again I asked him for his pass just then a truck came by and he put up his thumb trying to get a drive. I then touched his arm and asked him for his pass. He replied by saying "don't get so jeezeless tough." In the mean time L/Cpl Mercer of the L of C Cdn pronost Coy. came along. The accused then started to walk away. I ordered him placed under close arrest. He made an attempt to strike me. I grabbed him around the neck with my left arm. We started to wrestle we both went down. I landing on top. He started to kick and one foot caught me on the face. One of the men that was standing by said, "Let him get up Sgt." I did so and then he kicked me on the legs. L/Cpl Mercer told him to come to the guard room and he started to fight with him ~~and enough force having to be used~~ We took the accused to the L of C pronost detachment house, I went in the house to make out the charge and get transport to transport him to his unit and left the accused in the custody of me Pte Collomby and Pte Adams. We then escorted him to his unit turned him over to the guard room and the body receipt ~~obtained~~ obtained.

Trust

I recognized the accused.

It was not bright moonlight but it was quite light enough to see and in my opinion the accused could have seen my stripes.

The accused made "motion to strike me and before we fell on the ~~floor~~ ground he had both his fingers under my eyes.

~~He said~~ One of the escort shouted, "let him get up Sgt." and I heard it plainly.

~~W~~ Cross examination by Defending Officer

I had a flashlight

I shone it on the accused not on his face

~~D~~ I used the words "have you a pass"?

I asked him twice ~~on~~ before I touched him and I did not grab him by the arm.

Demonstration by witness off the manner the sgt held accused

The accused was approximately two feet from me when he ~~did~~ denied his fist.

I grabbed ~~he~~ him by the neck for self defense
I had been in hospital with broken hands - I was out of hospital Appx. a week and one hand was still in taped.

~~Have you had~~

Instructions that I have received before are not to lay hands on a man but I had to do it in self-defense.

I do think that by ~~attacking~~ grabbing ~~shoes~~ ahold of him was the only way to defend myself

We wrestled about two or three minutes.

I did not strike the accused while wrestlening with him.

~~Pt~~ The other two Pte's, Pollomby and Adams, did not join the fracas while I was wrestlening.

NO CROSS EXAM.

Turbon by Court.

The condition of the ~~cou~~ accused was that of a sober man.

R. P. 83(b) complied with

Tuesbon.

I recognize the accused.

It was fairly dark.

The Sgt had to use his flashlight

I did not notice ~~of~~ where the ray of the flashlight went because I was behind the sgt.

I cannot state whether it was ~~light enough~~ possible for the Sgt's rank to be ~~seen~~ recognized

I can't say that he had his fist clenched or not.

I can't say if the blow was accidental or not.

The accused did not offer any resistance

The accused was sober

CROSS EXAM.

Defense: Question ~~of the~~ by the Defending officer.

I did not hear the sgt. identify himself.

I ~~h~~ was the person who said, "Let him up sgt".

All I saw was sgt. Nash approaching the accused and ~~I~~ heard Sgt NASH tell him to get up.

He got up immediately.

NO RE-EXAM.

Question by the court

The pass was not shown at all during the fracas.

E-13150, Pte Adams P. 1 Cdn Con. depot Regt police.

Second witness: Being duly sworn states:

On the mentioned date I was on guard duty. At the same time I was on the look out for two Cdn. soldiers who were supposed to have hit and robbed two British soldiers. Sgt Nash and Pte Collomby came up to me. ~~to~~ Sgt Nash asked me to accompany him and Pte Collomby to the road where Sgt NASH had been directed by an officer to a soldier lying down. We walked down the road. Sgt NASH flashed a light into the soldiers face. Sgt. NASH asked the soldier for a pass and the soldier said, "Yes". He then walked down the road Sgt NASH then laid his hand on the soldier and asked him if he knew who he was talking to and the soldier answered "Nobody". Sgt NASH ordered me and Pte Collomby to walk him up to the guard room. We started to walk up the road ~~we~~ and Sgt NASH and the accused were exchanging words. I do not know what they were. The first thing I knew Sgt NASH and the accused were down on the road and struggling. I noticed that the accused had his feet in Sgt NASH's face. I Pte Collomby and I parted them and then walked up the road to the Provost

Questions by the Prosecuting Officer

Sgt NASH's flashlight was shining partially on his head when the soldier got up.

The flashlight was shining on the accused for only a brief period of time.

I recognize the accused.

It was a fairly dark night

It was difficult for anybody to recognize ~~the hand of Sgt Nash~~ Sgt NASH's rank.

The accused went quietly

To my knowledge he was sober.

CROSS EXAMINATION

Questions by the Defending Officer:

I do not remember hearing somebody say "get up Sgt". I did not say it myself.

I had not seen any other exchange of blows except when I saw the accused feet in ~~the face~~ Sgt NASH's face.

The accused ~~He~~ was all bent up with his feet in Sgt NASH's face.

I don't know ~~[illegible]~~ why ~~this Sg~~ his feet should have been in that position.

The accused got up when the light was shining on him.

I do not know why the accused was lying down.

I did not see any difficulty ~~for~~ on the ~~between~~ ~~when between~~ Sgt NASH

I did not have any difficulty separating Sgt NASH and the accused.

I did not notice any further blows after I separated the accused and Sgt. NASH.

NO RE-EXAM.

R.P. 83(b) complied with

Third Witness:

B-41116 Pte LOLLOMBY, L.M. 1 Cdn Ion. Depot Reg't police.

Being duly sworn states:

On the said date at app. 0050 hrs Sgt NASH and I were on special patrol looking for two cdn. soldiers. As we approached the main gate of our area, we were informed by an officer coming in that there was a soldier lying on the wall - about 150 yds down the road. Sgt. NASH and myself, and Pte Adams and L/Cpl Mercer walked down the road to see where the soldier was, we found the accused asleep on the wall. The Sgt. woke him and told him to get up which the accused did. He then asked him where he was from, the accused replied, "EBOLI". The Sgt asked the accused if he had a pass. The accused replied, "Yes I have". He then walked away and started to think an approaching vehicle. The Sgt then called him back. Words passed between them which I did not hear, then I heard the Sgt say, who do you think you're talking to which was answered by the accused, "Nobody" or other words I did not hear. The Sgt then told us to take him down to the guard house. As we started off the accused turned towards the Sgt and made a motion with his arm - the next thing I knew they were both on the ground, struggling. Pte Adams and I stepped in to separate them - I had a hold of one of the accused's feet - L/Cpl Mercer and Myself told the Sgt. to let him up. I ~~let~~ go of his foot - I saw him strike the Sgt's face - we then escorted the accused to the L of C's provost headquarters. We got a vehicle and brought him down to Eboli.

I am not sure if it was produced afterwards.

The struggle started immediately right after Sgt. Nash told us to bring the accused to the guard room.

R. P 83(a) complied with.

Note

The Defending officer submits that the evidence for the prosecution does not establish a prima facie case on the ground that.

1° Accused did not attempt to strike Sgt Nash - he merely defended himself when attack by Sgt Nash

2° Fact of clenching his fists does not necessarily involve the idea of attack.

3° The accused was perfectly sober

4° He did not resist after being told to go to the guard room

5° It was very dark according to the last two witnesses and the accused did not recognized him as a superior officer.

The court is closed for consideration

After discussion in closed Court. it is announced that the submission is allowed

The Accused is declared Not guilty and The Court order the Accused to be immediately release of Arrest.

Fernand Tousley Major

SUMMARY OF EVIDENCE

In the case of A-28411 - Gnr. Michael Gerald DEAN, a soldier of the Canadian Army Overseas, on strength of 28 Rty 6 Cdn Base Rft Bn, 2 CBRD.

BY DIRECTION OF THE COMMANDING OFFICER THIS SUMMARY OF EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS

G-18048 - Sgt. NASH S.W., Regimental Police, 1 Cdn Conv Depot, being duly sworn, states:

I am G-18048 - Sgt. NASH S.W., Regimental Police, 1 Cdn Conv Depot. At or about 2359 hrs 6 Aug 44, while on duty as R.P. Sgt. of 1 Cdn Conv Depot, I walked down to the main gate at the North end of the Depot, near the main SALERNO road. I was informed by a passing officer that there was a Canadian lying alongside the road. I took Pte. COLOMBY and Pte. ADAMS with me to investigate. I then met L/Cpl. MERCIER of L of C Cdn Pro Corps, who accompanied me also. I found the accused, whom I now see and recognize, lying on a low wall. He was asleep, I shook him and awakened him and asked where he was from. He replied, "6 Bn, CBRD". I asked him if he had a pass. He said, "I have". Just then a truck approached. The accused started toward the truck and raised his thumb. I said, "I'm still talking to you. Let me see your pass". He did not stop and I grabbed his arm. He said, "Don't get so goddamn tough". I asked him if he knew who he was talking to. He replied, "I don't give a God damn, it's not so very much anyway". I then ordered him to the Guard room. He hesitated, so I walked up to him, and he stepped toward me. We bumped together. He had doubled his right fist as if to hit and I grabbed him, by putting my left arm around his neck. The accused put two fingers of his left hand under my eyes. We both fell down, and I landed on top. We then grappled. He started to kick and one foot hit me in the face. Then two of my men grabbed his feet, and one of them said, "Let him get up, Sergeant". I started to get up and my men let his feet go. As they did, the accused kicked me on the legs three times, as he lay on the ground. Then, L/Cpl. MERCIER took hold of him and the accused started to fight with him. L/Cpl. MERCIER overpowered him, took him to the L of C Pro detachment HQ. Later I took him under close arrest to 6 Bn and turned him over to the Sgt. of the Guard.

S.W. Nash

(S.W. Nash) Sgt.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

SECOND WITNESS

E-13150 - Pte. ADAMS P., of the Regimental Police of 1 Cdn Conv Depot, being duly sworn, states:

I am E-13150 - Pte. ADAMS P., of the Regimental Police of 1 Cdn Conv Depot. At about 2359 hrs 6 Aug 44 I was on Picquet duty at the main gate near the SALERNO road. I was looking out for two Canadian soldiers who had supposedly robbed two British soldiers. Sgt. NASH came up and an officer told us that a Canadian soldier was lying down on a wall by the road. I went with Sgt. NASH and Pte. COLOMBY down the road, and we were joined by L/Cpl. MERCIER. Sgt. NASH went up to the accused, whom I now see and recognize, and who was lying down, and awakened him.

SECOND WITNESS (Cont'd)

The Sgt. asked, "Where do you belong", or words to that effect. The accused said, "EBOLI", and may have named his Unit, but I am not sure. Sgt. NASH asked, "Have you got a pass?" The accused said, "Yes". The Sergeant ordered him to produce the pass. The accused walked toward the road along which a truck was coming. Sgt. NASH put his hand on the accused and said, "Who do you think you are talking to", or words to that effect. The accused said, "I am talking to nobody", or words to that effect. Sgt. NASH ordered Pte. COLOMBY and myself to take him to the Guard Room (under arrest). Then, the accused started walking up the road~~back~~ with us. He and Sgt. NASH were exchanging words which I didn't hear clearly and did not understand. The next thing I noticed was that the accused and Sgt. NASH were struggling on the ground. Then the accused doubled his legs up and started to kick. One foot hit Sgt. NASH in the face. When I and Pte. COLOMBY stopped the struggle and parted them. Then, Cpl. MERCER, Pte. COLOMBY and myself took the accused to the L of C Provost HQ.

P. Adams Pte

(P. Adams) Pte.

QUESTION BY ACCUSED: "How did you break up the fight?".
ANSWER: "I grabbed both of the men on the ground and pulled them apart".
QUESTION BY ACCUSED: "Why did you kick me", when I was on the ground".
ANSWER: "I didn't kick or hit you at any time in the struggle".

THIRD WITNESS

B-41116 - Pte. COLOMBY L.M., of Regimental Police, 1 Cdn Conv Depot, being duly sworn, states:

I am B-41116 - Pte. COLOMBY L.M., of Regimental Police 1 Cdn Conv Depot. At approximately 0005 hrs, 7 Aug 44, I was on special patrol with Sgt. NASH, near the main gate, on the lookout for two Canadians soldiers. We weretold that there was a Canadian soldier lying on a wall about 150 yds down the road. I went with Sgt. NASH, Pte. ADAMS and L/Cpl. MERCER down the road. I saw the accused lying on the wall. Sgt. wakened him and asked where he was from. Accused said, "EBOLI". Sgt. said, "Have you got a pass". Accused said, "Yes", then walked away and started thumbing an approaching truck. The Sgt. exchanged words which I didn't hear. Then, I heard the Sgt. say something like, "Who do you think you are talking to?". Accused said, "Nobody", and some other words which I didn't hear. Then Sgt. NASH said, "Take him to the Guard Room". Then accused turned and raised an arm and then he and the Sergeant grabbed each other and fell on the road. Then, I and Pte. ADAMS and L/Cpl. MERCER separated them. During the separation the accused kicked the Sergeant in the face. Then, I accompanied the accused to L of C Provost HQ.

L.M. Colomby

(L.M. Colomby) Pte.

QUESTION BY ACCUSED: "Did you actually see me kick the Sgt."
ANSWER: "I let go of your foot and you kicked him in the face".
QUESTION BY ACCUSED: "Do you think I did it intentionally".
ANSWER: "I don't know".
QUESTION BY ACCUSED: "Just before the struggle started, did you hit me, and did you see anyone else hit me".
ANSWER: I didn't see anyone hit you. I didn't hit you, either".

QUESTION TO THE ACCUSED:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence".

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE.

I hereby certify that the above Summary of Evidence consisting of three (3) pages was taken before me in the presence and in the hearing of the accused, and that Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

R Mahaffey Lieut.
(R. Mahaffey) Officer detailed to take Summary of Evidence.

In the Field
8 Aug 44.

Fernand Trudeau Major.

I, No. A.28411, Cmr. Dean, R.C., requests that my Commanding Officer appoint [redacted] Lt. L. D. Baker to defend me at my forthcoming Field General Court-Martial.

(Signed) M L Dean
L.C. Dean, A-28411

5'E-27.

Mr. Dean, O. E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused B137246 Pte (L/Cpl Orville Elroy DEAN RHLI att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for NA beginning on (date) NA (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which no days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for nine (9) months.

(Sgd) Judge-Advocate, if any. 21 Mar 45 Date awarded. (Sgd) " J M Bowman " Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed 23 Mar 45 GSNG

~~I direct that the accused be not committed to prison or detention barracks until further order.~~(1) GSNG

(1. AA 57A. Delete if not used.)

Date 23 Mar 45 (Sgd) " G S N Gostling " (G S N Gostling) Brigadier Commanding 2 Cdn Base Rft Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused: B137246 Pte Dean O.E. C.R.4[illegible] 7-3 d/27 Mar 45

Date: 27 Mar 45

Signature of Offr: " A O Hood " Lt Col Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5E-27

FIELD GENERAL COURT-MARTIAL

CFA96 (To Neu of AFA3) 40/P & B/1608 (4950) 8738B

Convened by Order of Brigadier G S N Gostling ED Comd 2 CBRG dated 20 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B137246	Pte	L/Cpl	Orville Elroy	DEAN	RHLI att 1 Cdn Disciplinary Centre

CERTIFIED TRUE COPY [illegible] Legal Staff 18/4/45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 21 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 27/93

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) ~~&~~ attached thereto.(1) JMB
The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and JMB
each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1050 hours trial commences. JMB

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) JMB
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ JMB

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to NA as interpreter? Ans NA
The Interpreter is sworn.(1) Do you object to NA as shorthand writer? Ans NA
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J M Bowman	48th Highrs att 1 Cdn Disciplinary Centre
Member	Capt	G B Cartmel	RCA att 1 Cdn Disciplinary Centre
Member	Lt	E F McManus	RCE 9 C.B.R.Bn
Judge-Advocate	~~~~	~~~~	~~~~ JMB
Prosecutor	Capt	F C Karn	CIC att 1 Cdn Dis Centre
Defending Offr	Capt	N D Bowler	CIC att 1 Cdn Dis Centre

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO(1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See Dil p 2.)

A8. The accused B137246 Pte(L/Cpl)Orville Elroy DEAN ~~stands~~ arraigns make(s) (no) ~~a~~ plea JMB
(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as to accused's mental fitness to stand trial (AA 130, RP 57), or as one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made to support or oppose it, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. JMB

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans. No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his~~ JMB
~~(their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they)~~ JMB
~~change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly. JMB
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of JMB Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. JMB

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. (2)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Do you intend to call witnesses on your behalf ?
Ans. Are they witnesses as to character only ? Ans.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified extract~~ JMB
~~copies (copies) of Conduct Sheet(s)~~(2) purporting to refer to the accused, which he submits to the Defending Offr for JMB examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "C" and Ex N/A respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 552. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. I wish to plead in mitigation under oath JMB
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by Dr. law of England see AA 40(D), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. JMB

CHARGE SHEET

The accused, B137246 Pte (L/Cpl) Orville Elroy DEAN, ROYAL Hamilton Light Infantry, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE - WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
Sec 15 (1)
Army Act in that he

In the Field, absented himself without leave from 1800 hrs 17 Dec 44 until surrendering himself at 2245 hrs 6 Mar 45.
(Absent 79 days 4 hrs 45 minutes)

" A O Hood "

(A O Hood) Lt Col
Commanding
1 Cdn Disc Centre

In the Field
18 Mar 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
20 Mar 45

" G S N Gostling "

(G S N Gostling) Brig
Comd
2 Cdn Base Rft Gp

JMB

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B137246	Pte	L/Cpl	Orville Elroy	DEAN	RHLI att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 20 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed GSNG or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ Attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I ~~also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J M Bowman	48th Highrs att 1 Cdn Disciplinary Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	G B Cartmel	RCA att 1 Cdn Disciplinary Centre
Lt	to be detailed by OC 9 CBR Bn	9 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 20 Mar 45

" G S N Gostling " (Signed personally. RP 105 fn 2.)

(G S N Gostling)

Brigadier (Rank.)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (FA66 (2p 2nd of AFA3) 40-P & 67167 (4451))

JMB

MFB 246

MEDICAL OFFICER'S CERTIFICATE (R.H.(Can)Form 587)
(CMHQ CL 173)

I certify that I have this day examined B137246

L/Cpl Dean O.E. and in my opinion he is fit/~~unfit~~

to undergo trial by Court Martial.

Station 1 Cdn Disciplinary Centre

Date 21 Mar 45

" A M Davis " Capt
Medical Officer

1 Cdn Disciplinary Centre
Unit

JMB

Plea in Mitigation

The accused, B137246 Pte (L/Cpl) DEAN O.R., having been duly sworn

I am 20 yrs of age enlisted 10 Dec 42 and arrived overseas in Nov 43. I have been in action from 5 Jul 44 until 17 Dec 44 when I went absent. I did not go absent from the front line, but from the rest area. The reason that I went absent was because I could feel myself cracking up as my nerves were very bad. I had not had a pass of any kind in the 5½ months in action and really needed a rest. I regret going absent because I have always tried to be a good soldier. I was made a section leader in action.

I am more than anxious to return to the front line and that is the reason I surrendered myself. I feel very well now and ask that the Court see fit to allow me to go back as soon as possible.

" O E Dean "

JMB.

RP 83 (b) has been complied with

" J M Bowman " Major

Ex "A"

Summary of Evidence in the case of B137246 Pte (L/Cpl) Orville Elroy DEAN, RHLI, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 55 dated 30 Dec 44

Exhibit "B" - Certificate of surrender dated 7 Mar 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A No

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

" Maurice Rousseau " Capt

Officer detailed to take Summary of Evidence

Dated in the Field
17 Mar 45

JMB

Ex "B" "M. ROUSSEAU" CAPT

TO: Officer Commanding
1 DISCIPLINARY CENTRE
CDN ARMY OVERSEAS

99/30/ RHLI/1(A5c)

14 MAR 45

EXTRACTS FROM: UNIT ROYAL HAMILTON LIGHT INFANTRY

Part II Order 55 dated 30 Dec 44

ABSENT WITHOUT LEAVE

AWL from 1800 hrs 17 Dec 44
B137246 L/Cpl Dean O.E.

" J R Fenelon " Capt "C"

SMB

E-A "C" "M. ROBESEAU" CAPT

CERTIFICATE OF SURRENDER UNDER ARMY ACT SECTION 163 (1)(1)

I, Capt D W Caine certify that B137246 Pte Dean C.E. of Royal Hamilton Light Infantry surrendered himself to No 1610210 L/Cpl Wilkinson B of 240 H.Q. Provost Company at BRUGES at 2245 hours on 6 Mar 1945, as a absentee without leave. He was dressed in uniform.

" D W Caine " Captain

Cmdg. 240 H.Q. Provost Company,
C.M. Police

B.L.A.
7 Mar 45

NOTES

If the surrender was made to an O.R., this certificate must be signed personally by HIS Commanding Officer. If the surrender was made to an officer, this certificate may either be signed by that officer or by his Commanding Officer.

In no circumstances should the place of surrender be described as "In the Field" The actual place of surrender should be stated, or if difficulty is experienced in describing the place the map reference should be given.

a MB

Ex "D"

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B137246	Pte (L/Cpl	DEAN O E	RHLI

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For NO MFM 6 available ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for nil beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 14 days in military custody, *i.e.*, nil days in open arrest, 14 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 20 years old

6. The date of his attestation ~~calling up for military service~~ MR is 10th Dec 42

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of‡ CVSM with Medal

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of / / / / / /	
In the war substantive rank of / / / / / /	
In the acting rank of / / / / / /	

SMB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(20091) Wt.42129/4209 42,000 12/44 A.& E.W.Ltd. Cp.698 Forms/7.2 6(War)/4

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		AWOL 6 months		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 21 day of Mar 45

" J A Dibb " Capt
Admin Offr
1 Cdn Disciplinary Centre

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B137246 Pte (L/Cpl) Orville Elroy DEAN RHLI att 1 Cdn Disciplinary Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for NA beginning on (date) NA (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(6). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 22.)

Sentence Awarded by the Court :

To undergo detention for Nine(9) months, ~~and to be [illegible] reduced to the rank of~~ [illegible]

(Sgd) ..... Judge-Advocate, if any. 21 Mar 45 Date awarded. (Sgd) W Lawson Hayes President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed 23 Mar 45

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) .....

Date 23 Mar 45 (G S N Gostling) Brigadier, Commanding 2 Cdn Base Rft Gp

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B137246 Pte Dean, O E	27 Mar 45	..... L/Cpl, Comde, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CR 478 7-3 27 Mar 45

RECORDED AT CMHQ IN AB 160 5E-27.

FIELD GENERAL COURT-MARTIAL

CFA86 (To Illust of AFA81) 40-1 or 8-1808 (4030)

4/38B

Convened By Order of Brigadier G S N Gostling, ED Comd 2 CBRG dated 20 Mar 45

ACCUSED.

(Add as to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-137246	Pte	L/Cpl	Orville Elroy	DEAN	RHLI att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED 23 Apr 45

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH CMHQ

Held at (place) in (country) BELGIUM on (date(s)) 21 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (1).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to NA as interpreter ? Ans NA

The Interpreter is sworn.(1) Do you object to NA as shorthand writer ? Ans NA

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans Nil (2)

(1. RP 102. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, 109E, p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J M BOWMAN	48th Highrs att 1 Cdn Disciplinary Centre
Member	Capt	G B Cartood RCA att 1 Cdn Disc Centre	
Member	Lt	E F McEwan RCE 7 CBR Bn	
Judge-Advocate			
Prosecutor	Capt	F C Kara C.I.C. att 1 Cdn Disc Centre	
Defending Offr	Capt	W D Bowler C.I.C. att 1 Cdn Disc Centre	

Questions by President : Is the Prosecutor a lawyer ? Ans Nil Is the Defending Offr a lawyer ? Ans Nil (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 20 p 2.)

A8. The accused B-137246 Pte (L/Cpl) Orville Elroy DEAN on arraignment make(s) (not) a plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in All cases and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 32 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 895 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Band E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol XI p3

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(*7*) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(*7*), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and extolled true copy (copies) of Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(*b*) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 'D' and Ex 'E' respectively.(3)
(1. *MFB* 152 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans I would like to plead for mitigation under oath.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if and recorded per Notes. Court should permit accused or his witnesses to prove or say anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138. 162, *RP* 43-50, 88, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas KO JOY* 2323, *MML p* 90, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*c*) (*B*), 68(*1*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-137246 Pte (L cpl) Orville Elroy DEAN, Royal Hamilton Light Infantry, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1500 hrs 17 Dec 44 until surrendering himself at 2245 hrs 6 Mar 45.
(Absent 79 days 4 hrs 45 minutes)

In the Field
15 Mar 45

(A C Hood) Lt col
Commanding
1 Cdn Disc Centre

To be tried by Field General Court-Martial

In the Field
20 Mar 45

(G S H Gostling) Brig
Comd
2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

CFA 95 (In lieu of AFA 33)
40/PAS/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 135(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-137246	Pte	L/Cpl	Orville Elroy	DEAN	R H L I att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J M BOWMAN		48th Highrs att 1 Cdn Disciplinary Centre

MEMBERS.

(Rank.)		(Unit.)
Capt	G B CARTMEL	RCA att 1 Cdn Disciplinary Centre
Lt	to be detailed by OC 9 CBR Bn (Named or detailed. RP 106.)	9 CBRBn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 20 Mar 45

(Signed personally. RP 105 fn 2.)
(G S M Goetling)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined B137246 (No.)
L/Cpl (Rank) Dean (Name) O.E. and in my opinion he is
fit ~~unfit~~ to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

Date 2 Mar 45

(Sgd) (Medical Officer)

Unit 1 Cdn Disciplinary Centre

Plea in Mitigation

The accused, B137246 Pte (A/Cpl) DEAN, C.R,
having been duly sworn:-

I am 20 yrs of age, enlisted 10 Dec 42
and arrived overseas in Nov 43

I have been in action from 5 June
until 17 Dec 44 when I went absent. I did
not go absent from the front line, but from
the rest area. The reason that I went absent
was because I could feel myself cracking
up as my nerves were very bad. I had
not had a pass of any kind in the 5½
months in action and really needed a rest.
I regret going absent because I have
always tried to be a good soldier. I was
made a section leader in action.

I am more than anxious to return
to the front line and that is the reason
I surrendered myself. I feel very well
now and ask that the Court see fit to
allow me to go back as soon as possible

C. E. Dean

RP 83(B) has been complied with

(1) Ex "A"

Summary of Evidence in the case of B-137246 Pte (L cpl) ORVILLE BARRY DEAN, RHLI, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 55 dated 30 Dec 44

Exhibit "B" - Certificate of ~~apprehension~~ surrender dated 7 Mar 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. No

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

Maurice Fauteux Capt

Officer detailed to take Summary of Evidence.

Dated in the Field
17 Mar 45.

Ex. B

~~Exhibit "A"~~

PART II ORDER EXTRACT FORM

99/20/ RHLI/1(A5c)

TO: Officer Commanding
1 DISCIPLINARY CENTRE
Cdn Army Overseas

14 MAR 45 19

EXTRACTS FROM: UNIT ROYAL HAMILTON LIGHT INFANTRY

Part II Order No. 55 dated 30 DEC 44

ABSENT WITHOUT LEAVE

AWL from 1800 hrs 17 DEC 44

B137246 L Cpl DEAN C E

MD

The following documents are { attached. Please acknowledge receipt on attached duplicate. required. Please forward same.

Certified to be a true extract from the regimental books and documents in my custody.

Officer in Records
Cdn. Sec. 2 Echn. HQ 21 A Gp.

for

Originating Clerk's Initials

Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 [illegible]

Ex. C. Exhibit 'B'

CERTIFICATE OF SURRENDER UNDER ARMY ACT SECTION 163 (i) (j).

I, Capt. D.W. Caine certify that No. [illegible] Rank. Pte.

Name. [illegible] of. [illegible]

surrendered himself to No. [illegible] Rank. [illegible]

Name. [illegible] of. [illegible]

at. [illegible] at. [illegible] hours on. [illegible] as a

~~Deserter~~ (or absentee without leave)

He was dressed in uniform
plain clothes.

D.W. Caine Captain,
Cmdg. 240 H.Q. Provost Company,
C.M. Police.

B.L.A.
7 AUG 45

NOTES.

If the surrender was made to an O.R., this certificate MUST be signed personally by HIS Commanding Officer. If the surrender was made to an officer, this certificate may either be signed by that officer or by his Commanding Officer.
In no circumstances should the place of surrender be described as "In the Field". The actual place of surrender should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

Ex. "D"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B-137246	Pte (L-Cpl	DEAN OE	RHLI

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For No MFM 6 available ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for [illegible] 14 days in military custody, i.e., NIL days in open arrest, [illegible] 14 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 20 years old

6. The date of his attestation / calling up for military service is 10th Nov 42

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of‡ CVSM with rosette

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of		
In the war substantive rank of		
In the acting rank of		

[illegible]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through*

(27633) Wt.24928/2494 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No MFM o available		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~17~~ 21 day of Mar 45

[illegible] Offr.

1 Cdn Disciplinary Centre

HR-52

Pte Dean R.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-138794 Pte ROBERT JOSHUA DEAN - CIC - 1 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA SEC 18(1)	GUILTY	GUILTY	
2nd AA SEC 40	NOT GUILTY	NOT GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
10 months Detention pra period of six (6) months

(Sgd) ..... 6 Feb/45 (Sgd) ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-573. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, (MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings and sentence of the Court but remit 2 months detention of the sentence.

~~I withhold that the records be sent forward to the Minister of Defence for his decision.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) (E G Blackader) Brig
Date 9 Feb 45 Commanding 12 Cdn Inf Trg Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B138794 PTE ROBERT JOSHUA DEAN	10 Feb 45	A/Offr Comdg 1 Cdn Inf Trg Bde

Promulgated in Pt II DO 34 dated 12 Feb 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 R 4R-52

(Authority: Chief of APAG) 40/P & D/1600 (40/P&D)

4/38B

FIELD GENERAL COURT-MARTIAL

13 FEB 1945 CMHQ

Convened by Order of Brigadier K G Blackader Comd 12 CITB dated 9 Feb 45
DSO, MC, ED

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/oppmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-138794	PTE	Robert Joshua	DEAN	CIC - 1 CITR

REVIEWED 20 Feb 45 [signature] JAG BRANCH C.M.H.Q.
PROSECUTION
REVIEWING OFFICER

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date*(*s*)) 6 Feby 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1715 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused~~: Do you object to ~~be sworn~~ as interpreter? Ans ~~No~~

~~The Interpreter is sworn~~.(1) Do you object to ~~Pte Cpl Sgt Lieut~~ as shorthand writer? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs composing the Court, etc:

President	LT COL	D L REDMAN VD	HQ CIRU
Member	CAPT	L A BOURGEOIS	1 CITR
Member	LT	B J McLEOD	3 CITR
~~Judge-Advocate~~			
Prosecutor	LT	R B ALLAN	1 CITR
Defending Offr	CAPT	R G STAGG	1 CITR

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros is lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (a) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposn, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 7 (C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate insert per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 28.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 733 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 90(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 27(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~ ~~change(s) his (their) plea(s) on the ..... charge(s). Part I of the Schedule is amended accordingly.~~~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (~~them~~) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO - SIR (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 2 nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~disallowed~~ on the ..... charge(s), and ~~allowed~~ on the 2 nd charge(s), and that, accordingly, ~~the trial will proceed on the former, but~~ the accused is (are) found Not Guilty on the latter charge(s).(4)
2 nd (1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 80 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not appropriate when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)
CONTINUED

D9. The ~~accused having been found Guilty on one or more of the charges,~~ the proceedings are concluded by using Record Form E ~~below~~ B above

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans TO the evidence NOTE - ATT
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 255 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Reply if Offr NOTE - ATT
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~ (2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas RO 309, 2323, RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas RO 309, 2323, RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas RO 309, 2323, RP 46. As to sentences see AA 44 (5), MML p 130. When accused MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, No. B-138794 Private Robert Joshua Dean of the Canadian Infantry Corps, on hte strength of No. 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Section 15(2)
ARMY ACT

When on Active Service, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

absented himself without leave from 0800 hrs 21 Dec 44 till 0815 hrs 19 Jan 45 when apprehended at Laurentide Camp, No. 2 Canadian Infantry Training Regiment. Total Absence: 29 days, 15 minutes.

SECOND CHARGE
Section 40
ARMY ACT

When on Active Service, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

at Laurentide Camp, No. 2 Canadian Infantry Training Regiment on 19 Jan 45 made use of a document purporting to be his own, well knowing that it was not his.

G B Dean Colonel

(C.B. Ware) Commander,
No. 1 Cdn Inf Trg Regt

In The Field

22nd day of January 1945

To be tried by Field General Court Martial.

K G Blackader

(K G Blackader) Brig
Comd
1d Cdn Inf Trg Bde

In the Field
5 Feb 45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PA8/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-138794	Pte		Robert Joshua	DEAN	CIC - 1 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Feb 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt COL	D L HEDMAN, VD	Hq CRU
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Captain	to be detailed by Commanding Officer	1 CITR
Lieutenant	to be detailed by Commanding Officer	2 CITR
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Captain	to be detailed by Commanding Officer	1 CITR
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

K G Blackader (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 5 Feb 45

Commanding (K G Blackader) 10 Cdn Inf Trg Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. B138784 P/E Dean R.J.

of 1 B1TR and in my opinion he

is fit ~~unfit~~ to undergo Trial by Court Martial.

Station 1 B1TR

Date 6 Feb 45

[signature] Capt.

Medical Officer

CASE OF

B.138794 Pte DEAN. RJ. 1 CITR.

TRIAL OF ACCUSED ON SECOND CHARGE.

PROSECUTOR STATED THAT HE HAD NO EVIDENCE TO PRESENT TO THE COURT TO DAY ON THIS CHARGE.

THE DFG OFFR MOVED THAT THE CHARGE BE DISMISSED BECAUSE THE PROSECUTION HAD FAILED TO MAKE A PRIMA FACIE CASE.

THE COURT WAS CLOSED.

THE COURT RE-OPENED AND THE PRESIDENT ANNOUNCED THAT THE COURT FOUND THE ACCUSED NOT GUILTY ON THE SECOND CHARGE.

Sir:- I am B-138794, Pte. Dean, R.J. My reason for absence from my unit on Dec 21 was on account of worries which I have had back home, referring to my Mother, who is very ill with cancer. I think very dearly of my Mother. At the time that I went absent, I was receiving very little mail from home. I put in for my leave, as I thought I could relax my mind, but my leave was turned down. That made things worse. I could not concentrate on soldiering so I went to the padre to find out whether he could do anything for me, but I got no results. Then I asked to be paraded to my company comdr so I could tell him my story and he said he would see what he could do.

I waited about two weeks, then I got very, very depressed, so I went absent without leave, not thinking at the time of what harm I was causing myself, as my mind went blank on me.

R. J. Dean.

E-1

Pte. Dean

The accused joined the army [illegible] coming overseas in Jun 44. He has made a written statement, copy of same for your information. Also, a letter from his Mother which bears out the fact that his Mother is ill.

The acc used claims that he felt it was necessary for his well being that he be granted leave and change his environement in order to relax his mind over hte condition of his Mother. He had not been receiving mail very regularily and this added to his troubles. He asked for leave in the usual manner but it was turned down. With the result that he asked to be paraded to his coy comdr. Again, he did not get his request granted. After this last appeal refusal, with the padre being unable to help him, it was then that he decided that he had to have leave, thinking it was essential for his own peace of mind.

E-3

SUMMARY OF EVIDENCE

In the case of B-138794 Pte. Dean, R.J., Canadian Infantry Corps, on the strength of No. 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS for the PROSECUTION

K-66085 L/Sgt Dore, E.J.C., Canadian Infantry Corps, on the strength of No. 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, having been duly sworn states as follows:

I am K-66085 L/Sgt Dore, E.J.C., on the strength of No. 1 Canadian Infantry Training Regiment, employed as the permanent orderly sergeant of "B" Company, No. 1 Canadian Infantry Training Battalion. At 0800 hrs on the morning of 21 Dec 44 while checking my billets for bed inspection before the men went on parade, I was unable to locate the accused, whom I now recognize. He was absent at 0800 hrs and has been absent from each and every roll call since that date.

The accused declines to cross-examine this witness.

(E.J.C. Dore) K-66085 L/Sgt.

SECOND WITNESS for the PROSECUTION

P-13162 C.S.M. Williams, E.J., Royal Canadian Regiment, on the strength of No. 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Exhibit "A".

"Sir:- I am P-13162 C.S.M. Williams, E.J., Royal Canadian Regiment, CSM of R& D Wing No. 2 C.I.T.R. On the 19 Jan 45 at approx. 0815 hrs while making my rounds of "E" lines Laurentide Camp accompanied by C-40015 Cpl Casault, J.P. I found the accused sleeping in hut E-3. I questioned the man, who told me he was on leave from N.E.T.D. Not being satisfied with this I asked him for his M.B.N. Pt I and as this appeared to be false I ordered him into close arrest. The M.B.N. Pt I he gave me was made out in the name of B-133568 Pte Wilson, J.P. On admittance to Unit Guard Room he handed over another M.B.N. Pt I together with a Pt 3 and identity discs which stated him to be B-138794 Pte Dean, R.J. On further questioning the accused admitted being A.W.L. from 1 C.I.T.R. approx. a month. I notified R.M.Q. 2 C.I.T.R. and forwarded this evidence and all documents."

Signed "E.J. Williams" CSM
P-13162 R& D Wing 2 CITR

In my opinion the attendance of this witness cannot readily be procured.

(J.E. Phelps) Officer detailed to take the Summary of Evidence. Lieut.

The accused does not demand the attendance of this witness for cross-examination.

SUMMARY OF EVIDENCE

In the case of B-138794 Pte. Dean, R.J., Canadian Infantry Corps, on the strength of No. 1 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

THIRD WITNESS for the PROSECUTION

C-40015 Cpl. Casault, J.P., Canadian Infantry Corps, on the strength of No. 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Exhibit "A": "Sir:- I have read over and corroborate the above statement.

Signed "J.P. Casault" Cpl. C40015

In my opinion the attendance of this witness cannot readily be procured.

J.E. Phelps Lieut.
(J.E. Phelps) Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

FOURTH WITNESS for the PROSECUTION

A/Capt. E.W.E. Plant, Canadian Infantry Corps, on the strength of No. 1 Canadian Infantry Training Regiment, an officer of the Canadian Army Overseas having been duly sworn states as follows:
I am A/Capt. E.W.E. Plant, on the strength of No. 1 Canadian Infantry Training Regiment, employed as Adjt. No. 1 Canadian Infantry Depot Battalion. I produce as evidence:
MBM Pt I B133568 Wilson J.P.
MBM Pt II B138794 Dean R.J.
MBM Pt III B138794 Dean R.
These documents relate to the accused and are marked Exhibits "B", "C", and "D" respectively and initialed by me for purposes of identification. I also produce Discs Identity, 2, B138794 Dean, R.J. which relate to the accused and are marked Exhibit "E" and initialed by me for purposes of identification.

The accused declines to cross-examine this witness.

A/Capt.
(E.W.E. Plant)

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The Accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

In the Field,
22nd day of January, 1945 J.E. Phelps Lieut.
(J.E. Phelps) Officer detailed to take the Summary of Evidence.

EXA

R&D WING
2 C.I.T.R.

Exhibit "A" GLP

19 Jan 45

Sir,

I am P-13162 C.S.M. Williams, E.J. R.C.R. C.S.M. of R&D Wing 2 C.I.T.R.

On the 19 Jan 45 at approx. 0815 hrs while making my rounds od E lines Laurentide Camp accompanied by C-40015 Cpl. Casault, J.P. I found the accused sleeping in hut E-3.

I questioned the man, who told me he was on leave from N.E.T.D. not being satisfied with this I asked him for his M.B.M. Pt I and as this appeared to be false I ordered him into close arrest.

The M.B.M. Pt I he gave me was made out in the name of B-133568 Pte Wilson, J.F.

On admittance to Unit Guard Room he handed over another M.B.M. Pt I together with a Pt3 and identity discs which stated him to be B-138794 Pte. Dean, R.J.

On further questioning the accused admitted being A.W.L. from 1 C.I.T.R. approx. a month. I notified R.H.Q. 2 C.I.T.R. and forwarded this evidence and all documents.

P-13162 E.J. Williams C.S.M.
.....
(R&D WING 2 C.I.T.R.)

I have read over and correborate the above statement.

C-40015 J.P. Casault Cpl.
.....
(R&D WING 2 C.I.T.R.)

DOCUMENTS
M.B.M. Pt I-B133568 Wilson, J.F.
M.B.M. Pt I-B138794 Dean, R.J.
M.B.M. Pt 3-B-138794 Dean, R.
Discs Identity 2.B-138794 Dean, R.J.

From
2 C.I.T.R.

29 Jan 49

Sir.

I am P-13162 C.S.M. Williams, R.J. R.C.E. C.S.M. of R&D Wing 2 C.I.T.R.

On the 19 Jan 49 at approx. 0815 hrs while making my rounds on the lines Laurentide Camp accompanied by C-40019 Cpl. Desault, J.P. I found the accused sleeping in hut B-3.

I questioned the man, who told me he was on leave from M.S.T.U. not being satisfied with this I asked him for his M.B.P. Pt I and as this appeared to be false I ordered him into close arrest.

The M.B.P. Pt I he gave me was made out in the name of B-133560 Pte Wilson, J.P.

On admittance to Unit Guard Room he handed over another M.B.P. Pt I together with a Pt3 and identity discs which states him to be B-136794 Pte. Dean, R.J.

On further questioning the accused admitted being A.W.O.L. from 2 C.I.T.R. approx. a month. I notified R.M.P. 2 C.I.T.R. and forwarded this evidence and all documents.

P-13162 C.S.M.
.....
(R&D Wing 2 C.I.T.R.)

I have read over and corroborate the above statement.

C-40019 Cpl.
.....
(R&D Wing 2 C.I.T.R.)

DOCUMENTS
M.B.P. Pt I-B133560 Wilson, J.P.
M.B.P. Pt I-B136794 Dean, R.J.
M.B.P. Pt 3-B-136794 Dean, R.
Discs Identity 2.B-136794 Dean, R.J.

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
R138794	Private	Robert Joshua DEAN	Canadian Infantry Corps

1. The following is a fair and true summary of the entries in the regimental ~~and squadron, battery or company~~ conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the * entries for drunkenness must be stated separately and dated.

	* Within last 12 months		* Since Enlistment	
For	AA Sec 15(1)	(2) times	(4)	times
For	AA Sec 22	(1) times	Nil	times
For	AA Sec 24(2)	(2) times	Nil	times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 17 days in military custody, making a total of 17 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~enrolment, attestation~~ paper is 19 years

6. The date of his ~~enrolment~~ attestation specified in his ~~enrolment~~ attestation paper is 15 January 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 470 days

8. The accused is entitled to deferred pay or gratuity in respect of above service

9. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

10. The accused ~~is in possession of, or entitled to a military decoration or military award~~ (*or is in possession of or* entitled to (*state any military decoration or reward*). Canadian Volunteer Service Medal & Clasp.

11. ~~(If the accused is a warrant officer.) The accused held~~ he was made a warrant officer ~~and held the regimental rank~~ of

12. ~~(In the case of an officer.) The accused holds~~ on the army the rank of ~~dated~~ and in his regiment (*or corps or department*) the rank of ~~dated~~

W.O. 57/137/1519 20M. 5/44. P. Ltd. T19-5.

Ex 15
MM

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B138794 *Rank* Private Name DEAN R.J. of CIC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Civil Court	8 Oct 43 Toronto	Theft	Suspended Sentence	
Civil Court	27 Oct 43 Toronto	Theft	Gaol - 15 days	
D.C.M.	Dec 43 Camp Borden Ontario	AA Sec 15(1) AWL AA Sec 40 Conduct to Prej of Good Order & Military Discipline.	90 days Detention	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody. & M.F.M. 4.

Signed this 6 day of Feb 45.

J.H. Galloway Capt.
Offr. i/c Regtl. Documents.

~~[illegible] or [illegible] [illegible], without reduction, to the present date.~~

Date of Promotion

In the rank of years,

In the rank of years,

In the rank of years,

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial a re-information may be collected from such sources as are available and the paragraph, as amended, signed by the Officer.*)

No B13879 Name Dean R.J. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 15 Jan 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/100 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No two | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with (this)	By whom awarded	Remarks
Camp Borden	13 Dec 43	Pte		AA Sec 24(2) Losing by neglect his equip., clothing & Dept Rec. to the amount of $14.41.	Major Spencer (doc)	Admonished	16 Dec 43. DO 299	Col M.P.A. Hare	Stoppages of $14.41.
Camp Borden	30 Nov 43	Pte		1st Charge AA Sec 15(1) AWL whilst in custody from 0845 hrs 30 Nov 43 till appr at Toronto Ont., by civilian authorities dressed in civilian clothes.	L/C Brown Pte Dawson Cpl Franklin Pte Davey	90 dys detn.	DO 311 31 Dec 43	D.C.M.	Stoppages $1.50.
				2nd Charge AA Sec 40. Conduct to prej., etc. in that he at Toronto, Ont on 8 Dec 43 was improperly in possession of a greatcoat property of B14548 Pte Davey S.F.					

(PTO)

No B13879 Name DEAN R.J. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 15 Jan 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/100 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc "S. Eurene" Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with (this)	By whom awarded	Remarks
	Sheet destroyed 10 May 44 Date of Last Entry 1 Apr 44 Cases of Drunkenness (Nil) "S. Eurene" Major								
Camp Borden	14 Jul 43	Pte		A.W.L. from 2200 hrs 14 Jul 43 to 0300 hrs 1 Oct 43 on apprehension by M.P. in Toronto, Ont. Close arrest. Total absence 78 days 5 hrs.	Sgt Cresswell (doc) Major Whitten (doc) L/C Young (doc)	28 dys Detn	2 Oct 43	Lt Col MB Machell	Forf 79 dys Pay (R&I 149(1)a. Cost of apprh. $1.02. Stoppages to value of $27.77.
			2.	Losing by neglect his Kit and equipment to the amount of $27.77 Reduced Price (Close arrest.	CQMS Bennett		2 Oct 43		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 29 Sep 44		Pte		AA Sec 15(1) AWL from 2200 hrs 29 Sep 44 to 2340 hrs 29 Sep 44. Absent 1 hr 40 mins.	Cpl Fraser	Forf 3 days pay FR&I 149(2)	3.10.44	Lt Col RC Coleman	
Field 22 Oct 44		Pte		AA Sec 15(1) AWL from 2200 hrs 22 Oct 44 to 2300 hrs 22 Oct 44. Absent 1 hr.	Cpl Albert Cpl Miller	4 days pay FR&I 149(2)	24.10.44	Lt Col RC Coleman	

Date 6 Feb 45 J.H. Galloway Capt.
Officer IC of Regimental Books

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Toronto 8 Oct 43		Pte		Sentenced by Civil Power on a charge of theft and placed on suspended sentence.		Placed on suspended sentence	DO 260 2 Nov 43	G.V. Keddy Capt.	
Toronto 27 Oct 43		Pte		Sentenced by Civil Power on a charge of theft and committed to gaol for a term of 15 days to date from 20 Oct 43.		Committed to gaol for 15 dys.	DO 260 2 Nov 43	G.V. Keddy Capt.	
Camp Borden 25 Nov 43		Pte		AA 15(1) Absence without leave after having broken out of barracks from 2130 hrs 25 Nov 43 till apprehended by C.Pro.C. Toronto at 0915 hrs 26 Nov 43 Total absence 11 hrs 45 mins. 2nd charge - breaking out of barracks when his duty required him to be in barracks (Close arrest)	Cpl Franklin L/C Bird(doc) L/C Campbell (doc) Pte Wainwright.	14 dys detn stoppages of $1.13-cost of apprehension	29 Nov 43	MPA Hare Colonel	Forf 1 days pay. FR& 149(1)a.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at 1 CITR, In the Field, preliminary to my trial by Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Signed at 1 CITR
In the Field
this 29th day
of January 1945.

R.J. Dean.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lt. K.W. Purcell if he is available.

LIST OF EXHIBITS IN THE CASE
OF
B138794 Pte R.J. Dean, CIC.

EXHIBIT "A" - Written statement of F13162 CSM Williams, M.J., Royal Canadian Regiment.
Written statement of C40015 Cpl Cassault, JP, 2 CITR.
EXHIBIT "B" - MBM 1 Part I of B138668 Wilson, J F
EXHIBIT "C" - MBM 1 Part II of B138794 Pte Dean, R.J.
EXHIBIT "D" - MBM 1 Part III of B138794 Pte Dean, R.
EXHIBIT "E" - Discs, identity, 2, for B138794 Pte Dean, R.J.

LIST OF WITNESSES IN THE CASE
OF
B138794 Pte R.J.Dean, CIC.

FIRST WITNESS FOR THE PROSECUTION	Z66085 L/Sgt Dore, E J C	1 CITR
SECOND WITNESS FOR THE PROSECUTION	F13162 CSM Williams, M.J.	2 CITR
THIRD WITNESS FOR THE PROSECUTION	C40015 Cpl Cassault, J.P.	2 CITR
FOURTH WITNESS FOR THE PROSECUTION	A/Capt E.W.E. Plant	1 CITR

LLL-60

PTE DEAN S.

RECEIVED 27 MAY 1944 BRANCH

RECORDED AT CMHQ IN AB 160 2 LLL-60 G 91

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFA32) 40 P.A.D. 1608 (2664)

Convened by Order of Brigadier E.W. Haldenby Comd 1 Cdn Base Rft. Group dated 30 April 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 187 (3), fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-64447	Pte	Samuel	Dean	4 Bn 1 CBR Gp.

PROCEEDINGS REVIEWED

J.J. Hutchinson Capt
REVIEWING OFFICER, JAG BRANCH

31 may 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 2 May 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for hints and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1005 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ a interpreter? Ans

The Interpreter is sworn.(1) ~~Do you object to~~ a shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member recires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.L. MacInnes	R.C.A.	38 Cdn Base Rft Coy 1 C.B.R.Gp
Member	Capt.	R. Caron	C.I.C.	22 Cdn Base Rft. Coy 1 C.B.R.Gp
Member	Capt.	G. Payette	C.I.C.	1 Bn C.B.R.D
Judge-Advocate				
Prosecutor	Lieut.	F. Patley	C.I.C.	1 Bn C.B.R.D
Defending Offr	Lieut	W.D. Reid	C.I.C.	3 Bn C.B.R.D

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Cmn Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused B 64447 Pte Samuel Dean before arraignment makes(s) (no) (~~or~~) plea. (1)

(1. If a special plea is made for separate trial as one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 20, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62. When several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-64447 - Pte Samuel Dean 4 R Highrs 7 C. 4 Cdn Base Rft Coy 1 Cdn B R Gp

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty	
2nd	Charge	Guilty	Guilty	
3rd	Charge	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 29 days, of which 9 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of one hundred and twenty days.

(Sgd) Judge-Advocate, if any. 2 May 44 Date awarded. (Sgd) A.L. MacInnes Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) Ent

(1. AA 57A. Delete if not used.)

(Sgd) Chr Haldenby Brig.

Date 3 May Commanding COMMANDER 1 CDN BASE RFT GROUP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B 64447 PTE DEAN S.	5 May 44	(A E Davidson) Capt, Adjt. 4 Cdn Base Rft Bn, 1 Cdn Base Rft Gp C M F

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C) 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty ~~to Not Guilty on~~ ~~charge(s)~~. The accused is (are) so informed, ~~and he (they) changes (change) his (their) plea(s) on~~ (charge(s)). Part 1 of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex F, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 8.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here [state Sheets of Record].

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. ..... Do you intend to call witnesses on your behalf?

Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 112.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 127(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (c), RP 45, 120(A).* 2. *AA 54(2), RP 45, 127. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E below~~.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex F (B.C.) and Ex G (B.C.) respectively.(3)

(1. *MFB 2053 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment.(1) Ans. Yes.(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or add anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its powers, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 558, 336, 343-346, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 66(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see letters on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE-SHEET

THE ACCUSED, B 64447 PRIVATE SAMUEL DEAN, 48 HIGHRS OF C, 4 CDN BASE RFT BN 1 CDN BASE RFT GROUP, A SOLDIER OF THE CDN ARMY OVERSEAS, IS CHARGED WITH:-

1st Charge

A.A. Sec 15

(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, In Italy, absented himself without leave from 4 Cdn Base Rft Bn from 0930 hrs 23 Jan 44 until surrendering to CMP at approximately 1030 hrs 26 Jan 44. (Total time absent: 3 days - 1 hr.)

2nd Charge

A.A. Sec 22

WHEN ON ACTIVE SERVICE, WHEN IN CONFINEMENT ESCAPING ~~FROM CONFINEMENT~~,

in that he,

In the Field, Italy, when in confinement in 1 Cdn Base Rft Bn's Guard Room, ~~Canada Barracks~~, did escape at approximately 2200 hrs 5 Feb 44.

3rd Charge

A.A. Sec 15

(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, Italy, did absent himself without leave from 1 Cdn Base Rft Bn from 2200 hrs 5 Feb 44 until surrendering himself at 1 Cdn Base Rft Bn Guard Room at 1900 hrs 3 Mar 44.
(Total time absent: 26 days - 21 hrs).

L. J. Flynn

(L J Flynn) Lt.-col.,
Commanding,
4 Cdn Base Rft Bn, 1 Cdn Base Rft Group CMF

In the Field
21 Apr 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

B. M. Strong
D.A.A.&M.G. Major
for (E. W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group
Cdn Army - C M F

30 Apr 44

FIELD GENERAL COURT-MARTIAL

CFA 30 (In lieu of AFA 3)
40/PAD/1001 (23/43)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-64447	Pte		Samuel	DEAN	4 Bn 1 CBRGp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on 30 Apr 44 (date) endorsed ~~by me~~ by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have) attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	A.L.MacINNES (Must be named. RP 106.)	RCA	38 Cdn Base Rft Coy - 1 CBRGp (Unit.)

MEMBERS.

Capt	R. CARON	CIC	38 Cdn Base Rft Coy 1 CBRGp
Capt (Rank.)	G. PAYETTE (Named or detailed. RP 106.)	CIC	1 Bn 1 CBRD (Unit.)

WAITING MEMBER.

Capt or Lt (Rank.)	To be detailed by OC 38 Cdn Base Rft Coy (Named or detailed, if any. RP 106.)	1 CBRGp (Unit.)
	~~ALTERNATE~~	
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.) (E. W. Haldenby) (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 30 Apr 44 Commanding 1 Cdn Base Rft Group Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

I hereby certify that I have this morning examined B.64442....

Pte. Dean L.....3 Bn., 1. C.B.R.S. and that in my opinion

he is fit to undergo trial by Court Martial.

This 2nd day of

May 1944

[illegible] Capt

572 36-83-4 Jet

B

NOTICE UNDER R.P. 76.

To B 64447 Pte Samuel Dean (48 Highs of C)

Take Notice: That the Prosecutor inrends to call A-22296 Capt White, J.P. 4 CBR Bn as a witness (on your trial by F.G.C.M.) to produce a copy of Pt II Orders, No. 41 d/24 Mar 44, issued by Canadian Section, G.H.Q. 2nd Echelon, C.M.F. and containi the following entries (on page 4).

6 Absent without leave

(a) AWL from 0930 hrs 23 Jan 44, app at 2130 hrs 1 Feb 44

B 64447 Pte. Dean S.

(c) AWL from 2200 hrs 5 Feb 44 , app at 1900 hrs 3 Mar 44
B 64447 Pte. Dean, S.

Receipt of a true copy hereof admitted 26 Apr 44.

S Dean.

AWL

Last Order
No. 40
22 Mar 44

X-LIST 48TH HIGHLANDERS OF CANADA
Part II Orders issued by
CANADIAN SECTION, G.H.Q., 2ND ECHELON, C.M.F.

This Order
No. 41
24 Mar 44

"A" OFFICERS

1. STRENGTH INCREASE

(a) T.O.S. X-4 List (4Bn) from 48 Highrs Training Increment 16 Mar 44. (Auth:-Cdn 02E/1 Div ARS/Trg Inc/1(Cdn 02E) 1 Div ARS/475)
Lieut N.A. Ballard
Lieut R.F. Girdlestone

(b) T.O.S. X-3 List from 48 Highrs 9 Mar 44.
Lieut C.M. Middleton

(c) AMENDMENT Part II Order No.9-A para 1(a) of 13 Jan 44, is amended to read:-
Lieut T.M. Buchanan 11 Dec 43
Lieut P.F. Knight 22 Oct 43

2. STRENGTH DECREASE

(a) S.O.S. X-4 List (4Bn) to 48 Highrs 17 Mar 44.(Auth:- Cdn 02E/1 Div ARS/603)
Lieut R.F. Girdlestone.
Lieut N.A. Ballard

(b) S.O.S. X-4 List (4Bn) to 48 Highrs Training Increment 17 Mar 44. (Auth Cdn 02E/1 Div ARS/604)
Lieut H.R. Grant
Lieut P.F. Knight

"B" OTHER RANKS

3. STRENGTH INCREASE

(a) T.O.S. X-6 List from 48 Highrs 11 Oct 43 (Missing unofficial P.O.W.) Auth-AFW 3014 Ser 209 Page 2 d/18 Mar 44)
B64278 Pte Stanyer W.H.

(b) T.O.S. X-6 list from 48 Highrs 21 Dec 43 (Missing) Auth-AFW 3014 Ser 171 Page 3 d/2 Feb 44
L103461 Pte Paterson R.C.

(c) T.O.S. X-4 List (4Bn) from C.Fro C. X-4 List (4Bn) 18 Dec 43. Auth-2ECH L/O 1 Cdn Div)
B95175 Pte Simpson G.K.

(d) T.O.S. X-3 List from HQ 1 C.I.B. 14 Mar 44.
B75941 Pte McDonald G.E.

(e) T.O.S. X-3 List from 48 Highrs.

B73982	Pte	Allan	A.D.	13 Mar 44
B72777	Pte	Ballantyne	J.	13 Mar 44
F32463	Pte	Crane	R.E.	15 Mar 44
B73098	Pte	Dochorty	J.T.	7 Dec 43
B103109	Pte	Gait	H.R.	14 Mar 44
B72948	Pte	Gray	G.	19 Mar 44
B0157	Pte	Irvine	D.W.	15 Mar 44
B73279	Cpl	James	E.E.(Corp "Bn)	16 Mar 44
B72675	Pte	Knight	A.C.	16 Mar 44

3. STRENGTH INCREASE (CONT'D)

(e)

C120322	Pte	Lavery	A.J.	10 Mar 44
B73660	CQMS	McLean	C.	14 Mar 44
M102929	Pte	Nickle	J.	16 Mar 44
A116801	Pte	Phillips	J.T.	11 Mar 44
B72635	Pte	Ronnie	K.H.	16 Mar 44
H103343	Pte	Robinson	A.M.	18 Mar 44
B17189	Pte	Sagle	F.M.	12 Mar 44
B73420	Pte	Smith	J.G.	17 Mar 44
B74103	Pte	Townsend	J.H.	15 Mar 44
M12429	Pte	Versailles	J.	18 Mar 44

(f) T.O.S. X-4 List (1Bn) from WNSR X-4 List (1Bn) 21 Mar 44. (Auth-CECH/43/Post CIC/1(A7) d/18 Mar 44)
B132630 Pte Shrubb G.

(g) T.O.S. X-4 List (4Bn) from HQ 1 Cdn Corps on Trans to C.I.C. from C.M.S.C. 21 Mar 44. Auth-CECH/44/Trans Gen/2(A7) d/10 Mar 44)
G5299 Pte Goodwin R.C. (Clerk "C")

(h) AMENDMENT Part II Order No. 37-A para 4(a) of 25 Nov 43 insofar as it refers to the u/m is amended to " 29 Oct 43 "
K37566 Pte Kelly J.H.
(CMHQ Records Obs No.X85 d/3 Mar 44)

(i) AMENDMENT Part II Order No. 36 para 2(a) of 11 Mar 44, insofar as it refers to the u/m is " Cancelled"
B73521 Pte Ainsworth S.

(j) AMENDMENT Part II Order 38 para 2(a) of 16 Mar 44, insofar as it refers to the u/m is " Cancelled "
B64278 Pte Stanyer W.H.

4. INTERNAL POSTINGS

(a) Posted from X-4 List(1Bn) to X-3 List 17 Mar 44.
B145881 Pte Girling B.H.

(b) Posted from X-3 List to X-4 List (1Bn) 18 Mar 44.

A4361	Pte	Sherman	G.L.
C65394	Pte	Simpson	W.R.
L6099	Pte	Yandt	R.F.
B78559	Pte	Hicken	E.

(c) Posted from X-3 List to X-9 List 1 Mar 44 Auth- Pending Reboard
D139372 Pte Cunningham M.J.W.

(d) DELETED

(e) Posted from X-3 List to X-9 List 11 Mar 44, Auth-Pending Reboard.
B72982 Cpl Gunn W.E.

(f) Posted from X-3 List to X-9 List 15 Mar 44, Auth-Pending Reboard.
B73181 Pte Munro J.P.
B74062 L/Cpl Craig-Murphie R.

4. INTERNAL POSTINGS (CONT'D)

(g) Posted from X-4 List (1Bn) to X-9 List 15 Mar 44, Auth- Post Order 572 d/16 Mar 44.
B74130 Pte Beatty J.A.
B73106 Pte Barron A.M.

(h) Posted from X-3 List to X-8 List 11 Mar 44, Auth-Post Order (Exit Med) d/10 Mar 44.
D138925 Pte Nelson R.C.J.

(i) Posted from X-4 List (1Bn) to X-8 List 22 Mar 44, Auth-Post Order 72 Exit (Underage) d/21 Mar 44.
B142541 Pte Stewart G.E.

(j) Posted from X-2 List to X-4 List (4Bn) 13 Mar 44, released 25 F.P. Camp.
B74644 Pte MacDonell G.W.

(k) Posted from X-4 List (4Bn) to X-3 List 14 Mar 44.
B74644 Pte MacDonell G.W.

(l) Posted from X-3 List to X-4 List (4Bn) 20 Mar 44.
L100613 Pte Bissett L.

(m) Posted from X-4 List (1Bn) to X-3 List 20 Mar 44.
B107015 Pte Snell M.F.D.
B126600 Pte Wiley W.G.

(n) Posted from X-4 List (1Bn) to X-9 List 22 Mar 44, Auth- Post Order No. 617 d/21 Mar 44.
A4361 Pte Sherman G.L.
C65394 Pte Simpson W.H.

(o) Posted from X-3 List to X-9 List 9 Mar 44, Auth-Pending Reboard.
B73409 Sgt Travers W.A.

(p) Posted from X-3 List to X-9 List 26 Feb 44 Auth-Pending Reboard
F66132 Pte MacDonald J.H.

(q) Posted from X-3 List to X-4 List (4Bn) 14 Mar 44.
F40177 Pte McIntyre J.D.

(r) Posted from X-3 List to X-8 List 14 Mar 44, Auth- Post Order No. 35 d/13 Mar 44.
B73344 Pte Scott D.

(s) Posted from X-4 List (4Bn) to X-8 List 14 Mar 44 Auth-Post Order No. 35 d/13 Mar 44.
B72538 Pte Millar J.

(t) Posted from X-3 List to X-4 List (4Bn).
B64258 Pte Skelly T.P. 16 Mar 44
B73876 Pte MacDonald C.W. 15 Mar 44

4 INTERNAL POSTINGS (CONT'D)

(u) Posted from X-3 List to X-9 List 16 Mar 44, Auth-Pending Reboard.
B59034 Pte Heikkila T.R.
B73062 Cpl Nicholson R.

(v) Posted from X-3 List to X-8 List 14 Mar 44, Auth- Post Order No. 43 d/14 Mar 44.
B72887 Pte Donnelly E.D.
C65093 L/Cpl Webb P.J.

(w) Posted from X-3 List to X-8 List 14 Mar 44, Auth-Post Order (Exit Med) d/14 Mar 44.
B88025 Pte Thompsett G.

5. ATTACHED

(a) Att f.a.p. from X-4 List (1Bn) to F.E. (4Bn) 10 Mar 44, Auth- 1 ECH/Att Order No.17 d/7 Mar 44.
B48959 Pte Hopper G.B.

(b) Ceases att to 1 N.E.T.C. 11 Dec 43.
B144091 Pte Evans R.T.

6. ABSENT WITHOUT LEAVE

(a) A.W.L. from 0930 hrs 23 Jan 44, App at 0930 hrs 1 Feb 44.
B64447 Pte Dean S.

(b) A.W.L. from 0930 hrs 23 Jan 44, App at 1530 hrs 16 Feb 44.
B73521 Pte Ainsworth S.

(c) A.W.L. from 2200 hrs 5 Feb 44, Still absent 0800 hrs 13 Feb 44 (8th Day)
B64447 Pte Dean S.

(d) A.W.L. from 2200 hrs 5 Feb 44, Still absent 2200 hrs 27 Feb 44 (22nd day)
B64447 Pte Dean S.

(e) A.W.L. from 2200 hrs 5 Feb 44, App at 1900 hrs 3 Mar 44.
B64447 Pte Dean S.

(f) AMENDMENT Part II Order No. 28 para 5(c) of 24 Feb 44, insofar as it refers to the A/L is " Cancelled "
B64447 Pte Dean S.

7. PAY AND ALLOWANCES

(a) Granted daily regt'l rate of pay of $1.40

F52331	Pte	Andrews	G.B.	15 Aug 43
B73867	Pte	Armstrong	T.J.E.	25 Oct 43
B143146	Pte	Booth	F.B.	1 Jul 43
B79158	Pte	Harrison	R.	27 Aug 43
B146231	Pte	Vosdingh	D.A.	17 Feb 44

7. PAY AND ALLOWANCES (CONT'D)

(b) Granted daily regt'l rate of pay of $1.50

F52331	Pte	Andrews	G.E.	15 Oct 43
D73867	Pte	Armstrong	T.J.B.	25 Dec 43
C6151	Pte	Ashley	R.C.	10 Dec 43
B143346	Pte	Booth	F.E.	1 Sep 43
B142717	Pte	Bowerman	C.A.	12 Feb 44
B43336	Pte	Callaway	R.C.	5 Nov 43
B145768	Pte	Dunais	F.J.	10 Feb 44
D79158	Pte	Harrison	R.	27 Oct 43
B132324	Pte	Hartwell	A.E.	4 Mar 44
B145320	Pte	Lamontagne	R.J.	10 Feb 44
B149093	Pte	Steinback	T.N.	7 Jan 44

8. PUNISHMENTS

(a) Amendment- Part II Order 1-4 para 13(b) of 3 Jan 44, insofar as it refers to the u/m is amended to:-
1 days pay under FR&I 149 (1)(a) Total Forf of 15 days pay.
14 days pay under FR&I 149 (2)
P16457 Pte Flanagan M.F.

(b) AMENDMENT - Part II Order No. 33 para 4(a) of 6 Mar 44, insofar as it refers to the u/m is amended to " 2 Offences Under AA 11"
K47056 Pte Clarkson R.D.

9. CHANGE OF REGIMENTAL NUMBER

(a) Regimental number changed to B73579. All doc's to be amended accordingly. Auth- CMHQ Records Obs No.783 d/11 Mar 44.
B73449 Pte Trail W.

10. STRENGTH DECREASE

(a) S.O.S. X-3 List to 48 Highrs 9 Oct 43.
B73098 Pte Docherty J.T.

(b) S.O.S. X-3 List to HQ 1 CIB 4 Dec 43.
B75941 Pte McDonald G.E.

(c) S.O.S. X-3 List Died of Wounds 11 Mar 44, Auth-AFW3014 Ser 203 page 4 d/11 Mar 44.
M12564 Pte Moore R.P.

(d) S.O.S. X-3 List Died of Wounds 9 Mar 44. Auth-AFW3014 Ser 204 page 5 d/13 Mar 44.
B130719 Pte Davis A.F.

(e) S.O.S. X-4 List (4Dn) to C Post C X-4 List (4Dn) 10 Mar 44. Auth-CECH/44/Trans Gen/2(47) d/6 Mar 44.
U1610 L/Cpl Anderson H.B.

(f) S.O.S. X-4 List (4Dn) to 48 Highrs 27 Oct 43.
B73477 Pte Wilcox J.K.
(CMHQ Records Obs No. X83 d/3 Mar 44)

(g) S.O.S. X4 List (4Dn) to 48 Highrs 15 Jun 43.
K37566 Pte Kelly J.H.
(CMHQ Records Obs No. X85 d/3 Mar 44)

10 STRENGTH DECREASE (CONT'D)

(h) S.O.S. X-3 List to 48 Highrs 8 Mar 44.
D74267 Pte Gresswell H.E.

(i) S.O.S. X-3 List to Wenforth of C X-4 List (2Dn) 18 Mar 44.
M106429 Pte Ruck M.

(j) S.O.S. X-4 List (4Dn) to 48 Highrs 17 Mar 44. Auth-ECH/1 CD/901 d/13 Mar 44.

D78791	Pte	Despard	W.F.	D144627	Pte	Sutherland	D.M.
D133709	Pte	Wilde	H.S.	D144854	Pte	Wilson	W.J.
D142433	Pte	Workman	N.S.	D6877	Pte	Young	L.H.
H8834	Pte	Oleschuk	S.	D134042	Pte	Tanner	W.J.
D77402	Pte	Wilson	J.W.C.	D145225	Pte	Woods	G.D.

(k) S.O.S. X- 4 List (4Dn) to 48 Highrs 11 Mar 44, Auth-ECH/1 CD/753 d/5 Mar 44.

D143904	Pte	Lyrne	J.R.	M73432	Pte	Loveday	C.R.
A22738	Pte	Darnier	W.J.	D147068	Pte	Dradey	A.C.
D68898	Pte	Dryan	F.C.	D144480	Pte	Clark	J.E.
D75424	Pte	Dickie	P.M.	D72673	Pte	Knight	A.C.
B136473	Pte	Angove	G.R.	D85196	Pte	Denle	P.D.
D46552	Pte	Drooks	H.W.J.	D148139	Pte	Burgess	W.H.
D68712	Pte	Condie	T.M.	D148293	Pte	Embree	L.R.
D46612	Pte	Fagan	H.P.	D68627	Pte	Fraser	T.J.
B46574	Pte	Growden	C.	D75383	Pte	Harris	A.R.E.
B79769	Pte	Hickingbotton	J.R.	D147304	Pte	Hooper	W.C.
B136630	Pte	Insley	V.E.	C120531	Pte	Johnston	J.
D46440	Pte	MacDonald	A.A.	D147783	Pte	Mateyk	G.J.
D68626	Pte	Pelville	J.	A102861	Pte	Gaudette	D.E.
D41021	Pte	Harris	A.E.B.	D70509	Pte	Harrison	W.T.
D143476	Pte	Hitchcock	T.N.	D147077	Pte	Husselstrom	C.A.
B142567	Pte	Ireland	A.T.	D135203	Cpl	Kennedy	W.R.
B40582	Pte	MacIver	R.M.	D83542	Cpl	McIntee	O.H.
D75362	Pte	McCrae	A.M.	D135878	Pte	Moss	C.E.
D137948	Pte	Murphy	J.R.	D139466	Pte	Principe	P.E.
B126253	Pte	Rees	R.J.	D146384	Pte	Rennie	J.J.
D136490	Pte	Smith	J.W.H.	D143452	Pte	Spraggett	T.
B46320	Sgt	Mitchell	A.	D147317	Pte	Mulvihill	D.J.
D32402	Pte	Picard	C.L.	D74069	Pte	Reed	L.S.
D144023	Pte	Reginbal	A.J.	D142284	Pte	Rennie	D.P.
D144952	Pte	Spiers	G.B.	D21199	Pte	Starblanket	J.
D3694	Pte	Gallagher (Clerk "C")	C.C.	D101614	Pte	Gilmour (Clerk "C")	T.A.

(l) AMENDMENT Part II Order No.29 para 9(d) of 26 Feb 44, insofar as it refers to the w/n is " Cancelled"
D73521 Pte Ainsworth S.

/DAS

B T Saunders
(B.T Saunders) Capt,
for Officer i/c
Canadian Section, G.H.Q., 2nd Echelon, C.M.F.

Lieut. E.O. POWELL B.84447 PTE.

DEAN S. 48th HIGHLANDERS OF CANADA

3313982 L/CPL. SHARP G.

NAPLES 26 JAN 44 1030

E.O. Powell Lieut.

LIST OF EXHIBITS in the case of B 84447 Pte Dean S. (48 Highrs of Can)

EXHIBIT "A" Record of Declaration of Court of Inquiry. & Schedule thereto.
EXHIBIT "B" Certificate under Section 163 Army Act Sec (1)(j).
EXHIBIT "C" Statement of Evidence of F 39716 Sgt Whynot, 1 CBR Bn.
EXHIBIT "D" Statement of Evidence of C 5126 L/Cpl Pierce J.E. 1 CBR Bn.

LIST OF WITNESSES FOR THE PROSECUTION:

A 22296 Sgt White J.P. Orderly Room Sgt Clerk 4 Cdn Base Rft Bn.
F 39716 Sgt Whynot R. Provost Sgt, 1 CBR Bn 1 CBR Gp.
C 5126 L/Cpl Pierce J.E., R.P. 1 CBR Bn.

I request that ..... if available act in my defence. If this Officer is not available, I request that the Commanding Officer of HQ, 1 Cdn Base Rft Group, appoint an officer to act in my behalf.

.....Dean.....

Date 25 Apr 1944

Received from 4 Cdn Base Rft Bn, 1 Copy of Charge Sheet and Summary of Evidence, referring to a charge of A.W.L. x Sufficient for which I was remanded for Court Martial

Dean
(Signature)

In the case of B 64447 Pte Samuel Dean

Plea of Mitigation.

A.L.L.

~~The accused joined the Army in April 41 – three years ago.~~

His conduct sheet shows a number of minor crimes, mainly A.W.L.; but these crimes were all in 1941 and 1942 while the accused was serving with the G.O.R. The accused came to the 48th Highlanders in the Sicilian campaign, fought through Sicily and Italy to Campobasso. During that time he had no crime – no misdeed; he did a good job of work and was never in trouble. Taken out of the line at Campobasso the accused, in January of this year, went A.W.L. from a Reinforcement unit for 3 days – clearly a serious crime. He was apprehended and made the mistake of breaking arrest. Apparently he realised the effect of what he had done as, after three weeks of absence, he surrendered of his own volition.

Now Sir, – here is a man whose conduct in his unit and while in the line was exemplary. His only misconduct ~~occurred~~ when taken out of the line – an absence of 3 days followed, unfortunately by a break from confinement and a further short absence. But he did surrender himself, his absence was not long and

it is my humble suggestion to the court that a minimum punishment followed by a quick return to his field unit be considered by the Court. I would like to draw to the attention of the Court that the accused has spent 69 days in custody awaiting this Trial. This is a waste of fighting manpower, an injustice to the accused and a flagrant case of bad man management and should be taken into consideration by the Court.

W.P. Reid Lt
Defending officer

Summary of Evidence Exhibit E. [illegible]

In the Case of B64447 Pte SAMUEL DEAN (48th HSC)
of 4 CBRBn, 1 CBRSp, CA CMF

Charged with: ABSENTING HIMSELF WITHOUT LEAVE (Rallee [illegible])

By direction of the Commanding Officer the evidence is taken on oath.

First Witness } A22296 Sgt WHITE, J.P., 4 CBRBn, 1 CBRSp,
duly sworn, states.

I am A22296 Sgt White, J.P., Orderly Room Clerk, 4 CBRBn.

~~I produce a certified true copy of Record of Declaration of a Court of Inquiry (and schedule thereto) purporting to relate to the accused and declaring him absent without leave from 1730 hrs 23 Jan 44.~~

I further produce a Certificate of Surrender under A.A. Sec 103(a)(i) purporting to relate to the accused and to certify to his surrender at Naples at 1030 hrs 26 Jan 44.

~~I further produce~~

[signature] White

The accused declines to cross examine this witness.

The certified true copy of Record of Declaration of Court of Inquiry (and schedule thereto), and the Certificate of Surrender, mentioned by the witness, produced, read over to the accused, marked EXHIBIT "A" and EXHIBIT "B" respectively, signed by me and attached hereto

[signature] Whyman
Officer Taking Summary

Second Witness } F39716 Sgt WHYNOT, R., Provost Sgt 1 CBRBn, 1 CBRSp.

Document purporting to be a signed statement of the evidence of F39716 Sgt Whynot, R., 1 CBRBn, 1 CBRSp. read over to the accused, marked EXHIBIT C, signed by me and attached hereto.

I certify that, in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the summary of evidence cannot readily be procured.

[signature] Whyman
Officer Taking Summary

The accused does not wish to compel the attendance of F39716 Sgt Whynot, R., for cross examination.

[signature] Dean

Third Witness } C5126 L/Cpl PIERCE, J.E., 1 CBRBn, R.P.

Document purporting to be a signed statement of the evidence of C5126 L/Cpl Pierce, J.E., 1 CBRBn, R.P., read over to the accused, marked EXHIBIT D, signed by me and attached hereto.

I certify that, in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the Summary of Evidence cannot readily be procured.

Abb

E. Drynan Capt.
Officer Taking Summary

The accused does not wish to compel the attendance of C5126 L/Cpl Pierce, J.E. for cross examination.

S. Dean

The accused was warned as follows:
"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence."
The accused replied: "I do not wish to say anything."

S. Dean

The accused declines to call witnesses on his own behalf.

I certify that the foregoing Summary of Evidence consisting of two pages, was taken down by me in the presence and hearing of the accused and that R.P. 4 has been complied with.

E. Drynan Capt.
Officer Taking Summary

In the Field
2. Apr. 44

EXHIBIT "G"

Statement of Evidence of F39716 Sgt WHYNOT, R. Provost Sgt 1 CBRBn 1 CBR Gp.

In the Case of B 64447 Pte Dean, S. (48th H.C.) of CBRBn.

I am the a/m Sgt Whynot. I was on duty in 1 CBRBn Detention Room at 2000 hrs 2 Feb 44 when the a/m Pte Dean, S. reported in to me, stating he had gone A.W.L. from his Field Unit, the 48th Highlanders of Can. On instructions from 1 Bn. Adj. I placed him under close arrest and confined him in 1 Bn Guard Room.

At approximately 2200 hrs 5 Feb 44 the a/m Dean, S. broke confinement, with 4 other prisoners, by saving the bars of the window of the room in which he was confined.

The a/m Dean, S. was absent without leave from 1 Bn from 2200 hrs 5 Feb 44 under he surrendered himself to me at 1 CBRBn Guard Room at 1900 hrs 3 Mar 44, at which latter time I placed him under close arrest.

This is EXHIBIT "C" in the Summary of Evidence in the case of H64447 Pte Dean, S. taken before me 21 Apr 44

[illegible signature]

EXHIBIT "D"

Statement of Evidence of C 5126 of Cpl PIERCE, J.E., 1 CBRBn RP.

In the Case of B 64447 Pte Dean, S. (48 Hy C) 1 CBRBn

I am the a/m of Cpl Pierce, J.E. At about 2200 hrs 5 Feb 44. I was checking the cells at 1 CBRBn Guard Room (in performance of my duty). I noticed several beds empty in one cell. I immediately called the roll of those in confinement. Five men did not answer to their names, including the a/m Pte Dean, S., and none could be located over near the Guard Room. The bars of the window of the cell in which these five men, including the a/m Pte Dean, S., had been confined, had been sawn. The next time I saw the a/m Dean was on 5 Mar 44.

L/Cpl. J.E. Pierce

This is EXHIBIT "D" in the Summary of Evidence in the Case of B 64447 Pte Samuel Dean taken before me 21 Apr 44

[illegible]
Officer Stay Summary

Last Conduct Sheet destroyed 26/11/41

No B54447 Name PTE DEAN S. Sqn, Battery, or Company D. Corps Q.C.R. Date of enlistment 16/4/41 GC Badges Service or Proficiency Pay

Exhibit F Plate

MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet 2/3/42 No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 1. Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	S.O.S. on transfer to 3 Cdn Div Inf Reinforcement Unit 11/10/41								
In the Field	10-2 42	Rfn		A.A. 9 Disobeying a lawful command given by his superior officer in that he failed to move at the double when ordered to doso at 1540 hrs 10-2-42	Cpl Roos J	7 dys C.B.	11-2-42	Major J G Spragge	
In the Field	24 Feb	Rfn		A.A.40 In that after being warned failed to turn in his blankets	Rfn Kane H	2 dys C.B.	4 Mar 42	Major GFC Pangman	
In the Field	25-5 42	Rfn		AA 15(1)AWL from manoeuvres from 0430 hrs 25-5-42 to0200 hrs 26-5-42(Absent:1dy 17hrs 30 mins)	Cpl Peterkin	5 dys C.B. 5 dys pay	5-6-42	Lt.-col JG Spragge	Forfs 2dys pay under FRAI 149 (1)(a)
Field	29-9 42	Rfn		AASec15(1)AWL from 2359 hrs 29 Sep to 2325 hrs 30 Sep. (23 hrs 25 mins)	Cpl Farzwell	7 dys C.B. 7dys forf pay	6 Oct 42	Capt S M Lett	1 dys forf pay FRAI 149

Cost of Return £1.3.6

(PTO)

57236-8-8

Place	Date of offence	Rank	Cause of detention	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	9-9 42	Rfn		WCAS AA 15 (1) AWL from 2200 hrs 9 Sep to 2330 9 Sep 42(1hr30mins)	Cpl Hutley	7 dys C.B.	10 Sep 42	Capt S C Hayes	
Field	13 Nov 42	Rfn		AA Sec 15(1) AWL from 2359 hrs 13-11-42 to 2130 hrs 23-11-42 (9 Days 23½ hrs)	Sgt Jones Documentary	28 days F.P.		26-11-42 Lt.col JO Sprague	Forfs 10 dys pay Forfs 28 dys pay
Field	30 Jan 43	Rfn		AA 15(1) AWL from 2359 hrs 30 Jan to 1100 hrs 31 Jan 43(11hrs 1min)	Cpl Horslin Cpl Galstone	5 dys C.B. 5 dys pay	4 Feb43	Lt.col JO Sprague	Forf 1 dys pay DRAI 149 (1)(a)
	Certified true copy from the Regt'l Book in my custody.								
	(A E Davidson) Captain Adjutant,								
21 Apr 44	4 Cdn Base Rft Bn, 1 Cdn Base Rft Group - CMF								

S12326-8-2

Exhibit G

ARMY FORM B. 2161.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 64447	PTE	SAMUEL DEAN	48 Highrs of Can (4 CBR Bn)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheets mentioned should be produced in court with the statement but not annexed to the proceedings.

† See para. 671, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, pre-sumption being given to the most serious charges in each entry, and to each recognized special act of gallantry or distinguished conduct.

† Instructions.—If the charge is of drunkenness, give the dates of drunkenness only as stated separately and dated.

	* Within last 12 months.		* Since Enlistment.
For AA Sec 9	– times	1	times.
For AA Sec 15 (1)	– times	5	times.
For AA Sec 40	– times	1	times.
For	times		times.
For	times		times.

Number of instances of gallantry or distinguished conduct

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence of ~~imprisonment~~ detention commencing on the ~~xxxxxxxxx~~ day of

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 69 dys 16 hrs 30 min in military custody, making a total of 69 dys 16 hrs 30 min of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 27 y 2 m

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 16 Apr 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A, dated , and in his regiment (*or* corps *or* department) the rank of N/A dated

(1)(8289) W1.10815/144 125,000 6/41 A.&E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B 64447 Rank Private Name DEAN S. of 48 Highrs of C Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
N/A	N/A	N/A	N/A	N/A

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2 day of May 44

C. E. Davidson Capt

1A. The accused has served as a non-commissioned officer conformably, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years .....

In the rank of ..... years .....

In the rank of ..... years .....

(Insert rank.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

S-P-119

Bdr. Dean, T.R.

CHARGE SHEET

The accused, Number G-8204 Bombardier Thomas Ralph DEAN, 90 Bty, 1 Anti-tank Regiment R.C.A., a soldier of the Canadian Army Overseas, when on active service, is charged with

CHARGE ONE
A.A. Sec 15(1)

When on active service, absenting himself without leave

in that he

At WILHELMSHAVEN, GERMANY, absented himself without leave from roll call at 0900 hours 14 May 45 until 1630 hours 18 May 45.

CHARGE TWO
A.A. Sec 40

When on active service, conduct to the prejudice of good order and military discipline

in that he

In the Field, between 14 May 45 and 18 May 45, was improperly concerned in the use of Canadian Military Vehicle WD Number CL 4270560, 60 cwt 4 x 4 GS.

BILTHOVEN, HOLLAND
29 Jun 45

(G.T. White) Major
A/CO 1 A tk Regt RCA

To be tried by Field General Court Martial.

2 Jul 45

(W S Ziegler) Brig
CRA 1 Cdn Inf Div

CFA95 (In lieu of AFA8)
40/P&S/1697 (2868)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G8024	Bdr		Thomas Ralph	DEAN	1 Cdn A tk Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~[illegible]~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 Jul 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	L Hemsworth (Must be named. RP 106.)	11 Cdn A Fd Regt (Unit.)

MEMBERS.

Capt	F A Oliver	1 Cdn Med Regt
Lt (Rank.)	G E Mitchell (Named or detailed. RP 106.)	1 Cdn Med Regt (Unit.)

WAITING MEMBER.

Lt (Rank.)	R J Hauser (Named or detailed, if any. RP 106.)	11 Cdn A Fd Regt (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.) — W S Ziegler (Signed personally. RP 105 fn 2.) — Brig (Rank.)

Date 2 Jul 45 — Commanding GRA 1 Cdn Inf Div Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

KR (Can) Para 557

I certify that I have this morning examined

Number 68204 Rank Bdr Name Dean T.R.

of 90th Bty 1st Regt RCA
(unit)

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial

Station Field

Date 4/7/45.

H.C. Graves Capt
Medical Officer

RECORDED AT CMHQ IN AB 160. 57 Pte 119

FIELD GENERAL COURT-MARTIAL

Convened by Order of BRIG. N.S. ZIEGLER. Comd CRA 1 CDN INF DIV dated 2 JUL 45

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: 13.8204 Bdr. Dean, Thomas Ralph 1 A Tk Regt.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd	Not Guilty	Guilty.	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) N/A. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in ~~Confinement~~ awaiting present trial—a total of 35 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the ranks.

(Sgd) ..... Judge-Advocate, if any. 4 Jul 45 Date awarded. (Sgd) H Hemsworth President. Maj a RCA

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP (2)(A)(i). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is

The finding of the Court, that the plea in bar of trial is not proved, is CONFIRMED and I confirm the finding and sentence.

~~I direct that the accused be not committed for trial or detention beyond until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) C.H. Douglas Brig

Date 7 JUL 45 Commanding CRA 1 CDN INF DIV Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused G8204 GORDEAN, THOMAS RALPH Date 10 JUL 45 Signature of Offr. Ralph de Cosmos Lt. RCA

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 27 JUL 1945 CMHQ

PROCEEDINGS REVIEWED 27 July 45 Capt. REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS REVIEWED 21 Army Gp R.C.A.

35 days 4 days

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent, or confirmed (b) absent, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 329, 330.)

Number (a) Pmnt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname. Unit.

G8024 Bdr. THOMAS RALPH DEAN 1 CDN. A.T. & Regt. R.C.A.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND. on (date(s)) 4 JUL 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 1. Citations do NOT include all relevant fmn ROs. For guidance as to procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the (CO)(2).~~ NA

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans

~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~ NA

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 108. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	L. HEMSWORTH	11 CDN A.F.D. REGT.
Member	CAPT.	F.R.S. ONNER	1 CDN FLD REGT.
Member	LT.	G.E. MITCHELL	1 CDN FLD REGT.
Judge-Advocate			
Prosecutor	LT.	H.S. SOPER	1 CDN A.T. REGT.
Defending Offr	MAJOR	D.N. BYERS	2 CDN ARM REGT.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans Yes. (2)

(1. RP 16, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Auth. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See (2) p 3.)

A8. The accused G8024 Bdr. THOMAS RALPH DEAN before arraignment make(s) (no) plea (s) in bar R.P. 36(ii) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GB), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references to fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 24, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

36178-

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ~~3~~ 5

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p*54 *para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Extra Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No. .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ~~first~~ second ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ~~first~~ second ..... charge(s), ~~and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4) ~~He~~

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans No. Do you intend to call witnesses on your behalf ?

Ans No. ~~Are there witnesses as to character only ? Ans~~ ~~Yes~~

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ are (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ~~first~~ second ..... charge(s), being subject to confirmation, will be promulgated later.(1)

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.* 2. *AA 54(3), RP 45, 120(A).*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(ies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "A" and Ex "B" respectively.(3)

(1. *MFB 3&5 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 per r 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 75(D). One sentence only, comprised of the punishment or punishments (and dismissal) in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MAML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. As to release from arrest by Court on signing Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

PROCEDURE

in the case of

G-8204 Bdr DEAN, T.R.

Before arraignment the defence made a plea for bar of trial under 36 A2.

1st WITNESS

G-8024 Bdr Dean, T.R. 1 Cdn A/Tk Regt RCA sworn.

Q-1 - What was your unit 13 May 1945?

A-1 - 16 Cdn AA OR.

Q-2 - What was your job?

A-2 - Motor Mechanic.

Q-3 - What were your duties?

A-3 - Complete charge of MT and fitting spare parts.

Q-4 - From 18 of May until the break-up of your unit what were your duties?

A-4 - In charge of MT.

Q-5 - During that time were your duties restricted?

A-5 - No.

Q-6 - Did you have duties that took you out of the area?

A-6 - Yes. Picking up spare parts.

Q-7 - Did anyone accompany you?

A-7 - No.

Q-8 - What authority did you have? Who sent you?

A-8 - Quartermaster Capt. I would tell him what I needed.

Q-9 - On or about 18 May were you put under arrest?

A-9 - No.

Cross-examine - None.

2nd WITNESS

H-40795 Sgnn BERG, H.V. 4 Coy 1 Cdn Army Sigs sworn.

Q-1 - On and just after 18 May what was your unit?

A-1 - 16 Cdn AA OR.

Q-2 - What were your duties?

A-2 - Driver Mechanic driving a line truck.

Q-3 - Did you know accused?

A-3 - Yes.

Q-4 - From the 18th May to the break-up of unit what were accused duties?

A-4 - In charge of MT.

in the case of

G-8204 Bdr DEAN, T.R.

Q-5 - You know the accused is charged with two offences?

A-5 - Yes.

Q-6 - Who was with accused during period of alleged offences?

A-6 - I was.

Q-7 - Were you or the accused placed under arrest on or shortly after 18 May 45?

A-7 - I was not.

Q-8 - Do you from your own knowledge whether after 18 May 45 accused was sent out of unit lines?

A-8 - Yes. I saw him go out with trucks.

Q-9

Cross-examine - None.

ADDRESS OF DEFENDING OFFICER

Major D.N. Byers - 2 Cdn HAA Regt.

Plea in bar of trial as in MML covers just this type of case. The reason behind it is that the law considers it inequitable if a man is accused of certain offences to allow that man to continue doing the same duties out of which his alleged offences arose. The practical application of that is generally known to all in the Army. That is, if an officer or a soldier has committed a Court Martial offence he is almost invariably placed under close arrest, and taken off the duty he was formerly doing.

The Summary of Evidence of alleged offences of the 18 May. Summary of Evidence started on 11 Jun 45 and the supplementary Summary of Evidence on 25 Jun 45. Summary of Evidence should be held the same day as investigation.

ADDRESS OF PROSECUTING OFFICER

Lt. H.S. Soper - 1 Cdn A/Tk Regt.

Refer to KR Can. 452 B & C. The accused may still be required to do all duties.

COURT RULES. No condonement because as a Technical NCO in a small unit, it would be necessary for him to carry on duties.

ADDRESS FOR THE PROSECUTION

Lt. H.S. Soper - 1 Cdn A/Tk Regt

The accused is charged with absent without leave and concerned with improper use of a WD Vehicle during the same period. The two offences were committed at the same time and were closely related. By evidence produced by cross-examination of witnesses, the prosecution will prove them simultaneously. It will become obvious they are interdependent.

PROCEDURE

in the case of

G-8204 Bdr DEAN, T.R.

The prosecution will base the case for absent without leave on ref the Army Act MML page 441. Note 1 para 5. Also MML Chapter 6 para 13.

1st WITNESS
Prosecution D-118573 Sjt SULLIVAN, A.J. - 14 Cdn Fd Regt RCA sworn.

Q-1 - From 14 May to shortly after 18 May 45 what was your unit?

A-1 - 16 Cdn AA OR.

Q-2 - Was accused one of the men of which you were in charge?

A-2 - Yes.

Q-3 - When did you first find the accused absent?

A-3 - 0900 hrs 14 May 45.

Q-4 - When did you see him next?

A-4 - About 1630 hrs 18 May 45.

Cross-examine - None.

2nd WITNESS
Prosecution Capt. F.R.P. ARSENAULT - 6 Cdn Fd Regt RCA sworn.

Q-1 - What was your unit 14 May 45?

A-1 - 16 Cdn AA OR.

Q-2 - Was accused under your command?

A-2 - Yes.

Q-3 - What do you know of this case?

A-3 - On 12 May 45 Bdr Dean asked ~~he~~ go for MT parts. I told him of several Work Shops in the vicinity of WILHELMSHAVEEN. I signed 1045s for him. I did not see Bdr Dean again until the 19 May 45. Destination of trip was not stated. No work ticket submitted.

Q-4 - Did you give Bdr Dean orders where he was to go?

A-4 - No.

Q-5 - What orders were given regarding near-by workshops?

A-5 - I told him to try work shops, but no orders given to go far from Wilhemshaveen.

Q-6 - Were work tickets in use?

A-6 - Yes.

Objected to by the defence, because he is giving evidence that an order existed in the unit.

Q-7 - Had you signed Work Ticket for vehicles at this time?

A-7 - Yes.

PROCEDURE

in the case of

G-8204 Bdr DEAN, T.R.

Q-8 - Had any work tickets been submitted by Bdr. Dean previous to this offence?

A-8 - I had signed many, but cannot remember if I signed any immediately previous to 13 May 45.

Q-9 - What was the date work tickets came into use.

A-9 - About two or three weeks before this.

Q10 - What manner was the fact that work tickets were needed announced?

A10 - Published in Unit orders.

Q11 - Did you see the orders?

A11 - Yes.

Q12 - How were orders published?

A12 - Posted in mess halls and prominant places.

Cross-examine

Q-1 - Were work tickets generally used in operational role?

A-1 - No.

Q-2 - On 12 May 45 your talk with Bdr. Dean approved him of going to get parts?

A-2 - Yes.

Q-3 - Did you specify time or place?

A-3 - No.

Q-4 - Did you ask him to bring a work ticket to you?

A-4 - No.
Witness now identifies 1045s marked Exhibit "C".

Q-5 - On return of Bdr Dean did he bring parts back?

A-5 - Some, not all.

Re-examine by Court

Q-1 - Had these expeditions been taken before?

A-1 - Yes.

Q-2 - Had he been away over-night before?

A-2 - Yes.

Q-3 - Had he been sent on these trips officially?

A-3 - Yes.

PROCEDURE

in the case of

G-8204 Bdr DEAN, T.R.

3rd WITNESS Prosecution H-40795 Sgmn BERG, H.V. - 4 Coy 1 Cdn Army Sigs sworn.

Q-1 - What unit were you in from 13 to 18 May 45?

A-1 - 16 AA OR.

Q-2 - Did you accompany Bdr Dean on this trip?

A-2 - Yes.

Q-3 - What were your instructions or orders?,

A-3 - Warned by Bdr Dean the night before.

Q-4 - Were you told where you were going?

A-4 - No.

Q-5 - What was your destination when you left the unit?

A-5 - Cdn Workshops at MEPPEN.

Q-6 - Did Bdr Dean indicate his intentions if no parts available at MEPPEN?

A-6 - No.

Q-7 - Did you have a work ticket?

A-7 - No.

Q-8 - Had orders been issued that work tickets were necessary?

A-8 - In operations work tickets were not needed. They started at OLDENZAAL, but started to fall through after the next move.

Q-9 - Were work tickets required at WILHELMSHAVEN?

A-9 - Yes.

Q10 - Tell the Court what took place on the trip from morning 13 to 18 May 45.

A10 - On the morning of 13 May 45 at approx 0730 hrs I left with Bdr Dean to pick up spare parts. Our first stop was at the salvage dump at MEPPEN. After Bdr Dean found he could not get the parts we left for a salvage dump at GRAVES. When we arrived at GRAVES the salvage dump was closed so we proceeded to TURNHOUT. On our arrival at TURNHOUT, we looked for the salvage depot where Bdr Dean at once changed a jeep motor, but found it had been moved. As the time was now approx 2030 hrs we decided to go to HALAAR for the evening where we were once stationed. Afterstaying there the night we visited friends on the following day, 14 May 45. In the evening of the same day after watching a Victory Parade we decided to return to our unit. After leaving HALAAR we proceeded about five kilometers and came upon a street dance in progress. We watched it for about ten minutes, th[illegible] then Bdr Dean got out of our vehicle.

I then proceeded to PUTTE ten kilometers from where I left Bdr Dean. After stopping for about fifteen minutes at PUTTE, at another dance, I started to return to where I left Bdr Dean. Approx 1 kilometer from HEYST-OP-DEN-BERG I met with an accident. After giving the Military Police the required information I went to a work shops in MECHELIN with the vehicle where I spent the night. On the morning of the 15 May 45 I went to HEYST-OP-DEN-BERG where I found Bdr Dean and explained to him what had happened. I stayed in HEYST-OP-DEN-BERG for the night and on the morning of the 16 May 45 I returned to the work shops and helped finish repairs on my vehicle. We were ready to start for the unit when we discovered that owing to the accident our headlights would not function. We remained in HEYST-OP-DEN-BERG and on the following morning 17 May 45 we started for the unit. Upon arriving at ZUTPHEN we were requested by two Army officers to tow their broken-down jeep to HENGELO. After doing so we proceeded to OLDENZAAL where we spent the night. On the morning of 18 May 45 we proceeded to MEPPEN where we obtained the required spare parts and went back to our unit, arriving at approx 1630 hrs.

Q-11- How far is HEYST-OP-DEN-BERG from MECHELIN?

A-11- About 20 kilometers.

Q-12- What time did you decide to return on 16 May 45?

A-12- After supper.

Q-13- What time did you discover that the lights weren't working?

A-13- I do not know.

Q-14- Was it dark?

A-14- No.

Q-15- How far is it from TURNHOUT to HALAAR?

A-15- I do not know.

Q-16- How long does it take to drive from TURNHOUT to HALAAR?

A-16- An hour and a quarter to an hour and a half.

Q-17- What time did you first arrive at HALAAR?

A-17- About 9 o'clock at night.

Q-18- Did you have any reason to go to HALAAR other than to visit friends?

A-18- No.

Q-19- Did you have a reason to stay other than visiting friends?

A-19- No.

Q-20- Could you have continued to go to unit on 14 May 45 if you had not stopped at the street dance?

A-20- Yes.

PROCEDURE

in the case of

G-8204 Bdr DEAN, T.R.

Q-21 - On 14 May 45 was any effort made to look for spare parts?

A-21 - No.

Cross-examine

Q-1 - During and at the time you were at WILHELMSHAVEN were vehicles out without work tickets?

A-1 - Yes.

Q-2 - Do you know of vehicles legally ordered, but no work tickets signed?

A-2 - Sometimes one work ticket was used for all day.

Q-3 - Was there a close check on vehicles?

A-3 - No.

End of case for prosecution.

Defending officer submits evidence for prosecution does not prove vehicle concerned in charge two. Ref R.P. 70. (Foot note).

COURT RULES - submission is dis-allowed in that the number of the vehicle used is not essential to constitute the offence. The offence would have been the same had any vehicle been used.

No witness for the defence because all facts are before the Court.

CLOSING ADDRESS FOR THE PROSECUTION

Prosecution submits charges against accused proved. According to evidence the accused proceeded on a trip in charge of a WD Vehicle and although the purpose was authorized, the trip was not. Also accused abandoned purpose of trip and proceeded to visit friends and attend street dances. The trip was not authorized because no work ticket was submitted when they were in order. Had a ticket been used, Capt Arsenault would have filled in the destination. This removes authorization for extended trip and places full responsibility on the accused. No justification for accused to have gone farther than MEPPEN without further instructions from Capt Arsenault. He therefore acted on his own authority to go to GRAVES and TURNHOUT. For this part of the trip the defence may plead initiative of an NCO. The prosecution is willing to admit that initiative, constructive and well-guided initiative is an admirable quality in an NCO and that an NCO should not be penalized for using it except for a good reason. Nevertheless, any soldier acting on his own authority and without authority of his superior officers must be prepared to accept the responsibility from the result of his unauthorized actions. If the accused had returned from TURNHOUT directly and reported at the earliest possible moment to Capt Arsenault, and even though his return had been expected on the 13 May it is quite probable that a certain amount of lee-way would have been allowed for imitiative. However, any commendable or excusable deviation from the authorized

in the case of

G-8204 Bdr DEAN, T.R.

actions was completely prejudiced by the accused entirely unjustified joy-ride to HALAAR and the entirely unwarranted three days wasted as a result of that action. Therefore the day and one half spent in returning from HALAAR to WILHELMSHAVEN must be included in the period of AWL and improper use of the vehicle.

CLOSING ADDRESS FOR THE DEFENCE

Evidence on a second charge is from Capt Arsenault who gave permission to the accused to go and did not lay down where he was to go or how long he could be away. I submit that Capt Arsenault's evidence shows sufficient authority for accused to use vehicle. The 1045s show that a fair number of parts were needed and it is in the evidence that accused did bring parts back.

On the first charge the same evidence I submit was sufficient authority for accused to leave unit. I stress evidence that accused had made similar trips, some for more than 24 hrs in the past. Should Court decide guilty on the first charge, I submit that period of absence be less that that on charge sheet. Evidence shows accused as looking for parts the greater part of the time and he was not responsible for the break-down of vehicle which caused further delay of his return.

ADDRESS OF DEFENCE IN MITIGATION OF PUNISHMENT

Accused came overseas in February 1941 and is assigned to a repat draft now. The draft is likely to be called in a short time - a week or ten days. Accused is married and a wife in Canada awaits his return. I suggest the sentence should not affect his return to Canada.

[illegible] No. 260	16 Cdn A A Ops Room.	May 13/45
Ford 15 cwt. C.Z. 4205275	Muffler and Inlet Pipe	301XF 5230A
	Distributor Complete	21A-12100
	~~[illegible]~~	

Exhibit "C"

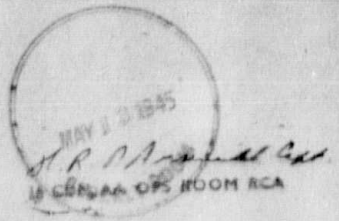
[illegible]

MAY [illegible] 1945
16 CDN AA OPS ROOM RCA
[illegible]

Unit No. 260	16 Cdn AA Ops Room.	May 13/45
Ford 15 cwt. C.2. 4205275	Muffler and Inlet Pipe Distributor Complete ~~[illegible]~~	G01YF 5230 A 21 A - 12100

MAY 13 1945
16 CDN AA OPS ROOM RCA
ORDERLY ROOM

Track No. 200	12 Clr AA Ops. Room.	May 13/45
Ford 15 cwt. C.2. 1205 275	Muffler and Inlet Pipe Distributor Complete [redacted]	COIYF 5230 A 21A - 12100



No 237 | 16 Cdn AA Ops Room | May 13/45

Rev. 15 Rect
C2.

Clutch to be
Repaired

MAY 13 1945
ORDERLY ROOM

S R P Arnold Capt
16 CDN AA OPS ROOM RCA

16 Cdn A A Ops

15 Cdn

C2

Clutch to be Repaired

[illegible]wt No. 261	16 Cdn A A Ops Room	May 13/45
Ford, B cwt Ch 4270560	Complete Set of Brake shoes and lining Shoes Brake lining forward Shoes Brake lining Rear.	91T 2018 A 91T 2018 A R. P. Arrowsmith Capt 16 CDN AA OPS ROOM ROA

MAY 1 1945
ORDERLY ROOM

Unit. No. 261	16 Cdn AA Ops Room	Mag + Spa
Ford, B cwt. CL 4270560	Complete Set of Brake shoes and lining	
	2, Shoes Brake lining Ford	91T 2018 A
	Shoes Brake lining Rear	91T 2018 A

MAY 8 1945 ORDERLY ROOM

S. P. P. Arrowsmith Capt.
16 CDN AA OPS ROOM RCA

...t. No. 261	16 Coln AA Ops Room	May 13/45
Ford, B cwt Cl 4270560	Complete Set of Brake shoes and lining Shoes Brake lining Front Shoes Brake lining Rear.	91T2018A 91T2018A S R Minnell Capt

MAY 13 1945
16 ODN AA OPS ROOM RCA
ORDERLY ROOM

Ex. "A" AB

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G-8204	BDR.	DEAN, Thomas Ralph	1 Anti-tank Regiment RCA

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Absence without leave AA Sec 15(1) 1 times.

For Cond. to Prej. etc AA Sec 40 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 8 Oct 44

Date of last entry in Field Conduct Sheet 4 Dec 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. NIL

*3. The accused at the present time is under sentence for N/A beginning on the ..... day of .....

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 61 days in military custody, *i.e.*, 31 days in open arrest, NIL days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 28

6. The date of his attestation is 19 Mar 40

7. The service which the accused is allowed to reckon is 5 Yrs 3 Mos

8. The accused is in possession of‡ CVSM & Clasp

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of BDR	5 Jun 44
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(11144) W1.8475/668 100,000 4/42 A. & E. W. Ltd. Gp.698 Forms B.296(War)/2
(11145) W1.13556/1875 60,000 3/42 " "

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~30th~~ 1st day of ~~June~~ July 1945

W.A. Grant Lieut.

(W.A. Grant) Lieut
A/Adjt. 1 A tk Regt RCA

Ef B 64

G-8204

COPY COPY COPY

CERTIFIED TRUE COPY OF ORIGINAL.....

No. EX Name DEAN T.R. Sqn., Battery, or Company Corps RCA Date of enlistment 19 Mar 40 G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 175M - 7-41 (1219-[illegible]) H.Q. 1772-39-[illegible]

Date of last entry in Company Conduct Sheet 29 May 43 No. and date of last drunk N/A Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of awarded or of order dismissing with trial	By whom awarded	Remarks
Sheet destroyed 21 Sept. 43. Entries 5. Cases of Drunkeness						NIL			
Field	8 Oct 44			AA Sec 15(1) WOAS A.W.L. from 1530 hrs 8 Oct 44 until 2245 hrs 8 Oct 44 (Absent 9 hrs 15 min.)	Sgt Sullivan A.J. L/Cpl Barden V.E.	SEVERE REPRIMAND	10 Oct 44	J.F. Dobson Major	Forfeits one days pay under FRMI 149(1)(a)
Field	4 Dec 44	Pdr.		AA Sec 40 WOAS. Being in a place which was posted as being OUT OF BOUNDS in Unit Orders	Documentary Cpl. Penner M.	SEVERE REPRIMAND	5 Dec 44	J.F. Dobson Major	

15 JUN 1945

Certified true Copy
[illegible]

(P.T.O.)

872 36-8-[illegible]

I wish to be represented at my forthcoming trial by Field General Court Martial by Major EYERS, 2 HAA Regt RCA.

29 Jun 45.

F Lance R Dean.

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SUMMARY OF EVIDENCE

In the case of

C-8204 Bdr DEAN T.R.

By direction of the Commanding Officer, the summary of evidence is taken on oath.

First Witness for the prosecution

D-118573 Sgt SULLIVAN A.J., 16 Can A.A.O.R., R.C.A., in the Field, having been duly sworn states:-

At 0900 hrs on 14 May 45, I was in charge of the morning parade. I called the roll and found that Bdr DEAN was absent. He was continually absent from parades from this date and time until the morning of 19 May 45, at 0900 hrs, when he was again on parade.

The accused declines to cross-examine this witness.

Signed A. J. Sullivan
A.J. Sullivan

Second Witness for the prosecution

H-40795 Signn BERG H.V., 16 Cdn A.A.O.R., Sigs Sec, in the Field, having been duly sworn states:-

On the morning of the 13 May 45 at apprex 0730 hrs, I left with Bdr DEAN to pick up spare parts. Our first step was at the Salvage Dump at MEPPEN. After Bdr DEAN found he could not get the parts we left for a salvage dumpsat GRAVES. When we arrived at GRAVES the salvage dump was closed so we proceeded to TURNHOUT. On our arrival at TURNHOUT we looked for the salvage depot where Bdr DEAN had once changed a Jeep meter -- but found it had been moved. As the time was now apprex 2030 hrs we decided to go to HALAAR for the evening where we were once stationed. After staying there the night we visited friends on the following day, 14 May 45. In the evening of the same day, after watching a Victory parade, we decided to return to our unit. After leaving HALAAR we proceeded about five (5) kilometres and came upon a street dance in progress. We watched it for about ten minutes then Bdr DEAN got out of our vehicle. I then proceeded to PUTTE, ten kilometres from where I left Bdr DEAN. After stopping for about fifteen minutes at PUTTE, at another dance, I started to return to where I had left Bdr DEAN. Apprex one (1) kilometre from HEYST-OP-DEN-BERG I met with an accident. After giving the Military Police the required information I went to a wksps in MECHELIN with the vehicle, where I spent the night. On the morning of the 15th May 45 I went to HEYST-OP-DEN-BERG where I found Bdr DEAN and explained to him what had happened. I stayed in HEYST-OP-DEN-BERG for the night and on the morning of the 16 May 45 I returned to the wksps and helped to finish repairs on my vehicle. We were ready to start for the unit when we discovered that owing to the accident our headlights would not function. We remained in HEYST-OP-DEN-BERG and on the following morning 17 May 45 we started for the unit. Upon arriving at ZUTPHEN we were requested by two Army Officers to tow their broken-down Jeep to HENGELO. After doing so we proceeded to OLDENZAAL where we spent the night. On the morning of 18 May 45 we proceeded to MEPPEN where we obtained the required spare parts and then proceeded to the unit, arriving at apprex 1630 hrs.

The accused declines to cross-examine this witness.

Signed H.V. Berg
H.V. Berg

Third Witness for the prosecution

Lieut T.E. LAMB, 16 Cdn A.A.G.R., R.C.A., in the Field, having been duly sworn states:-

At 1630 hrs 18 May 45 Bdr DEAN reported to me in the unit Orderly Room at WILHELMSHAVEN and presented me with a note from a Service Corps Wksps which stated that the vehicle had been made road-worthy enough to return to the unit. This is the first time I had seen Bdr DEAN for a number of days.

The accused declines to cross-examine the witness.

Signed T.E. Lamb Lieut
T.E. LAMB

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused elected to give evidence as follows:-

First Witness for the defence

The accused, G-88804 Sgt DEAN F.R., 16 Con A.A.C.R., R.C.A., in the Field, having been duly sworn states:-

On 12 May 45 I met Capt ARSENAULT in the hall-way of our billet. I explained to Capt ARSENAULT that I needed some vehicle parts which I had not been able to obtain from ADOS as I had already tried to do so in OLDENBURG. I then suggested that I should go out on the scrounge. He then gave me permission to go. I then went and made out the necessary AB 1045 forms and took them to Capt ARSENAULT and got him to sign them.

On 13 May 45 at approx 0730 hrs I left, stopping at NEUFEN. I arrived there at approx 1130 hrs. I got out of the vehicle and inquired about the necessary parts. I could not obtain them there, so I continued on to GRAVES where I got out of the vehicle and went across the road where a L/Cpl was standing and asked him who I would have to see about getting some parts. He then told me that the dump was closed. I then proceeded to TURNHOUT. On the way, coming into TILBURG, I spoke to a Traffic Control policeman and asked if he knew of any slavage dumps and he said he did not know of any. I then again proceeded towards TURNHOUT. On our arrival at TURNHOUT I went to where the salvage dump was when I had once before put a motor in a Jeep while stationed at GILZE. On arriving at the former location of the dump, I found it had been moved away from the area. I then proceeded to HALAAR where I spent the night. On 14 May 45 I said to my driver, "While we are here we may as well visit some friends that we had met when we were stationed there". We spent the day visiting and in the evening there was a Victory parade which we watched. At approx 2100 hrs we started to return to the unit. On our way, approx five (5) kilometres East, there was a street dance in progress. We stopped the vehicle and sat and watched the dance for about ten minutes. I got out of the vehicle and the driver went to another dance. I waited until approx 2230 hrs and when he did not return I went and found accommodation for the night. On the morning of 15 May 45 I met my driver in HEIST-OP-DEN-BERG. He told me that he had had an accident. I then asked him where the vehicle was and he told me that it was in an RASC wksp in MECHELIN. I then asked him how long it would be before the vehicle would be repaired. He said approx two days or so as they did not have the required parts available. On the morning of 16 May 45 the driver went for the vehicle, returning in the evening. We got ready to start back for the unit when we discovered that there were no lights as a result of the accident.

We then remained in HEYST-OP-DEN-BERG for the night. On the morning of the 17 May 45 we left to return to our unit. On coming into ZUTPHEN we were stopped by two British Officers requesting us to tow their Jeep to HENGELO, which we did. After arriving at HENGELO we continued on to OLDENZAAL, arriving there at approx 2330 hrs. There we remained for the night. On the morning of 18 May 45 we continued on to MEPPEN where we stopped at the salvage dump. I got out of the vehicle and went over to see the clerk in charge, near the gate entrance, and asked him if I could get the required parts. He replied that he did not know but that there had been two vehicles brought in, and told me where they were. I then proceeded to where he told me to go. I found the vehicles and procured some of the parts that I needed, enough to put two of our vehicles back on the road. I then started back to the unit arriving at approx 1620 hrs where I reported in to Lieut LAMB.

Signed T R Dean
T.R. Dean

The accused does not call any witness for the defence.

I certify that the foregoing Summary of Evidence, consisting of five pages, was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

D M Kaser Lieut

In the Field
11 June 1945.

ADDITIONAL SUMMARY OF EVIDENCE IN THE CASE OF
C-8204 BDR. DEAN, T.R.

Capt. F.R.P. ARSENAULT, 16 Cdn AAOR RCA, in the Field having been duly sworn states:-

At about 1540 hours on 12 May 45 at WILHELMSHAVEN, Bdr. DEAN asked me if he could go to workshops near by to get some parts for vehicles which needed repairing in the unit. I told him there were some workshops in the vicinity of WILHELMSHAVEN and he could try there. I gave no orders for him to go any distance. That evening at about 1930 hours he brought some 1045s for me to sign which I did. I did not see Bdr. DEAN again until 19 May 45.

Q. Did you sign a work ticket for this detail ?
A. No, I did not.

Q. Did you intend that Bdr. DEAN should go as far as MEPPEN ?
A. No, I did not intend him to go any further than the area of WILHELMSHAVEN, but did not order him not to go any further. Had the work ticket been submitted I would have marked his destination.

Q. When did you expect Bdr. DEAN back ?
A. On the same day he went which was 13 May 45.

Accused Questions

Q. Are you sure I asked to go to a nearby workshop ?
A. No, I'm not positive I said nearby, but I did not instruct you to operate anywhere outside the area.

(T.E. Lamb) Lt
Witness

Sgd: (F.R.P. ARSENAULT) Capt

D-118573 Sgt. SULLIVAN, A.J., 16 AAOR RCA, in the field, having been duly sworn states: -

In addition to the evidence which I gave in the case of Bdr. DEAN, T.R. on 11 Jun 45 I also wish to state that I saw Bdr. DEAN when he returned at approximately 1630 hours on 18 May 45.

Sgd: (A.J. SULLIVAN) Sgt.

The accused declines to cross-examine the witness

(T.E. Lamb) Lt.
Witness

The Accused was cautioned as follows: -

Do you wish to make any statement or to give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused declined to make a statement.

I certify that the foregoing additional Summary Of Evidence consisting of two pages, was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

25 Jun 45 Sgd: (T.E. Lamb) Lt.

CERTIFIED TRUE COPY OF ORIGINAL ADDITIONAL SUMMARY OF EVIDENCE TAKEN DOWN BY ME IN LONGHAND ON 25 JUN 45.

(T.E. Lamb) Lt.
1 A tk Regt R.C.A.

(1)

Before arrangement defenses made a plea under 36 RS for bar of travel

Examined 1st witness

B 8024 Edw Dean 7 K 1 Con Pk Regt.

What was unit

16 Edw P.H. Rd

What was your job

Motor mech.

What are duties

Complete charge of 1st. & getting spare parts.

From 12 May until breakup of farmer unit what were your duties

In charge of 1st

During idot time were your duties restricted

No.

Did you have duties that took you out of [illegible]

Yes picking up your parts

Did anyone accompany you

No.

What authority did you have who sent you

The Q replace I would tell him what I needed.

On or about 12 May was you put under arrest.

No

Cross-exam. None.

2nd witness

H 40795 Tyson Berg H.V. 4 Coy 1 Con Bray [illegible]

On & just after 18 May what was you unit
16 Ch. AA OR
what was your duty
Saving-mech. - Driving a line truck.
Did you know accused
Yes.
From 18 May to break up what was accused duties.
In charge of M.T.
You know accused is charged with Con offence
Yes
Who was with accused during periods of
alleged offence.
I was.
Was you or accused placed under arrest on
or shortly after 18 May
I was not. ~~[illegible]~~
Do you from own knowledge know whether
after 18 May accused was sent out of units
line
Yes I saw him go out with trucks.
Cross-examine - None.

Defence - Maj. D.H. Byers 8 Cdn HAR.
Plea in bar of trial is in MHC. cases
just the type of case. Therefore behind it
is that the law considers it inequitable if
a man is accused of certain offences
to allow that man to continue during the

(3)

[illegible] 11 May. Destination of trip was not stated. No work ticket submitted.

Did you give Bob Lack orders when he was to go?

No.

What orders given regarding nearby workshops?

I told him to try workshops but no orders given to go far from Wilhelmshaven.

Were work tickets in use?

YES

Objected by defence because he is giving evidence that an order existed in unit.

Had you signed work tickets for weeks at this time.

Yes.

Had any work tickets been submitted by Bob. Lean previous to this?

I had signed many but cannot remember if I signed any for previous to May 13.

What was date work tickets came into use?

About 2 or 3 weeks before this.

What manner was fact work tickets needed announced?

Published in unit orders.

Did you see order?

Yes.

How were orders published?

Posted in mess hall & prominent places.

Cross-examine.

Were work tickets generally used in operational role on

No.

On 12 May your talk to Bdr. Dean approved this going to get parts?

Yes.

Did you specify time or place.

No

Did you ask him to bring a work ticket to you

No.

Witness identifies 1045 marked Exhibit C

On return of Bdr Dean did he bring parts back?

Some. not all.

Court. Were these expeditions been taken before?

Yes.

Had he been away overnight before?

Yes.

He had been sent on these trips officially?

Yes.

3rd Witness

H 40745 Sgmn Bay Hd. (Has already been [illegible] in the case) 4 Bay [illegible] bringing

What unit were you in from 13 to 17 May?

16 ABOR

Did you accompany Bdr Dean on this trip?

Yes

What were instructions or orders?

Warned by Bdr. Dean night before.

Were you told where you were going?

No.

What was destination when you left unit?

Can workshops at Nyppen.

Did Bdr. Dean indicate his intentions if no parts available at Nyppen?

No.

Did you have a work ticket?

No.

Had orders been issued that work tickets were necessary?

In operations work tickets were not needed.

They started at Oldenzaal but started to fail through optimist move.

Were work tickets required at Heldenrodenen?

Yes.

Tell exact what took place on trip from [illegible] 13 to 18 May.

How far is Hoyst [illegible] from [illegible]?

About 20 km.

What time did you decide to return on 16 May?

After supper.

What time did you discover lights not working?

Do not know.

Was it dark?

No.

How far is it from Turnhout to Halaar?

Do not know.

How long to drive from Turnhout to Halaar?

1 hour and ¼ or ½ ~~hour~~ hour

What hour did you first arrive at Halaar?

About 9 o'clock at night

Did you have any reason to go to Halaar other than visit friends?

No.

Did you have a reason to stay other than visiting friends?

No.

Could you have continued to go to unit on 14th

if you had not stopped at street alone?

Yes.

On 14th was any effort made to look for spare parts

No.

Press examined:

During & after time you were at Hal Hamburg were vehicles out without work tickets?

Yes.

Do you know of legally ordered [illegible] work tickets signed?

Sometimes I would tickets used for all day.

Was there a [illegible] on vehicles?

No.

Defense - R.&P. 70 footnote.

Defending officer submits, evidence for prosecution does not prove vehicle connected in charge 2.

~~Court rules that submission is disallowed because prosecution must prove all essential facts~~

Court rules that submission is disallowed in that the no. of the vehicle used is not essential to constitute the offence. The offence would have been the same had any vehicle been used.

No witnesses for defense because all facts are now before court.

Prosecution address.

Submits charges against accused proved. According to evidence the accused proceeded on a trip in charge of a W.D. vehicle and although the purpose was authorized the trip was not. Also accused abandoned purpose of trip & proceeded to visit friends & attend street dances. The trip was not authorized because no work ticket was submitted when they were in order. Had a ticket been used Capt. Kessenault would have filled in destination. This removes authorization for extended trip & places full responsibility on accused. No justification for accused to have gone farther than Hyppenmittant further instructions from Capt. Kessenault. He therefore acted on own authority to go to Grauss & Turnhout. For this part of trip defence may plead initiative of H.P.

if you had not stopped at street doors?

Yes.

On 14th was any effort made to look for spare parts

No.

Cross-examined.

During & after time you were at Wilhelmshaven were vehicles out without work tickets?

Yes.

Do you know of legally ordered but no work ticket signed?

Sometimes I would ticket used for all days

Was there in alone check on vehicles?

No.

Defense - Refs. 70 factors.

Defending offence submits evidence for prosecution does not prove vehicle concerned in charge &c.

~~[illegible]~~

~~[illegible]~~

factor

Court rules that submission is disallowed in that the no. of the vehicle used is not essential to constitute the offence. The offence would have been the same had any vehicle been used.

No witnesses for defense because all facts are now before court.

Prosecution address.

Submits charges against accused proceed. According to evidence the accused proceeded on a trip in charge of a W.D. vehicle and although the purpose was authorized the trip was not. Also accused abandoned purpose of trip & proceeded to visit friends & attend street dances. The trip was not authorized because no work ticket was submitted when they were in order. Had a ticket been used Capt. Greenwell would have filled in destination. This removes authorization for extended trip & places full responsibility on accused. No justification for accused to have gone farther than Hyppenmichael further instructions from Capt. Greenwell. He therefore acted on own authority to go to Graves & Turnbull. For this part of trip defense may plead initiative of N.C.O.

and well guided initiative is an admirable quality in an NCO and an NCO should not be penalized for using it except for good reason. Nevertheless any soldier acting on his own authority and without authority of his superior officers must be prepared to accept the responsibility for the results of his unathorized action. If the accused had ~~was~~ returned from Turnhout directly and reported at the earliest possible moment to Capt Arsenault even though ~~he had been~~ his return had been expected on the 13th ~~same day that~~ it is quite probable that a certain amount of leeway would have been allowed for initiative. However any commendable or excusable deviation from ~~his~~ authorized actions was completely predjudiced by the accused entirely unjustified joy ride to Falaar and the entirely unwarranted 3 days wasted as a result of that action. Therefore the day and 1/2 spent in returning from Falaar to Wilhelmshaven must be included in the period of AWL and improper use of the vehicle.

4 WL 4 1/2 days

Dist. Tournhout to Halaar.
equivalent dist other direction?
Had wp ticket been submitted dist. marked.
As a direct result of decision to proceed from Tournhout to Halaar (instead of returning from Tournhout toward Wilhelmshaven) to visit friends (no searching for parts)
Decision to start out at 2100 hrs for Wilhelmshaven lead to street dance
Decision to go to dance instead of returning to unit, all lead to accident.
Accident combined with time wasted visiting friends and dancing took up fully three days.

In addition I submit that there was no justification for the accused to have proceeded further than the Dump at Meppen without further instructions from Capt Arsenault. And that therefore he was acting on to his own authority in going to Graves and then on to Tournhout. Presumably he made an effort to find the parts at Graves and Turnhout. For this part of the trip the defence may plead initiative on the part of an NCO. The prosecution is willing to admit that initiative, constructive

Address of defense.

The Evidence on 2nd charge is from Capt. Arsenault who gave permission to accused to go and did not lay down where he was to go or how long to be away. I submit that Capt. Arsenault's evidence shows sufficient authority for accused to use vehicle. The 1045's show that a fair number of parts were needed & it is in evidence accused did bring parts back.

On first charge the same evidence I submit was sufficient authority for accused to leave unit. I stress evidence that accused had made similar trips some for more than 24 hours in past. Should court decide guilty on 1st charge I submit period of absence of leave be less than that in charge sheet. Evidence shows accused was looking for parts a greater part of time & he was not responsible for breakdown of vehicle which caused further delay of his return.

Defense in mitigation of punishment

Accused came overseas Feb. 41 and is assigned to a repat. draft now. The draft is likely to be called in a short time week or ten days. Accused is married & in Canada awaiting his return. I suggest a sentence that would not affect his return to Canada.

COUNTER NUMBER 542539

HOUR 2016

OPERATOR'S INITIALS WL

RELIEVING OPERATOR HMB

99-V

Pte DEAN. W.J.

Correspondence to be PINNED here

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Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this Eighth day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit wher. Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[~~I am unable to appoint~~

*(1. ~~Three Officers to form the Court.~~

*(2. ~~A Field Officer as President.~~

~~for the following reasons, namely:~~

* Omit if not applicable.

Judge Advocate

Capt R.A.Ritchie A.D.J.A. 3 Cdn Div

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	A.D.MacPherson	22 Cdn Fd Amb R.C.A.M.C.

Members.

Rank.	Name.	Regiment.
Lieut	H. Clewerth	R.C.A.S.C.
Lieut	H.B.Jackson	C.H. of D. (WC)

*Signed A.F.L.Keller
(A.F.L.Keller) Major-Gen
Commanding 3 Cdn Div
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C/20616 Pte DEAN, W.J. C.H. of O. (MG)	Army Act Sec 15(1)	GUILTY	GUILTY. TO UNDERGO DETENTION FOR A PERIOD OF NINETY DAYS. DATED IN THE FIELD THIS 9th DAY OF JANUARY 1943 A D MacPherson Maj PRESIDENT.	Confirmed E.W.H.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary):—

(Signed) R.F.L. Keller (R.F.L.Keller) Major-Gen Commanding 3 Cdn Div Convening Officer (e)

(Signed) A D MacPherson (A.D.MacPheeson) Major 22 Cdn Fd Amb, R.C.A.M.C. President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of Jan, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 9th day of Jan 1943

A D MacPherson Maj
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 15 day of JANUARY 1942

E W Haedenby Brig
Confirming Officer.

Promulgated and extracts taken in the case of C-20616 Pte. Dean, W.J.

(a) (Dated) 1st Bn The Cameron Highlanders of Ottawa (M.G.) 16 January 1943 (Signed) [illegible] Lt Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B 2

CHARGE SHEET

The accused C-20616 PTE. WALTER JOSEPH DEAN, of the Cameron Highlanders of Ottawa (MG), a soldier of the Canadian Army Overseas when on active service is charged with

1ST CHARGE
See 15(1)AA.

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field, absented himself without leave from 2359 hrs 3 December 42 until 1300 hrs 4 January 43, a total absence of 31 days, 13 hrs and one minute.

In the field.
7 January 1943

To Be Tried By F.G.C.M

9 Jan 42

Arthur S. Pettapiece (Major)
A/Officer Commanding
1st Bn., C. H. of O. (MG)

1st Battalion Cameron Highlanders of Ottawa (MG) C.A.(O)

MEDICAL CERTIFICATE (K.R.Can 557)

"H"

This is to certify that I have today examined ~~G-80616~~
Pte. Dean, W.J., and find him fit to undergo trial by
Court Martial.

(Medical Officer) R.C.A.M.C.
att to C.H. of O(MG)

In the Field
9 Jan 1943

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD ON THE NINTH DAY OF JANUARY 1943 BY ORDER OF MAJ. GEN. R.F.L. KELLER COMMANDING 3rd CANADIAN DIVISION DATED 8th DAY OF JANUARY 1943.

PRESIDENT

MAJOR A. D. MAC PHERSON 22 Cdn Fld Amb RCAMC.

LIEUT. H. CLEWORTH R.C.A.S.C.

LIEUT H. B. JACKSON C.H.Q.O (M.G).

CAPT. R.A. RITCHIE H.Q. 5Cdn Div. JUDGE ADVOCATE.

TRIAL OF C20616 PTE DEAN. W.J. C.H.Q.O (M.G)

Heforder commencing the Court, the charge sheet and the Summary of evidence are laid before the Court.

The Court satisfy themselves that R's.P. 22 and 23 have been complied with.

The Accused is brought before the Court.

PROSECUTOR Lieut H.C. SWIFT C.H.Q.O (M.G).

DEFENDING OFFICER Lt. R.D. GRANT C.H.Q.O (M.G.) The convening order is read & marked "A" & signed by the President. The names of the President and members are read over.

QUESTION TO the Accused

Do you object to being tried by me or by any of the members whose names you have heard read over?

ANSWER NO

The President, Members and Judge Advocate are duly Sworn.

The Charge Sheet is signed by the President and marked B_2.

The accused is arraigned upon the charge in the above mentioned Charge Sheet.

QUESTION TO THE ACCUSED — Are you guilty or not guilty of the charge against you which you have heard read?

ANSWER — GUILTY.

The accused having pleaded Guilty to the charge, the provisions of R.P. 35(B) were ~~have~~ complied with.

The accused C.20616. Pte Dean W.T. CH 90(HG) is found GUILTY of the charge as laid.

The Summary of Evidence was read, marked I, Signed by the President and attached to the proceedings.

QUESTION TO THE ACCUSED — Do you wish to make any statement in mitigation of punishment?

ANSWER — NO.

QUESTION TO THE ACCUSED — Do you wish to ~~not~~ give evidence yourself or to call any witnesses as to character.

ANSWER — Yes Sir.

FIRST WITNESS FOR THE DEFENCE.

LIEUT. R. D. GRANT. having been duly sworn ~~THE DEPENDING OFFICER~~, states:

Pte Dean is a clean living soldier and well thought of. He has been with the battalion three years and his work has been very satisfactory ~~He is~~ ~~Considered~~

RULE OF PROCEDURE 83 (B) COMPLIED WITH.

FOR THE PROSECUTION.

LIEUT. H. C. SWIFT is duly sworn:

Q. Have you any evidence to produce as to character and particulars of service of the accused?

A. I produce the A.F.B. 296 and M.F.M. 6 of the accused.

Q. Is the the accused the person named in the statements which you have produced? [The depending officer agrees to waive the reading of these documents]

A. Yes

Q. Have you compared the contents of these statements with the Regimental books?

A. Yes Sir

Q. Are they true extracts from the Regimental books and is the statement of entries in the conduct sheet a fair and true summary of those entries?

A. Yes Sir.

TO THE ACCUSED NO CROSS EXAMINATION. Do you wish to address the court? A. No

THE COURT IS CLOSED FOR CONSIDERATION OF THE SENTENCE.

FOR SENTENCE SEE A.F.A. 3 page 2.

(1)

6 Jan 43

I

Summary of Evidence in the case of No. C-20616 Pte. Dean, W.J. C.H. of O. (HQ)

Pat Kelly Capt

A.D. MacDonald Maj.

This summary is taken on oath at the direction of Lt-Col. P.C. Klaeher, the C.O. of the accused.

1st Witness No. C20749 Sgt. MacDonald R.C. having been sworn and having identified the accused states

" I was the N.C.O. in charge of the kitchen when the accused was on duty on the date in question. I first noticed his absence about 1030 hrs. on the 4th day of December 1942 and I reported his absence immediately to the orderly room clerk of "Y" Coy. where Dean had come from. I think the clerk's name was Pte. Sontag. I also reported the matter to an officer who was in "Y" Coy. orderly room at the time but I cannot remember that officers name nor can I now identify him as he had only recently come to the Bn. I have never had Pte Dean report to me for duty since nor did I ever see him again until he returned to the unit. I next saw him this morning,

6 Jan 42

The accused declines to cross-examine.

Sgt R. Dean Donald

2nd Witness C-21313 Sgt. Baird J.H., having been duly sworn and having identified the accused, states:-

"I was in command of the quarter guard of the C.H. of A. Camp on 4 Jan 42. At approximately 1300 hrs. of that day the accused came in to the guard room, showed me his pass which I now identify by my handwriting on the back, and said he was reporting in. I put him under close arrest and detained him in the guard house. His name was one of a list of absentees in the guard room but I cannot say how or when he was first reported as being A.W.L. Exhibit "A" is the pass to which I am referring."

James J. Baird

The accused declines to cross-examine this witness.

3rd Witness, C-20876 L/Cpl. Balderstar K.L. having been duly sworn and having identified the accused states:-

"I am an N.C.O. on duty in the Bn. Orderly Room of the C.H. of A. (MG) Upon examination of my records I see that the accused was reported by his Coy orderly room as being A.W.L. for 21 continuous days as of 2359 hrs 24 Dec 42. This means that upon investigation

by the Bn. Orderly Room it was ascertained that the accused was continuously absent for 21 days on 24 Dec. 42. This report is necessary for a return which we always make when any person is absent for 21 days. If the accused returns at any time after the 21 days we would have a record of it.

K. L. Balderston 1/Cpl.

The accused declines to cross-examine.

4th Witness No. C21301 Cpl. Montgomery G.J.W. having been duly sworn states:-

"I was commander of the quarter guard of C.H. of O(MG) camp on the night of 3-4 Dec 42. I cannot remember now whether or not the accused reported in that night. Ordinarily, if he did not, his name would be posted up in the guard room as being A.W.L. but I cannot now remember whether the name of the accused was posted up. Also if he did report in his pass would be collected from him at that time and he would not get it back again."

G. Montgomery Cpl.

The accused declines to cross-examine.

The accused, having been warned in accordance with R.P. 4(E) as follows "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence", elects to give evidence on oath.

The Accused having been duly sworn, states:

"I admit to being A.W.L. for the period of time stated. I was fed up with the way things were going in the kitchen and I decided to get out of it this way. I do not mind cooking but I did not like the way things were going and I wanted to get some real training."

Pte W. J. Dean

This is to certify that R.P. 4(C)(D)(E)(F) & (G) have been complied with and that the foregoing Summary was taken down in the presence and hearing of the accused on the above-mentioned date.

6 Jan 43

Arthur S. Rettapaio
Major

Cdt+A

If a calling-out of the whole Army Reserve is ordered, every soldier on pass must return immediately to his unit without waiting for instructions.

No. _____ Regiment C.H. of O (M.G.)

PASS

Army Form Pass (In pads of 100)

No. C-20 6H (Rank) Pte (Name) Dean W.J.

has permission to be absent from his †quarters/duty from

1300 hrs Dec 2-42 to 2359 hrs Dec 3-42

for the purpose of proceeding to London

(Station) HQ Bay

(Date) 2-12-42

Cpl. L. Tripp Capt

Commanding

(P.T.O.)

† Delete whichever is not applicable.

* Destination [illegible] shown is to expand as letters, unless notification is desirable owing to local conditions or is necessary to make purchase of a real [illegible] at subject fare.

CROWN COPYRIGHT RESERVED

872 36-83

A Soldier on pass who requires medical aid must apply for it, personally if possible, to the nearest Military, R. Naval or R. Air Force Hospital or other Medical Institution, showing this pass. If, however, he resides more than two miles from such hospital, etc., he may apply to a civilian doctor, or where he will stay this pass, and the doctor will then be allowed the following cases for medical attendance on the soldier at the known residence.

TEST AND MEDICINE	If not more than 3 miles away	1300 hrs 4-1-43 Estate Office
Day Night 7 P.M. to 07.00 hrs.	1s. 6d. 5s. 0d.	An additional 1s. 6d. for each mile or part of a mile, with a limit of 15 miles.

When the soldier visits the surgery of a civilian doctor the [illegible] of [illegible] each visit will be [illegible] per visit.

The Soldier will at once report the employment of the civilian doctor by a letter addressed to his Commanding Officer to whom the civilian doctor will submit his claim on Army Form G 1667 for payment.

If hospital treatment is necessary, the soldier will at once report the fact, if possible, to the nearest Military, R. Naval or R. Air Force Hospital, Military Emergency Station, or Medical Inspection Room for Troops, and failing that to his Commanding Officer, when arrangements will be made, wherever possible, for any necessary [illegible] to be given from Military sources. If a soldier is admitted or a R. Naval or R. Air Force hospital, he will report the fact immediately to his Commanding Officer. So in the event of emergency, a soldier is admitted to a civil hospital he will report the fact immediately to his Commanding Officer, who will at once notify the Assistant Director of Medical Services concerned.

When a soldier on pass is prevented by sickness, which must be properly certified, or by other unavoidable causes, from reporting his Corps by the date on which his pass expires, he is to report himself before that date:

- To the Commanding Officer or other Officer on the staff of the Army or to the Commanding Officer of any unit or detachment of the Regular Army, or for pass of leave to within convenient distance to a Barrier or the Police.
- If in Ulster, he is to furnish the medical certificate to his C.O.

A Soldier on leave or furlough who requires emergency dental treatment must apply for it to the nearest Military, Royal Naval or Royal Air Force Hospital or Dental Centre.

If he resides more than two miles from such hospital or dental centre, he may apply to a civilian dental practitioner to whom he will show this pass, the dental practitioner will be paid only for strictly emergency treatment and at the rates admissible under the National Health Insurance Act (Dental Benefit Regulations).

The soldier will at once report the employment of the civilian dental practitioner to his Commanding Officer, and the practitioner will submit his claim for payment on Army Form G 1667, and forward it to the Deputy Director of Medical Services at the headquarters of the Command in which the soldier is temporarily resident.

These instructions, where applicable, will also be held to refer to an auxiliary of the Auxiliary Territorial Service or to a member of a Voluntary Aid Detachment called out for service.

If his pass exceeds 24 hours a soldier is to leave his address with the Captain of his company, and he must at all times be prepared to reply on the shortest notice, if ordered to do so.

NOTE.—The above instructions are not applicable to a soldier on Field Service overseas.

872 36-C3-Ref 1

No. 20616 Name Dean W.J. Sqn., Battery or Company "A" Corps Date of enlistment 2/9/39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 300/55—8-39 (1703) H.Q. 1772-45-15

Date of last entry in Company Conduct Sheet 31/1/42 No. and date of last drunk 18/1/41 Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. (Sd) Major W.S. Mackenzie Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	24/4/42	Pte	2	W.O.A.S. A.W.L. From 2359 hrs 24 Apr 42 to 2220 hrs 27 Apr 42. (Total time 2 days 22 hrs 21 min) A.A. Sec. 15 (1)	Sgt. Smellie	Forfeits 14 Days pay Total Forfeiture 17 days Forfeiture of 3 days pay under Article 140-1 (a) F.R. & I for the C.A.S.F.	28/4/42	Major Clingan	
Field	19.8.42	Pte		W.O.A.S. A.W.L. 15 Days. 2 hrs. AA 15 (1)	Pte Cunningham Cpl. Gossah	Fined 28 days pay	4.9.42	Lt. Col. Klaehn	16

"J"

(P.T.O.)

572 36-8-42

No. C.20616 Name Dean, W.J. Sqn., Battery, or Company "A" Corps C.H. of O.(MG) Date of enlistment 2/9/39 G.C. Badges N/A Service or Proficiency Pay N/A

M.F.M. 6 (A.F.B. 122) 500M—4.39 (1703) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet 18/1/41 No. and date of last drunk 18/1/41 Period not reckoning towards freedom from extra fine N/A Sheet No. 1. Signature O.C. Company Geo Cripp Capt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
SHEET	DESTROYED		2	SEPT 41 LAST ENTRY		Geo Cripp Capt.			2nd Series
Canada	30/12/39	Pte		A.A. Sec 15(1) Absenting himself without leave from 0830 hrs 30 Dec 39 to 2200 hrs. 2 Jan 40 (Absent 3 days, 13 hrs, 30 min)	Sgt. Harvey	14 days detn. 14 hrs pack drill	3 Jan 40	G.H. Rogers Lt Col.	4
Iceland	3/9/40	Pte.		(1) A.A. Sec 10(4) W.O.A.S. Breaking out of quarters, after tattoo roll call. (2) A.A. Sec 15(1) W.O.A.S. Absenting himself without leave from 2200 hrs 3 Sept 40 to 0250 hrs 4 Sept 42 (Absent 4 hrs 50 min)	Sgt. H. Scott Pte. W. Leavere " Shirreffs " S. Dick	Forfeiture of 7 days pay	4 Sept 40	W.S. McKenzie Capt.	

(P.T.O.)

572 36-3-3

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Iceland	22/11/40	Pte.		W.O.A.S. A.A. Sec 40: 'Conduct to the prejudice of good order and military discipline, became unfit for duty through over indulgence in alcoholic stimulants	Capt. Browne, L.C.M. Sgt. A. Sutton Sgt. H. Cory Cpl. T. Dobson	21 days F.P.	25 Nov 40	G.H. Rogers, Lt. Col.	Released from Alabaster Barracks 15/2/41 Remission earned N/A P.C. Wardle Capt. Commandant
Iceland Released from detention Barracks, Alabaster, on 15/2/41 Sentence having expired Remission Earned N/A Days P.C. Wardle, Capt. Commandant	10/1/41	Pte.	1st	(1) "Drunkenness" A.A. Sec 19 (2) Broke bounds and proceeded to Reykjavik.	Sgt. Mattice Pte. Miller Pte. Dagg	27 Days F.P.	20 Jan 41	G.H. Rogers Lt. Col.	1st offence Drunkenness
Field	21/1/42	Pte.		A.A. Sec 15(1) W.O.H.S. Absenting himself without leave from 21 Jan 42 to 26 Jan 42 (Absent 5 days 18 hrs 31 min.	Sgt. Mai-Hentherington Cpl. Perry	Forfeiture of 10 days pay	31 Jan. 42	Maior Cingan [illegible]	[illegible]

87236-53-[illegible]

Exhibit "K"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
C-20616 ~~C-20 610~~	Pte	Walter Joseph DEAN	1st Bn Cameron Highlanders of Ottawa (MG)

1. The following is a fair and true summary of the entries in the regimental ~~and squadron, battery or company~~ conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recorded special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For A.W.L. Sec 15 (1) A.A.	3 times	5 times
For Drunkenness Sec 19 A.A.	Nil times	1 times
For Brea king out of Bks	Nil times	2 times
For Unfit for duty due to previous indulgence in alcohol Sec 40 A.A.	Nil times	1 times
For	times	times

Number of instances of gallantry or distinguished conduct, Nil

~~—or—~~

~~There are no entries in the conduct sheets of the accused~~

2. The accused has not been previously convicted, ~~or~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time ~~or The accused at the present time is under sentence for~~

~~beginning on the~~ day of

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 6 days in military custody, making a total of 6 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 30 yrs

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 2 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

8. The accused is entitled to deferred pay or gratuity in respect of N 11 service.

9. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~or is in possession of or entitled to (state any military decoration or reward).~~

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental~~ rank of

12. (*In the case of an officer.*) The accused holds in the ~~army~~ the rank of dated

~~and in his regiment (or corps or department) the rank of dated~~

(P7556) Wt.30547/975 75,000 12/40 A.S.& W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C-20616 Rank Pte Name Walter Joseph DEAN of (MG) 1st Bn C.H.of O. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of January 1943

J. Macpherson Capt. Adjt

~~43. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

~~In the rank of~~ ..... years.

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

000-10

PTE DEAN W.J.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.20616 Pte (A/Cpl) Walter Joseph DEAN - RCASC - 3 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 8.)

At present under sentence for ——— beginning on (date) ——— JWD

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 3 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of (629) one hundred and twenty nine days.

(Sgd) ——— 9 June 44 (Sgd) J.M. Bowman Major

Judge Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ——— (Sgd) ——— Commanding ———

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings of the Court but commute the sentence to ninety (90) days forfeiture of pay + confirm the sentence as so commuted

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 10 June 44 (Sgd) Robert Lough Brig

Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C-20616 Pte.(A/Cpl.) DEAN, W.J.	10 June 44 (3 CIRU Pt II D.O. No. 136 dated 12 June 44)	(A. C. Person) Colonel Condr., 3 Cdn Inf Bde

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED AT CMHQ IN AB 180 - 800-10

FIELD GENERAL COURT-MARTIAL

CFAMS (To form of AFAS) W. P. & Pr. 10808 (40-10) 4/38B

Convened by Order of Brig J.R. Stewart Lough DSO, MC, VD Comd "D" Gp, CRU dated 8 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.20616	Pte	A/Cpl	Walter Joseph	DEAN	RCASC 3 CIRU

PROCEEDINGS REVIEWED 19 Jun 44 W.K. Lyon Wing

REVIEWING OFFICER, JAG BRANCH CMHQ

Held in the Fd in (country) ——— on (date(s)) 9 June 44

PROCEEDINGS OF TRIAL.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1340 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ JWD

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to NA as interpreter? Ans NA

The Interpreter is sworn.(1) Do you object to NA as shorthand writer? Ans NA

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If an objection, waiting member retires. RP 68(B). If objection, see procedure AA 52, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.M. Bowman	As above	3 CIRU
Member	Capt.	G.A. Morton	"	3 CIRU
Member	Lieut	R.A. Hicks	S.D. & T. Offr	3 CIRU
Judge-Advocate	—	—		JWD
Prosecutor	Capt.	H.A. Lecoffe	Staff Capt	3 CIRU
Defending Offr	Lieut	J.G. Hughes	Pdr Pl	3 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2d p 3.)

A8. The accused ——— before arraignment makes(s) (now) (in) plea JWD (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB mess. and name of the accusant making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. JWD

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Basic F.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. JWD

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on NA charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on NA charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 12.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part II of the Schedule is dated and signed.(2)
(1. *AA 54(3) (b), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(1. *AFB 353 or AFB 294.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty.* 2. *As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 98(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ex. A

CHARGE SHEET

In the case of C.20616 Private (Acting Corporal) Walter Joseph DEAN, Royal Canadian Army Service Corps, attached as in War Establishment 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
ARMY ACT
SEC. 15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

did absent himself without leave from 3 Canadian Infantry Reinforcement Unit from 0600 hours the 17th day of May 1944 until surrendering himself to the Unit Guard Room at 3 Cdn Inf Rft Unit at 1035 hours the 6th day of June, 1944.

Total time absent: 20 days 4 hours and 35 minutes.

(A. S. Pearson) Colonel
Comdr
3 Cdn Inf Rft Unit

In the Field
7th day of June
1944.

To be tried by Field General Court Martial

(J.R. Stewart Lough) Brigadier
Commander
"B" Group, Cdn Rft Units
Convening Officer

In the Field
8 Jun 44

Ex. B.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3)
40/FA3/1697 (2958)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 318, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.20616	Pte	A/Cpl	Walter Joseph	DEAN	RCASC 3 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and dated 8 Jun 44 (*date*), endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.M. Bowman	48 Highrs - 3 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt. A Captain	C.A. Murton to be detailed by Commanding Officer	C.I.C. 3 CIRU
Lieut. A Lieutenant	R.A. Hicks to be detailed by Commanding Officer	3 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
—	—	—

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
—	—	—

On Active Service in the Fd

in England (Country)

Date 8 Jun 44

(Signed personally. RP 105 fn 7.)
(J.R. Stewart Lough)
Brigadier (Rank.)
Commanding "D" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

JRB

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2092.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(E)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jne 63 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in *CF A* 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40–42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statements by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 86.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*Where accused charged jointly see RP* 85.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 562(*a*).)

(vii) Summing up by JA, *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 3 of *CF A* 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 586. *As to certified copies of regimental books see AA* 182 (1) (g) (A).)

(vi) Summary of Evidence, *if not already an exhibit*.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of *CF A* 96 and not form part of record of proceedings. (*RP* 96(*D*).) A recommendation for mercy will be inserted in Part 2 of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 118(*C*), *MML* p 769.)

4. The President or JA, *if any*, will return proceedings promptly with covering letter sent in an envelope marked "Confidential", or as otherwise directed.

Ex. C.

3 CANADIAN INFANTRY REINFORCEMENT UNIT

Medical Officers Certificate
K.R.(CAN) Para 557.

I certify that I have this morning examined No. [illegible]

A/Cpl Dean, W.E. of 3 C.I.R.U. and in my opinion he is

fit to undergo trial by Court Martial.

Station Newton Yorks

DATE 9 Jun 1944

[signature]
Medical Officer,
3 Cdn.Inf.Rft.Unit.

Ex G. A/Cpl. Dean G.C.M.

9 Jun 44

Plea of Mitigation by Defense - Lt. J. G. Hyman

Sir. - I wish to enter a plea of mitigation to request leniency in the case of the defendant, A/Cpl. Walter Joseph Dean.

The soldier now on trial enlisted in the Cdn. Army, (Active Force), on the 2 Sep. 39, a week before the Cdn. government declared war on Germany. He volunteered for one purpose, and for one purpose only. - To fight! - To fight any and all enemies of his country, - regardless of personal dangers, discomforts, and separation from his young wife and family. ~~for years~~. ~~Ar p~~

As far as health is concerned, Cpl. Dean is "A" category, and has been, in the 4½ years of his army career.

He served with the Cameron Highlanders of Ottawa as a machine-gunner, and

[illegible]

Ex G. A/Cpl. Dean R.C.C.M.

9 Jun 44

Plea of Mitigation by Defense - Lt. J. G. Haynes

Sir. - I wish to enter a plea of mitigation to request leniency in the case of the defendant, A/Cpl. Walter Joseph Dean.

The soldier now on trial enlisted in the Cdn. Army, (Active Force), on the 2 Sep. 39 a week before the Cdn. government declared war on Germany. He volunteered for one purpose, and for one purpose only. - To fight! To fight any and all enemies of his country, - regardless of personal dangers, discomforts, and separation from his young wife and family. ~~for years~~. ~~As f~~

As far as health is concerned, Cpl. Dean is "A" category, and has been, in the 4½ years of his army career.

He served with the Cameron Highlanders of Ottawa as a machine-gunner, and

[illegible]

572 36-83-4 Jef

Ex "G" 2.

after spending 11 months in Iceland with the regt., ~~[illegible]~~ he came with them to England. It was during his service in Iceland that Cpl. Dean was asked to cook and was so successful that he began to receive trades pay as a cook, group "C". Since that time he has cooked for the C.M. of O. in England, and in April, 43 was sent to #5 C.I.R.U., where his services as a cook were so invaluable that he was promoted to A/Cpl. and his attempts to get to the R.C.A.S.C., where, as a cook, he rightfully belongs, were always frustrated.

When #5 C.I.R.U. was broken up, he naturally expected that then he would realize his wish of being sent to R.C.A.S.C., from whence he could be drafted out to the field which

/13

EX. G 3.

was his one aim. Instead, he was transferred to #3 C.I.R.U., and has been cooking ever since. During this time he believes he has been frowned upon by those N.C.O.'s and cooks who were already on the staff of this unit, and who believed he would eventually be promoted over their heads, and quite rightly, perhaps! In this atmosphere of resentment, he continued to do a fine job, and to hope that he would soon be sent to R.C.A.S.C., vainly, as it now appears!

One day, a few weeks ago, Cpl. Dean sat down and began to sum up his own situation. This is what he arrived at. First - he was a young man, - "A" category, with a will to fight, which is only too

JHD

872 36-85-1

Ex. "G"

4

often lacking in some soldiers. Secondly - cooks are always needed both in the front line and in the reinforcement units, but there are many low - category men who could replace him in this unit, and release him for front-line duty. (Don't forget, - the defendant volunteered in the first place for one reason only to fight, - and it is far from his ambition to spend his time for the duration in a reinforcement unit, when "A" category cooks are in demand in action) Thirdly - he enlisted as a machine-gunner, and only became a cook through circumstance and necessity in Iceland. Now he discovers that through doing a tough and often thankless job to the best of his ability, he seems

JEA

572 36-8-3 - Jef

to have forfeited his chances of fighting, for no matter how he tried to get to R.C.A.S.C., he failed. Last but by no means least of these conclusions, he hears of the immense preparations in sway for the impending 2nd Front, and realizes that in less he does something soon, he will miss out on the only opportunity he will have of coming to grips with the enemy.

He sums all this up, and the only solution which comes to his mind, (wrong though it may be), is to go absent without leave, hoping that this will bring things to a head. Having tried everything else, he puts this last plan into action.

Now, - we can all sit in judgement on the foolishness of this

Ex. 6 6.

escapade, and we know that it hasn't done him any good, - but no man is faultless, and all make a mistake sometime.

The defendant has had no crimes and convictions for over a year, and has ~~evidently~~ obviously been doing his best to soldier as evidenced by the fact that he was made an A/Cpl. for his work at #5 C.I.R.V.

I ask you to take all these things into consideration and I ask for leniency in Cpl. Dean's case.

Thank you sir.

J.G. Haynes, Lt.
3 C.I.R.V.

JGHB

872 36-85 Ex 4

Ex PF

3 CANADIAN INFANTRY REINFORCEMENT UNIT
PART II ORDERS
ISSUED BY
COLONEL A.S. PEARSON, O.B.E., ED.
COMMANDER

Last Order #114 d/17 May 1944.

This Order #115 d/18 May 1944

11. ABSENCE WITHOUT LEAVE

(a) The u/m are absent without leave from times shown:

C.20616 A/Cpl Dean, W.J. (CIC) 0600 hours 17 May 1944.

(sgd) Capt W. E. Thorne
for Capt Thomas E Rogers, Adjt.
3 Cdn Inf Rft. Unit.

CERTIFIED TRUE EXTRACT OF ORIGINAL DOCUMENT IN MY POSSESSION.

(Thomas E Rogers) Capt. Adjt
3 Con Infrft Unit

7 JUN 1944.

Ex. H (1)

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Nawton Yorks on the 7th day of June, 1944, preliminary to My Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

No C.20616 W.J. Dean
(C.20616 Pte(A/Cpl) DEAN, W.J.

Date at Nawton Yorks
this 7th day of June, 1944

I hereby request that the Convening Officer appoint an officer to represent me at my Trial.

I desire the services of Lt J.G. Haynes O.O.R. of C.
3 C I R U

if he is available

C20616 W.J. Dean
(C.20616 Pte(A/Cpl) DEAN, W.J.

Dated at Nawton Yorks
this 7th day of June, 1944.

JMB

Ex H.

SUMMARY OF EVIDENCE

In the case of Number C.20616 Private (Acting Corporal) Walter Joseph DEAN, Royal Canadian Army Service Corps, attached as in War Establishment 3 Canadian Infantry Reinforcement Unit, asoldier of the Canadian Army Overseas.

By Direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut J. H. Galloway, Canadian Infantry Corps, Acting Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am Lieut J. H. Gallgway, Canadian Infantry Corps, employed as Acting Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit. I produce certified true extract of Part II Daily Order Number 115 dated the 18th day of May 1944 showing the accused, whom I now recognize, as being absent without leave from 0600 hours the 17th day of May 1944. This document purporting to be signed by Capt W. E. Thorne for Capt Thomas E Rogers, Capt & Adjt 3 Cdn Inf Rft Unit is marked Exhibit "A".

.....
(J. H. Galloway) Lieut.

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION

Number A.60062 Pte (A/L/Cpl) Hagerty, A.G., Canadian Infantry Corps, Regimental Police, 3 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am No. A.60062 Pte (A/L/Cpl) Hagerty, A.G., Canadian Infantry Corps, employed on the Regimental Police of 3 Canadian Infantry Reinforcement Unit. At 1035 hours on the 6th day of June 1944 I was on duty in the Unit Guard Room when C.20616 A/Cpl Dean, W.J. surrendered himself to me. This evidence pertains to the accused whom I now recognize.

A.60624 Hagerty. A.G.
(A.60062 Pte (A/L/Cpl) Hagerty, AG)

The accused declines to cross-examine this witness.

The accused having been warned according to Rules of Procedure 4 (E) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of One Page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

.....
(Thomas E Rogers) Capt.
Officer detailed to take Summary of Evidence

In the Field
7th day of June
1944.

Ex. "E"

No C20616 Name DEAN W.J. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 6/9/39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed 12/9/39					
Field	9/9/40	PTE		AA Sec 10 (A)		Forf 7 days pay	4/9/40		
Field	28/10/40	PTE		AA Sec 40		21 days FP & 21 days	pay 25/11/40		
Field	29/1/41	PTE		AA Sec 19		27 days FP & 27 days	pay 18/1/44		
Field	4/2/42	PTE		AA 15(1) AWL 5 dys 18 hrs 31 mins		Forf 10 dys pay	28/1/42		Forf 6 dys 149(1)(a)
Field	5/5/42	PTE		AA 15(1) AWL 2 dys 22 hrs 21 mins		Forf 14 dys pay	28/4/42		Forf 3 dys 149(1)(a)
Field	28/5/42	PTE		AA 15(1) AWL 13 hrs 1 min.		Admonished	22/5/42		Forf 1 day 149(1)(a)
Field	10/9/42	PTE		AA 15(1) AWL 15 dys 2 hrs.		Forf 28 days pay	4/9/42		Forf 16 dys 149(1)(a)
Field	3/12/42	PTE		AA 15(1) AWL 31 dys 13 hrs 1 min		FGCM 90 days Dat'n 9/1/43	FGCM		Forf 32 dys 149(1)(a) 5 dys 149(1)(c)(ii)
				Granted remission of Sentence of 30 days.					
	14/7/43			Certified true copy from documents in my possession.(Sgd:J.L.Henslowe,Capt.,R.C., 5 CIRU)					
	7/6/44			CERTIFIED TRUE COPY OF MFM 6 IN POSSESSION THIS OFFICE.					

(W.E. THORNE) CAPT.,
Records Officer, 3 Cdn Inf Rft Unit.

(PTO)

/wlm

ARMY FORM B.296 (WAR).

Character and Particulars of Service of Accused.

(at Trials by Field General Courts-Martial only).

Name.	Regiment (or as the case may be).
DEAN W.J.	C.I.C. 3 C.I.R.U.

The following is a fair and true summary of the entries in the Field Conduct Sheet accused, exclusive of convictions by a court martial or a civil court :—

For	A.A. 15(1)	4 times.
For	A.A. 40	1 times.
For	A.A. 19	1 times.
For	A.A. 10(A)	1 times.

of first entry in Field Conduct Sheet 9 Sep 40

of last entry in Field Conduct Sheet 3 Dec 42

9. Previous convictions of the accused by a court martial or a civil court are set out the Schedule overleaf.

3. The accused at the present time is under sentence for

[illegible] day of [illegible]

[illegible]ning on the

4. The accused has been awaiting trial on the present charges for NIL

[illegible] in civil custody; and for 3 days in military custody, i.e., NIL days in open arrest, 3 days in close arrest; of [illegible]ch NIL days were spent in hospital.

5. The present age of the accused is 31 years, 6 months,

6. The date of his attestation is 6 Sep 39 ~~calling up for military service~~ [illegible]

7. The service which the accused is allowed to reckon is 4 years, 8 months,

8. The accused is in possession of: C.V.S.M. and Clasp.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

~~In the substantive rank of~~

In the war substantive rank of [illegible]

In the acting rank of ACTING CORPORAL 1 Aug 43.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

4/42 A. & E. W. Ltd. Gp.698 Forms/B.296(War)/2
8/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	9 Jan 43 Field U.K.	A.A. 15(1) AWL 31 days 13 hrs 1 min.	90 days Det'n Confirmed by Brig.E.A. Haltenby, 3rd Div., on 15 Jan 43.	Granted remission of 30 days Detention wef 9 Mar 43.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this _____ day of _____

(N.E. THORNE) CAPT.,
Records Officer, 3 Cdn Inf Bde Unit

COUNTER NUMBER 5423580

HOUR 2030

OPERATOR'S INITIALS HMB

RELIEVING OPERATOR _____

COUNTER NUMBER 5'42580

HOUR 2030

OPERATOR'S INITIALS HMB

RELIEVING OPERATOR _____

Affidavit

PROVINCE OF ONTARIO
COUNTY OF CARLETON
TO WIT:

I, Hubert M Barclay of the City of Ottawa, in the County of Carleton, an employee of the Department of National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.

2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.

3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the City of Ottawa, in the County of Carleton, this day of A.D. 19

CAMERA OPERATOR

A NOTARY PUBLIC

Dated NOV. 22. 1952.

APPENDIX "A" TO THE AFFIDAVIT

CAMERA OPERATOR'S REPORT

PRODUCTION DATA	DATE	HOUR
STARTED		
FINISHED		
TOTAL NO. OF HOURS		9 ½
TOTAL NO. OF IMAGES		5120

JOB NO. 44 REEL NO. 25

BOOK NO. 17-1 CAMERA # 2

INDEXING DATA 44-15A. 44-15B.

BEGINS WITH DALZELL G.T. DAVIES K. R.

1. DAOUST A. DAVIS J.W.

2. DAOUST E.P. DAVIS W.H.

3. DAVIDSON A.C. DAY G.H.

ENDS WITH DAVIES J. DEAN W.J.

J.G.

END

SECOND

SIDE


44.15